

# Federal Register

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**Monday  
May 19, 1980**

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**Part VIII**

**Environmental  
Protection Agency**

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**Hazardous Waste Management System**

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**Proposal To Modify 40 CFR Part 265—  
Subpart H—Financial Requirements**

CCR 000041212

ENVIRONMENTAL PROTECTION  
AGENCY

## 40 CFR Parts 264 and 265

EPA 1459-71

Financial Requirements for Owners  
and Operators of Hazardous Waste  
Management FacilitiesENVIRONMENTAL PROTECTION  
AGENCY

ACTION: Revision of Proposed Rule.

**MARY:** This proposal is a revision of regulations proposed on December 18, 1978 (43 FR 58995, 59006-7). Under the revised proposal, as in the original, an owner or operator of each hazardous waste management facility would have to provide assurance that funds will be available when needed for properly operating the facility and, in the case of a disposal facility, for maintaining and monitoring it after closure. The revised proposal, however, allows a number of options in providing such assurances. In the original proposal had only one option, trust funds. The revised provisions for financial assurance are added for inclusion both in the general standards to be used in standards (Part 264) and in standards for facilities in interim status (Part 265). The revised proposal also includes a requirement for liability insurance facilities in interim status. The liability requirements in the original proposal were only for inclusion in the general standards. These general standards have not been revised, but the next period for them is reopened. EPA is reproposing this rule because many new and revised provisions have not been subjected to public review. The changes have resulted from analyses by the Agency in response to comment on the original proposal.

**DATES:** Comments are due on or before August 18, 1980. A public hearing will be held on July 1, 1980 from 9 a.m. to 5 p.m.

**ADDRESSES:** Comments should be addressed to Deborah Villari, Docket Officer, Office of Solid Waste (WH-562), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-8173. Comments should identify the regulatory docket as follows: "Section 3004. Financial Requirements."

An official record for this rulemaking is available at: Room 2711, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9 a.m. to 5 p.m., Monday through Friday, excepting holidays.

A public hearing will be held at the North Building Auditorium, 330

Independence Avenue SW., Washington, D.C., on July 1, 1980, from 9 a.m. to 5 p.m., with registration from 8:30 to 9 a.m. Anyone wishing to make a statement at the hearing should notify, in writing: Ms. Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. E.P.A., 401 M Street SW., Washington, D.C. 20460.

Oral and written comments may be submitted at the public hearing. Persons who wish to make oral presentations must restrict their presentations to 10 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

**FOR FURTHER INFORMATION CONTACT:** George A. Garland, Chief, Economic and Policy Analysis Branch, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-0190.

For information about the liability requirements, contact Hugh Holman, Economic Analysis Division, Office of Planning and Evaluation (PM-220), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202) 755-2677.

**SUPPLEMENTARY INFORMATION:****Authority**

This regulation is proposed under the authority of Section 1008, 2002(a), and 3004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 USC §§ 6905, 6912(a), and 6924.

**Background**

Section 3004(f) of the Resource Conservation and Recovery Act of 1976 specifically requires EPA to establish financial responsibility standards applicable to owners and operators of hazardous waste management facilities as such standards may be necessary or desirable to protect human health and the environment. EPA proposed, on December 18, 1978 (43 FR 58995, 59006-7), financial requirements intended to provide: (1) assurance that funds will be available when needed to close hazardous waste management facilities properly and to monitor and maintain hazardous waste disposal facilities after closure; and (2) liability coverage for injuries to people and property which result from the operation of hazardous waste management facilities.

The need for requirements for financial assurance of closure and post-closure care is indicated by the numerous instances of environmental damage resulting from abandonment of facilities and other failure to provide for

closure and post-closure care in a timely manner. (Several such cases are described in the Background Document for the financial requirements.) The likelihood of failure to provide adequately for closure and post-closure care is increased by the fact that the costs occur when the economic value of the facility is diminished or nonexistent. For some disposal facilities, post-closure care must extend for decades beyond the operating life of the facility. EPA believes that significant numbers of owners and operators may lack the ability to provide effectively for closure and post-closure costs unless they make provision for them during the active operating life of the facility.

The Agency believes liability requirements are necessary because of the potential for damage to people and property from hazardous waste management operations, as indicated by actual damage cases and the essential nature of hazardous wastes. If the facility owner or operator has insufficient financial resources to pay for damages, private parties or government may be forced to bear the costs.

The basic purposes of the financial requirements have not changed since the original proposal, but the provisions for achieving these purposes have been expanded and altered as a result of reanalyses following public comment on the original proposal. As explained in greater detail below, the revised proposal would allow owners and operators to choose from a number of mechanisms in providing financial assurance for closure and post-closure care, including trust funds, surety bonds, letters of credit, guaranties, a financial test, and a revenue test for municipalities. The provisions for the one option that was available in the original proposal, the trust fund, have been restructured to be less burdensome to owners and operators. Standard forms for the financial instruments have been added to the proposal.

The revised requirements for financial assurance for closure and post-closure care are proposed for inclusion in both the general standards to be used in the permitting of hazardous waste management facilities (40 CFR Part 264) and the interim status standards (Part 265). The headings and citations are numbered for inclusion in Part 265 since the regulations on closure, post-closure care, cost-estimating, and applicability to which the proposed regulations must refer have been promulgated only for Part 265 (and appear in today's Federal Register). For inclusion in Part 264, these citations would be changed and other

minor modifications would be made, e.g., the requirement that the assurance mechanisms be established by the effective date of the regulations would be dropped since the general standards must be applicable to new facilities seeking a permit after the effective date.

The revised proposal also adds a liability insurance requirement for facilities in interim status. The insurance would cover damage claims resulting from sudden accidents. The general status liability requirements in the original proposal, covering both sudden and nonsudden events, are not part of the reproposal, but the public comment period for them is reopened, to run concurrently with the comment period for the reproposal.

Other portions of the original proposal not included in the reproposal are: (1) the requirements for estimating the costs of closure and post-closure care, which, with an "Applicability" section, are promulgated in today's Federal Register; (2) the transfer of ownership provisions, which are dropped from these requirements since this topic is more appropriately covered by the Consolidated Permit Regulations, 40 CFR Part 122, Subparts A and B, which are promulgated today; and (3) the access and default provisions, which are dropped since Sections 3007 and 3008 of RCRA contain access and enforcement provisions that apply to all regulations under Subtitle C of RCRA, and the Agency has decided that special provisions for financial responsibility requirements would be inappropriate.

#### Applicability

The applicability of the financial requirements for hazardous waste facility owners and operators is set forth in 40 CFR 265.140, which is promulgated today. The proposed regulation, as revised, includes amendments to § 265.140 to cover applicability of the proposed financial requirements. Essentially, the financial requirements for closure and the liability requirements would apply to owners and operators of all hazardous waste facilities, and the requirements for post-closure care would apply only to owners and operators of disposal facilities. States and the Federal government are exempt from the financial requirements.

#### Financial Assurance for Closure

Under Subpart C of the Part 265 regulations promulgated today, an owner or operator of each hazardous waste facility must prepare a closure plan for the facility. The owner or operator must also prepare a cost estimate for closure of his facility at the point in the facility's operating life when

the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan; he must adjust the estimate for inflation annually and prepare a new estimate whenever a change in the closure plan affects the cost of closure (see § 265.142).

The originally proposed interim status standard for financial assurance for closure required that the owner or operator make a cash deposit for the entire amount of the closure cost estimate into a closure trust fund on the effective date of the regulations; the general standard required an owner or operator to make a cash deposit equal to the cost estimate for closure, multiplied by the appropriate "present value factor," into a closure trust fund as a condition of receiving a permit. The present value factor accounted for growth of the fund over operating life at a 2 percent per annum real interest rate (interest minus inflation). A number of commenters said that owners and operators of many facilities could not afford to comply with these requirements. They suggested that many facilities would have to close, exacerbating the expected shortfall in hazardous waste management capacity. The Agency believes that depositing the full amount of the closure cost in the trust at the beginning may cause insolvency in a few cases representing a relatively small percentage of capacity. However, not being willing to risk aggravating a possible capacity shortfall, EPA proposes to allow the closure trust fund to build up over the expected life of the site or 20 years, whichever period is shorter. The revised proposed requirements for the trust fund include provisions for adjusting the annual payments in response to inflation, changes in the closure cost estimate, and changes in the value of securities in the fund.

As noted above, the originally proposed general standard for the trust fund allowed adjustment of the lump-sum amount to be deposited on the basis that the fund would earn a real interest rate of 2 percent. Some commenters felt that this rate was too low, while others felt it was too high. EPA agrees that a 2 percent real interest rate is too high. Provisions of the revised proposal are based on a zero real interest rate to adequately account for the effects of long-term inflation and trustee fees. Based on long-term data, the Agency believes that over an extended period, the purchasing power of the deposited funds is likely to be static, i.e., the nominal interest realized will be cancelled out by inflation and by trustee fees.

The original proposal did not allow reimbursement of the owner or operator for closure expenses from the trust fund until closure was completed to the satisfaction of the Regional Administrator. Commenters stated that this provision imposed hardship on owners and operators since they would have to pay out twice for closure before being reimbursed. The Agency agrees that it would be preferable to reimburse owners and operators as closure is accomplished. Under the revised proposal the owner or operator would be reimbursed for closure bills submitted before closure was completed if the Regional Administrator found them to be in accordance with the closure plan and if the amount remaining in the trust fund after such payment would be at least 20 percent of the amount in the fund when closure began. The 20 percent remaining would provide reasonable financial assurance for closure activities that may be found to be necessary after the owner or operator and an independent registered professional engineer have certified that closure was completed in accordance with the closure plan. The Regional Administrator must release all funds within 30 days of receiving such certifications unless he has reason to believe closure was not done according to the closure plan.

EPA received numerous comments, especially from industry, suggesting that other financial assurance mechanisms in addition to the trust should be allowed. Commenters stated that allowing only trust funds is unnecessary and financially burdensome. The Agency now proposes to allow a number of mechanisms including surety bonds, letters of credit, guaranties, and tests of financial strength, as well as trust funds.

EPA's major concern with respect to surety bonds has been that they could be quickly cancelled and thus did not assure coverage of closure. As the Agency has gone through the process of revising its proposed regulations, however, it has learned that cancellation provisions that assure coverage of closure may be obtainable by the regulated community. The surety bond provisions in the reproposal include two cancellation clauses. First, the owner or operator and EPA must receive 90 days' notice of cancellation from the surety company; during this time, if the owner or operator is unable to establish other financial assurance, the Agency may order closure. A second clause requires that the bond must remain in effect until completion of closure once closure begins or is ordered to begin by the Regional Administrator.

believes that these provisions would make the surety bond an acceptable alternative mechanism.

A bank letter of credit assures that a bank will make available a specific sum of money over a specific time period on behalf of its customer to the party (beneficiary) in whose favor the letter is written. The beneficiary can draw on a credit by presenting documents specified in the letter. Under the proposed regulation, a letter of credit, payable to the Regional Administrator, could be obtained by a facility owner or operator in the amount of the closure cost estimate. The letter of credit would contain an automatic one-year extension clause; if the bank decides not to renew the credit, it must give 60 days' notice to the Regional Administrator. If the owner or operator fails to establish other financial assurance during this period, if the owner or operator fails to carry out closure in accordance with the approved plan, the Regional Administrator could draw on the credit; the funds would go into an escrow account from which closure bills would be paid. The revised proposal includes a financial test consisting of criteria for working capital, and level of indebtedness. By meeting these terms, a firm could satisfy the requirement for financial assurance for closure. The purpose of the test is not to determine whether a firm will go bankrupt, but rather to indicate whether it will have adequate funds to establish a trust or other allowable instrument to provide financial assurance for closure. If the financial position deteriorates below the acceptable levels, under the proposed regulation, a firm meeting the financial test may lose another entity's compliance with closure regulations, and this entity would qualify as financial assurance for closure. Reasons explained in the preamble of Parts 264 and 265, facilities owned or operated by States or the Federal Government are exempt from the requirements under 30(c). Since local governments sometimes do, become, however, the Agency has a simple revenue test for facilities in the repropo-

ded flexibility, the revised regulation explicitly allows an owner or operator to combine instruments (e.g., of half the closure cost by a trust fund, half by a letter of credit, or more than one facility instrument, or cover both post-closure care with a mechanism.

Under the originally proposed interim status standards, the Regional Administrator could allow partial compliance with the financial assurance requirements if full compliance would render the owner or operator insolvent. This provision is not included in the revised proposal since it could work against the main function of the requirements as minimum standards for financial responsibility on the part of owners and operators. It would also impose a severe administrative burden on the Agency, since the financial status of owners and operators applying for such relief would have to be evaluated. Furthermore, EPA believes that by changing the trust fund to make it a less costly mechanism, and by providing for other financial mechanisms which, for many owners and operators, may be considerably cheaper to use than the trust fund, any need for such a provision is substantially reduced.

#### Financial Assurance for Post-Closure Care

Subpart C of the Part 265 regulations promulgated today requires that an owner or operator of each hazardous waste disposal facility prepare a plan for 30 years of post-closure care. The owner or operator must prepare, and keep current, a cost estimate for 30 years of post-closure care of the facility (see § 265.144).

The original proposed regulation for financial assurance for post-closure care required establishment of a trust fund built up over the life of the facility. Assurance of post-closure care for 20 years was required since the basic period of post-closure care under the proposed post-closure regulations was 20 years. Again, a 2 percent real interest rate was assumed in directing the calculation of the amount to be paid in. The issues and comments received on the post-closure trust fund requirements were very similar to those received on the closure trust requirements. The Agency's response in the revised proposal is very much the same, and thus the post-closure trust provisions are quite similar to those of the closure trust provisions as revised. The owner or operator would be reimbursed for post-closure costs if they are in accordance with the post-closure plan. At the end of 30 years of post-closure care (or earlier if the Regional Administrator reduces the post-closure care period required of the facility), any funds remaining in the trust would be returned to the owner or operator.

In the revised proposal surety bonds and letters of credit have been added as acceptable financial instruments for assuring post-closure care. These may

be written so that they assure lump-sum post-closure funds at closure, or they may assure that the funds will be available at any point during the post-closure period should the owner or operator default. A financial test, guaranty, and a revenue test for municipalities are also being allowed as means of assuring post-closure care.

#### Mechanisms for Financial Assurance Suggested But Not Included

All the basic methods for providing financial assurance that have been added since the original proposal were among those suggested by commenters on the original proposal. There were a number of other mechanisms suggested that are not in the reproposal, however.

The escrow account has been considered by the Agency, but was not included in the reproposal because it would require the Regional Administrator to become a signatory to the agreement and might present other administrative burdens without offering significant advantage over the other instruments allowed. The escrow account is used in the repropo-

regulations as a means of holding funds following a default, since this use of escrows does not involve the Regional Administrator as a signatory. A national fund based on assessments on owners and operators and used to cover defaults was suggested by several commenters. Use of such a method would clearly require special legislation. EPA is considering proposal of legislation for a national fund that may include coverage of defaults in providing post-closure care, as well as coverage of post-closure liability.

Other mechanisms suggested included pledges of securities, liens against land and real improvements, interest-bearing accounts in financial institutions, and sinking funds. These were not included because the Agency concluded that they suffered from one or more of the following shortcomings: their status is uncertain in the event of financial failure; they would impose unreasonable administrative burdens on the Agency; they could be cancelled quickly, providing no long-term guarantee of financial assurance; or they depend on long-term solvency of the owner or operator.

#### Liability Requirements

The reproposal includes an interim status requirement for liability insurance during operating life. Under this requirement an owner or operator of each hazardous waste treatment, storage, or disposal facility must show evidence of a minimum of \$1 million of liability insurance per occurrence per

firm with a \$2 million annual aggregate, for sudden and accidental occurrences (exclusive of legal defense costs).

EPA today also reopens the comment period on the general standards for liability coverage proposed December 18, 1978 (43 FR 59007). The proposed general standards differ from the interim status requirement proposed today, for reasons discussed below. The final general standards and interim status standards will be revised in promulgation to make them consistent as far as insurance for sudden accidents is concerned.

The general standards proposed in December 1978 required each owner or operator to maintain liability insurance for both sudden and accidental occurrences and for nonsudden and accidental occurrences. The interim status regulations proposed at that time did not include any insurance requirement. Though cognizant of the need for financial responsibility for third-party claims during interim status, EPA was concerned that liability insurance would not be made available to facilities managing hazardous waste until they could show compliance with permit requirements. Analysis performed since the December 1978 proposal suggests that many firms following good business management practices already possess liability insurance covering sudden accidents. Other firms that follow good management practices should easily be able to increase their coverage to the requisite amount or to obtain coverage in the event that they do not currently carry such insurance.

Sudden accidents that cause damage to third parties are clearly a possibility during the operation of a hazardous waste management facility. An analysis of the 90 incidents of damage occurring on hazardous waste management sites in the EPA damage report files showed that damage occurred from sudden events in 15 of the incidents. Facilities involved in sudden accidents were both "on-site" (adjacent to manufacturing facilities) and off-site, and were owned by small, independent operators as well as by large corporations.

The analysis of liability coverage has confirmed that coverage for nonsudden occurrences may not be available at this time to all firms prior to compliance with permit requirements. Most insurance companies do not currently provide coverage of nonsudden occurrences; most that do provide coverage restrict it to their clients who are large and well-managed. Consequently, for the interim status period, the Agency has decided to propose that insurance coverage be

required, but only for damages from sudden and accidental incidents.

The analysis suggests that the required insurance can be obtained at a reasonable cost. The cost of liability insurance varies considerably with the inherent risk of the activity insured, the management practices of the firm, and the past accident record of the firm. The cost of annual coverage for sudden accidents is likely to range from \$10-20,000 for a small "average risk" waste disposal firm (with annual revenues of \$1 million or less) and would increase, though at a decreasing rate, for larger sized firms. This cost of coverage is estimated to be 1-3 percent of annual revenues for small firms. If a small firm is deemed to pose greater risks, however, it could end up paying 5-10 percent of its revenues for insurance. A large high-risk waste disposal firm is likely to pay less than 1 percent of its revenues for insurance coverage. Additionally, the cost of coverage for a firm that only stores waste should be less than the cost of coverage for waste disposal firms. The Agency believes that the firms that do not currently have this coverage or do not have it in the requisite amount should be able to secure it at reasonable cost.

In addition to not requiring coverage for nonsudden events, the liability insurance requirement for the interim status period proposed here differs from the previously proposed general standards in several respects:

The amount of insurance coverage required for sudden incidents is \$1 million per incident instead of the \$5 million per incident specified in the proposed general standard. Many commenters on the proposed general standard argued that \$5 million was too high, and that there have been no representative settlements in this amount. In response to these comments, EPA has reconsidered the required level of coverage. An extensive analysis of the Agency's damage report files identified only one incident where damage caused by a sudden occurrence was estimated. The damages in this incident were \$216,500 (1979 dollars). Insurance industry representatives informed EPA that small firms might typically maintain coverage for sudden events in an amount ranging from \$300,000 to \$1 million. Finally, EPA contacted four States (Washington, Oregon, Oklahoma, and Kansas) known to require insurance for hazardous waste management facilities, and found that the amount of insurance required by these States ranges from \$300,000 to \$1.2 million. On the basis of these findings, EPA is proposing to require \$1

million of liability insurance per incident.

Many commenters on the proposed general regulations argued that EPA should not specify any one amount of required insurance coverage, that the amount should be decided on a case-by-case basis after a review of the degree of risk posed by the operations of a hazardous waste management facility. EPA agrees that the degree of risk is of signal importance in setting an appropriate level of insurance coverage. EPA believes that \$1 million is a reasonable minimum level of coverage for sudden and accidental occurrences for all firms managing hazardous wastes, and that many firms will choose to obtain coverage in greater amounts based on the risks inherent in their operations. EPA also believes that the premiums paid by facility owners and operators for a given level of coverage will reflect the degree of risk posed by the operations of the facility.

Under today's proposal, liability insurance is to be maintained on a per firm basis rather than a per site basis, accompanied by an annual aggregate liability limit. Many commenters on the proposed general standards requested clarification on this point. Liability insurance is required on a per firm basis rather than a per site basis because insurance companies generally provide coverage to all facilities owned or operated by a firm under a single policy. The insurance industry provides coverage in this manner because through the use of an annual aggregate they are able to take into account the risk of multiple accidents occurring at a firm which owns one or more facilities. Having reviewed prior damage incident histories, the Agency believes that an annual aggregate twice that of the liability limit per occurrence will provide adequate coverage for sudden accidents.

The amount of liability insurance carried must exclude legal defense costs. Legal defense costs are excluded from the liability limits because the costs of legal defense could be considerable and, if included in the limits, could consume the major portion of insurance coverage and leave little coverage for actual damages. The exclusion of legal defense costs is also consistent with standard comprehensive general liability policies.

An added requirement is that the deductible in the insurance policy must not exceed 5 percent of the per incident limit of liability of the policy. A maximum limit has been placed on the deductible in order to prevent firms from carrying a policy with a deductible so high as to render any insurance

verage ineffective, due to the underlying inability of the firm to meet obligations under the deductible. Finally, self-insurance is not permitted as an alternative to liability insurance during interim status. Self-insurance, as proposed in the December 1978 general standards, was defined as the absence of insurance and the sufficiency of ability to cover potential claims. The Agency believes that most if not all firms currently carry or can obtain comprehensive general liability policies and hence sees no need to allow self-insurance for the interim status period.

#### • **State-Authorized Mechanisms**

In the original proposal the Agency did not address the problem of differences between State and Federal financial requirements which potentially could cause problems to owners or operators. No such problem would develop in States that receive authorization to operate a hazardous waste regulatory program in lieu of the Federal program, since only the State's requirements would apply. Some States, however, may not seek or obtain Federal authorization, and, for others, authorization may be delayed. In such cases the owners and operators would be subject to Federal hazardous waste regulations and also to any State hazardous waste regulations that are in effect. To avoid causing unnecessary burdens on owners and operators, the Agency has included provisions in the proposed regulation that would allow owners or operators to use State-authorized mechanisms to meet the financial requirements if such mechanisms provide assurances that are substantially equivalent to that of mechanisms specified in the Federal requirements.

As to the extent that a State has legal or financial responsibility for closure, post-closure care, or liability for a facility, the owner and operator would be exempt from the respective Federal financial requirements.

#### • **Comments Requested on Financial Assurance for Closure and Post-Closure**

In response to many comments on the proposed regulation on financial assurance for closure and post-closure care, the Agency is proposing a greatly revised regulation. The main change has been to allow means in addition to trust funds which would be effective in assuring availability of funds. EPA has limited comments regarding financial mechanisms, however. The Agency expects to receive, and expects to benefit

greatly from, public review of this entire revised proposal. Furthermore, the Agency requests comments on the following specific matters:

- The revised proposal allows the closure trust fund to be built up in annual payments over the life of the facility, or 20 years, whichever period is shorter. Does the benefit of lowering the cost of compliance with the financial requirement outweigh any reduction in financial assurance caused by the lengthy pay-in period?

- What kinds of owners or operators of hazardous waste facilities are likely to be able to obtain letters of credit and surety bonds? Can the requirements for these instruments be altered in a way that will increase their availability without reducing their effectiveness?

- What has been the experience of other governmental entities with collecting on surety bonds and letters of credit in the event of a default? Has experience led any governmental body to prefer one type of financial instrument over another in terms of reliability and ease of administration? What kinds of arrangements do banks and other financial institutions usually make to hold funds pending the outcome of legal determinations of default?

- Are the proposed financial test, revenue test, and guaranty effective means of financial assurance? Are the criteria accurate measures of financial health? Are there relatively simple alternatives or substitutes for the criteria which promise greater accuracy or reliability? Is there empirical evidence available which would justify making the proposed financial tests more or less stringent? Should private bond-rating services be considered as an alternative to the revenue test for municipalities or added as an element of the test?

- The Agency has considered escrow accounts as mechanisms for financial assurance and has tentatively decided that they are likely to present undue administrative burdens to the Agency without offering significant advantages over the other instruments allowed in the regulations. Comments are nonetheless invited on the idea of adding escrow accounts to the list of allowed instruments.

- The revised proposal allows for use of a single financial mechanism to provide financial assurance for closure and/or post-closure care of multiple facilities. How useful is this provision to the regulated community? Will it pose administrative problems to the Regional Offices in cases where facilities in more than one Region are covered by a single financial instrument?

- Suggestions and information on other possible mechanisms, or on different versions of the instruments already allowed, will be welcomed. The utility of such suggestions will be maximized by providing concrete examples of the form and operation of the instruments as well as an argument as to how they will succeed in meeting the problems of providing financial assurance for closure and/or post-closure care at a hazardous waste facility.

- EPA has been considering proposing legislation for a national fund that would provide financial assurance for post-closure care. Under such an approach, owners or operators of hazardous waste disposal facilities would pay into a national fund which would then be used to pay for post-closure care at bankrupt facilities. Comments are invited on whether this approach might be less costly than the proposed requirements for financial assurance for post-closure care.

- Forms for the trust instruments, surety bonds, letters of credit, and guarantees allowed in this revised proposal are included in these regulations in Appendices II-VIII. The Agency would prefer to require the use of such forms in order to simplify review of the instruments and administration of the regulations. Are there errors of commission or omission in the language of the specific forms which may impede or prevent them from accomplishing the goals intended? Would changes in the language or requirements of the specific forms increase their availability to the regulated community without reducing their reliability? How can the costs of the instruments be minimized further?

#### • **Comments Requested on Liability Requirements**

EPA also invites comments on several issues pertaining to the interim status liability requirement proposed today, and reopens the comment period on the general standard for liability coverage proposed December 18, 1978 (43 FR 59007).

EPA invites comment on the following specific issues, as well as on any other issues raised by the proposed liability requirements:

- Should the Agency require insurance coverage for nonsudden and accidental occurrences during the interim status period?

- Will the insurance industry provide such coverage?

- Will such coverage be available on a continuing basis, or may the insurance industry withdraw such coverage in the event of large damage suits?

- Is it desirable to allow the use of financial responsibility mechanisms such as indemnity funds as alternatives to liability insurance for either sudden or nonsudden occurrences? How would such alternatives work?
- Is the amount of coverage specified in the regulations appropriate?
- Can we tailor the amount of required insurance to reflect better the degrees of risk posed by the operations of particular sites? How can this be done?
- What will the likely annual cost of insurance be for nonsudden incidents?
- Will all firms be able to afford insurance for nonsudden incidents?
- Can a useful self-insurance alternative be specified which will ensure financial responsibility? What criteria should be used in qualifying self-insurers? What should be the allowable level(s) of self-insurance?
- EPA has obtained information on the above issues relating to liability requirements since the original proposal and has included the information as an appendix to the Background Document for the financial requirements. The Agency requests comments on this information as well as on the rest of the Background Document.

#### Background Document

Copies of the Background Document prepared in support of this revised proposed rule are available for review in all EPA Regional Office libraries and in the EPA headquarters library (Public Information Reference Unit) Room 2404, Waterside Mall, 401 M Street, SW, Washington, D.C.

#### Economic, Environmental, and Regulatory Impacts

In accordance with Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107, EPA policy as stipulated in 39 FR 37419, October 21, 1974, and Executive Order 12044, respectively, analyses of the economic, environmental, and regulatory impacts are being performed for the entirety of Subtitle C, Hazardous Waste Management. Copies of the draft documents covering the proposed requirements for financial assurance of closure and post-closure care are available for review in the EPA libraries noted above. The impacts of the liability requirement in this reproposal are not covered in the present drafts but will be covered in subsequent drafts.

Dated: May 2, 1980.

Douglas M. Costle,  
Administrator.

It is proposed to amend 40 CFR Part 265 by revising § 265.140(a) and (b), and

adding §§ 265.141, 265.143, 265.145, 265.146, 265.147, and Appendices I-VIII. It is also proposed that the same provisions, with changes in section numbers and other minor modifications, will be included in Part 264.

#### Subpart H—Financial Requirements

##### § 265.140 Applicability.

(a) The requirements of §§ 265.142, 265.143, 265.146, 265.147, and 265.149 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or in § 265.1.

(b) The requirements of §§ 265.144 and 265.145 apply only to owners and operators of disposal facilities.

##### § 265.141 Definitions.

When used in Part 265, the following terms have the meanings given below:

(a) "Assets" means debit balances carried forward upon a closing of books of account representing property values or rights acquired that are recognized and measured in conformity with generally accepted accounting principles.

(b) "Current assets" means cash and other assets that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of a business or within one year, if the operating cycle is shorter than one year.

(c) "Current liabilities" means liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet or the creation of other current liabilities; or those expected to be satisfied within a relatively short period of time, usually one year.

(d) "Liabilities" means obligations carried forward upon a closing of books of account that are recognized and measured in conformity with generally accepted accounting principles.

(e) "Marketable securities" means securities that are traded on recognized established securities markets where there are independent bona fide offers to buy and sell and where payment will be received in settlement of a sale within a relatively short time conforming to trade custom.

(f) "Net working capital" means the excess of current assets over current liabilities.

(g) "Net worth" means the excess of total assets over total liabilities and is equivalent to owner's equity.

(h) "Standby letter of credit" means an irrevocable engagement by an issuing bank, at the request of an owner or operator, that it will honor demands for

payment made by the U.S. Environmental Protection Agency for the period of the letter of credit and under terms specified for letters of credit in these regulations.

(i) "Surety bond" means a contract by which a surety company engages to be answerable for the default or debts by an owner or operator on responsibilities relating to closure or post-closure care, and agrees to satisfy these responsibilities if the owner or operator does not, in accordance with the terms specified for surety bonds in these regulations.

(j) "Total-liabilities-to-net-worth ratio" means the value of total liabilities, which includes the sum of short-term and long-term obligations, divided by the value of net worth.

(k) "Trust fund" means a fund established by an owner or operator and held by a financial institution as the trustee with a fiduciary responsibility to carry out the terms of the trust as specified in these regulations for the benefit of the U.S. Environmental Protection Agency.

##### § 265.143 Financial assurance for facility closure.

By the effective date of these regulations, an owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from among the following options:

###### (a) Closure trust fund.

(1) The owner or operator may establish a closure trust fund. The trustee must be a bank or other financial institution. The beneficiary of the trust fund must be the U.S. Environmental Protection Agency.

(2) The trust agreement must be executed on EPA Form 8700-15 (see Appendix II). The owner or operator must send the properly executed trust agreement to the Regional Administrator by certified mail within 10 days after the effective date of the agreement.

(3) Replacement of a trust fund with another form or forms of financial assurance allowed in this section must be preceded by the written consent of the Regional Administrator. The owner or operator must report any change of trustee to the Regional Administrator within 10 days after such a change becomes effective.

(4) Payments to the trust fund must be in cash or marketable securities. The value of each security must be determined in accordance with the Internal Revenue Service method for valuing securities for estate tax purposes (28 CFR 20.2031-2). In all valuations of the trust fund for purposes

regulations, securities must be in accordance with this IRS method. Payments to the closure trust fund shall be made annually over the life of the facility as estimated in the closure plan (§ 265.112(a)) or 20-year pay-in period, whichever period is shorter; this period is hereafter referred to as the pay-in period. The first payment must be made on the adjusted closure cost estimate (§ 265.142) divided by the number of years in the pay-in period. The first payment must be made by the effective date of the regulations. Subsequent payments must be made no later than 30 days after the anniversary date of the first payment. The trust agreement must require the trustee to notify the Regional Administrator by certified mail within 5 days after the end of the 30-day period if the trustee does not receive payment within such period after receiving such notification. The Regional Administrator may order the owner or operator to begin closure unless the owner or operator has established other financial assurance as allowed in this section.

The owner or operator must adjust the amount of each annual payment to be made by multiplying the previous year's payment by a factor calculated in accordance with § 265.142(c).

The closure cost estimate is in accordance with the next annual payment calculated as follows: Divide the adjusted closure cost estimate by the number of years in the pay-in period as of the effective date of the regulations.

Multiply the result by the payments made to the fund. From the result of step 2, subtract the current value of the fund. The amount which needs to be paid over the remaining pay-in period is the result of step 3 by the number of years in the pay-in period. Divide the result of step 4 by the number of years in the pay-in period to obtain the new annual payment.

At the end of this calculation, see

The owner or operator must determine the value of the trust fund in 30 days prior to the date the first payment is due to be made. If the value of the fund has decreased since the previous year's payment, the next payment must be based on the steps in paragraph (c). The owner or operator must use the calculation in paragraph (c) to determine his next payment. The value of the fund has decreased since the previous year's

exceeds the total amount of the adjusted closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the adjusted closure cost estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(9) An owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate at the time the fund is established, but the trust fund must be valued annually and its value must be maintained at no less than the value that the fund would have had if annual payments had been made as specified in paragraphs (a)(5)-(8) of this section.

(10) If an owner or operator establishes a closure trust fund after the effective date of these regulations, having initially used one of the other mechanisms specified in this section, his first payment must be in the amount that the trust fund would have contained if it had been established on the effective date of these regulations in accordance with the requirements of this section.

(11) If the operating life of a facility extends beyond the maximum 20-year pay-in period, the owner or operator must determine the value of the trust fund every year after the 20th year until closure begins. Whenever the closure cost estimate changes during this period in accordance with § 265.142 (b) or (c), the owner or operator must compare the new estimate with the latest annual value of the fund. If the value of the fund is less than the amount of the adjusted closure cost estimate, the owner or operator must deposit cash or marketable securities into the fund so that its value equals the amount of the estimate. Such payment must be made within 60 days of the change in the closure cost estimate. If the value of the fund is greater than the total amount of the adjusted closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of funds in excess of the estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(12) Within 30 days after receiving a request from the owner or operator for release of excess funds as specified in paragraphs (a) (8) and (11), the Regional Administrator must direct the trustee in writing to release such excess funds to the owner or operator unless the Regional Administrator finds that the closure cost estimate was not prepared and adjusted in accordance with § 265.142.

(13) An owner or operator may request reimbursement for closure expenditures by submitting itemized bills to the Regional Administrator. Within 30 days after receiving bills for closure activities, the Regional Administrator must direct the trustee in writing to pay those bills which the Regional Administrator determines to be in accordance with the closure plan or are otherwise justified. Such payments must be made so long as the value of the fund after payment is at least 20 percent of the value that the fund had before any closure bills were paid.

(14) If an owner or operator substitutes another form or forms of financial assurance specified in this section for all or part of the trust fund, he may apply to the Regional Administrator for release of funds from the trust fund. Within 30 days after receiving such request, the Regional Administrator must direct the trustee in writing to release the excess funds to the owner or operator.

(15) The terms of the trust must require the trustee to make disbursements as specified in this paragraph. The trustee will disburse monies from the trust fund to parties designated by the Regional Administrator upon written notification from the Regional Administrator that:

(i) The value of the trust fund exceeds the amount of the adjusted closure cost estimate; or

(ii) The itemized bills are in accordance with the approved closure plan or are otherwise justified, and they must be paid if the value of the trust fund after such payment is at least 20 percent of the value that the fund had before any closure bills were paid; or

(iii) The owner or operator has established other financial assurance for closure as allowed in this section for part or all of the trust fund; or

(iv) There has been a legal determination, a copy of which is attached to this notification, of a violation of the closure requirements of these regulations rendered in a proceeding brought pursuant to Section 3008 of RCRA.

(16) The trust agreement must require the trustee to release all funds remaining in the trust fund to the owner or operator upon receipt from him of the original or an authenticated copy of the Regional Administrator's letter, specified in paragraph (h) of this section, notifying the owner or operator that he is no longer required to comply with the requirements of this section for financially assuring closure of the facility.

(b) *Surety bond guaranteeing performance of closure.* (1) An owner or

operator may meet the requirements of this section by obtaining a surety bond guaranteeing performance of closure. A surety company issuing a bond in accordance with these regulations must, at a minimum, be authorized to do business in the United States and be certified by the U.S. Treasury Department, in Circular 570, to write bonds in the penal sum of the bond to be issued. The obligee of the bond must be the U.S. Environmental Protection Agency.

(2) The bond must be executed on EPA Form 8700-18 (see Appendix III). The terms of the bond must provide that the surety will send the properly executed bond to the Regional Administrator by certified mail within 10 days after the effective date of the bond.

(3) The surety bond must guarantee that the owner or operator will perform facility closure in accordance with the closure plan. The surety bond must be written in an amount equal to or greater than the adjusted closure cost estimate (see § 265.142). The surety bond must be written so that whenever closure activities begin or are ordered to begin by the Regional Administrator during the term of the bond, the bond coverage includes completion of closure in accordance with the closure plan.

(4) If the closure cost estimate increases beyond the amount of the penal sum of the bond, the owner or operator must, within 30 days of such increase in the estimate, cause the penal sum of the bond to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the closure cost estimate decreases, the penal sum of the bond may be reduced to the amount of the adjusted closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(5) The terms of the surety bond must provide that the surety company may cancel the bond by sending notice to the owner or operator and to the Regional Administrator by certified mail. Cancellation must not be effective for at least 90 days after the Regional Administrator receives the notice. The owner or operator, within 5 days of receiving a notice of cancellation from the surety, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the bond by providing 30 days' notice to the surety company if the Regional Administrator has given prior written consent based on

his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of cancellation from the surety the Regional Administrator may order the owner or operator to begin closure unless the Regional Administrator has received evidence of other financial assurance as specified in this section.

(7) A surety becomes liable on a bond obligation only when a proceeding brought pursuant to the provisions of Section 3008 of RCRA has determined that the owner or operator has violated the closure requirements of these regulations. The terms of the bond must require that, following such a determination, the surety must:

- (i) Complete closure of the facility in accordance with the closure plan; or
- (ii) Pay the amount of the penal sum into an escrow account as directed by the Regional Administrator.

(8) The Regional Administrator must direct the depository of an escrow account established under paragraph (b)(7)(ii) of this section to disburse funds to designated parties for the purpose of completing closure.

(c) *Standby letter of credit assuring funds for closure.* (1) An owner or operator may meet the requirements of this section by obtaining an irrevocable standby letter of credit. The letter must be written in favor of the Regional Administrator of the U.S. Environmental Protection Agency and must be for a period of at least one year. The letter of credit may be issued by any bank which is a member of the Federal Reserve System.

(2) The letter of credit must be executed on EPA Form 8700-17 (see Appendix IV). The terms of the letter must provide that the issuing bank will send the properly executed letter of credit to the Regional Administrator by certified mail within 10 days after the effective date of the letter.

(3) The credit must be issued for at least the amount of the adjusted closure cost estimate (see § 265.142).

(4) If the closure cost estimate increases beyond the amount of the credit, the owner or operator must, within 30 days of such increase in the estimate, cause the amount of the credit to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the closure cost estimate decreases, the credit may be reduced to the amount of the adjusted closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the issuing bank of any reduction in the required credit within 30 days after receiving the request.

(5) The letter of credit must contain a clause providing for automatic annual extensions of the credit, subject to 60 days' written notice by the issuing bank to both the owner or operator and the Regional Administrator, by certified mail, of the bank's intention not to renew the credit. The owner or operator, within 5 days of receiving notice of nonrenewal from the bank, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the letter of credit by providing 30 days' notice to the issuing bank if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of nonrenewal from the bank the Regional Administrator may draw upon the credit up to the full amount of the credit unless he has received evidence that the owner or operator has established other financial assurance as specified in this section. If the Regional Administrator draws upon the letter of credit following a notice of nonrenewal, the issuing bank must, under the terms of the letter, deposit the amount of the draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(12)-(16) of this section.

(7) If the closure cost estimate increases beyond the amount of the funds in the escrow account, the owner or operator must, within 30 days of such increase, add to the account or establish other financial assurance as specified in this section to cover the increase. If the owner or operator fails to do so, the Regional Administrator may order him to begin closure.

(8) The Regional Administrator may otherwise draw upon the letter of credit only upon a legal determination of a violation of the closure requirements of these regulations rendered in a proceeding brought pursuant to the provisions of Section 3008 of RCRA. The terms of the letter must provide that, if the Regional Administrator draws upon the letter of credit following such a determination, the issuing bank will immediately and directly deposit the amount of the draft into an interest-bearing escrow account. The letter must require the escrow depository to disburse monies from the escrow account to persons designated by the Regional Administrator to complete closure of the facility.

(d) *Use of more than one type of financial instrument.* An owner or operator may meet the requirements of

by establishing more than one financial instrument. These instruments are limited to a trust fund, deed, or letter of credit as provided in paragraphs (a), (b), and (c), and any other instrument required by this section (e.g., a letter of credit to assure half the closure cost trust fund the remaining half).

*Financial test and guaranty for owner or operator.* An owner or operator may meet the requirements of this section by passing the following financial tests:

(1) Net worth. At least \$10 million in net worth in the United States.

(2) Liabilities-to-net-worth ratio. Liabilities must not be more than three times net worth.

(3) Working capital in the United States. Working capital must be at least twice the adjusted estimate (see § 265.142).

(4) Characteristics. Characteristics must be disclosed in a financial statement audited by an independent certified public accountant.

(5) Statement of assets. The statement must contain unconsolidated assets dated no more than 140 days before the current date. The owner or operator who intends to use a guaranty to meet both closure and post-closure requirements for a single facility must meet closure and/or post-closure requirements for more than one facility.

(6) Financial test. The statement must show assets for which facilities through the financial test demonstrate that his net worth in the United States is at least the sum of all the adjusted closure and post-closure costs covered by the financial test. The owner or operator must have the financial statement available at the time the guaranty is provided. The owner or operator must provide data from the financial statement requested as part of annual reports to the Regional Administrator.

(7) During the operating life of the facility the owner or operator must meet the requirements of this section.

(8) If at any time during the operating life of the facility the owner or operator fails to meet the requirements of paragraph (e)(1) of this section, the Regional Administrator must, unless he has reason to believe that closure has not been in accordance with the closure plan, send a letter to the owner or operator notifying him that he no longer has to comply with the requirements of this section for the facility in question.

[Comment: It should be noted that this letter from the Regional Administrator to the owner or operator releases him only from requirements for financial assurance for closure of the facility; it does not release him from legal responsibility for meeting the closure standards.]

guarantor must meet the requirements for owners or operators in paragraphs (e) (1) and (2) of this section.

(5) The guaranty must be executed on EPA Form 8700-18 (see Appendix V). The owner or operator must send the properly executed guaranty to the Regional Administrator by certified mail within 10 days after the effective date of the guaranty.

(6) Under the terms of the guaranty, the guarantor must notify the Regional Administrator and the owner or operator by certified mail if he at any time fails to meet the requirements of paragraph (e)(1) of this section. The guarantor must send such notice within 5 days after learning of failure to meet the requirements.

(7) The owner or operator must, within 30 days of receiving such notification, establish other financial assurance as specified in this section and provide evidence of such assurance to the Regional Administrator. If he fails to do so, the Regional Administrator may order him to begin closure.

(8) The guaranty may cancel the guaranty with 90 days' notice to the Regional Administrator and the owner or operator by certified mail, except that the guaranty must remain in effect if closure begins or is ordered to begin by the Regional Administrator before the end of the 90 days. Evidence of other financial assurance as specified in this section must be provided to the Regional Administrator within 90 days after a notice of cancellation is received by the Regional Administrator; otherwise, he may order the owner or operator to begin closure.

(9) The guaranty may be cancelled at any time following the mutual written consent of the owner or operator, the Regional Administrator, and the guarantor.

(10) Under the terms of the guaranty, in the event of a legal determination of a violation of the closure requirements rendered in a proceeding brought pursuant to Section 3008 of RCRA, the guarantor must pay parties designated by the Regional Administrator to complete closure in accordance with the closure plan.

(f) *Revenue test for municipalities.* (1) If the owner or operator is a municipality (as defined by RCRA), it may meet the requirements of this section by having annual revenues from property, sales, and/or income taxes equal to 10 times the adjusted closure cost estimate (see § 265.142). To be acceptable, these tax revenues must be legally available to cover closure responsibilities, i.e., they must not be dedicated to other purposes or

otherwise precluded from use in meeting closure responsibilities.

(2) The owner or operator must send a letter signed by the chief financial officer of the municipality to the Regional Administrator stating that the municipality meets the requirements of paragraph (f)(1) of this section. The letter must be sent by certified mail within 10 days after the owner or operator begins use of the revenue test to meet the requirements of this section.

(3) If at any time during the operating life of the facility the annual tax revenues fail to meet the minimum multiple specified in paragraph (f)(1), the owner or operator must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirement. The owner or operator must send evidence of other financial assurance as specified in this section to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the minimum multiple; otherwise the Regional Administrator may order the owner or operator to begin closure.

(g) *Use of a single financial mechanism for multiple facilities.* An owner or operator may use a single financial mechanism, as specified in paragraphs (a) through (f) of this section, to meet the requirements of this section for more than one facility of which he is the owner or operator. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established for each facility.

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days of receiving certifications from the owner or operator and an independent registered professional engineer that closure has been accomplished in accordance with the closure plan (see § 265.115), the Regional Administrator must, unless he has reason to believe that closure has not been in accordance with the closure plan, send a letter to the owner or operator notifying him that he no longer has to comply with the requirements of this section for the facility in question.

[Comment: It should be noted that this letter from the Regional Administrator to the owner or operator releases him only from requirements for financial assurance for closure of the facility; it does not release him from legal responsibility for meeting the closure standards.]

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**§ 265.145 Financial assurance for post-closure monitoring and maintenance.**

By the effective date of these regulations, an owner or operator of each disposal facility must establish financial assurance for 30 years of post-closure care of the facility. He must choose from among the following options:

(a) *Post-closure trust fund.* (1) The owner or operator may establish a post-closure trust fund. The trustee must be a bank or other financial institution. The beneficiary of the trust fund must be the U.S. Environmental Protection Agency.

(2) The trust agreement must be executed on EPA Form 8700-19 (see Appendix VI). The owner or operator must send the properly executed trust agreement to the Regional Administrator by certified mail within 10 days after the effective date of the agreement.

(3) Replacement of a trust fund with another form or forms of financial assurance allowed in this section must be preceded by written consent of the Regional Administrator. The owner or operator must report any change of trustee to the Regional Administrator within 10 days after such a change becomes effective.

(4) Payments to the trust fund must be in cash or marketable securities. The value of each security must be determined in accordance with the Internal Revenue Service method for valuing securities for estate tax purposes (26 CFR 20.2031-2). In all valuations of the trust fund for purposes of these regulations, securities must be valued by this IRS method.

(5) Payments to the post-closure trust fund must be made annually over the operating life of the facility as estimated in the closure plan (§ 265.112(a)) or 20 years, whichever period is shorter; this period is hereafter referred to as the "pay-in" period. The first payment must be equal to the adjusted post-closure cost estimate (see § 265.144) divided by the pay-in period in years. The first payment must be made by the effective date of these regulations. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The trust agreement must require the trustee to notify the Regional Administrator by certified mail within 5 days after the 30-day period if he does not receive payment within such period. Upon receiving such notification, the Regional Administrator may order the facility to begin closure unless the owner or operator has established other financial assurance as allowed in this section.

(6) The owner or operator must adjust the amount of each annual payment after the first one by multiplying the

amount of the previous year's payment by the inflation factor calculated in accordance with § 265.142(c).

(7) If a new post-closure cost estimate is prepared in accordance with § 265.144(b), the next annual payment must be calculated as follows:

Step 1—Divide the adjusted post-closure cost estimate by the number of years in the pay-in period as of the effective date of these regulations.

Step 2—Multiply the result by the number of payments made to the fund.

Step 3—From the result of step 2 subtract the current value of the fund. The result is the amount which needs to be distributed over the remaining pay-in period.

Step 4—Divide the result of step 3 by the remaining years in the pay-in period.

Step 5—Add the result of step 4 to the result of step 1 to obtain the new payment.

(Appendix I provides an example of a calculation of a new closure trust fund payment using these same steps.)

(8) The owner or operator must determine the value of the trust fund each year during the operating life of the facility within 30 days prior to the date each annual payment is due to be made. If the total value of the fund has decreased since the previous year's valuation, the next payment must be calculated using the steps in paragraph (a)(7) of this section. The owner or operator may also use the calculation in paragraph (a)(7) to determine his next payment if the value of the fund has increased. If the value of the fund exceeds the total amount of the adjusted post-closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the adjusted post-closure cost estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(9) An owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the post-closure cost estimate at the time the fund is established, but the trust fund must be valued annually and its value must be maintained at no less than the value that the fund would have had if payments and valuations had been made as specified in paragraphs (a)(5)-(8) of this section.

(10) If an owner or operator establishes a post-closure trust fund after the effective date of these regulations, having initially used one of the other mechanisms specified in this section, his first payment must be in the amount that the trust fund would have contained if it had been established on

the effective date of these regulations in accordance with the requirements of this section.

(11) If the operating life of a facility extends beyond the maximum 20-year pay-in period, the owner or operator must determine the value of the trust fund every year after the 20th year until closure begins. Whenever the post-closure cost estimate changes during this period in accordance with § 265.144 (b) or (c), the owner or operator must compare the new estimate with the latest annual value of the fund. If the value of the fund is less than the amount of the adjusted post-closure cost estimate, the owner or operator must deposit cash or marketable securities into the fund so that its value equals the amount of the estimate. Such payment must be made within 60 days of the change in the post-closure cost estimate. If the value of the fund is greater than the total amount of the adjusted post-closure estimate, the owner or operator may submit a written request to the Regional Administrator for release of funds in excess of the estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(12) Within 30 days after receiving a request from the owner or operator for release of excess funds as specified in paragraphs (a)(8) and (11), the Regional Administrator must direct the trustee in writing to release such excess funds to the owner or operator unless the Regional Administrator finds that the post-closure cost estimate was not prepared and adjusted in accordance with § 265.144.

(13) An owner or operator may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 30 days after receiving the bills for post-closure activities, the Regional Administrator must direct the trustee in writing to pay those bills which the Regional Administrator determines to be in accordance with the post-closure plan or are otherwise justified.

(14) If an owner or operator substitutes another form of financial assurance specified in this section for all or part of the trust fund, he may apply to the Regional Administrator for release of funds from the trust fund. Within 30 days after receiving such a request, the Regional Administrator must direct the trustee in writing to release the excess funds to the owner or operator.

(15) Reversion of excess funds after closure.

(i) If, under the provisions of § 265.117(d), the Regional Administrator follows termination or reduction of some or all of the requirements of a post-

closure plan before the end of the 30-year period, the excess portion of the trust fund must be released by the Regional Administrator.

(ii) At the end of the post-closure care period or the end of 30 years of post-closure care, whichever comes earlier, the Regional Administrator must direct the trustee to release any funds remaining in the trust to the owner or operator.

(16) The terms of the trust must require the trustee to make disbursements as specified in this paragraph. The trustee will disburse monies from the trust fund to parties designated by the Regional Administrator upon written notification from the Regional Administrator that:

(i) The value of the trust fund during the operating life of the facility exceeds the amount of the adjusted post-closure cost estimate; or

(ii) The itemized bills are in accordance with the approved post-closure plan or are otherwise justified;

(iii) The owner or operator has established other financial assurance for post-closure care as allowed in this section for part or all of the trust fund;

There has been a legal determination, a copy of which is attached to this notification, of a violation of the post-closure requirements of these regulations ordered in a proceeding brought pursuant to Section 3008 of RCRA; or

(v) The post-closure care period has ended or the requirements for post-closure care have been reduced.

b) *Surety bond guaranteeing a lump-sum payment for post-closure care.* (1) An owner or operator may meet the requirements of this section by obtaining a surety bond guaranteeing a lump-sum payment into a post-closure trust fund. A surety company issuing a bond in accordance with these regulations must, at a minimum, be authorized to do business in the United States and be certified by the U.S. Treasury Department, in Circular 570, to issue bonds in the penal sum of the trust fund to be issued. The obligee of the bond must be the U.S. Environmental Protection Agency.

The bond must be executed on Form 8700-20 (see Appendix VII). Terms of the bond must provide that the surety will send the properly executed bond to the Regional Administrator by certified mail within 30 days after the effective date of the

The surety bond must guarantee that the owner or operator will, within 30 days after the beginning of closure of

the facility, pay a lump sum equal to the final post-closure cost estimate prepared in accordance with § 265.144 into a trust fund that complies with the provisions of paragraph (a) of this section. The surety bond must be written so that whenever closure activities begin or are ordered to begin by the Regional Administrator during the term of the bond, the bond coverage includes completion of the payment obligation guaranteed by the bond.

(4) If the post-closure cost estimate increases beyond the amount of the penal sum of the bond, the owner or operator must, within 30 days of such increase in the estimate, cause the penal sum of the bond to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the penal sum of the bond may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(5) The terms of the surety bond must provide that the surety company may cancel the bond by sending notice to the owner or operator and to the Regional Administrator by certified mail. Cancellation must not be effective for at least 90 days after the Regional Administrator receives the notice. The owner or operator, within 5 days of receiving a notice of cancellation from the surety, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the bond by providing 30 days' notice to the surety company if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of cancellation from the surety, the Regional Administrator may order the owner or operator to begin closure unless the Regional Administrator has received evidence of other financial assurance as specified in this section.

(7) A surety becomes liable on a bond obligation only when the owner or operator fails to perform as guaranteed by the bond and fails to provide other financial assurance of post-closure care as specified in this section.

(8) The Regional Administrator must notify the surety in writing within 60 days after the beginning of closure that the owner or operator has:

(i) Established financial assurance for post-closure care that satisfies the requirements of this section; or

(ii) Failed to fulfill the payment obligation guaranteed by the bond. The Regional Administrator will then direct the surety in the placement of funds in a trust fund meeting the specifications of paragraph (a) of this section.

(c) *Standby letter of credit assuring a lump-sum payment at the time of closure for post-closure care.* (1) An owner or operator may meet the requirements of this section by obtaining an irrevocable standby letter of credit assuring a lump-sum payment at the time of closure to provide for post-closure care. The letter must be written in favor of the Regional Administrator of the U.S. Environmental Protection Agency and must be for a period of at least one year. The letter of credit may be issued by any bank which is a member of the Federal Reserve System.

(2) The letter of credit must be executed on EPA Form 8700-17 (see Appendix IV). The terms of the letter must provide that the issuing bank will send the properly executed letter of credit to the Regional Administrator by certified mail within 10 days after the effective date of the letter.

(3) The credit must be issued for an amount equal to the adjusted post-closure cost estimate (see § 265.144).

(4) If the post-closure cost estimate increases beyond the amount of the credit, the owner or operator must, within 30 days of such increase in the estimate, cause the credit to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the credit may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the issuing bank of any reduction in the required credit within 30 days after receiving the request.

(5) The letter of credit must contain a clause providing for automatic annual extensions of the credit subject to 60 days' written notice by the issuing bank to both the owner or operator and the Regional Administrator, by certified mail, of the bank's intention not to renew the credit. The owner or operator, within 5 days of receiving a notice of nonrenewal from the bank, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the letter of credit by providing 30 days' notice to the issuing bank if the Regional Administrator has given prior written consent based on his having received

evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of nonrenewal from the bank, the Regional Administrator may draw upon the credit up to the full amount of the credit unless he has evidence that the owner or operator has established other financial assurance as specified in this section. The terms of the letter must provide that if the Regional Administrator draws upon the letter of credit following a notice of nonrenewal the issuing bank will deposit the amount of the draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(12)-(16) of this section.

(7) If the post-closure cost estimate increases beyond the amount of the funds in the escrow account, the owner or operator must, within 30 days of such increase, add to the account or establish other financial assurance as specified in this section to cover the increase. If the owner or operator fails to do so, the Regional Administrator may order him to begin closure.

(8) The Regional Administrator may otherwise draw on the credit only if the owner or operator fails to establish, within 30 days after the beginning of closure, other financial assurance for post-closure care as specified in this section. The issuing bank must, under the terms of the letter, deposit the amount of such a draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(13)-(16) of this section.

(d) *Surety bond guaranteeing performance of post-closure duties.* (1) An owner or operator may meet the requirements of this section by obtaining a surety bond guaranteeing performance of post-closure care. A surety company issuing a bond in accordance with these regulations must, at a minimum, be authorized to do business in the United States and be certified by the U.S. Treasury Department, in Circular 570, to write bonds in the penal sum of the bond to be issued. The obligee of the bond must be the U.S. Environmental Protection Agency.

(2) The bond must be executed on EPA Form 8700-21 (see Appendix VIII). The terms of the bond must provide that the surety will send the properly executed bond to the Regional Administrator by certified mail within 10 days after the effective date of the bond.

(3) The surety bond must guarantee that the owner or operator will satisfy the post-closure care requirements of these regulations for 30 years or for the post-closure care period, whichever period is shorter. The surety bond must be written in the amount of the adjusted post-closure cost estimate (see § 265.144).

(4) If the post-closure cost estimate increases beyond the amount of the penal sum of the bond, the owner or operator must, within 30 days of such increase in the estimate, cause the penal sum of the bond to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the penal sum of the bond may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(5) Under the terms of the bond, the surety company may cancel the bond during the operating life of the facility by sending notice to the Regional Administrator and to the owner or operator by certified mail. Cancellation must not be effective for at least 90 days after the Regional Administrator receives the notice. The owner or operator, within 5 days of receiving notice of cancellation from the surety, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the bond at any time by providing 30 days' notice to the surety company if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a cancellation notice from the surety, the Regional Administrator may order the owner or operator to begin closure unless the Regional Administrator has received evidence of other financial assurance as specified in this section.

(7) The surety bond must be written so that whenever closure activities begin or the Regional Administrator orders them to begin during the term of the bond, the bond coverage extends to the end of 30 years of post-closure care or to the end of the post-closure care period, whichever is shorter. The owner or operator, as the principal of the bond, must notify the surety of the date on which post-closure care begins in accordance with the post-closure plan for the facility.

(8) As post-closure obligations are completed, the penal sum of the bond may be reduced commensurately, so that the balance of the penal sum of the bond will equal the remaining cost obligations of the owner or operator for post-closure care. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(9) A surety becomes liable on a bond obligation only when a proceeding brought pursuant to the provisions of Section 3008 of RCRA has determined that the owner or operator has violated the post-closure requirements of these regulations. Following such a determination the surety must:

(i) Complete post-closure care of the facility in accordance with the post-closure plan; or

(ii) Pay the amount of the penal sum of the bond into a trust fund meeting the specifications of paragraph (a) of this section as directed by the Regional Administrator.

(e) *Standby letter of credit assuring funds during the post-closure period.* (1) An owner or operator may meet the requirements of this section by obtaining an irrevocable standby letter of credit assuring availability of funds during the post-closure period. The letter must be written in favor of the Regional Administrator of the U.S. Environmental Protection Agency and must be for a period of at least one year. The letter of credit may be issued by any bank which is a member of the Federal Reserve System.

(2) The letter of credit must be executed on EPA Form 8700-17 (see Appendix IV). The terms of the letter must provide that the issuing bank will send the properly executed letter of credit to the Regional Administrator by certified mail within 10 days after the effective date of the letter.

(3) The credit must be issued for the amount of the adjusted post-closure cost estimate (see § 265.144).

(4) If the post-closure cost estimate increases beyond the amount of the credit, the owner or operator must, within 30 days of such increase in the estimate, cause the amount of the credit to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the amount of the credit may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required credit

within 30 days after receiving the request.

(5) As post-closure obligations are completed, the credit guarantee may be reduced commensurately, so that the remaining credit will equal the remaining cost obligations of the owner or operator for post-closure care. At the request of the owner or operator, the Regional Administrator must send written notice to the bank of any reduction in the required credit guarantee within 30 days after receiving the request.

(6) The letter of credit must contain a clause providing for automatic annual extensions of the credit subject to 60 days' written notice by the issuing bank to both the owner or operator and the Regional Administrator, by certified mail, of the bank's intention not to renew the credit. The owner or operator, within 5 days of receiving a notice of nonrenewal from the bank, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the letter of credit by providing 30 days' notice to the issuing bank if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(7) Thirty days after receiving a notice of nonrenewal from the bank, the Regional Administrator may draw upon the credit up to the full amount of the credit unless he has received evidence that the owner or operator has established other financial assurance as specified in this section. The terms of the letter must provide that if the Regional Administrator draws upon the letter of credit following a notice of nonrenewal, the issuing bank will deposit the amount of the draft immediately and directly into an interest-bearing escrow account.

Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(12)-(16) of this section.

(8) If the escrow account specified in paragraph (e)(7) of this section is established during operating life, and if the post-closure cost estimate increases beyond the amount of the funds in the escrow account, the owner or operator must, within 30 days of such increase, add to the account or establish other financial assurance as specified in this section to cover the increase. If the owner or operator fails to do so, the Regional Administrator may order him to begin closure.

(9) The Regional Administrator may otherwise draw upon the letter of credit only upon a legal determination of a

violation of the post-closure requirements of these regulations rendered in a proceeding brought pursuant to the provisions of Section 3008 of RCRA. The terms of the letter must provide that if the Regional Administrator draws upon the letter of credit following such a determination, the issuing bank will immediately and directly deposit the amount of the draft into an interest-bearing escrow account. The letter of credit must require the escrow depository to disburse monies from the escrow account to persons designated by the Regional Administrator to carry out post-closure care of the facility.

(f) *Use of more than one type of financial instrument.* An owner or operator may meet the requirements of this section by establishing more than one type of financial instrument. These instruments are limited to a trust fund, surety bonds, or letters of credit as specified in paragraphs (a) through (e) of this section (e.g., a letter of credit may assure half the post-closure cost and a trust fund the remaining half).

(g) *Financial test and guaranty for post-closure care.* (1) An owner or operator may meet the requirements of this section by having all of the following financial characteristics:

(i) At least \$10 million in net worth in the United States.

(ii) A total-liabilities-to-net-worth ratio of not more than three.

(iii) Net working capital in the United States of at least twice the adjusted post-closure cost estimate (see § 265.144).

(2) These characteristics must be demonstrated in a financial statement which has been audited by an independent certified public accountant and which contains unconsolidated balance sheets dated no more than 140 days prior to the current date. The owner or operator who intends to use a financial test to meet both closure and post-closure requirements for a single facility or to meet closure and/or post-closure requirements for more than one facility must indicate in the statement which requirements are to be met for which facilities through the financial test and must demonstrate that his net working capital in the United States is at least twice the sum of all the adjusted estimates of closure and post-closure costs to be covered by the financial test. The owner or operator must have the financial statement available at the facility and must provide data from the statement if requested as part of annual reports to the Regional Administrator under § 265.75.

(3) If the owner or operator fails to meet the requirements of paragraph

(g)(1) of this section at any time before the end of the post-closure care period or 30 years of post-closure care, whichever comes earlier, he must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirements. Evidence of other financial assurance as specified in this section must be sent to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the requirements of paragraph (g)(1). If he does not establish other financial assurance, and this lapse in financial assurance occurs during operating life, the Regional Administrator may order the owner or operator to begin closure.

(4) An owner or operator may meet the requirements of this section by obtaining another entity's written guaranty providing financial assurance, in an amount equal to the adjusted post-closure cost estimate, for compliance by the owner or operator with the post-closure requirements of these regulations. The guarantor must meet the requirements for owners or operators in paragraphs (g) (1) and (2) of this section.

(5) The guaranty must be executed on EPA Form 8700-18 (see Appendix V). The owner or operator must send the properly executed guaranty to the Regional Administrator by certified mail within 10 days after the effective date of the guaranty.

(6) Under the terms of the guaranty, the guarantor must notify the Regional Administrator and the owner or operator by certified mail if he fails to meet the requirements of paragraph (g)(1) of this section at any time before the end of the post-closure period or the end of 30 years of post-closure care, whichever comes earlier. The guarantor must send such notice within 5 days after learning of failure to meet the requirements.

(7) The owner or operator must, within 30 days of such notification, establish other financial assurance as specified in this section and provide evidence of such assurance to the Regional Administrator. If he fails to do so, and such failure occurs during operating life, the Regional Administrator may order him to begin closure.

(8) The guarantor may cancel the guaranty during the operating life of the facility with 90 days' notice to the Regional Administrator and the owner or operator by certified mail, except that the guaranty must remain in effect if closure begins or is ordered to begin by the Regional Administrator before the end of the 90 days. Evidence of other financial assurance as specified in this

section must be provided to the Regional Administrator within 30 days after a notice of cancellation is received by the Regional Administrator; otherwise, he may order the owner or operator to begin closure.

(9) The guaranty may be cancelled at any time following the mutual written consent of the owner or operator, the Regional Administrator, and the guarantor.

(10) Under the guaranty, in the event of a legal determination of a violation of the post-closure requirements rendered in a proceeding brought pursuant to Section 3008 of RCRA, the guarantor must pay parties designated by the Regional Administrator to complete post-closure care for 30 years or the post-closure care period, whichever period is shorter.

(h) *Revenue test for municipalities.* (1) If the owner or operator is a municipality (as defined by RCRA), it may meet the requirements of this section by having annual revenues from property, sales, and/or income taxes equal to 10 times the adjusted post-closure cost estimate (see § 265.144). To be acceptable, these tax revenues must be legally available to cover post-closure responsibilities, i.e., they must not be dedicated to other purposes or otherwise precluded from use for post-closure care.

(2) The owner or operator must send a letter signed by the chief financial officer of the municipality to the Regional Administrator stating that the municipality meets the requirements of paragraph (h)(1) of this section. The letter must be sent by certified mail within 10 days after the owner or operator begins use of the revenue test to meet the requirements of this section.

(3) If the annual tax revenues fail to meet the minimum multiple specified in paragraph (h)(1) at any time before the end of the post-closure care period or 30 years of post-closure care, whichever comes earlier, the owner or operator must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirements. The owner or operator must send evidence of other financial assurance as specified in this section to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the minimum multiple. If he does not establish other financial assurance, and this lapse in financial assurance occurs during operating life, the Regional Administrator may order the owner or operator to begin closure.

(i) *Use of a single financial mechanism for multiple facilities.* An owner or operator may use a single

financial mechanism, as specified in paragraphs (a) through (h) of this section, to meet the requirements of this section for more than one facility of which he is the owner or operator. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established for each facility.

**§ 265.146 Use of a single mechanism for financial assurance of both closure and post-closure care.**

An owner or operator may use a single mechanism to provide financial assurance for both closure and post-closure care of one or more facilities of which he is the owner or operator. Such a mechanism must be one of the following:

(a) A trust fund that meets the specifications of both § 265.143(a) and § 265.145(a).

(b) A surety bond that meets the specifications of both § 265.143(b) and § 265.145 (b) or (d).

(c) A letter of credit that meets the specifications of both § 265.143(c) and § 265.145 (c) or (e).

(d) A guaranty that meets the specifications of both § 265.143(e) and § 265.145(g).

(e) The financial test as specified under both § 265.143(e) and § 265.145(g).

(f) The revenue test as specified under both § 265.143(f) and § 265.145(h).

The amount of funds available under the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established for financial assurance of closure and of post-closure care of each facility.

**§ 265.147 Liability requirement.**

An owner or operator of a hazardous waste treatment, storage, or disposal facility or group of facilities must have and maintain liability insurance from an insurer licensed or eligible to insure facilities in the jurisdiction where any one facility is located, for sudden and accidental occurrences in the amount of \$1 million per occurrence with an annual aggregate per firm of \$2 million, exclusive of legal defense costs, for claims arising out of injury to persons or property from the operations of each such hazardous waste facility or group of facilities. The deductible written into the insurance policy must not exceed 5 percent of the per incident limit of liability of the policy.

**§ 265.148 [Reserved]**

**§ 265.149 Applicability of State financial requirements.**

(a) A facility may be located in a State in which existing hazardous waste regulations include liability requirements and requirements for financial assurance for closure and post-closure care. If so, the owner or operator may use existing State-authorized financial mechanisms in meeting the requirements of §§ 265.143, 265.145, and 265.147 provided that:

(1) The State-authorized mechanism is a mechanism allowed in §§ 265.143, 265.145, or 265.147; or

(2) The State mechanism provides substantially equivalent assurance (e.g., escrow account) or liability coverage as the mechanisms of §§ 265.143, 265.145, and 265.147.

The owner or operator must obtain an additional financial assurance mechanism for closure or for post-closure care, chosen from § 265.143 for closure and from § 265.145 for post-closure care, or additional liability insurance as specified in § 265.147, if the amount of funds available from the State mechanisms is less than that required by this Subpart. The total amount of funds available through the combination of the State and Federal mechanisms must equal at least the amount required in §§ 265.143, 265.145, and 265.147.

(b) If a State assumes legal responsibility for an owner's or operator's compliance with the closure or post-closure requirements or liability requirements of these regulations or assures that funds will be available from State sources to cover such requirements, the owner or operator will be in compliance with such requirements of this Subpart to the extent the State's assurances are substantially equivalent to meeting the requirements of this Subpart. The owner or operator must send a letter to the Regional Administrator describing the nature of the State's responsibility regarding his facility's closure, post-closure care, and/or his liability, and citing the State regulation providing for such assumption of responsibility. The letter must be sent by certified mail within 10 days after the effective date of these EPA regulations or the date on which State assumption of responsibility for the facility becomes effective. A copy of the letter must be sent to the responsible State agency(ies).

**Appendix I to Part 265**

The following is an example of the calculation in § 265.143(a)(7) using these assumptions: The closure cost estimate at the time the closure trust fund was established

\$70,000. Five annual payments have been made. The current value of the fund is \$25,000 (including earnings of the fund and yearly increases in the payments as a result of the adjustment for inflation required by paragraph (a)(8)). The total pay-in period is 20 years. Now the owner or operator has changed the estimate to \$120,000 because of a change in the closure plan and therefore needs to recalculate his next payment.

Step 1—The adjusted estimate, \$120,000, divided by the pay-in period, 20 years, is \$6,000.

Step 2—\$6,000 multiplied by the number of payments made, 5, is \$30,000.

Step 3—\$30,000 minus the current value of the fund, \$25,000, is \$5,000.

Step 4—\$5,000 divided by the remaining years in the pay-in period, 15, is \$333.

Step 5—Adding \$333 to the \$6,000 from step 1 gives the new payment, \$6,333.

#### Appendix II to Part 265

EPA Form 8700-15

U.S. Environmental Protection Agency

#### Closure Trust Agreement

As provided for in 40 CFR 265.143(a) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

EPA Facility Identification No. \_\_\_\_\_  
Adjusted closure cost estimate, in accordance with 40 CFR 265.142: \$ \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I \_\_\_\_\_, owner or operator, am placing \_\_\_\_\_, property described below in trust for the U.S. Environmental Protection Agency (EPA) to be \_\_\_\_\_ (name of financial institution) \_\_\_\_\_ as trustee under the terms set forth below. The trust shall be named the "\_\_\_\_\_ Closure Trust" for the following hazardous waste management facilities:

Name and address of facility, or write in "see attached Schedule A" if more than one facility.

**Purpose Clause**  
Pursuant to the financial assurance requirements of 40 CFR 265.143, the purpose of this trust is to pay for the costs of closing above-named facility(ies) in accordance with the closure requirements of 40 CFR Part 265.

**Property Clause**  
I agree to by (owner or operator) \_\_\_\_\_ as grantor of this trust that the will be funded in accordance with the requirements of § 265.143(a) of the Act. The initial transfer of property to trust shall consist of the property listed in Schedule B, attached hereto.<sup>1</sup>

**Period Clause**  
This trust shall continue until terminated by the happening of one of the following conditions:

When (owner or operator) \_\_\_\_\_ transfers to the trustee the original or an

closure of more than one facility is covered by this bond, list on a separate sheet the EPA Facility Identification Numbers, names, and addresses, and adjusted closure cost estimates for all the facilities, label this list "Schedule A," and attach it to this bond. Show total of cost estimates. If property included in initial transfer on this bond, clearly label this list "Schedule B," and attach it to this agreement.

authenticated copy of the letter(s) signed by the EPA Regional Administrator(s) stating that he is no longer required to provide financial assurance for closure of the above-named facility(ies). In such an event, all remaining trust property, less final trust administration expenses, shall be delivered to (owner or operator) \_\_\_\_\_

(b) By the mutual written consent of the grantor of this trust, the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, the trustee of this trust at any time.

4. Operation of the Trust, Duties of the Trustee

(name of financial institution acting as trustee) \_\_\_\_\_ acknowledges below its receipt of the trust property listed in Schedule B and its acceptance of the obligations and duties of the trustee as defined below.

(a) The trustee agrees to notify the EPA Regional Administrator(s) by certified mail within five days following the expiration of the thirty-day period after the anniversary of the establishment of the trust, as specified in § 265.143(a)(5).

(b) The trustee may resign from its obligations as trustee by submitting a written notice of its intent to the grantor and to the EPA Regional Administrator(s).

(c) The trustee is to make payments out of the trust only under the conditions specified in 40 CFR 265.143(a)(15).

(date) \_\_\_\_\_ (signature of grantor) \_\_\_\_\_

(address of grantor) \_\_\_\_\_  
(authorized signature for trustee) \_\_\_\_\_  
(name of trustee) \_\_\_\_\_  
(address of trustee) \_\_\_\_\_  
(signature of notary) \_\_\_\_\_

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

#### Appendix III to Part 265

EPA Form 8700-16

U.S. Environmental Protection Agency

#### Closure Performance Bond

As provided for in 40 CFR 265.143(b) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

EPA Facility Identification No. \_\_\_\_\_  
Adjusted closure cost estimate, in accordance with 40 CFR 265.142: \$ \_\_\_\_\_

Know all men by these presents, that we, (owner of operator) \_\_\_\_\_ of (address) \_\_\_\_\_, as Principal and (name of surety company) \_\_\_\_\_, a company created and existing under the laws of (State) \_\_\_\_\_, as Surety, are held and firmly bound unto the U.S. Environmental Protection

<sup>1</sup> If closure of more than one facility is covered by this bond, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and adjusted closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this bond. Show total of cost estimates.

Agency (EPA) in the penal sum of \_\_\_\_\_ U.S. dollars (\$ \_\_\_\_\_) for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

Whereas, the Principal intends to obtain interim status, as defined by Section 3005 of the Resource Conservation and Recovery Act of 1976, as amended, for one or more hazardous waste management facilities, and such status depends upon compliance with the standards of 40 CFR Part 265, which includes the requirement, specified in § 265.143, that the owner or operator of each such facility must establish financial assurance that the applicable closure requirements of Part 265 will be met, and

Whereas, this bond is written to assure compliance with the closure requirements of Part 265 for the following hazardous waste management facilities: (name and address of facility or write in "see attached Schedule A" if more than one facility) \_\_\_\_\_, and shall inure to the benefit of EPA in accordance with Part 265.

Now, therefore, the condition of this obligation is such that, if the Principal shall faithfully fulfill the closure requirements of 40 CFR Part 265 at each of the facilities guaranteed by this bond, pursuant to all applicable statutes, rules and regulations, and shall close each such facility in accordance with the closure plan required by the said Part 265, then, and only then, the above obligation shall be void; otherwise to be and to remain in full force and effect.

The Surety shall become liable on this bond obligation only upon legal determination rendered in a proceeding brought pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended, that the Principal has violated the closure requirements of 40 CFR Part 265. Following such a determination, the Surety must either complete closure of the facility in accordance with the approved closure plan for the facility or pay the amount of the penal sum into an escrow account as directed by an EPA Regional Administrator.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penal sum. The insolvency or bankruptcy of the Principal shall not constitute a defense to the Surety with regard to claims of liability on the bond obligations, and in the event of said insolvency or bankruptcy, the Surety must pay any unsatisfied final judgments obtained on such claims. The Surety agrees to furnish written notice forthwith to the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located of all suits filed, judgments rendered, and payments made by the Surety under this bond.

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Surety may terminate this bond by written notice sent by certified mail

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to the Principal and to the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, such termination to become effective ninety (90) days after actual receipt of said notice by EPA; provided, however, no such termination shall become effective with respect to any facility closure guaranteed by this bond if closure of said facility has begun or has been ordered to begin by an EPA Regional Administrator. The Principal may terminate this bond by sending written notice to the Surety, such termination to become effective thirty (30) days after receipt of such notice by the Surety; provided, however, that such notice is accompanied by written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

If more than one surety company joins in executing this bond, such action shall constitute joint and several liability on the part of the sureties.

In witness whereof, the Principal and Surety have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Seal) \_\_\_\_\_  
(Surety) \_\_\_\_\_  
(Seal) \_\_\_\_\_  
(Principal) \_\_\_\_\_  
(Seal) \_\_\_\_\_  
(attorney-in-fact) \_\_\_\_\_ (address of Principal) \_\_\_\_\_

Surety Bond No. \_\_\_\_\_

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

#### Appendix IV to Part 285

EPA Form 8700-17

U.S. Environmental Protection Agency

#### Standby Letter of Credit

As provided for in 40 CFR 285.143(c), 285.145(c), and 285.145(e) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

<sup>1</sup>EPA Facility Identification No. \_\_\_\_\_  
Adjusted cost estimate(s) for the facility, for closure and/or post-closure care to be covered by this Letter of Credit, in accordance with 40 CFR 285.142 and 285.144: \$ \_\_\_\_\_ (closure) \$ \_\_\_\_\_ (post-closure)

Administrator(s) for Region(s) \_\_\_\_\_  
U.S. Environmental Protection Agency  
Address(es) \_\_\_\_\_  
(Address to EPA Regional Administrator(s) of Region(s) in which the facility(ies) is (are) located.)

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_

<sup>1</sup>If more than one facility is covered by this Letter of Credit, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and adjusted closure and/or post-closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this Letter of Credit. Show total(s) of cost estimates.

\_\_\_\_\_, in favor of the Regional Administrator(s) for Region(s) \_\_\_\_\_ of the U.S. Environmental Protection Agency for the account of (owner or operator) \_\_\_\_\_ up to the aggregate amount of \_\_\_\_\_ U.S. dollars (\$ \_\_\_\_\_) available by your drafts as specified below.

This Letter of Credit is effective as of today's date and will expire on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, subject to the operation of the renewal clause below.

The purpose of this Letter of Credit is to provide financial assurance to the U.S. Environmental Protection Agency of compliance with the ("closure," "post-closure," or "closure and post-closure") \_\_\_\_\_ requirements of 40 CFR Part 285 as they apply to (name and address of facility, or write in "see attached Schedule A" <sup>1</sup>if more than one facility) \_\_\_\_\_

Such assurance is required for closure by 40 CFR 285.143 and for post-closure care by 40 CFR 285.145. This Letter of Credit provides assurance for (check those that apply):

—Closure in accordance with the letter-of-credit specifications of 40 CFR 285.143(c)

—A lump-sum payment at closure for the purpose of assuring post-closure care in accordance with letter-of-credit specifications of 40 CFR 285.145(c)

—Funds for the performance of post-closure care in accordance with letter-of-credit specifications of 40 CFR 285.145(e)

All drafts on this Letter of Credit submitted in writing and accompanied by your signature will be promptly paid and deposited in an interest-bearing escrow account in this Bank. If a draft on the escrow account is accompanied by a copy of an order from a Federal Administrative Law Judge or a Federal District Court Judge setting forth a determination of a violation of the above-mentioned closure and/or post-closure requirements, we will pay the party or parties designated by the court or the EPA Regional Administrator(s).

Alternatively, payments may be made out of any amount in escrow following a draft upon this Letter of Credit by the mutual written consent of (owner or operator) \_\_\_\_\_ and the EPA Regional

Administrator(s), pursuant to 40 CFR 285.143(c)(6), 285.145(c)(6) and (8), or 285.145(e)(7), as applicable.

It is a condition of this Letter of Credit that it will be automatically extended for one-year periods from the expiration date set forth above, unless sixty (60) days before that date we notify you by certified mail of our intent not to renew the credit. In that case, for the remainder of the period of the Letter of Credit, you may draw upon the credit up to the aggregate amount of the credit remaining, such draft to be deposited in escrow as described above. This Letter of Credit may be terminated by (owner or operator) \_\_\_\_\_ by sending written notice to this Bank, such termination to become effective thirty (30) days after receipt of such notice by this Bank; provided, however, that such notice is accompanied by your written authorization for termination of the Letter of Credit.

This Letter of Credit is subject to Article Five of the Uniform Commercial Code and the "Uniform Customs and Practices for Documentary Credits" (1974 Revision)

described in International Chamber of Commerce Brochure No. 290.

All communications concerning this Letter of Credit are to be addressed to: (name and address of responsible officer of the issuing bank) \_\_\_\_\_

(date) \_\_\_\_\_ (authorized signature) \_\_\_\_\_  
(print or type name of person signing) \_\_\_\_\_  
(title of person signing) \_\_\_\_\_  
(name of bank) \_\_\_\_\_

Mail to the EPA Regional Administrator(s) within 10 days of the effective date by certified mail.

#### Appendix V to Part 285

EPA Form 8700-18

U.S. Environmental Protection Agency

#### Guaranty

As provided for in 40 CFR 285.143(e) and 285.145(g), under authority of the Resource Conservation and Recovery

Act of 1976, as amended (42 USC 6901)

<sup>1</sup>EPA Facility Identification No. \_\_\_\_\_  
Adjusted cost estimate(s) for the facility, for closure and/or post-closure care to be covered by this guaranty, in accordance with 40 CFR 285.142 and 285.144: \$ \_\_\_\_\_ (closure) \$ \_\_\_\_\_ (post-closure)

Guaranty made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by (name of guaranteeing entity) \_\_\_\_\_, a business entity organized under the laws of the State of \_\_\_\_\_, with its principal office at \_\_\_\_\_, herein referred to as guarantor, to the U.S. Environmental Protection Agency (EPA) as obligee on behalf of (owner or operator) \_\_\_\_\_ of (business address) \_\_\_\_\_

#### Recitals

1. Guarantor meets or exceeds the financial test requirements of 40 CFR 285.143(e) and/or 285.145(g). Guarantor agrees to notify the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) listed below is (are) located and (owner or operator) \_\_\_\_\_ within five days after the guarantor learns of its failure to meet any of the test requirements at any time during the life of this guaranty.

2. (Owner or operator) \_\_\_\_\_ operates or owns a hazardous waste facility at (address of facility, or write in "see attached Schedule A" <sup>1</sup>if more than one facility is covered) \_\_\_\_\_

#### Statement of Guaranty

For value received from (owner or operator) \_\_\_\_\_, the guarantor guarantees to the U.S. Environmental Protection Agency (EPA) that in the event that (owner or operator) \_\_\_\_\_, fails to comply with the ("closure," "post-closure," or "closure and post-closure") \_\_\_\_\_ requirements of 40 CFR part 285 applicable to (name and address of facility or write in "see attached Schedule A") \_\_\_\_\_, the

<sup>1</sup>If more than one facility is covered by this guaranty, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and adjusted closure and/or post-closure estimates for all the facilities, clearly label this list "Schedule A," and attach it to this guaranty. Show total(s) of cost estimates.

Grantor agrees to pay the persons(s) designated by EPA or to pay EPA itself, following a legal determination of a violation of the regulations, an amount sufficient to bring the above-mentioned facility(ies) into compliance with the applicable regulations, but not to exceed the adjusted cost estimate(s) as prepared in accordance with 40 CFR 265.142 and 265.144.

This guaranty is good for so long as (owner or operator) must comply with the applicable financial assurance requirements of 40 CFR 265.143 and 265.145 for the above-named facility(ies).

The guarantor may terminate this guaranty by sending notice by certified mail to the EPA Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to (owner or operator), such termination to become effective ninety (90) days after actual receipt of the notice by EPA; provided, however, that no such termination shall become effective if closure begins or is ordered to begin by an EPA Regional Administrator before the end of the 90 days. Furthermore, if compliance with post-closure requirements is guaranteed, no such termination may become effective if closure is taken place.

This guaranty may be terminated at any time subject to the mutual, prior written consent of the guarantor, the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, and (owner or operator).

(effective date) (name of guarantor)

(signature of guarantor)  
(print or type name of person signing)  
(name of person signing)

(nature of witness or notary)  
I original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which largest number of facilities are located copies to the other Regional Administrator(s), by certified mail.

Appendix VI to Part 265

Form 8700-19

Environmental Protection Agency

#### Closure Trust Agreement

provided for in 40 CFR 265.145(a), under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

Facility Identification No. \_\_\_\_\_  
Estimated post-closure cost estimate, in accordance with 40 CFR 265.144: \$ \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I (owner or operator) \_\_\_\_\_, am placing the property described below in trust for the U.S. Environmental Protection Agency (EPA) to be held by (name of financial institution) \_\_\_\_\_

If post-closure care of more than one facility is required by the trust, list on a separate sheet the facility Identification Numbers, names, and adjusted post-closure cost estimates. Clearly label this list "Schedule A." and attach it to this agreement. Show total of cost estimates: \$ \_\_\_\_\_

\_\_\_\_\_ as trustee under the terms set forth below. The trust shall be named the "Post-Closure Trust" for the following hazardous waste management facility(ies):

(name and address of facility, or write in "see attached Schedule A" if more than one facility).

#### 1. Purpose Clause

Pursuant to the financial assurance requirements of 40 CFR 265.145, the purpose of this trust is to pay for the costs of post-closure care of the above-named facility(ies) in accordance with the post-closure requirements of 40 CFR Part 265.

#### 2. Property Clause

It is agreed to by (owner or operator) \_\_\_\_\_ as grantor of this trust that the trust will be funded in accordance with the requirements of § 265.145(a) of the regulations. The initial transfer of property to the trust shall consist of the property listed in Schedule B, attached hereto.<sup>1</sup>

#### 3. Period Clause

This trust shall continue until terminated upon the happening of one of the following conditions:

(a) Upon written notice(s) from the EPA Regional Administrator(s) that (owner or operator) is no longer required to maintain financial assurance for post-closure care of the above-named facility(ies). In such an event, all remaining trust property, less final trust administration expenses, shall be delivered to (owner or operator).

(b) By the mutual written consent of the grantor of this trust, the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, the trustee of this trust at any time.

#### 4. Operation of the Trust, Duties of the Trustee

(name of financial institution acting as trustee) \_\_\_\_\_ acknowledges below its receipt of the trust property listed in Schedule B and its acceptance of the obligations and duties of the trustee as defined below.

(a) The trustee agrees to notify the EPA Regional Administrator(s) by certified mail within five days following the expiration of the thirty-day period after the anniversary of the establishment of the trust, as specified in § 265.145(a)(5).

(b) The trustee may resign from its obligations as trustee by submitting written notice of its intent to the grantor and to the EPA Regional Administrator(s).

(c) The trustee is to make payments out of the trust only under the conditions specified in 40 CFR 265.145(a)(16).

(date) (signature of grantor)

(address of grantor)

(authorized signature for trustee)

(name of trustee)

(address of trustee)

(signature of notary)

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to

<sup>1</sup>List property included in initial transfer on separate sheet, clearly label this list "Schedule B," and attach it to this agreement.

Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

#### Appendix VII to Part 265

EPA Form 8700-20

U.S. Environmental Protection Agency

#### Bond for Payment to Post-Closure Care Trust Fund

As provided for in 40 CFR 265.145(b) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

<sup>1</sup>EPA Facility Identification No. \_\_\_\_\_  
Adjusted post-closure cost estimate, in accordance with 40 CFR 265.144: \$ \_\_\_\_\_

Know all men by these presents, that we, (owner of operator) \_\_\_\_\_ of (address) \_\_\_\_\_, as Principal and (name of surety company) \_\_\_\_\_, a company created and existing under the laws of (State) \_\_\_\_\_, as Surety, are held and firmly bound unto the U.S. Environmental Protection Agency (EPA) in the penal sum of \_\_\_\_\_ U.S. dollars (\$ \_\_\_\_\_) for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

Whereas, the Principal intends to obtain interim status, as defined by Section 3005 of the Resource Conservation and Recovery Act of 1976, as amended, for one or more hazardous waste disposal facilities, and such status depends upon compliance with the standards of 40 CFR Part 265, which includes the requirement, specified in § 265.145, that the owner or operator of each such facility must establish financial assurance that the applicable requirements of Part 265 for post-closure care will be met, and

Whereas, this bond is written to assure that the Principal will establish a trust fund in accordance with § 265.145 for the purpose of providing for post-closure care of the following hazardous waste disposal facilities: (name and address of facility or write in "see attached Schedule A" if more than one facility) \_\_\_\_\_, and shall inure to the benefit of EPA in accordance with said Part 265.

Now, therefore, the condition of this obligation is such that, if the Principal shall faithfully, for each of the facilities guaranteed by this bond, within 30 days after beginning closure, make full payment in the amount of the final adjusted post-closure cost estimate calculated in accordance with § 265.144 into a trust fund meeting the requirements of § 265.145(a) to assure the costs of 30 years of post-closure care, pursuant to all applicable statutes, rules and regulations, then and only then, the above obligation shall be void; otherwise to be and to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal fails

<sup>1</sup>If provision for post-closure care of more than one facility is covered by the bond, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and adjusted post-closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this bond. Show total of cost estimates.

to make payment in accordance with § 205.145(b)(3). Upon notification by an EPA Regional Administrator that the Principal has failed to fulfill the payment obligation, the Surety will place funds in the amount of the payment obligation into a trust fund as directed by an EPA Regional Administrator.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penal sum. The insolvency or bankruptcy of the Principal shall not constitute a defense to the Surety with regard to claims of liability on the bond obligations, and in the event of said insolvency or bankruptcy, the Surety must pay any unsatisfied final judgments obtained on such claims. The Surety agrees to furnish written notice forthwith to the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located of all suits filed, judgments rendered, and payments made by the Surety under this bond.

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the address of the Principal as stated herein and shall continue in force for each facility guaranteed by this bond until ninety (90) days following the beginning of closure of that facility or until receipt of written notice sent by EPA to the Surety of satisfactory completion of the financial assurance obligation of the Principal with regard to post-closure care of that facility, the sooner, or until otherwise terminated as hereinafter provided. The Surety may terminate this bond by written notice sent by certified mail to the Principal and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, such termination to become effective ninety (90) days after actual receipt of said notice by EPA; provided, however, that no such termination shall become effective if closure of said facility has begun, or has been ordered to begin by an EPA Regional Administrator. The Principal may terminate this bond by sending written notice to the Surety, such termination to become effective thirty (30) days after receipt of such notice by the Surety; provided, however, that such notice is accompanied by written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

If more than one surety company joins in executing this bond, such action shall constitute joint and several liability on the part of the sureties.

In witness whereof, the Principal and Surety have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Seal) \_\_\_\_\_  
(Surety) \_\_\_\_\_  
(Seal) \_\_\_\_\_  
(Principal) \_\_\_\_\_  
(Seal) \_\_\_\_\_  
(attorney-in-fact) \_\_\_\_\_ (address of Principal) \_\_\_\_\_

Surety Bond No. \_\_\_\_\_

Mail original to the EPA Regional Administrator within 10 days of the effective

date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

#### Appendix VIII to Part 265

EPA Form 8700-21

#### U.S. Environmental Protection Agency

#### Post-Closure Performance Bond

As provided for in 40 CFR 265.145(d), under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

EPA Facility Identification No. \_\_\_\_\_  
Adjusted post-closure cost estimate, in accordance with 40 CFR 265.144: \$ \_\_\_\_\_

Know all men by these presents, that we, (owner or operator) \_\_\_\_\_ of (address) \_\_\_\_\_, as Principal and (name of surety company) \_\_\_\_\_, a company created and existing under the laws of (State) \_\_\_\_\_, as Surety, are held and firmly bound unto the U.S. Environmental Protection Agency (EPA) in the penal sum of \_\_\_\_\_ U.S. dollars (\$\_\_\_\_) for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

Whereas, the Principal intends to obtain interim status, as defined by Section 3005 of the Resource Conservation and Recovery Act of 1976, as amended, for one or more hazardous waste disposal facilities, and such status depends upon compliance with the standards of 40 CFR Part 265, which includes the requirement, specified in § 265.145, that the owner or operator of each such facility must establish financial assurance that the applicable requirements of Part 265 for post-closure care will be met, and

Whereas, this bond is written to assure compliance with the post-closure requirements of 40 CFR Part 265 for the following hazardous waste disposal facilities: (name and address of facility or write in "see attached Schedule A" if more than one facility) \_\_\_\_\_, and shall inure to the benefit of EPA in accordance with said Part 265.

Now, therefore, the condition of this obligation is such that, if the Principal shall faithfully fulfill the applicable post-closure requirements set forth in 40 CFR Part 265 for each of the facilities guaranteed by this bond, pursuant to all applicable statutes, rules and regulations, and shall carry out the post-closure plan required by Part 265, then, and only then, the above obligation shall be void; otherwise to be and to remain in full force and effect.

The Surety shall become liable on this bond obligation only upon a legal determination rendered in a proceeding

<sup>1</sup> If post-closure care of more than one facility is covered by the bond, list on a separate sheet the EPA Facility Identification Numbers, names, and addresses, and adjusted post-closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this bond. Show total of cost estimates.

pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended, that the Principal has violated the post-closure requirements of 40 CFR Part 265.

Following such a determination, the Surety must either complete post-closure care of the facility in accordance with the approved post-closure plan for the facility or pay the amount of the penal sum into a trust fund as directed by an EPA Regional Administrator.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penal sum. The insolvency or bankruptcy of the Principal shall not constitute a defense to the Surety with regard to claims of liability on the bond obligations, and in the event of said insolvency or bankruptcy, the Surety must pay any unsatisfied final judgments obtained on such claims. The Surety agrees to furnish written notice forthwith to the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the address of the Principal as stated herein and shall continue in force until the end of 30 years of post-closure care unless prior notice is received by the Surety from EPA, or until terminated as hereinafter provided. The Surety may terminate this bond by written notice sent by certified mail to the Principal and to the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, such termination to become effective ninety (90) days after actual receipt of such notice by the Agency; provided, however, that no such termination shall become effective if closure of any said facility has taken place, has begun, or has been ordered to begin by an EPA Regional Administrator. The Principal may terminate this bond by sending written notice to the Surety, such termination to become effective thirty (30) days after receipt of such notice by the Surety; provided, however, that such notice is accompanied by written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

If more than one surety company joins in executing this bond, such action shall constitute joint and several liability on the part of the sureties.

In witness whereof, the Principal and Surety have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Seal) \_\_\_\_\_  
(Surety) \_\_\_\_\_  
(Seal) \_\_\_\_\_  
(Principal) \_\_\_\_\_

(attorney-in-fact) \_\_\_\_\_ (address of Principal) \_\_\_\_\_

Surety Bond No. \_\_\_\_\_

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in

CCR 000041230

more than one Region, send original to Regional Administrator of Region in which largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

[FR Doc. 80-14370 Filed 5-18-80; 4:45 am]

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CCR 000041231

**Environmental Protection Agency**

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**Monday  
May 19, 1980**

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**Part IX**

**Environmental  
Protection Agency**

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**Hazardous Waste Management System**

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**Proposal To Modify 40 CFR Part 265—  
Subpart R—Underground Injection**

CCR 000041232

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 265

(FRL 1447-1)

### Hazardous Waste Management: Interim Status Requirements for Underground Injection

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing specific requirements for disposal of hazardous waste by underground injection under § 3004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended. These proposed requirements would amend Subpart R of the interim status regulations applicable to hazardous waste treatment, storage and disposal facilities. The proposed amendment includes requirements concerning general operating practices, waste analysis, monitoring and response, closure and post-closure care, financial responsibility and special handling of ignitable, reactive or incompatible waste. A public hearing will be held to receive public comment on the amendment as well as on issues raised in the Preamble to the regulations issued under Part 122 of this Chapter concerning regulation of Class IV wells.

**DATES:** EPA will accept written comments on the proposed amendment until on or before July 18, 1980.

A public hearing will be held from 9 a.m. to 5:00 p.m. on July 8, 1980.

**ADDRESSES:** Comments should be addressed to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency. Communications should identify the regulatory docket number "Section 3004".

The hearing will be held on July 8, 1980 at the H.E.W. Auditorium at 330 Independence Avenue, S.W., Washington, D.C. from 9:00 am to 5:00 pm.

The official docket for this proposed rulemaking is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and is available for viewing from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bernard J. Stoll, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9116.

**SUPPLEMENTARY INFORMATION:** Underground injection of hazardous

waste is under the jurisdiction of both the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*, which creates a "cradle to grave" management program for all hazardous waste, and the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f *et seq.* which creates an Underground Injection Control (UIC) program. After examining the goals and policies of these two programs, EPA has concluded that the disposal of hazardous waste by underground injection in each State will be regulated under RCRA until a UIC program has been established in that State.

The hazardous waste management program, under Subtitle C of RCRA, provides a system for tracking and managing those solid wastes which are deemed "hazardous" according to the criteria established under Section 3001 of RCRA. A manifest system is employed to assure that hazardous waste is properly transported from its point of generation to facilities that store, treat or dispose of the waste.

Under Section 3004 of RCRA, EPA is to establish standards, applicable to owners and operators of hazardous waste treatment, storage or disposal facilities which protect human health and the environment. Eventually all such facilities will be subject to permits, issued pursuant to Section 3005 of RCRA, which implement the Section 3004 standards and other appropriate requirements. Under Section 3005, all treatment, storage or disposal of hazardous waste is prohibited, except in accordance with a permit under that section, six months after the promulgation of the Section 3004 standards.

The Congress recognized that it would not be possible for EPA to issue all permits within six months of the promulgation of Section 3004 standards. Therefore it created an "interim status" period during which existing facilities which have applied for a permit may be treated as having been issued a permit while the Agency reviews and processes the facility's permit application. In keeping with the philosophy that facilities are to be treated as having been issued a permit during the interim status period, EPA believes it is appropriate to impose certain basic requirements on those facilities during the interim status period. The Agency has promulgated such interim status regulations for hazardous waste treatment, storage and disposal in a separate section of today's Federal Register.

Part C of the SDWA creates a program for the protection of underground sources of drinking water.

As part of that program, EPA is to establish regulations containing minimum requirements for effective State underground injection control (UIC) programs and the Administrator is to list in the Federal Register each State for which, in his judgment, a State UIC program may be necessary to assure that underground injection will not endanger drinking water sources. The Administrator has listed a total of 57 States, territories and the District of Columbia as needing a UIC program. Once EPA has established the minimum requirements, each listed State shall apply for and may receive approval for primary enforcement responsibility over underground injection in their State. If the State does not seek such responsibility, or if EPA determines that State authority is inadequate to implement the minimum requirements, EPA shall establish a UIC program for the State.

Thus the UIC program does not have an equivalent of the "interim status" period under RCRA. To accommodate the RCRA goal that disposal of hazardous waste (including underground injection) be subject to control during that period, EPA has decided to regulate underground injection under the RCRA interim status regulations. Accordingly, owners and operators of underground injection wells used to dispose of hazardous waste will be subject to the same general requirements applicable to all treatment, storage and disposal facilities. These are set forth in Subparts A-E of Part 265, which is published in today's Federal Register. In addition the interim status regulations of Part 265 include a Subpart R, which will contain specific requirements applicable to underground injection.

The proposed hazardous waste management regulations of December 18, 1978 (43 Fed Reg 58946) did not specifically address underground injection. The Agency has decided to propose the specific requirements applicable to underground injection to gain the benefit of public comment.

### Rulemaking Strategy

EPA recognizes that the regulation of underground injection under RCRA must be coordinated with the UIC program. EPA anticipates that when State UIC programs become effective, underground injection of hazardous waste which falls under the jurisdiction of the UIC program will be regulated under that program. Thus the RCRA and UIC programs must be structured to allow for such a shift without unnecessary confusion.

EPA plans to develop this portion of the RCRA regulations in tandem with the UIC program. Certain portions of the UIC program regarding Class IV wells are being re-proposed today. For a discussion of those re-proposed elements commenters should see the Preamble to Subpart C of the Part 122 regulations published in today's Federal Register. The hearing dates which have been established in this proposed regulation also match those for the re-proposed elements of Part 122. EPA anticipates that commenters may want to address their written comments and any statements at the hearing to both the Part 122 proposal and this proposed amendment to Part 265.

The technological requirements specified in these proposed regulations apply to both Class I and Class IV underground injection wells, unless identified as applying only to one or the other. All Class I wells have similar characteristics so that these applications should be easily understood. In the case of Class IV wells, however, this may not be the case.

Underground injection wells for disposal of hazardous waste are classified as either Class I or Class IV. Class I wells are those which inject waste beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water. However, the Class IV wells can be subdivided into two types. The first type is those Class IV wells which discharge hazardous waste directly into underground sources of drinking water. The other type is those Class IV wells which discharge hazardous waste above underground sources of drinking water.

One of the key issues concerning underground injection is the approach that should be taken under RCRA and SDWA toward Class IV wells that involve the direct injection of hazardous wastes into underground sources of drinking water. For a more detailed description of this issue, commenters should see the Preamble to Subpart C of Part 122, which is published in today's Federal Register.

Commenters should be aware that EPA is considering implementing some of the options discussed in Part 122 under RCRA and may incorporate one of those options in these interim status regulations. Under § 122.36 of the UIC program proposal, all injection of hazardous waste directly into an underground source of drinking water through a Class IV well would be prohibited six months after approval of the final program. EPA is considering a similar ban under RCRA. Such a ban

might be instituted on the effective date of the interim status regulation implementing the ban or at some time after the effective date. Commenters should also be aware that EPA is considering incorporating such a ban into its Part 264 regulations to address direct injection while UIC programs are being developed.

The Agency has not made a decision at this time concerning whether Class IV wells discharging hazardous waste above underground sources of drinking water should be banned. However, the Agency believes that in the event it decides to allow such wells to continue to operate, that it should alert the public to the kinds of technical controls it is considering imposing so that the public can meaningfully comment on them.

Class IV wells discharge hazardous waste into or above underground sources of drinking water through a variety of underground injection devices. As already discussed in this Preamble, no technical requirements are included in these regulations for Class IV wells which discharge directly into underground sources of drinking water. Requirements are included in these regulations, however, for those Class IV wells which discharge hazardous waste above underground sources of drinking water. Because of the variety of devices classified as Class IV wells which discharge above underground sources of drinking water, the Agency recognizes that difficulties arise in developing requirements that would apply to all such injection devices.

There are essentially four groups or types of these Class IV devices. They are best described by expressing them in comparison to other devices and techniques. The first type are those normally called wells, which are similar to the usual dug or drilled well, with or without well casing or other fabricated side walls. They are always considerably deeper than they are wide. The second type is similar to the first but usually much shallower than the first. They are usually referred to as pits and are similar in most aspects to surface impoundments. They are usually open at the top and constructed to allow liquid to seep through the bottom and sides into surrounding soil. The third type is more a treatment device than an injection device. They are usually buried rigid vessels designed to contain waste for chemical, physical or biological treatment and equipped with distinct influent and effluent pipes. Septic tanks, devices which are designed to treat waste biologically under anaerobic conditions, are an example of this type. The fourth and final type are those that

are designed to distribute fluids beneath the ground surface over a relatively large area and usually involve buried lateral pipes or trenches. An example of this type is a leaching field which distributes effluent from a septic tank.

As can be seen from this discussion a given requirement for one type of device may not be appropriately applied to the other three devices. For this reason the Agency has directed the requirements in these proposed regulations primarily to those Class IV underground injection devices which are normally thought of as wells.

In addition to, or instead of, the requirements specified in these proposed regulations for Class IV underground injection devices, the Agency is considering the specification of other more appropriate requirements for those Class IV underground injection devices which do not typify wells.

In particular, the Agency is considering the requirements specified in Part 265-Subpart K. Surface Impoundments, or similar requirements for application to the second type described above (i.e., pits). The requirements specified in Part 265-Subpart Q. Chemical, Physical, and Biological Treatment or similar requirements are being considered for application to the third type (e.g., septic tanks) and the requirements in Part 265-Subpart M. Land Treatment, or similar requirements for the fourth or remaining type. The Agency specifically invites comment on the appropriateness of applying these requirements to Class IV underground injection devices.

Because of the similarity between these latter three types of injection devices and those hazardous waste management techniques to be controlled by regulation in accordance with the Part 265 requirements under RCRA, the Agency is also considering regulating these injection techniques under RCRA only, now and in the future. The UIC program would still assume regulatory responsibility for those of these injection techniques which are generally considered as wells (i.e., the first type) when such programs go into effect. The Agency invites specific comments on this concept.

These proposed regulations include a limited number of definitions, used throughout the regulations. These definitions also appear in § 122.3 of the Part 122 regulations published in today's Federal Register. The Agency will be developing additional appropriate definitions for this proposed regulation in conjunction with the Part 146 regulations which are now under development.

The various requirements included in these proposed regulations are summarized as follows:

#### General Operating Requirements

These proposed regulations include specific operational requirements for Class I wells which dispose of hazardous waste beneath the lowermost formation containing, within one quarter of the well bore, an underground source of drinking water. Such wells usually pass through overlying aquifers which are to be protected as underground sources of drinking water. Protection involves requirements for injections only occur through properly designed and constructed wells. The injection of hazardous waste must be accomplished through tubing of a well casing which is cemented to the well bore. Furthermore, the annular space between the tubing and casing must be filled with a suitable sealant. As will be discussed later, the integrity of these seals is to be demonstrated by a monitoring program. A requirement for protecting overlying aquifers is the prohibition of injection of hazardous waste between the casing and the well bore. Additional operational controls include conditions placed on injection pressure in the injection zone. These conditions are set to prevent the migration of hazardous waste, hazardous waste constituents, or formation fluids from the injection zone to underground sources of drinking water. This migration could occur either through fractures in the injection zone, the confining zone, or through incompletely completed or plugged wells in the injection zone. To prevent migration by the first of these, the pressure in the injection zone must remain below a predetermined maximum known as fracture pressure. The injection pressure must at all times remain less than the fracture pressure. To prevent contamination by another pathway, the owner or operator must either correct the problems with the wells or inject at a reduced pressure such that the injected fluids do not reach the improperly plugged or uncased wells. Facilities under interim construction for which injection pressures have already been determined. The regulations require that the owner or operator must monitor his injection pressure to prevent migration of hazardous waste or hazardous waste constituents out of the injection zone by any pathway. The discussion applies only to the disposal of hazardous

waste. The regulations do not include any general operating requirements for Class IV wells which inject above underground sources of drinking water. Since these wells are intended to introduce injection fluids above underground sources of drinking water, requirements to prevent leakage from the well are not pertinent. As will be discussed later, however, the regulations do specify ground-water monitoring requirements for these wells.

#### Special Handling Requirements

Facilities which dispose of hazardous waste by underground injection must comply with the § 265.13 General Waste Analysis requirements. In addition, in the case of underground injection, the owner or operator must ascertain that the waste is compatible with the components of the well and the injection formation. Trial tests are required when a well is used to inject a different hazardous waste to ensure that the new waste will not react with previously injected fluids, the injection formation or components of the well and form gases which could cause a threat to public health or the environment, or otherwise damage the well or the receiving formation. Test results must demonstrate compliance with the requirements of § 265.17(b). If the owner or operator has on hand information demonstrating the compatibility of various hazardous wastes with the well components and the injection formation the trial tests need not be performed.

In § 265.437 of the proposed regulations the underground injection of ignitable, reactive, and incompatible waste is prohibited unless such injection complies with § 265.17(b).

#### Monitoring and Response

As discussed earlier in the discussion of general operating requirements, for Class I wells both the mechanical integrity and the injection zone pressure are to be monitored.

Monitoring to assure the mechanical integrity of the well is to be accomplished by applying a selected pressure to the material placed in the annular space between the tubing and the well casing, and then monitoring the pressure for changes. Any abrupt change in the measured pressure indicates that the tubing is leaking into the annular space. In determining the pressure to be applied to the annular space the owner or operator must establish an allowable range based on generally accepted engineering practices. A sudden leak or fracture in the tubing or casing would cause an abrupt change in the annular pressure. If a significant change in the annular

pressure is detected, the owner or operator is required to take appropriate corrective action to restore mechanical integrity. This action may include replacing or repairing tubing, casing, seals or other appurtenances.

These proposed regulations do not specify appropriate annular pressures or the means to restore mechanical integrity. The regulations do require the owner or operator to implement a monitoring program to demonstrate mechanical integrity of Class I wells based upon a plan prepared and submitted to the Regional Administrator, all on the effective date of these regulations. Continuous monitoring of annular pressure is commonly employed at Class I facilities and therefore the Agency is requiring continuous monitoring and recording. In addition to the annual report that the Agency is considering requiring notice within a specified period (e.g., 24 hours) any readings falling outside the allowable range.

Monitoring of the injection pressure is also required, for Class I wells. As discussed earlier in this document, injection at too high a pressure can cause hazardous waste, hazardous waste constituents, or formation fluids to migrate from the injection zone. To guard against this possibility, the owner or operator must measure the injection pressure to assure that it does not exceed the allowable pressure in the injection zone. Since the pressure is measured at the well head and not in the injection zone itself, he must calculate, based upon generally accepted engineering principles, the maximum allowable pressure at the well head based on the characteristics of both the fluid being injected and the injection well apparatus. If the well head pressure exceeds the allowable limit, the owner or operator must modify his injection process to restore the injection pressure to within allowable limits. For more information on this subject see "An Introduction to the Technology of Subsurface Wastewater Injection," EPA-600/2-77-240, December 1977.

As with the mechanical integrity monitoring program, the owner or operator must, on the effective date of these regulations, develop and submit to the Regional Administrator a plan for injection pressure monitoring and then implement it. This plan must include a specification of continuous monitoring and recording. The Agency is considering, in addition to the annual report, requiring periodic or episodic reporting.

The owner or operator is required to keep records of monitoring data and

locations throughout the active life of facility. He must also submit to the Regional Administrator an annual report on the mechanical integrity and injection pressure monitoring programs. The report must contain a description of any corrective actions instituted during the year and the circumstances which necessitated the corrective actions. In the case of Class IV wells used to dispose of hazardous waste by injection above an underground source of drinking water, these proposed regulations require compliance with the requirements of Part 265 Subpart F—Ground-Water Monitoring.

The Agency believes that wells injecting hazardous waste above an underground source of drinking water are very similar to surface impoundments used for the storage, treatment or disposal of hazardous waste in terms of potential ground-water contamination. This is especially true if surface impoundment leaks. Because of this similarity, the proposed regulations specify the same ground-water monitoring requirements for these wells as those which apply to surface impoundments, including the recordkeeping and reporting requirements of Subpart F.

Subpart F requires indicator monitoring which may lead to a ground-water quality assessment program. For those facilities where no hazardous waste or hazardous waste constituents are thought to be entering the ground water, an indicator monitoring program to detect leaks is described. For those facilities where ground-water contamination by hazardous waste or hazardous waste constituents from the facility is known or assumed to exist, Subpart F regulations describe a ground-water quality assessment program to establish the magnitude of impact on the ground water. Since most Class IV wells may already have contributed hazardous waste or hazardous waste constituents to the ground water, the Agency anticipates that a ground-water quality assessment program will be implemented at most Class IV injection well facilities.

#### *Closure and Post-Closure*

The regulations require an owner or operator to close his injection well in a way that migration of hazardous waste or hazardous waste constituents between underground sources of drinking water is prevented. Furthermore, the need for maintenance to protect human health and the environment is to be minimized. On the effective date of these regulations the owner or operator is required to have a written plan for closure of his injection

well at the end of its intended life or, for that matter, at any other time that closure would be necessary. The closure plan must describe the steps which will need to be taken to close the injection well.

These proposed regulations specify requirements for closure plan amendments, plan approval, and notification which are very similar to the facility closure requirements specified in Part 265—Subpart G, Closure and Post-Closure. Commenters may wish to review these proposed requirements in consideration of Subpart G.

In the case of Class I wells, these regulations specify that closure must be accomplished by plugging. Common plugging techniques include: the Balance Method; the Dump Bailer Method; and the Two-Plug Method. Each of these techniques requires that the well be brought into a state of static equilibrium, either by circulating the mud in the well at least once or a comparable method, prior to placement of the cement plug(s). For more information see "Cementing" by Dwight K. Smith, Chapter 10, Monograph Volume 4, Henry L. Doherty Series, SPE of AIME, 1976.

In the case of Class IV wells which are used to dispose of hazardous waste by injection above underground sources of drinking water, the owner or operator must remove remaining hazardous waste from the injection well and then close the well, in accordance with the facility closure plan to satisfy § 265.435(a). One method of meeting this objective is to preclude the injection of additional fluids, even those which are not hazardous waste, which could result in mobilization of hazardous waste remaining in the aeration zone and introduction of these substances into the ground water.

A "Comment" included in the proposed regulations reminds the owner or operator that any waste removed from the injection well during closure must be managed as a hazardous waste, unless he demonstrates that the waste is not hazardous.

Following closure, the owner or operator of a Class IV well must implement his post-closure plan. These proposed regulations impose the post-closure requirements specified in Subpart G, which, in the case of underground injection, involve post-closure monitoring of the ground water in accordance with Subpart F. EPA believes that such post-closure monitoring is appropriate since hazardous waste may remain in the soil adjacent to the injection well. This monitoring will determine whether the waste migrates to ground water and, if

such migration occurs, what degree of contamination occurs. The latter determination must, at a minimum, include a prediction of the rate of migration of the contaminants in the saturated zone. If the well is contaminating ground water the assessment of contamination in the ground water must continue as long as waste is being injected (i.e., until closure of the facility). This is necessary to account for differences in the waste injected (e.g., volume, constituents).

If contamination first appears during the post-closure period a single ground-water quality assessment (including a prediction of the rate of migration) should be sufficient to characterize likely future contamination. While the Agency believes that the post-closure monitoring requirements of Subpart F are applicable to Class IV wells that inject above an underground source of drinking water, the Agency does not expect that most Class IV wells will be engaging in extensive post-closure monitoring. Many Class IV wells will have triggered the ground-water quality assessment program of Subpart F during the active life of the facility. Such facilities would only monitor until final closure. Those that are using the indicator monitoring system during the post-closure period are likely to discover an impact on ground water. Under Subpart F, such facilities need only complete and report on a single ground-water quality assessment.

#### *Financial Requirements*

In imposing financial requirements on the owners or operators of underground injection facilities, these proposed regulations draw a distinction between the closure and post-closure requirements. Since closure is accomplished essentially through plugging, it is appropriate to use financial requirements similar to those in § 122.42(g), which seem appropriate for such techniques. Since the post-closure requirements of this Subpart are based on the requirements of Subpart G of this Part, it is appropriate to use financial responsibility requirements similar to those in Subpart H of this Part.

The Agency is also considering distinguishing between Class I and Class IV wells for purposes of financial responsibility. Under this alternative approach, requirements for Class I wells (which do not have post-closure requirements) would be based on those in § 122.42(g). The requirements for Class IV wells (which would include requirements during the post-closure period) would be based on Subpart H. The Agency is also considering imposing

with all of Subpart H or requirements similar to those in § 122.42(g) on all underground injection facilities disposing of hazardous waste above underground sources of drinking water.

The Agency has decided to repropose financial responsibility requirements for owners or operators of hazardous waste management facilities. To the extent appropriate, the Agency may decide to promulgate such requirements for owners or operators of wells used to dispose of hazardous waste, at the time it promulgates such requirements for other hazardous waste management facilities.

Dated: May 2, 1980.

Douglas M. Costle,  
Administrator.

It is proposed to further amend Title 40 CFR, Part 265, by adding §§ 265.431—265.437 to Subpart R, which has been promulgated in today's Federal Register as follows:

#### § 265.431 Definitions.

The following definitions promulgated in § 122.3 of this Chapter apply:

**Formation** means a body of rock characterized by a degree of lithologic homogeneity; which is prevailing, but not necessarily, tabular and mappable on the earth's surface or traceable in the surface.

**Formation fluid** means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as drilling mud.

**Injection well** means a "well" into which "fluids" are being injected.

**Injection zone** means a geological "formation", group of formations, or part of a formation receiving fluids through a well.

**Plugging** means the act or process of stopping the flow of water, oil, or gas in formations penetrated by a borehole or well.

**Underground source of drinking water ("USDW")** means an aquifer or its portion: (a) which supplies drinking water for human consumption; or (b) in which the ground water contains fewer than 10,000 mg/l "total dissolved solids".

#### § 265.432 General operating requirements.

The owner or operator of a Class I well for disposal of hazardous waste must prevent migration of hazardous waste or hazardous waste constituents into or between underground sources of drinking water as follows:

(a) Wells must be cased and cemented between the well bore and casing;

(b) Hazardous waste must be injected through tubing, with a packer set

immediately above the injection zone and with the annulus between the tubing and the long string of casings filled with fluid, or by another equally effective technique for which the owner or operator has a written demonstration, available for review by the Regional Administrator, indicating that it provides a comparable level of protection to underground sources of drinking water.

(c) Injection of hazardous waste between the outermost casing and the well bore is prohibited; and

(d) Injection pressure at the well head must not exceed a maximum pressure which must be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone, initiate fractures in the confining zone or otherwise cause the migration of hazardous waste, hazardous waste constituents, or formation fluids into an underground source of drinking water.

#### § 265.433 Waste analysis.

For disposal of hazardous waste by underground injection the owner or operator must, in addition to the waste analyses required by § 265.13:

(a) Conduct waste analyses and trial tests; or

(b) Present written, documented information from his or similar disposal operations to show that this disposal will comply with § 265.17(b) and for Class I wells, that the waste is compatible with fluids in the injection zone and minerals in both the injection zone and the confining zone and will not damage the mechanical integrity of the well.

#### § 265.434 Monitoring and response.

(a) The owner or operator of a facility which disposes of hazardous waste by underground injection into a Class I well must:

(1) On the effective date of these regulations develop and submit to the Regional Administrator a plan for a monitoring program capable of determining compliance with § 265.432, by:

(i) Demonstrating the mechanical integrity of the injection well to satisfy § 265.432(a) and (b); and

(ii) Demonstrating that the pressure of the injected fluids remains within allowable limits to satisfy § 265.432(d).

(2) The plan to be submitted under paragraph (a) of this section must specify:

(i) For demonstrating mechanical integrity:

(A) The annual pressure range to be maintained and basis for determining it

for the specific well tubing, packer and casing characteristics and for the anticipated injection fluid temperatures;

(B) The devices and procedures for continuous monitoring and recording of the annular pressure, and evaluation of that information; and

(C) Procedures for immediate response to changes in the annular pressure outside the allowable range, and for restoration of mechanical integrity;

(ii) For demonstrating that injection fluid pressure remains within allowable limits:

(A) The calculated fracture pressure and the basis for determining it for the specific formation and zone of injection;

(B) The calculated allowable injection pressure to be measured at the well head and the basis for determining it for specific injection fluid characteristics (i.e., specific gravity, viscosity and temperature);

(C) The techniques and procedures for continuous monitoring and recording of the injection pressure at the well head, for evaluation of that information; and

(D) Procedures for immediate response to an increase in the well head pressure above the allowable limit, to restore pressure to within allowable limits.

(3) On the effective date of these regulations the owner or operator must implement the monitoring plan which satisfies paragraph (a)(2) of this section and determine the mechanical integrity of the well and the injection zone pressure.

(4) The owner or operator must keep records of the monitoring data and evaluations specified in paragraphs (a)(2)(i) and (ii) of this section throughout the active life of the facility.

(5) The owner or operator must submit an annual report to the Regional Administrator which assures compliance with § 265.432. He must separately identify in the annual report those corrective actions, specified in paragraphs (a)(2)(i)(C) and (a)(2)(ii)(D) of this section which were implemented during the reporting period, and an explanation of the circumstances which required corrective action.

(b) The owner or operator of a facility which disposes of hazardous waste by underground injection into a Class IV well which discharges above an underground source of drinking water must monitor the ground water in accordance with the requirements of Subpart F of this Part.

#### § 265.435 Closure and post-closure.

(a) The owner or operator must close his facility in a manner that:

(1) Will prevent the migration of hazardous waste or hazardous waste constituents into or between underground sources of drinking water via the well structure; and

(2) Will minimize the need for further maintenance to protect human health and the environment.

(b) On the effective date of these regulations, the owner or operator must have a written closure plan. He must keep this plan at the facility. This plan must identify the steps necessary to completely close the facility. The closure plan must:

(1) Identify the techniques to be used to close the well in accordance with paragraphs (c) and (d) of this Section;

(2) Describe the steps which are necessary to decontaminate facility equipment during closure; and

(3) Include a schedule for final closure which specifies the anticipated date when wastes will no longer be received, the anticipated date when final closure will be completed, and intervening milestone dates for tracking the progress of closure.

(c) The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator must amend his plan any time changes in operating plans or facility design affect the closure plan.

The owner or operator must submit his closure plan to the Regional Administrator at least 180 days before the date he expects to begin closure. The Regional Administrator will modify, approve, or disapprove the plan within 90 days of receipt and after providing the owner or operator and the affected public (through a newspaper notice) the opportunity to submit written comments. If an owner or operator plans to begin closure within 180 days after the effective date of these regulations, he must submit the necessary plans on the effective date of these regulations.

(e) Within 90 days after receiving the final volume of hazardous wastes, the owner or operator must treat all hazardous wastes in storage or in treatment, or remove them from the site, or dispose of them on-site, in accordance with the approved closure plan.

(f) The owner or operator must complete closure activities in accordance with the approved closure plan and within six months after receiving the final volume of wastes. The Regional Administrator may approve a longer closure period under paragraph (d) of this section if the owner or operator can demonstrate that:

(1) Required or planned closure activities will, of necessity, take him longer than six months to complete, and

(2) That he has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

(g) The owner or operator of a Class I well must close by plugging to satisfy paragraph (a) of this section.

(h) At closure, the owner or operator of a Class IV well which discharges above an underground source of drinking water must:

(1) Remove the hazardous waste remaining in the well; and

(2) Close the well in a manner which satisfies paragraph (a) of this section.

[Comment: At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3 (c) or (d) of this Chapter, that any solid waste removed from the injection well is not a hazardous waste, he becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter.]

(i) When closure is completed, the owner or operator must submit to the Regional Administrator certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan.

(j) The owner or operator of a Class IV well which discharges above an underground source of drinking water must provide post-closure care in accordance with the applicable requirements of §§ 265.117-265.120 (see Subpart G of this Part).

#### § 265.436 Financial requirements.

(a) On the effective date of these regulations, the owner or operator of a facility which disposes of hazardous waste by underground injection must have a written estimate of the cost of closing the facility in accordance with the requirements in § 265.435. The owner or operator must keep this estimate, and all subsequent estimates required in this Section, at the facility.

(b) The owner or operator must prepare a new closure cost estimate whenever a change in the closure plan affects the cost of closure.

(c) The owner or operator must maintain financial responsibility in the form of performance bonds or other equivalent form of financial assurance to close a facility which disposes of hazardous waste by underground injection. In lieu of individual performance bonds, owners or operators may furnish a bond or other equivalent form of financial guarantee covering all

facilities which dispose of hazardous waste by underground injection in any one State.

(d) On the effective date of these regulations an owner or operator of a facility which disposes of hazardous waste by underground injection in a Class IV well which discharges above underground sources of drinking water must have a written estimate of the annual cost of post-closure monitoring and maintenance in accordance with the applicable post-closure requirements in §§ 265.117-265.120. This estimate, and all subsequent estimates, must be kept at the facility.

(e) The cost estimate required in paragraph (d) of this section must be revised whenever a change in the post-closure care plan affects the cost of post-closure care (see § 265.118(b)). The latest post-closure cost estimate is calculated by multiplying the latest annual post-closure cost estimate by 30.

(f) On each anniversary of the effective date of these regulations, the owner or operator must adjust the latest post-closure cost estimate using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its *Survey of Current Business*. The inflation factor must be calculated by dividing the latest annual published Deflator by the Deflator for the previous year. The result is the inflation factor. The adjusted post-closure cost estimate must equal the latest post-closure cost estimate times the inflation factor.

#### § 265.437 Special requirements for ignitable, reactive or incompatible wastes.

Ignitable, reactive or incompatible wastes (see Appendix V for examples) must not be disposed by underground injection unless § 265.17(b) is satisfied.

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**United States  
Federal Register**

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**Tuesday  
February 26, 1980**

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**Part IV**

**Environmental  
Protection Agency**

**Notification of Hazardous Waste Activity;  
Public Notice**

CCR 000041239

**ENVIRONMENTAL PROTECTION  
AGENCY**

[Docket No. 3010; FRL 1419-4]

**Preliminary Notification of Hazardous  
Waste Activity****AGENCY:** Environmental Protection  
Agency.**ACTION:** Publication of notification form.

**SUMMARY:** Section 3010 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6930 requires any person who generates or transports hazardous waste or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste to notify the Environmental Protection Agency (or States having authorized hazardous waste permit programs) of the hazardous waste activity within 90 days of the promulgation or revision of RCRA Section 3001 regulations. This notification will give EPA and the public a "snapshot" of the hazardous waste activity regulated under RCRA. In accordance with Section 6001 of RCRA, Federal Agencies must comply with the notification requirement of Section 3010. Section 3010 states that unless notification has been given, "no identified or listed hazardous waste subject to this subtitle may be transported, treated, stored, or disposed of." In addition, existing treatment, storage, and disposal facilities that do not provide notification pursuant to this section become ineligible for Interim Status under Section 3005(e). This notice sets forth procedures and a form which should be used when filing a notification of hazardous waste activity.

**ADDRESS:** The official docket for this notice is located in Room 2503, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. and is available for viewing from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION ON THIS**

**NOTICE CONTACT:** Mr. Terrence Kafara, State Programs and Resource Recovery Division, Office of Solid Waste, WH-563, U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 755-9150.

**SUPPLEMENTARY INFORMATION:****I. Authority**

This notice is issued under authority of Sections 2002(a) and 3010 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Clean Air Act of 1970 ("RCRA" or "the Act"), 42 U.S.C. 6912(a) and 6930.

**II. Background**

The Resource Conservation and Recovery Act provides for the development and implementation of a comprehensive program to protect human health and the environment from the improper management of hazardous waste. A fundamental premise of the statute is that human health and the environment will best be protected by careful management of the transportation, treatment, storage, and disposal of hazardous waste, in accordance with standards developed under the Act.

Elsewhere in today's Federal Register, standards for generators (Section 3002) and transporters (Section 3003) of hazardous waste are published. Within the next several months, the Environmental Protection Agency ("EPA" or "the Agency") will promulgate regulations for determining which wastes are hazardous (Section 3001); requirements for the treatment, storage, and disposal of hazardous waste (Section 3004); procedures for obtaining a hazardous waste permit (Section 3005); and procedures for the delegation of program responsibility from EPA to the States (Section 3006). The publication of these regulations sets in motion a series of events which will culminate in full implementation of the hazardous waste control program. One of these events is the notification of hazardous waste activity required by Section 3010 of RCRA.

Section 3010 requires all persons engaging in hazardous waste management activities to notify EPA or States having authorized hazardous waste permit programs. In developing the Notification Form included in this notice, EPA considered two distinct approaches. The first was to expand the form to include the gathering of additional information which could be used in establishing enforcement priorities. The second approach consisted of a form whose requests were limited to that information necessary to fulfill the statutory requirement for notification.

EPA chose the latter approach for two reasons. First, the successful establishment of a computer data base depends upon extensive use of a Notification Form which is designed for direct key punching and entry into the computer. The inclusion of information beyond that amount, which is legally required by Section 3010, would likely result in decreased use of the form by persons filing notifications. Second, the information required for the establishment of surveillance and enforcement priorities can be obtained

in other, more appropriate ways, such as annual reporting requirements.

**III. Implementation**

EPA has identified approximately 400,000 persons, businesses, and Federal Agencies which may be required to file notifications. EPA will mail to each of these persons a notification package including this Public Notice, an explanatory letter from the EPA Administrator, a copy of the EPA regulations on identification and listing of hazardous waste (Title 40, Code of Federal Regulations, Part 261), information from other EPA regulations which may be needed to assist persons in filing a notification, and a postcard which may be used by owners and operators of treatment, storage, and disposal facilities to request Part A of the permit application. The notification must be filed with EPA within 90 days of promulgation of 40 CFR Part 261. Part A of the permit application must be filed within six months of promulgation of the 40 CFR Part 261 for owners and operators of those facilities who wish to continue their operations under the Interim Status provisions of Section 3005(e) of the Act.

Receipt of a notification package from EPA does not mean that a person must file a notification, but rather that the person has been identified as a member of an industry or other activity likely to handle hazardous waste. For example, many persons in the wood and woodworking industry will receive notification packages. While many businesses in that industry generate hazardous waste, some will receive packages although they do not ordinarily produce hazardous waste.

Conversely, non-receipt of a notification package does not mean that a person is not required to file a notification. Each person must make a determination of whether he/she handles hazardous waste. EPA's mass mailing is intended to assist people in determining whether they are required to file a notification, and failure of the Agency to mail a notification package to any affected person will not relieve that person of the obligation to file a notification according to the requirements of the Act.

Each notification package will also include several pre-printed labels for use in filing the notification. The twelve-digit (12) number on the upper left hand corner of each label is that person's EPA Identification Number. It must be used on hazardous waste manifests and annual and other reports. Persons who do not receive notification packages will be assigned an EPA Identification

Number upon receipt by EPA of their notifications.

EPA will return to each notifier an acknowledgement of receipt of the notification, which will include the notifier's EPA Identification Number. Persons who received notification packages will already know their EPA identification Numbers and may begin to use them as required, that is, six months after promulgation of 40 CFR Part 261, even if the EPA acknowledgement is delayed. This acknowledgement in no way constitutes an endorsement by EPA of the adequacy of the notification or of the notifier's business practices, rather, it serves as a confirmation that EPA received the notification.

#### J. Who Must File

In order to transport, offer for transportation, treat, store, or dispose of hazardous waste, after the effective date of 40 CFR 261, a person must have filed notification and received an EPA identification Number. Regulations governing the notification process were proposed on July 11, 1978 (43 Fed. Reg. 908 *et seq.*). The proposed regulations stated that persons conducting hazardous waste activities "at the time of promulgation or revision of Section 301 regulations" were required to file a notification. Many commenters requested that the Agency clarify the question of who must file. EPA, accordingly, has been more specific in its instructions to the form.

It should be emphasized that the notification process applies in general to persons handling hazardous waste at the time of promulgation or amendment of the Section 3001 regulations. There are certain persons who do not have to file a notification though they handle hazardous waste, for example, persons generating small quantities of hazardous waste. The Section 3001 regulations exempt those persons who handle hazardous waste are exempt from filing.

Hazardous waste management facilities which are no longer in operation are not required to notify because it is EPA's view that the intent of Congress was that the Notification process was to be a snapshot of current hazardous waste management practices for the benefit of EPA and the public. Further, it was not intended, nor is it an appropriate vehicle for finding abandoned hazardous waste disposal sites in part, because the RCRA Subtitle C regulations do not cover those sites. New legislation to find clean-up abandoned sites is being considered by EPA and the Congress. It is noted that a notification is required

for a facility storing hazardous waste at the time of promulgation or amendment to the Section 3001 regulations even though no new wastes are being added. These facilities are, in effect, continuing to store hazardous waste and therefore they are considered to be in operation.

Generators of hazardous waste who begin operation after the initial notification period must, prior to shipping hazardous waste, apply for an EPA Identification Number using the Notification Form in accordance with the regulations published under Section 3002 (40 CFR Part 262). Similarly, new hazardous waste transporters must also apply for an EPA Identification Number on the Notification Form in accordance with the regulations published under Section 3003 (40 CFR Part 263) prior to moving any hazardous waste. The owners/operators of new treatment, storage, and disposal facilities and facilities which failed to meet the requirements for Interim Status (Notification within 90 days and submission of a Part A permit application within 180 days) may not operate until they receive a permit. This requirement includes generators who treat, store, or dispose of hazardous waste on-site.

Persons who have provided proper notification of hazardous waste activity may later begin to handle additional hazardous wastes not included in the original notification. In the administration of this program, EPA will not require these persons to file a new notification under Section 3010 with respect to those wastes. Such a requirement would be costly to both EPA and the regulated community with no corresponding benefit.

The Section 3010 notification will also provide information on the location of Class IV injection wells. Regulations promulgated under the Safe Drinking Water Act provide for EPA to conduct a survey of these wells. Under the Section 3010 notification, hazardous waste generators and owners and operators of facilities for treating, storing, or disposing of hazardous waste must indicate if an injection well is located at their installation. Requiring this information under the Notification process will greatly assist EPA in preparing for the survey under the Safe Drinking Water Act.

#### V. Information Required

Section 3010 requires a person who notifies EPA of his hazardous waste activity to state "the location and general description of such activity and the identified or listed hazardous wastes handled." The proposed regulations required submission of that information,

with the optional addition of the amount of hazardous waste handled annually.

Several changes were made from the proposed regulations to the final Public Notice. The "amount" item was deleted, because it would be extremely difficult for many persons to make an accurate estimate of the amount of hazardous waste handled in the past. The information thus obtained might be inaccurate or misleading, and therefore useless for informational purposes. A number of commenters suggested deletion of this item.

The "description of activity" requirement has been simplified. The proposed rule required a designation of which type of hazardous waste activity was being conducted (generation, transportation, treatment, storage, or disposal) and a general description of the business activity which produced the waste, through use of SIC (Standard Industrial Classification) code numbers. The SIC code requirement was deleted because, in many cases, the code number would not reveal the information necessary for EPA to make use of the data. For instance, a manufacturer's SIC code would not necessarily reveal that the company produces electroplating wastes, because the SIC code is keyed to the product (e.g., automobiles) and not to the waste. More accurate information as to amount and type of waste will be obtained through annual and other reports, permit applications, and EPA access to records.

The proposed form listed six characteristics of non-listed hazardous waste to be checked by persons handling such waste: ignitable, reactive, infectious, radioactive, corrosive, and toxic. The Section 3001 regulations, however, will not include characteristics for identifying waste as infectious or radioactive, but will use those properties as a basis for listing specific hazardous wastes. The form has been modified accordingly.

The proposal also allowed 180 days after promulgation of the Section 3001 regulations for a final notification with respect to toxic waste. Persons who had reason to believe they handled toxic waste were required to file a notification within 90 days of promulgation of the Section 3001 regulations, but were permitted to indicate that it was "undetermined" whether they handled toxic waste. Then, at the expiration of the 180-day period, such persons were to be considered as handling toxic waste unless they had submitted statements to the effect that the waste was not toxic. The reason for this variation in procedure was to allow for anticipated delays in obtaining a laboratory analysis establishing whether each

waste met the proposed standard for toxicity. The Agency decided, however, not to require notifiers to report on whether each waste is toxic. Rather, notifiers are simply required to determine whether at least one waste handled meets the standard for toxicity. This change greatly reduces the initial analytical burden on notifiers, and it is not unreasonable to expect completion of the notification within 90 days of promulgation of the Section 3001 regulations. Therefore the 180-day provision has been deleted. It should be noted that following the effective date of the hazardous waste regulatory program (6 months after promulgation of Section 3001) the determination as to toxicity must be completed by generators for each waste as required by 40 CFR Part 262, Standards Applicable to Generators of Hazardous Waste. Commenters stated that many transporters particularly those in the rail industry, would be unable to identify the waste they transport and therefore should be exempt from this notification provision. The Act requires all persons who handle hazardous waste to notify. The purpose of Section 3010 is to provide EPA information on the identity and hazardous waste handled by persons involved in hazardous waste activities. This information is essential for EPA's implementation of the Act. If necessary, transporters will be able to obtain the information on hazardous wastes from the shippers.

Finally, the proposed regulations were silent on the question of determining which wastes should be included in the notification. The proposal required persons conducting hazardous waste activities to notify with respect to those wastes handled "at the time of promulgation or revision of Section 3001 regulations." The instructions in this final Public Notice are more specific regarding the time period to be used. Any hazardous wastes handled during the three-month period immediately prior to the date of filing the notification must be included. Notifiers may also include other wastes which they anticipate they will be handling. For example, manufacturers may, from time to time, need to dispose of some of the chemical substances listed in 40 CFR Part 261. Notifiers who did not handle these wastes during the previous three months may include them in their notifications.

The form included in this notice offers a standardized approach for persons required to file notifications to provide the necessary information. Use of the form will assist EPA in the orderly initiation of its data management

system, which is designed to facilitate key punching for entry into the computer. Some commenters suggested that EPA accept data processing printouts in lieu of a Notification Form. EPA will accept printouts. However, EPA believes it will be simpler for persons to use the form rather than printouts when notifying. If a printout is used, the notifier will have to provide for each waste on the printout the appropriate EPA Hazardous Waste Number or, for non-listed hazardous wastes, the general characteristics of the wastes. Notifiers who do not use the form must include all required information, including the certification in Item X of the form, signed by the person notifying or his authorized representative.

#### VI. Claims of Confidentiality

In the proposed regulation, EPA requested public comment on two alternatives for handling claims of confidentiality. The first would have permitted unsubstantiated claims of confidentiality at the time of notification. If a request for the information under the Freedom of Information Act were to be received, or in anticipation of such a request, EPA would have required substantiation of the claim. The second would require the necessary substantiation to be submitted with the notification.

Although many comments received on the question favored the first option, EPA chose the second based on three primary considerations. First, if EPA obtains the substantiation of the claim of confidentiality with the notification, the Regional Counsel can determine the business confidentiality before the information is entered into the Agency's computer, thus simplifying the recordkeeping procedure. Second, since EPA expects to receive many requests for the information, it would place an unnecessary burden on the Agency to require it to make a separate request for substantiation of each claim of confidentiality. No additional burden will be placed on notifiers because EPA would request substantiation of the claim in any event. In fact, notifiers will have 90 days to prepare the substantiation, instead of the 15 business days permitted by EPA's Freedom of Information Act Regulations. Finally, EPA believes that, in light of the very general nature of the information requested, very few notifiers will be able to justify a claim that information in the notification is entitled to confidential treatment.

The final notice, therefore, requires that all claims of confidentiality be accompanied by a written

substantiation of the claim, in accordance with 40 CFR Part 2, Subpart B. The substantiation must address such questions as measures taken to guard against undesired disclosure of the information, the extent to which the information has been disclosed to others, and the harm which will result to the claimant's competitive position if the information is disclosed. The specific questions to be answered are listed in the instructions to the Notification Form.

Failure to include substantiation of a claim of confidentiality at the time of submission of notification will constitute a waiver of the claim, and the information in the notification will be available to the public.

#### VII. EPA Identification Number

The proposed regulations listed several types of identification numbers already assigned to many businesses and Federal Agencies, and instructed the notifier to use an appropriate number as his EPA hazardous waste identification number. A number of comments on this matter were received, some suggesting still more types of numbers to be used and others suggesting that, in the interest of conformity with the identification numbers to be assigned to treatment, storage and disposal facilities, the same numbering system should be used. EPA selected the latter option, and will use the Dun and Bradstreet Data Universal Numbering (DUN) system. The DUN system is the most nearly complete listing of U.S. businesses. Federal Agencies, which are not included in the DUN system, will be assigned their General Service Administration Real Property Number.

#### VIII. Use of Public Notice in Lieu of Final Promulgation of Regulations

The proposed rule included requirements as to who must file notifications, where and when to file, and what information notifications should contain, as well as a sample form. Also included was a provision for the temporary authorization of States for the sole purpose of receiving notifications.

EPA's primary reason for proposing regulations rather than a Public Notice was to establish rules covering the authorization of States to receive the notification (Limited Interim Authorization). However, EPA decided, for the reasons discussed below, to abandon the concept of Limited Interim Authorization. EPA has therefore decided not to promulgate notification regulations, but to issue this Public Notice instead.

The effect of this notice is, first, to provide a mechanism for implementation of Section 3010; second, to establish a certification statement which must be signed by anyone submitting a notification, and third, to establish a procedure for submission of claims of confidentiality.

#### IX. Limited Interim Authorization of States

The proposed regulations included procedures for granting "Limited Interim Authorization" to States in order to enable them to conduct the notification program. This concept was developed because it is very unlikely that any State hazardous waste program will be authorized during the 90-day notification period. It was intended that "Limited Interim Authorization" be granted separate and apart from the interim and full authorizations granted under section 3006 of RCRA.

Some commenters supported "Limited Interim Authorization" as a means for involving States in hazardous waste management as early as possible, while others objected on the grounds that "Limited Interim Authorization" is illegal and potentially burdensome. While EPA recognizes the benefits of involving the States during the initial implementation stages of RCRA, it has concluded that the use of "Limited Interim Authorization" is not authorized by RCRA. Section 3010 is explicit in stating that only "the Administrator" or States having authorized hazardous waste permit programs under Section 3006 may receive notifications. The creation of a nonstatutory class of State authorizations in light of such an express Congressional directive raises serious legal questions. Therefore, since procedures involved in authorizing State programs under section 3006 are not likely to be completed during the 90-day notification period, EPA will carry out the notification process in full.

#### OMB Review

Under the Federal Reports Act of 1942, the Office of Management and Budget (OMB) reviews reporting requirements in proposed forms and regulations in order to minimize the reporting burden on respondents and the cost to the government. EPA submitted Form 8700-12 implementing section 3010 notification requirements to OMB on December 8, 1979. Reporting requirements implementing sections 3002 and 3003 were submitted on February 1, 1980.

In the course of OMB's preliminary review, OMB staff raised no objection to the form itself. OMB has, however, advised that it cannot complete its review

of these requirements until the Administrator of EPA has made decisions regarding the coverage of the RCRA program under Subtitle C and OMB has had an opportunity to review the reporting burden of the entire regulatory program.

#### XI. Regulatory Analysis

In accordance with Executive Orders 12044 and 11821 as amended by Executive Order 11949, OMB Circular A-107 and EPA policy as stipulated in 39 Fed. Reg. 37419 (October 21, 1974), draft analyses of economic and environmental impacts have been prepared for the proposed Subtitle C, Hazardous Waste Management Regulations. The final Environmental Impact Statement will be available following promulgation of 40 CFR Part 261.

Dated: February 19, 1980.

Douglas M. Costle,  
Administrator.

BILLING CODE 6560-01-M

GSA No. 12345-XX  
Form Approved OMB No. 158-R-0000

Print or type with ELITE type 12 characters/inch in the shaded area only.

U.S. ENVIRONMENTAL PROTECTION AGENCY  
NOTIFICATION OF HAZARDOUS WASTE ACTIVITYINSTALLATION'S  
EPA I.D. NO.I. NAME OF  
INSTALLATIONII. INSTALLATION  
MAILING  
ADDRESSIII. LOCATION OF  
INSTALLATION

PLEASE PLACE LABEL IN THIS SPACE

**INSTRUCTIONS:** If you received a preprinted label, affix it in the space at left. If any of the information on the label is incorrect, draw a line through it and supply the correct information in the appropriate section below. If the label is complete and correct, leave Items I, II, and III below blank. If you did not receive a preprinted label, complete all items. "Installation" means a single site where hazardous waste is generated, treated, stored and/or disposed of, or a transporter's principal place of business. Please refer to the INSTRUCTIONS FOR FILING NOTIFICATION before completing this form. The information requested herein is required by law (Section 3010 of the Resource Conservation and Recovery Act).

## FOR OFFICIAL USE ONLY

## COMMENTS

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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|--------------------------|--|--|--|--|--|--|--|--|--|----------|--|--|--|--|------------------------------------|--|--|--|--|--|--|--|--|--|
| INSTALLATION I.D. NUMBER |  |  |  |  |  |  |  |  |  | APPROVED |  |  |  |  | DATE RECEIVED<br>(mo., day, & yr.) |  |  |  |  |  |  |  |  |  |
|                          |  |  |  |  |  |  |  |  |  |          |  |  |  |  |                                    |  |  |  |  |  |  |  |  |  |

## I. NAME OF INSTALLATION

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

## II. INSTALLATION MAILING ADDRESS

|                    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |     |  |  |  |  |          |  |  |  |  |
|--------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|-----|--|--|--|--|----------|--|--|--|--|
| STREET OR P.O. BOX |  |  |  |  |  |  |  |  |  |  |  |  |  |  |     |  |  |  |  |          |  |  |  |  |
|                    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |     |  |  |  |  |          |  |  |  |  |
| CITY OR TOWN       |  |  |  |  |  |  |  |  |  |  |  |  |  |  | ST. |  |  |  |  | ZIP CODE |  |  |  |  |
|                    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |     |  |  |  |  |          |  |  |  |  |

## III. LOCATION OF INSTALLATION

|                        |  |  |  |  |  |  |  |  |  |  |  |  |  |  |     |  |  |  |  |          |  |  |  |  |
|------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|-----|--|--|--|--|----------|--|--|--|--|
| STREET OR ROUTE NUMBER |  |  |  |  |  |  |  |  |  |  |  |  |  |  |     |  |  |  |  |          |  |  |  |  |
|                        |  |  |  |  |  |  |  |  |  |  |  |  |  |  |     |  |  |  |  |          |  |  |  |  |
| CITY OR TOWN           |  |  |  |  |  |  |  |  |  |  |  |  |  |  | ST. |  |  |  |  | ZIP CODE |  |  |  |  |
|                        |  |  |  |  |  |  |  |  |  |  |  |  |  |  |     |  |  |  |  |          |  |  |  |  |

## IV. INSTALLATION CONTACT

|                                           |  |  |  |  |  |  |  |  |  |  |  |  |  |  |                             |  |  |  |  |  |  |  |  |  |
|-------------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|-----------------------------|--|--|--|--|--|--|--|--|--|
| NAME AND TITLE (last, first, & job title) |  |  |  |  |  |  |  |  |  |  |  |  |  |  | PHONE NO. (area code & no.) |  |  |  |  |  |  |  |  |  |
|                                           |  |  |  |  |  |  |  |  |  |  |  |  |  |  |                             |  |  |  |  |  |  |  |  |  |

## V. OWNERSHIP

|                                       |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|---------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| A. NAME OF INSTALLATION'S LEGAL OWNER |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|                                       |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

## B. TYPE OF OWNERSHIP (enter the appropriate letter into box)

|            |  |  |  |  |  |  |  |  |  |                |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|------------|--|--|--|--|--|--|--|--|--|----------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| F. FEDERAL |  |  |  |  |  |  |  |  |  | M. NON-FEDERAL |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|            |  |  |  |  |  |  |  |  |  |                |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

## VI. TYPE OF HAZARDOUS WASTE ACTIVITY

|                                                 |  |  |  |  |  |  |  |  |  |                                                                |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|-------------------------------------------------|--|--|--|--|--|--|--|--|--|----------------------------------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| <input type="checkbox"/> A. GENERATION          |  |  |  |  |  |  |  |  |  | <input type="checkbox"/> B. TRANSPORTATION (complete item VII) |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <input type="checkbox"/> C. TREAT/STORE/DISPOSE |  |  |  |  |  |  |  |  |  | <input type="checkbox"/> D. UNDERGROUND INJECTION              |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

## VII. MODE OF TRANSPORTATION (transporters only)

|                                 |  |  |  |  |                                  |  |  |  |  |                                     |  |  |  |  |                                   |  |  |  |  |                                              |  |  |  |  |
|---------------------------------|--|--|--|--|----------------------------------|--|--|--|--|-------------------------------------|--|--|--|--|-----------------------------------|--|--|--|--|----------------------------------------------|--|--|--|--|
| <input type="checkbox"/> A. AIR |  |  |  |  | <input type="checkbox"/> B. RAIL |  |  |  |  | <input type="checkbox"/> C. HIGHWAY |  |  |  |  | <input type="checkbox"/> D. WATER |  |  |  |  | <input type="checkbox"/> E. OTHER (specify): |  |  |  |  |
|                                 |  |  |  |  |                                  |  |  |  |  |                                     |  |  |  |  |                                   |  |  |  |  |                                              |  |  |  |  |

## VIII. FIRST OR SUBSEQUENT NOTIFICATION

Mark 'X' in the appropriate box to indicate whether this is your installation's first notification of hazardous waste activity or a subsequent notification. If this is not your first notification, enter your installation's EPA I.D. number in the space provided below.

|                                                |  |  |  |  |  |  |  |  |  |                                                                       |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|------------------------------------------------|--|--|--|--|--|--|--|--|--|-----------------------------------------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| <input type="checkbox"/> A. FIRST NOTIFICATION |  |  |  |  |  |  |  |  |  | <input type="checkbox"/> B. SUBSEQUENT NOTIFICATION (complete item C) |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|------------------------------------------------|--|--|--|--|--|--|--|--|--|-----------------------------------------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

## C. INSTALLATION'S EPA I.D. NO.

## IX. DESCRIPTION OF HAZARDOUS WASTES

Please go to the reverse of this form and provide the requested information.

IX. DESCRIPTION OF HAZARDOUS WASTES (continued from front)

A. HAZARDOUS WASTES FROM NON-SPECIFIC SOURCES. Enter the four-digit number from 40 CFR Part 261.31 for each listed hazardous waste from non-specific sources your installation handles. Use additional sheets if necessary.

|   |   |   |    |    |    |
|---|---|---|----|----|----|
| 1 | 2 | 3 | 4  | 5  | 6  |
| 7 | 8 | 9 | 10 | 11 | 12 |

B. HAZARDOUS WASTES FROM SPECIFIC SOURCES. Enter the four-digit number from 40 CFR Part 261.32 for each listed hazardous waste from specific industrial sources your installation handles. Use additional sheets if necessary.

|    |    |    |    |    |    |
|----|----|----|----|----|----|
| 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 |

C. COMMERCIAL CHEMICAL PRODUCT HAZARDOUS WASTES. Enter the four-digit number from 40 CFR Part 261.33 for each chemical substance your installation handles which may be a hazardous waste. Use additional sheets if necessary.

|    |    |    |    |    |    |
|----|----|----|----|----|----|
| 31 | 32 | 33 | 34 | 35 | 36 |
| 37 | 38 | 39 | 40 | 41 | 42 |
| 43 | 44 | 45 | 46 | 47 | 48 |

D. LISTED INFECTIOUS WASTES. Enter the four-digit number from 40 CFR Part 261.34 for each listed hazardous waste from hospitals, veterinary hospitals, medical and research laboratories your installation handles. Use additional sheets if necessary.

|    |    |    |    |    |    |
|----|----|----|----|----|----|
| 49 | 50 | 51 | 52 | 53 | 54 |
|----|----|----|----|----|----|

E. CHARACTERISTICS OF NON-LISTED HAZARDOUS WASTES. Mark 'X' in the boxes corresponding to the characteristics of non-listed hazardous wastes your installation handles. (See 40 CFR Parts 261.20 - 261.23.)

☐ 1. IGNITABLE
☐ 2. CORROSIVE
☐ 3. REACTIVE
☐ 4. TOXIC

X. CERTIFICATION

certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

SIGNATURE

OFFICIAL TITLE

DATE SIGNED

CLASSING CODE 6560-01-C

CCR 000041245

## Instructions for filing Notification of Hazardous Waste Activity—EPA Form 8700-12: General Instructions

### Who Must File

The Resource Conservation and Recovery Act of 1976 (RCRA) requires anyone who generates or transports hazardous waste, or who owns or operates a facility for treating, storing, or disposing of hazardous waste to notify EPA of their activity. This includes individuals, trusts, firms, joint stock companies, corporations (including government corporations), partnerships, associations, States, municipalities, commissions, interstate bodies and Federal Agencies. If you transport, treat, store, or dispose of hazardous waste without filing a notification, you may be subject to civil and criminal penalties.

Generators, owners and operators of facilities for treating, storing, or disposing of hazardous waste who operate underground injection wells must notify EPA using the Notification Form under RCRA. You do not have to submit a separate Notification Form under the Safe Drinking Water Act, however, you are still required to fill out inventory and other forms required under the Safe Drinking Water Act. For further information, owners and operators of underground injection wells should consult the Chief, Water Supply Branch at the nearest EPA Regional Office.

### What Information Should Be Filed

When filing a notification, you must identify the hazardous wastes that you handle and give a general description of your activity including its location. You can submit all this information by simply completing the enclosed EPA Form 8700-12.

### Notification of Hazardous Waste Activity

**How Many Forms Should be Filed:** You need submit only one Notification Form per site or location, provided that you describe all the activities at that site or location. If you conduct hazardous waste activity at more than one site or location, you must submit a *separate* form for each site or location.

If you transport hazardous waste, and do not generate, treat, store, or dispose of hazardous waste, you may submit one form which covers all the transportation activities your company conducts. This form should be submitted to the EPA Regional Office that serves the area where your company has its headquarters or principal place of

business. However, if you are a transporter who generates, treats, stores or disposes of hazardous waste, you will have to complete and submit separate Notification Forms to cover each installation.

### When To File

**1. Within 90-days of Publication of Regulations Under Section 3001 of RCRA:** Anyone who conducts hazardous waste activity must file a notification within 90 days after EPA publishes regulations under Section 3001 of RCRA. These regulations define which solid wastes are hazardous wastes and are published under Title 40 of the Code of Federal Regulations, Part 261.

Owners or operators of facilities that treat, store or dispose of hazardous waste must submit a notification within 90 days after the 3001 regulations are published in order to qualify for "Interim Status"—that is, temporary authority to continue their operations until a final permit is issued.

**2. Within 90-days of Any Amendments to the Section 3001 Regulations:** From time to time, EPA may change its procedures for identifying hazardous waste, or may revise the list of hazardous waste which it has published. If you handle any wastes which are identified or listed as hazardous by an amendment to the Section 3001 regulations, you must file a notification covering these wastes within 90 days after the amendment is published.

**3. New Generators and Transporters:** If you begin to generate hazardous waste and have not previously filed a notification, you must comply with the regulations for obtaining an EPA Identification Number published under Section 3002 of RCRA (40 CFR Part 262) before you transport hazardous waste or offer your hazardous waste to a transporter.

Similarly, if you desire to transport hazardous waste and have not previously filed a notification, you must comply with the regulations for obtaining an EPA Identification Number published under section 3003 of RCRA (40 CFR Part 263) before you move any hazardous waste.

Persons applying for an EPA Identification Number under Section 3003 of RCRA need not complete the reverse side of the Notification Form as they may not know which wastes they will be handling.

**4. Treatment, Storage and Disposal Facilities:** If you own or operate a facility where hazardous waste is treated, stored, or disposed, and you do not file a notification during the 90-day period following the initial publication

of the Section 3001 regulations, you will not be allowed to continued your hazardous waste activities until you obtain a hazardous waste permit. Similarly, if you plan to open a new hazardous waste treatment, storage, or disposal facility, you must obtain a hazardous waste permit before commencing operations. Owners or operators of new facilities need not submit a notification, since your permit application will fulfill your notification requirements.

### Where To File

Notification should be sent to the EPA Regional Office that serves the area where your hazardous waste activity is located. If you received a notification packet from EPA that contains envelopes and pre-addressed mailing labels, you should use one of the envelopes and one of the mailing labels to send your notification to EPA. If you do not have a pre-addressed mailing label, mail your notification to the EPA Regional Office that serves the area where your hazardous waste activity is located. The mailing addresses for the EPA Regional Offices are listed below:

#### Mailing-Address for Receiving

| EPA Region | Area served                                                                                 | Notification                                                                                     |
|------------|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| I.....     | Connecticut, Maine, Massachusetts, Rhode Island, Vermont                                    | EPA Region I<br>Permits Branch<br>P.O. Box 6748<br>Boston, MA 02114                              |
| II.....    | New Jersey, New York, Virgin Islands, Puerto Rico                                           | EPA Region II<br>Information Service<br>Center<br>26 Federal Plaza<br>New York, NY 10007         |
| III.....   | Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia             | EPA Region III<br>P.O. Box 1460<br>Philadelphia, PA 19107                                        |
| IV.....    | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee | EPA Region IV<br>RCRA Activities<br>345 Courtland, N.E.<br>Atlanta, GA 30306                     |
| V.....     | Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin                                     | U.S. EPA<br>Region V<br>RCRA Activities<br>P.O. Box 7861<br>Chicago, IL 60680                    |
| VI.....    | Arkansas, Louisiana, New Mexico, Oklahoma, Texas                                            | EPA Region VI<br>Attn: 6 AEG<br>1201 Elm Street<br>First International Bldg.<br>Dallas, TX 75270 |
| VII.....   | Iowa, Kansas, Missouri, Nebraska                                                            | EPA Region VII<br>P.O. Box 15806<br>Kansas City, MO 64106                                        |
| VIII.....  | Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming                                | EPA Region VIII<br>BAH-WM<br>1860 Lincoln Street<br>Denver, CO 80295                             |
| IX.....    | Arizona, California, Hawaii, Nevada, Guam, American Samoa, Trust Territories                | EPA Region IX<br>Attn: A-3-2<br>215 Fremont Street<br>San Francisco, CA 94105                    |
| X.....     | Alaska, Idaho, Oregon, Washington                                                           | EPA Region X<br>M/S 530-A<br>1200 Sixth Avenue<br>Seattle, WA 98101                              |

CCR 000041246

**Confidential Information**

All information you submit in a notification can be disclosed to the public, according to the Freedom of Information Act and EPA Freedom of Information Regulations. Because notification information is very general, EPA believes that it is unlikely that any information in your notification could qualify to be protected from disclosure.

However, if you wish, you may make a claim of confidentiality by printing the word "confidential" on both sides of the Notification Form and on any attachments. In addition, *at the time of notification*, you must submit written answers to each of the following questions:

1. Which portions of the information do you claim are entitled to confidential treatment?
2. How long do you want this information treated confidential?

3. What measures have you taken to guard against undesired disclosure of the information to others?

4. To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?

5. Has EPA or any other Federal Agency made a pertinent confidentiality determination? (If so, include a copy of this determination of reference to it, if available).

6. Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between disclosure and the harm?

**Note.**—If you fail to include substantiation of your claim of confidentiality at the time you submit your notification form, you waive your claim, and the information on the form will be available to the public.

**Line-by-Line Instructions—EPA Form 8700-12**

Type or print in ink all items except X(A), SIGNATURE, leaving a blank box between words. If you must use additional sheets, indicate clearly the number of the item on the form to which the information on the separate sheet applies.

**Items I through III**

**Name, Mailing Address, and Location of Installation:** If you received a preprinted label from EPA, attach it in the space provided and leave items I, II, and III blank. If there is an error or omission on the label, cross out the incorrect information and fill in the appropriate item(s). If you did not receive a preprinted label, complete items I, II, and III.

Example:

|                                         |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| <b>I. NAME OF INSTALLATION</b>          |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Smith Manufacturing Company             |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <b>II. INSTALLATION MAILING ADDRESS</b> |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| STREET OR P.O. BOX                      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| P.O. Box 8719                           |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| CITY OR TOWN                            |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| 61801                                   |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <b>III. LOCATION OF INSTALLATION</b>    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| STREET OR ROUTE NUMBER                  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 1201 6th Street                         |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| CITY OR TOWN                            |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Urbana                                  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| 61801                                   |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

Item IV.

**Installation Contact:** Enter the name, title, and business telephone number of the person who should be contacted regarding information submitted on this form.

Item V.

**Ownership:** (A) Enter the name of the legal owner of the installation. Use additional sheets if necessary to list more than one owner.

(B) Enter an F in the box if the installation is owned by a Federal Agency. Enter an M if the installation is not owned by a Federal Agency. An installation is Federally owned if the owner is the Federal Government, even if it is operated by a private contractor.

Item VI.

**Type of Hazardous Waste Activity:** Mark "X" in the appropriate box(es) to

indicate the hazardous waste activity or activities at the installation. If you mark item C, you are reminded that you should mail the enclosed post card to request a RCRA Permit Application. Generators, owners and operators of facilities for treating, storing, or disposing of hazardous waste must mark item D if an injection well is located at their installation. An injection well is defined as any hole in the ground that is deeper than it is wide and that is used

for the subsurface placement of fluid, including septic tanks.

*Item VII.*

**Mode of Transportation:** Complete this item only if you are a transporter of hazardous waste to indicate the mode(s) of transportation you use.

*Item VIII*

**First or Subsequent Notification:** If you handle any hazardous waste that is identified in an amendment to Part 261 you will have to file a notification on that waste within 90 days after the amendment is published. Place an "X" in the appropriate box to indicate whether this is your first or a subsequent notification. If you have filed a previous notification, enter your EPA Identification Number in the boxes provided.

**Note.**—If you have filed a notification before, you only need enter the four-digit numbers of those wastes that were identified in the amendment to Part 261.

*Item IX*

**Description of Hazardous Waste:** You need to read Title 40, Code of Federal Regulations Part 261 in order to complete this item. Part 261 identifies those solid wastes that EPA defines to be hazardous wastes. Part 261 identifies hazardous wastes in two ways:

(1) A number of hazardous wastes are listed by name in various tables and appendices. EPA has assigned a four-digit number to each waste that is listed to make it easier to identify the wastes.

(2) Part 261 also lists the general characteristics of hazardous wastes. EPA has also assigned a four-digit number to these characteristics.

As you will note, Item IX on the form is divided into five sections. You should use Sections A through D to identify any listed hazardous wastes which you handle; use Section E to identify those characteristics of the non-listed hazardous wastes which you handle.

You should include in Sections A through E all hazardous wastes you handled during the three-month period preceding the date of notification. If you occasionally handle a hazardous waste but did not handle that waste during the three-month period preceding the date of notification, you may also include that waste (or wastes) in Section A through E.

If you are a new generator applying for an EPA Identification Number under the provisions of 40 CFR Part 262, you should describe the wastes which you believe you will be generating.

If you are a new transporter applying for an EPA Identification Number under

the provisions of 40 CFR Part 263, you are not required to complete Item IX.

The specific instructions for Sections A through E are:

*Section A*

If you handle hazardous wastes from the non-specific sources listed in Part 261.31, enter the appropriate four-digit numbers in the boxes provided.

*Section B*

If you handle hazardous wastes from the specific industrial sources listed in Part 261.32, enter the appropriate four-digit numbers in the boxes provided.

*Section C*

If you handle any of the commercial chemical products or manufacturing intermediate or material listed in Part 261.33 as wastes, enter the appropriate four-digit numbers in the boxes provided. Manufacturers may include the products or raw materials that can be reasonably anticipated to require treatment, storage, or disposal as wastes from time to time even though you may not have handled them in the past three months.

*Section D*

If you handle any of the hazardous wastes from hospitals, veterinary hospitals, or medical and research laboratories listed in Part 261.34, enter the appropriate four-digit numbers in the boxes provided.

*Section E*

If you handle hazardous wastes which are not listed in Subpart D of Part 261, you should describe these wastes by the characteristics in Subpart C of Part 261. For purposes of notification, it is not necessary to use the four-digit numbers for each characteristic. Rather, you should place an "X" in the box next to the characteristic of those non-listed wastes which you handle.

*Item X*

**Certification:** This certification must be signed by the owner or operator or an authorized representative of your installation. An "authorized representative" is a person responsible for the overall operation of the facility—for example—a plant manager or superintendent, or a person of equivalent responsibility.

[FR Doc. 80-5956 Filed 2-25-80; 8:45 am]

BILLING CODE 8560-01-M

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## ENVIRONMENTAL PROTECTION AGENCY GENERAL REGULATIONS FOR HAZARDOUS WASTE MANAGEMENT

(40 CFR 260; 45 FR 12724, February 26, 1980, Effective August 26, 1980)

### PART 260—HAZARDOUS WASTE MANAGEMENT: OVERVIEW AND DEFINITIONS

#### Subpart A—Definitions

Sec.  
260.10 Definitions.

#### Subpart B—General [Reserved]

Authority: Sections 2002(a), 3001 through 3010, Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 (42 U.S.C. §§ 2012(a), 6921 through 6930).

#### Subpart A—Definitions

##### § 260.10 Definitions.

When used in the regulations set forth in Parts 261, 262, 263, 264, and 265 of this title, the following terms have the meanings given below:

*Editor's note:* Parts 261, 264, 265 and 266 have not been promulgated by EPA.

(a) "Authorized Representative" means the person responsible for the overall operation of the installation, e.g., plant manager, superintendent or person of equivalent responsibility.

(b) "EPA identification number" means the unique number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

(c) "Hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous waste or a material listed in 40 CFR 261.33 which, because it is discharged, becomes a hazardous waste, onto or into the land or water.

(d) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(e) "Manifest" means the shipping document originated and signed by the generator which contains the information required by Subpart B of 40 CFR Part 262.

(f) "Manifest document number" means the serially increasing number assigned to the manifest by the generator for recording and reporting purposes.

(g) "On-site" means the same or geographically contiguous property which may be divided by public or private right(s)-of-way. Non-contiguous property owned by the generator but

connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(h) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, State, municipality, commission, political subdivision of a State, interstate body, or Federal agency.

(i) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(j) "Transportation" means the movement of hazardous waste by air, rail, highway or water.

(k) "United States" means the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(l) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

#### Subpart B—General [Reserved]

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[Sec. 260.10(l)]

## ENVIRONMENTAL PROTECTION AGENCY REGULATIONS FOR HAZARDOUS WASTE GENERATORS

(40 CFR 262; 45 FR 12732, February 26, 1980, Effective August 26, 1980)

*Editor's note.* Parts 261, 264, 265, and 266 have not been promulgated by EPA.

### PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

#### Subpart A—General

- 262.10 Purpose, scope, and applicability.
- 262.11 Hazardous waste determination.
- 262.12 EPA identification numbers.

#### Subpart B—The Manifest

- 262.20 General requirements.
- 262.21 Required information.
- 262.22 Number of copies.
- 262.23 Use of the manifest.

#### Subpart C—Pre-Transport Requirements

- 262.30 Packaging.
- 262.31 Labeling.
- 262.32 Marking.
- 262.33 Placarding.
- 262.34 Accumulation time.

#### Subpart D—Recordkeeping and Reporting

- 262.40 Recordkeeping.
- 262.41 Annual reporting.
- 262.42 Exception reporting.
- 262.43 Additional reporting.

#### Subpart E—Special Conditions

- 262.50 International shipments.
- 262.51 Farmers.

Appendix—Form: Annual Report (EPA Form 8700-13).

Authority: Secs. 2302(a), 3001, 3002, 3003, and 3005, Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act of 1976 and as amended by the Small Business Act of 1978 (42 U.S.C. (a), 6921, 6922, 6923, 6924, 6925).

#### Subpart A—General

- 262.10 Purpose, scope, and applicability.

(a) These regulations establish standards for generators of hazardous waste.

(b) A generator who treats, stores, or disposes of hazardous waste must only comply with the following sections of this Part: § 262.11 for determining whether or not he has a hazardous waste, § 262.12 for obtaining an EPA identification number, § 262.40 (c) and (d) for Recordkeeping, § 262.43 for additional reporting and if applicable, § 262.51 for Farmers.

(c) Any person who imports hazardous waste into the United States must comply with the standards applicable to generators established in this Part.

(d) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of § 262.51 is not required to comply with other standards in this Part or 40 CFR Parts 122, 264, or 265 with respect to such pesticides.

(e) A person who generates a hazardous waste as defined by 40 CFR Part 261 is subject to the compliance requirements and penalties prescribed in Section 3008 of the Act if he does not comply with the requirements of this Part.

*Note.*—A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in 40 CFR Parts 264, 265, and 266 and Part 122.

#### § 262.11 Hazardous waste determination.

A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:

(a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4.

(b) He must then determine if the waste is listed as a hazardous waste in Subpart D of 40 CFR Part 261.

*Note.*—Even if the waste is listed, the generator still has an opportunity under 40 CFR 261.39 to demonstrate to the Administrator that the waste from his particular facility or operation is not a hazardous waste.

(c) If the waste is not listed as a hazardous waste in Subpart D of 40 CFR Part 261, he must determine whether the waste is identified in Subpart C of 40 CFR Part 261 by either:

(1) Testing the waste according to the methods set forth in Subpart C of 40 CFR Part 261, or according to an

equivalent method approved by the administrator under 40 CFR 261.44; or

(2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

#### § 262.12 EPA identification numbers.

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Administrator using EPA form 8700-12. Upon receiving the request the Administrator will assign an EPA identification number to the generator.

(c) A generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

#### Subpart B—The Manifest

##### § 262.20 General requirements.

(a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a manifest before transporting the waste off-site.

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[Sec. 262.20(a)]

(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

#### § 262.21 Required information.

(a) The manifest must contain all of the following information:

- (1) A manifest document number;
- (2) The generator's name, mailing address, telephone number, and EPA identification number;
- (3) The name and EPA identification number of each transporter;
- (4) The name, address, and EPA identification number of the designated facility and an alternate facility, if any;
- (5) The description of the waste(s) (e.g., proper shipping name, etc.) required by regulations of the U.S. Department of Transportation in 49 CFR 172.101, 172.202, and 172.203;
- (6) The total quantity of each hazardous waste by units of weight or volume, and the type and number of containers as loaded into or onto the transport vehicle

(b) The following certification must appear on the manifest: "This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation and EPA."

#### § 262.22 Number of copies.

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

#### § 262.23 Use of the manifest.

- (a) The generator must:
- 1) Sign the manifest certification by hand; and
  - 2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and
  - 3) Retain one copy, in accordance with § 262.40(a).

(b) The generator must give the transporter the remaining copies of the manifest.

(c) For shipment of hazardous waste within the United States solely by railroad or solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility. Copies of the manifest are not required for each transporter.

**Note.**—See Part 263.20(e) for special provisions for rail or water (bulk shipment) transporters who deliver hazardous waste by rail or water to the designated facility.

### Subpart C—Pre-Transport Requirements

#### § 262.30 Packaging.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 CFR Parts 173, 178, and 179.

#### § 262.31 Labeling.

Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable Department of Transportation regulations on hazardous materials, under 49 CFR 172.

#### § 262.32 Marking.

(a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

"Hazardous Waste—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and

Address \_\_\_\_\_

Manifest Document

Number \_\_\_\_\_

#### § 262.33 Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F.

#### § 262.34 Accumulation time.

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

(1) All such waste is shipped off-site in 90 days or less;

(2) The waste is placed in containers which meet the standards of § 262.30;

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

(4) Each container is properly labeled and marked according to § 262.31 and 262.32.

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Part 264 and 265 and the permit requirements of 40 CFR Part 122.

### Subpart D—Recordkeeping and Reporting

#### § 262.40 Recordkeeping.

(a) A generator must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator must keep a copy of each Annual Report and Exception Report for a period of at least three years.

(c) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

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(d) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

#### § 262.41 Annual reporting.

(a) A generator who ships his hazardous waste off-site must submit Annual Reports:

(1) On EPA form 8700-13, according to the instructions on the form (See the Appendix to this Part);

(2) To the Regional Administrator for the Region in which the generator is located;

(3) No later than March 1 for the preceeding calendar year.

(b) Any generator who treats, stores, or disposes of hazardous waste on-site must submit an Annual Report covering those wastes in accordance with the provisions of 40 CFR Parts 264, 265, and 266 and 40 CFR 122.

#### § 262.42 Exception reporting.

(a) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(b) A generator must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

(1) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(2) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

#### § 262.43 Additional reporting.

The Administrator, as he deems necessary under section 2002(a) and section 3002(6) of the Act, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 CFR Part 261.

### Subpart E—Special Conditions

#### § 262.50 International shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the United States must comply with the requirements of this Part and with the special requirements of this section.

(b) When shipping hazardous waste outside the United States the generator must:

(1) Notify the Administrator in writing four weeks before the initial shipment of hazardous waste to each country in each calendar year. The waste must be identified by its EPA hazardous waste identification number and its DOT shipping description;

(2) Require that the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee may be used for this purpose;

(3) Meet the requirements under § 262.21 for the manifest, except that:

(i) In place of the name, address, and EPA identification number of the

designated facility, the name and address of the foreign consignee must be used;

(ii) The generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.

(c) A generator must file an Exception Report, if:

(1) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter; or

(2) Within 90 days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.

(d) When importing hazardous waste, a person must meet all requirements of § 262.21 for the manifest except that:

(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's, name, address and EPA identification number must be used.

(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

#### § 262.51 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this Part or other standards in 40 CFR Parts 122, 264 or 265 for those wastes provided he triple rinses each emptied pesticide container in accordance with Part 260 and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

CCR 000041252

[Sec. 262.51]

## APPENDIX - FORM

Please print or type with ELITE type (12 characters per inch)

GSA No 12345 XX  
For Approved OMB No 158 (XXXXX)

| <b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b><br><b>HAZARDOUS WASTE REPORT</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |   | <b>I. TYPE OF HAZARDOUS WASTE REPORT</b><br><b>TYPE A: GENERATOR (OFF-SITE SHIPMENTS ONLY)</b> |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
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| PLEASE PLACE LABEL IN THIS SPACE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |   | THIS REPORT IS FOR THE YEAR ENDING JULY 19____                                                 |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |   | <b>TYPE B: RESERVED</b>                                                                        |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |   | <b>TYPE C: RESERVED</b>                                                                        |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |   | _____                                                                                          |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| <b>INSTRUCTIONS:</b> You may have received a preprinted label attached to the front of this pamphlet, affix it in the designated space above-left. If any of the information on the label is incorrect, draw a line through it and supply the correct information in the appropriate section below. If the label is complete and correct, leave Sections II, III, and IV below blank. If you did not receive a preprinted label, complete all sections. "Installation" means a single site where hazardous waste is generated, treated, stored and/or disposed of. Please refer to the specific instructions for generators or facilities before completing this form. The information requested herein is required by law (Section 3002/3004 of the Resource Conservation and Recovery Act)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| <b>II. INSTALLATION'S EPA I.D. NUMBER</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
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| <b>III. NAME OF INSTALLATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
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| <b>IV. INSTALLATION MAILING ADDRESS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="30" style="text-align: center;">STREET OR P.O. BOX</td> </tr> <tr> <td style="width: 10%;">1</td><td style="width: 10%;">2</td><td style="width: 10%;">3</td><td style="width: 10%;">4</td><td style="width: 10%;">5</td><td style="width: 10%;">6</td><td style="width: 10%;">7</td><td style="width: 10%;">8</td><td style="width: 10%;">9</td><td style="width: 10%;">0</td><td style="width: 10%;">A</td><td style="width: 10%;">B</td><td style="width: 10%;">C</td><td style="width: 10%;">D</td><td style="width: 10%;">E</td><td style="width: 10%;">F</td><td style="width: 10%;">G</td><td style="width: 10%;">H</td><td style="width: 10%;">I</td><td style="width: 10%;">J</td><td style="width: 10%;">K</td><td style="width: 10%;">L</td><td style="width: 10%;">M</td><td style="width: 10%;">N</td><td style="width: 10%;">O</td><td style="width: 10%;">P</td><td style="width: 10%;">Q</td><td style="width: 10%;">R</td><td style="width: 10%;">S</td><td style="width: 10%;">T</td><td style="width: 10%;">U</td><td style="width: 10%;">V</td><td style="width: 10%;">W</td><td style="width: 10%;">X</td><td style="width: 10%;">Y</td><td style="width: 10%;">Z</td></tr> </table>                                                                                                         |   |                                                                                                |   | STREET OR P.O. BOX     |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 0 | A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z |
| STREET OR P.O. BOX                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
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| CITY OR TOWN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   | ST | ZIP CODE |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
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| <b>V. LOCATION OF INSTALLATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
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| STREET OR ROUTE NUMBER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 2 | 3                                                                                              | 4 | 5                      | 6 | 7 | 8 | 9 | 0 | A | B | C | D | E | F | G | H | I | J | K  | L        | M | N | O  | P                         | Q | R | S | T                         | U | V | W | X | Y | Z |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="20" style="text-align: center;">CITY OR TOWN</td> <td style="width: 10%; text-align: center;">ST</td> <td style="width: 10%; text-align: center;">ZIP CODE</td> </tr> <tr> <td style="width: 10%;">1</td><td style="width: 10%;">2</td><td style="width: 10%;">3</td><td style="width: 10%;">4</td><td style="width: 10%;">5</td><td style="width: 10%;">6</td><td style="width: 10%;">7</td><td style="width: 10%;">8</td><td style="width: 10%;">9</td><td style="width: 10%;">0</td><td style="width: 10%;">A</td><td style="width: 10%;">B</td><td style="width: 10%;">C</td><td style="width: 10%;">D</td><td style="width: 10%;">E</td><td style="width: 10%;">F</td><td style="width: 10%;">G</td><td style="width: 10%;">H</td><td style="width: 10%;">I</td><td style="width: 10%;">J</td><td style="width: 10%;">K</td><td style="width: 10%;">L</td><td style="width: 10%;">M</td><td style="width: 10%;">N</td><td style="width: 10%;">O</td><td style="width: 10%;">P</td><td style="width: 10%;">Q</td><td style="width: 10%;">R</td><td style="width: 10%;">S</td><td style="width: 10%;">T</td><td style="width: 10%;">U</td><td style="width: 10%;">V</td><td style="width: 10%;">W</td><td style="width: 10%;">X</td><td style="width: 10%;">Y</td><td style="width: 10%;">Z</td></tr> </table> |   |                                                                                                |   | CITY OR TOWN           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   | ST | ZIP CODE                  | 1 | 2 | 3 | 4                         | 5 | 6 | 7 | 8 | 9 | 0 | A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z |   |   |   |   |   |   |   |   |
| CITY OR TOWN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   | ST | ZIP CODE |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 2 | 3                                                                                              | 4 | 5                      | 6 | 7 | 8 | 9 | 0 | A | B | C | D | E | F | G | H | I | J | K  | L        | M | N | O  | P                         | Q | R | S | T                         | U | V | W | X | Y | Z |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| <b>VI. INSTALLATION CONTACT</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="25" style="text-align: center;">NAME (last and first)</td> <td colspan="10" style="text-align: center;">PHONE NO. (area code &amp; no</td></tr></table>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |   |                                                                                                |   | NAME (last and first)  |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    |                           |   |   |   | PHONE NO. (area code & no |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| NAME (last and first)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |   |                                                                                                |   |                        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |          |   |   |    | PHONE NO. (area code & no |   |   |   |                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |

GSA No. 12,445 XX  
Form Approved OMB No. 158 R00XXU.S. ENVIRONMENTAL PROTECTION AGENCY  
**HAZARDOUS WASTE REPORT (continued)**  
(Collected under the authority of Section 3002 of RCRA)

|                                                                     |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
|---------------------------------------------------------------------|-------------------------------------|-----------------------------|--|---------------------------------|--|--|--|--|--|--|--------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------|--|--|--|-----------------------|--|--|--|---------------------------------------|--|
| FOR OFFICIAL<br>USE ONLY<br>(Items 1 and 2)                         |                                     | 1. DATE RECEIVED            |  | IX. GENERATOR'S EPA I.D. NUMBER |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
|                                                                     |                                     | 2. TYPE OF REPORT           |  | G                               |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| X. FACILITY'S EPA I.D. NUMBER                                       |                                     | XI. FACILITY NAME (specify) |  |                                 |  |  |  |  |  |  |                                | XII. FACILITY ADDRESS (specify street or P.O. box no., city, state, & zip code) |                                                              |  |  |  |                       |  |  |  |                                       |  |
| XIII. WASTE IDENTIFICATION                                          |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| A. WASTE DESCRIPTION                                                |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| LINE<br>NUMBER #                                                    | 1. GENERATOR'S DESCRIPTION OF WASTE |                             |  |                                 |  |  |  |  |  |  | 2. DOT<br>HA-<br>ZARD<br>CLASS |                                                                                 | 3. EPA<br>HAZARDOUS<br>WASTE<br>NUMBER<br>(see instructions) |  |  |  | B. AMOUNT<br>OF WASTE |  |  |  | C. UNIT OF<br>MEASURE<br>(enter code) |  |
| 1                                                                   |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 2                                                                   |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 3                                                                   |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 4                                                                   |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 5                                                                   |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 6                                                                   |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 7                                                                   |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 8                                                                   |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 9                                                                   |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 10                                                                  |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 11                                                                  |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 12                                                                  |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| 13                                                                  |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |
| XIV. COMMENTS (enter information by line number - see instructions) |                                     |                             |  |                                 |  |  |  |  |  |  |                                |                                                                                 |                                                              |  |  |  |                       |  |  |  |                                       |  |

CCR 000041254

**General Instructions—Hazardous Waste Report**

**Important:** Read All Instructions before Completing This Form.

**Section I.—Type of Hazardous Waste Report:**

**Type A: Generator—Off-site Shipments Only.** For generators who ship their waste off-site, fill in the four boxes with the reporting year for this report (e.g., 1984).

**Type B:** [Reserved].  
**Type C:** [Reserved].

**Section II. thru Section VI.—Installation I.D. Number, Name of Installation, Installation Mailing Address, Location of Installation and Installation Contact:**

If you received a preprinted label from EPA, attach it in the space provided and leave sections II through VI blank. If there is an error or omission on the label, cross out the incorrect information and fill in the appropriate item(s). If you did not receive a preprinted label, complete items I through VI.

**Section VII.—Transportation Services Used (For Type A Reports Only):**

List the EPA Identification Numbers for those transporters whose services were used during the reporting year represented by this report.

**Section VIII.—Certification:**

The authorized representative of the installation completing this report must read the report, read the certification, and sign and date the certification where indicated. The printed or typed name of the authorized representative must also be included where indicated.

**Note.**—Since more than one page is required for each report, indicate the number of each sheet in the lower right corner where indicated and indicate the total number of pages.

**Type-A Report—Instructions**

**Hazardous Waste Annual Report for generators who ship their hazardous waste off-site.**

**Important:** Read All Instructions before Completing This Form.

**Section IX.—Generator's Identification Number:**

Enter your EPA identification number. **Section X.—Facility Identification Number:**

Enter the EPA identification number of the facility to which you sent the waste described below in section XIII (a separate sheet must be used for each facility to which you sent hazardous waste.)

**Section XI.—Facility Name:**

Enter the name of the facility corresponding to the facility EPA

identification number in Section X.

**Section XII. Facility Address:**

Enter the address of the facility corresponding to the facility EPA identification number in Section X.

**Section XIII.—Waste Information:**

All information in this section must be entered by line number. Each line entry will describe each waste as shipped to the facility identified in Section X above.

**Section XIII-A-1—Waste Description: Generator's Description.**

On each line, enter the description which you believe best describes each waste. (The description may use the process or function which best describes the source of the hazardous waste).

**Section XIII-A-2—Waste Description: DOT Hazard Class.**

Enter the two digit code from Table 1 which corresponds to the DOT hazard class of the waste described on this line in Section XIII-A-1. (If the waste described under XIII-A-1 has been shipped under more than one DOT hazard class, use a separate line for each DOT hazard class.)

**Section XIII-A-3—Waste Description: EPA Hazardous Waste Number.**

For each line, enter the four digit EPA Hazardous Waste Number from Table 2<sup>1</sup> which identifies the waste.

If the waste has several EPA listed wastes, enter the four digit EPA Hazardous Waste Numbers which identify each listed waste included in that waste.

Four spaces are provided. If more are needed:

(1) Enter the first three as described above;

(2) Enter 0000 in the lower right boxes of Section XIII-A-3 on this line;

(3) Enter additional EPA Hazardous Waste Numbers under Section XIV—Comments.

If the waste described on this line is not a listed waste in Table 2,<sup>1</sup> but meets one or more of the characteristics determined by you as required by § 262.11 under the Standards Applicable to generators (Part 262), enter the EPA Hazardous Waste Number(s) from Table 3<sup>1</sup> which identifies the waste described on this line. If more than four spaces are

required, follow the same procedure described above.

**Section XIII-B—Amount of Waste:**

Enter the amount of this waste you shipped to the facility identified in Section X and include the weight of containers if left at the treatment, storage, or disposal facility. If more than 999,999.999 units of the waste were shipped during the reporting period:

(1) Enter 999999999 in the boxes provided;

(2) In Section XIV—Comments, enter the line number, "Section XIII-B", and the correct amount (including the unit of measure).

**Section XIII-C—Unit of Measure:**

Enter the unit of measure code for the quantity of waste described on this line. Units of measure which must be used in this report and the appropriate codes are:

| Unit of measure | Code |
|-----------------|------|
| Pounds          | P    |
| Short tons      | T    |
| Kilograms       | K    |
| Tonnes          | M    |

If shipments were made in any other units they must be converted into the one of the required units of measure taking into account the appropriate density or specific gravity of the waste.

Table 1

| DOT Hazard class  | Code |
|-------------------|------|
| Combustible       | 1    |
| Corrosive         | 2    |
| Ecologic Agent    | 3    |
| Explosive A       | 4    |
| Explosive B       | 5    |
| Flammable Gas     | 6    |
| Flammable Liquid  | 7    |
| Flammable Solid   | 8    |
| Irritating Agent  | 9    |
| Non-Flammable Gas | 10   |
| Organic Peroxide  | 11   |
| ORM-E             | 12   |
| Oxidizer          | 13   |
| Poison A          | 14   |
| Poison B          | 15   |
| Radioactive       | 16   |

[Editor's note: In a separate notice, the Environmental Protection Agency February 26, 1980, published a notification form to be used by generators, transporters, and operators involved in hazardous waste activities (45 FR 12746). That form and the instructions for completing it are reprinted here for the convenience of subscribers.]

<sup>1</sup> Table 2 and Table 3 will be included in these instructions at the time Part 261 is promulgated.

CCR 000041255

GSA No. 12345-XX  
Form Approved OMB No. 159-006XX

Please print or type with ELITE type. Do not write in the shaded area only.

| EPA<br>U.S. ENVIRONMENTAL PROTECTION AGENCY<br>NOTIFICATION OF HAZARDOUS WASTE ACTIVITY                                                                                                                                                                                     |                                  | INSTRUCTIONS: If you received a preprinted label, affix it in the space at left. If any of the information on the label is incorrect, draw a line through it and supply the correct information in the appropriate section below. If the label is complete and correct, leave Items I, II, and III below blank. If you did not receive a preprinted label, complete all items. "Installation" means a single site where hazardous waste is generated, treated, stored and/or disposed of, or a transporter's principal place of business. Please refer to the INSTRUCTIONS FOR FILING NOTIFICATION before completing this form. The information requested herein is required by law (Section 3010 of the Resource Conservation and Recovery Act). |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| INSTALLATION'S EPA I.D. NO.                                                                                                                                                                                                                                                 | PLEASE PLACE LABEL IN THIS SPACE |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| NAME OF INSTALLATION                                                                                                                                                                                                                                                        |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| INSTALLATION MAILING ADDRESS                                                                                                                                                                                                                                                |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| LOCATION OF INSTALLATION                                                                                                                                                                                                                                                    |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| FOR OFFICIAL USE ONLY                                                                                                                                                                                                                                                       |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| COMMENTS                                                                                                                                                                                                                                                                    |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| INSTALLATION I.D. NUMBER                                                                                                                                                                                                                                                    |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| APPROVED                                                                                                                                                                                                                                                                    |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DATE RECEIVED (mo., day, & yr.)                                                                                                                                                                                                                                             |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| I. NAME OF INSTALLATION                                                                                                                                                                                                                                                     |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| II. INSTALLATION MAILING ADDRESS                                                                                                                                                                                                                                            |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| STREET OR P.O. BOX                                                                                                                                                                                                                                                          |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| CITY OR TOWN                                                                                                                                                                                                                                                                |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| ST. ZIP CODE                                                                                                                                                                                                                                                                |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| III. LOCATION OF INSTALLATION                                                                                                                                                                                                                                               |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| STREET OR ROUTE NUMBER                                                                                                                                                                                                                                                      |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| CITY OR TOWN                                                                                                                                                                                                                                                                |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| ST. ZIP CODE                                                                                                                                                                                                                                                                |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| IV. INSTALLATION CONTACT                                                                                                                                                                                                                                                    |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| NAME AND TITLE (last, first, & job title)                                                                                                                                                                                                                                   |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| PHONE NO. (area code & no.)                                                                                                                                                                                                                                                 |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| V. OWNERSHIP                                                                                                                                                                                                                                                                |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| A. NAME OF INSTALLATION'S LEGAL OWNER                                                                                                                                                                                                                                       |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| B. TYPE OF OWNERSHIP (enter the appropriate letter into box)                                                                                                                                                                                                                |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| VI. TYPE OF HAZARDOUS WASTE ACTIVITY                                                                                                                                                                                                                                        |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| A. GENERATION                                                                                                                                                                                                                                                               |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| B. TRANSPORTATION (complete item VII)                                                                                                                                                                                                                                       |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| C. TREAT/STORE/DISPOSE                                                                                                                                                                                                                                                      |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| D. UNDERGROUND INJECTION                                                                                                                                                                                                                                                    |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| VII. MODE OF TRANSPORTATION (transporters only)                                                                                                                                                                                                                             |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| A. AIR                                                                                                                                                                                                                                                                      |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| B. RAIL                                                                                                                                                                                                                                                                     |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| C. HIGHWAY                                                                                                                                                                                                                                                                  |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| D. WATER                                                                                                                                                                                                                                                                    |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| E. OTHER (specify)                                                                                                                                                                                                                                                          |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| VIII. FIRST OR SUBSEQUENT NOTIFICATION                                                                                                                                                                                                                                      |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Mark 'X' in the appropriate box to indicate whether this is your installation's first notification of hazardous waste activity or a subsequent notification. If this is not your first notification, enter your installation's EPA I.D. number in the space provided below. |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| A. FIRST NOTIFICATION                                                                                                                                                                                                                                                       |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| B. SUBSEQUENT NOTIFICATION (complete item C)                                                                                                                                                                                                                                |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| C. INSTALLATION'S EPA I.D. NO.                                                                                                                                                                                                                                              |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| IX. DESCRIPTION OF HAZARDOUS WASTES                                                                                                                                                                                                                                         |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Please go to the reverse of this form and provide the requested information.                                                                                                                                                                                                |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

EPA Form 8700-12 (2-80)

CONTINUE ON REVERSE

[Editor's note]

| I.D. NO. - FOR OFFICIAL USE ONLY |  |  |  |  |  |  |  |  |  |
|----------------------------------|--|--|--|--|--|--|--|--|--|
| 3                                |  |  |  |  |  |  |  |  |  |
| W                                |  |  |  |  |  |  |  |  |  |

**IX. DESCRIPTION OF HAZARDOUS WASTES** (continued from front)

**A. HAZARDOUS WASTES FROM NON-SPECIFIC SOURCES.** Enter the four-digit number from 40 CFR Part 261.31 for each listed hazardous waste from non-specific sources your installation handles. Use additional sheets if necessary.

|         |         |         |         |         |         |
|---------|---------|---------|---------|---------|---------|
| 1       | 2       | 3       | 4       | 5       | 6       |
| 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 |
| 7       | 8       | 9       | 10      | 11      | 12      |
| 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 |

**B. HAZARDOUS WASTES FROM SPECIFIC SOURCES.** Enter the four-digit number from 40 CFR Part 261.32 for each listed hazardous waste from specific industrial sources your installation handles. Use additional sheets if necessary.

|         |         |         |         |         |         |
|---------|---------|---------|---------|---------|---------|
| 13      | 14      | 15      | 16      | 17      | 18      |
| 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 |
| 19      | 20      | 21      | 22      | 23      | 24      |
| 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 |
| 25      | 26      | 27      | 28      | 29      | 30      |
| 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 |

**C. COMMERCIAL CHEMICAL PRODUCT HAZARDOUS WASTES.** Enter the four-digit number from 40 CFR Part 261.33 for each chemical substance your installation handles which may be a hazardous waste. Use additional sheets if necessary.

|         |         |         |         |         |         |
|---------|---------|---------|---------|---------|---------|
| 31      | 32      | 33      | 34      | 35      | 36      |
| 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 |
| 37      | 38      | 39      | 40      | 41      | 42      |
| 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 |
| 43      | 44      | 45      | 46      | 47      | 48      |
| 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 |

**D. LISTED INFECTIOUS WASTES.** Enter the four-digit number from 40 CFR Part 261.34 for each listed hazardous waste from hospitals, veterinary hospitals, medical and research laboratories your installation handles. Use additional sheets if necessary.

|         |         |         |         |         |         |
|---------|---------|---------|---------|---------|---------|
| 49      | 50      | 51      | 52      | 53      | 54      |
| 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 | 23 - 26 |

**E. CHARACTERISTICS OF NON-LISTED HAZARDOUS WASTES.** Mark 'X' in the boxes corresponding to the characteristics of non-listed hazardous wastes your installation handles. (See 40 CFR Parts 261.20 - 261.23.)

☐ 1. IGNITABLE

☐ 2. CORROSIVE

☐ 3. REACTIVE

☐ 4. TOXIC

**X. CERTIFICATION**

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

SIGNATURE

OFFICIAL TITLE

DATE SIGNED

EPA Form 8700-12 (2-80) REVERSE

CCR 000041257

### Instructions for Filing Notification of Hazardous Waste Activity—EPA Form 8700-12: General Instruction

#### Who Must File

The Resource Conservation and Recovery Act of 1976 (RCRA) requires anyone who generates or transports hazardous waste, or who owns or operates a facility for treating, storing, or disposing of hazardous waste to notify EPA of their activity. This includes individuals, trusts, firms, joint stock companies, corporations (including government corporations), partnerships, associations, States, municipalities, commissions, interstate bodies and Federal Agencies. If you transport, treat, store, or dispose of hazardous waste without filing a notification, you may be subject to civil and criminal penalties.

Generators, owners and operators of facilities for treating, storing, or disposing of hazardous waste, who operate underground injection wells, must notify EPA using the Notification Form under RCRA. You do not have to submit a separate Notification Form under the Safe Drinking Water Act, however, you are still required to fill out inventory and other forms required under the Safe Drinking Water Act. For further information, owners and operators of underground injection wells should consult the Chief, Water Supply Branch at the nearest EPA Regional Office.

#### What Information Should Be Filed

When filing a notification, you must identify the hazardous wastes that you handle and give a general description of your activity including its location. You can submit all this information by simply completing the enclosed EPA Form 8700-12.

#### Notification of Hazardous Waste Activity

**How Many Forms Should be Filed:** You need submit only one Notification Form per site or location, provided that you describe all the activities at that site or location. If you conduct hazardous waste activity at more than one site or location, you must submit a separate form for each site or location.

If you transport hazardous waste, and do not generate, treat, store, or dispose of hazardous waste, you may submit one form which covers all the transportation activities your company conducts. This form should be submitted to the EPA Regional Office that serves the area where your company has its headquarters or principal place of

business. However, if you are a transporter who generates, treats, stores or disposes of hazardous waste, you will have to complete and submit separate Notification Forms to cover each installation.

#### When To File

**1. Within 90-days of Publication of Regulations Under Section 3001 of RCRA:** Anyone who conducts hazardous waste activity must file a notification within 90 days after EPA publishes regulations under Section 3001 of RCRA. These regulations define which solid wastes are hazardous wastes and are published under Title 40 of the Code of Federal Regulations, Part 261.

Owners or operators of facilities that treat, store or dispose of hazardous waste must submit a notification within 90 days after the 3001 regulations are published in order to qualify for "Interim Status"—that is, temporary authority to continue their operations until a final permit is issued.

**2. Within 90-days of Any Amendments to the Section 3001 Regulations:** From time to time, EPA may change its procedures for identifying hazardous waste, or may revise the list of hazardous waste which it has published. If you handle any wastes which are identified or listed as hazardous by an amendment to the Section 3001 regulations, you must file a notification covering these wastes within 90 days after the amendment is published.

**3. New Generators and Transporters:** If you begin to generate hazardous waste and have not previously filed a notification, you must comply with the regulations for obtaining an EPA Identification Number published under Section 3002 of RCRA (40 CFR Part 262) before you transport hazardous waste or offer your hazardous waste to a transporter.

Similarly, if you desire to transport hazardous waste and have not previously filed a notification, you must comply with the regulations for obtaining an EPA Identification Number published under section 3003 of RCRA (40 CFR Part 263) before you move any hazardous waste.

Persons applying for an EPA Identification Number under Section 3003 of RCRA need not complete the reverse side of the Notification Form as they may not know which wastes they will be handling.

**4. Treatment, Storage and Disposal Facilities:** If you own or operate a facility where hazardous waste is treated, stored, or disposed, and you do not file a notification during the 90-day period following the initial publication

of the Section 3001 regulations, you will not be allowed to continued your hazardous waste activities until you obtain a hazardous waste permit. Similarly, if you plan to open a new hazardous waste treatment, storage, or disposal facility, you must obtain a hazardous waste permit before commencing operations. Owners or operators of new facilities need not submit a notification, since your permit application will fulfill your notification requirements.

#### Where To File

Notification should be sent to the EPA Regional Office that serves the area where your hazardous waste activity is located. If you received a notification packet from EPA that contains envelopes and pre-addressed mailing labels, you should use one of the envelopes and one of the mailing labels to send your notification to EPA. If you do not have a pre-addressed mailing label, mail your notification to the EPA Regional Office that serves the area where your hazardous waste activity is located. The mailing addresses for the EPA Regional Offices are listed below:

#### Mailing-Address for Receiving

| EPA Region | Area served                                                                                 | Notification                                                                                     |
|------------|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| I.....     | Connecticut, Maine, Massachusetts, Rhode Island, Vermont                                    | EPA Region I<br>Permits Branch<br>P.O. Box 8748<br>Boston, MA 02114                              |
| II.....    | New Jersey, New York, Virgin Islands, Puerto Rico                                           | EPA Region II<br>Information Service<br>Center<br>26 Federal Plaza<br>New York, NY 10007         |
| III.....   | Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia             | EPA Region III<br>P.O. Box 1460<br>Philadelphia, PA 19107                                        |
| IV.....    | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee | EPA Region IV<br>RCRA Activities<br>345 Courtland, N.E.<br>Atlanta, GA 30308                     |
| V.....     | Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin                                     | U.S. EPA<br>Region V<br>RCRA Activities<br>P.O. Box 7861<br>Chicago, IL 60680                    |
| VI.....    | Arkansas, Louisiana, New Mexico, Oklahoma, Texas                                            | EPA Region VI<br>Attn. 6 AEG<br>1201 Elm Street<br>First International Bldg.<br>Dallas, TX 75270 |
| VII.....   | Iowa, Kansas, Missouri, Nebraska                                                            | EPA Region VII<br>P.O. Box 15606<br>Kansas City, MO 64106                                        |
| VIII.....  | Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming                                | EPA Region VIII<br>BAH-WM<br>1860 Lincoln Street<br>Denver, CO 80295                             |
| IX.....    | Arizona, California, Hawaii, Nevada, Guam, American Samoa, Trust Territories                | EPA Region IX<br>Attn. A-3-2<br>215 Fremont Street<br>San Francisco, CA 94105                    |
| X.....     | Alaska, Idaho, Oregon, Washington                                                           | EPA Region X<br>M/S 530-A<br>1200 Sixth Avenue<br>Seattle, WA 98101                              |

[Editor's note]

**Confidential Information**

All information you submit in a notification can be disclosed to the public, according to the Freedom of Information Act and EPA Freedom of Information Regulations. Because notification information is very general, EPA believes that it is unlikely that any information in your notification could qualify to be protected from disclosure.

However, if you wish, you may make a claim of confidentiality by printing the word "confidential" on both sides of the Notification Form and on any attachments. In addition, *at the time of notification*, you must submit written answers to each of the following questions:

1. Which portions of the information do you claim are entitled to confidential treatment?
2. How long do you want this information treated confidential?

3. What measures have you taken to guard against undesired disclosure of the information to others?

4. To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?

5. Has EPA or any other Federal Agency made a pertinent confidentiality determination? (If so, include a copy of this determination of reference to it, if available).

6. Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between disclosure and the harm?

**Note.**—If you fail to include substantiation of your claim of confidentiality at the time you submit your notification form, you waive your claim, and the information on the form will be available to the public.

**Line-by-Line Instructions—EPA Form 8700-12**

Type or print in ink all items except X(A), SIGNATURE, leaving a blank box between words. If you must use additional sheets, indicate clearly the number of the item on the form to which the information on the separate sheet applies.

**Items I through III**

**Name, Mailing Address, and Location of Installation:** If you received a preprinted label from EPA, attach it in the space provided and leave items I, II, and III blank. If there is an error or omission on the label, cross out the incorrect information and fill in the appropriate item(s). If you did not receive a preprinted label, complete items I, II, and III.

Example:

|                                         |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|-----------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| <b>I. NAME OF INSTALLATION</b>          |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Smith Manufacturing Company             |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <b>II. INSTALLATION MAILING ADDRESS</b> |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| STREET OR P.O. BOX                      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| P.O. Box 8719                           |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| CITY OR TOWN                            |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Urbana                                  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| ST. ZIP CODE                            |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| IL 61801                                |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <b>III. LOCATION OF INSTALLATION</b>    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| STREET OR ROUTE NUMBER                  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 1201 6th Street                         |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| CITY OR TOWN                            |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Urbana                                  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| ST. ZIP CODE                            |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| IL 61801                                |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

**IV.**

**Installation Contact:** Enter the name, address, and business telephone number of person who should be contacted regarding information submitted on this form.

**V.**

**Ownership:** (A) Enter the name of the owner of the installation. Use additional sheets if necessary to list more than one owner.

(B) Enter an F in the box if the installation is owned by a Federal Agency. Enter an M if the installation is not owned by a Federal Agency. An installation is Federally owned if the owner is the Federal Government, even if it is operated by a private contractor.

**Item VI.**

**Type of Hazardous Waste Activity:** Mark "X" in the appropriate box(es) to

indicate the hazardous waste activity or activities at the installation. If you mark item C, you are reminded that you should mail the enclosed post card to request a RCRA Permit Application. Generators, owners and operators of facilities for treating, storing, or disposing of hazardous waste must mark item D if an injection well is located at their installation. An injection well is defined as any hole in the ground that is deeper than it is wide and that is used

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for the subsurface placement of fluid, including septic tanks.

#### Item VII.

**Mode of Transportation:** Complete this item only if you are a transporter of hazardous waste to indicate the mode(s) of transportation you use.

#### Item VIII

**First or Subsequent Notification:** If you handle any hazardous waste that is identified in an amendment to Part 261 you will have to file a notification on that waste within 90 days after the amendment is published. Place an "X" in the appropriate box to indicate whether this is your first or a subsequent notification. If you have filed a previous notification, enter your EPA Identification Number in the boxes provided.

**Note.**—If you have filed a notification before, you only need enter the four-digit numbers of those wastes that were identified in the amendment to Part 261.

#### Item IX

**Description of Hazardous Waste:** You need to read Title 40, Code of Federal Regulations Part 261 in order to complete this item. Part 261 identifies those solid wastes that EPA defines to be hazardous wastes. Part 261 identifies hazardous wastes in two ways:

(1) A number of hazardous wastes are listed by name in various tables and appendices. EPA has assigned a four-digit number to each waste that is listed to make it easier to identify the wastes.

(2) Part 261 also lists the general characteristics of hazardous wastes.

EPA has also assigned a four-digit number to these characteristics.

As you will note, Item IX on the form is divided into five sections. You should use Sections A through D to identify any listed hazardous wastes which you handle; use Section E to identify those characteristics of the non-listed hazardous wastes which you handle.

You should include in Sections A through E all hazardous wastes you handled during the three-month period preceding the date of notification. If you occasionally handle a hazardous waste but did not handle that waste during the three-month period preceding the date of notification, you may also include that waste (or wastes) in Section A through E.

If you are a new generator applying for an EPA Identification Number under the provisions of 40 CFR Part 262, you should describe the wastes which you believe you will be generating.

If you are a new transporter applying for an EPA Identification Number under the provisions of 40 CFR Part 263, you are not required to complete Item IX.

The specific instructions for Sections A through E are:

#### Section A

If you handle hazardous wastes from the non-specific sources listed in Part 261.31, enter the appropriate four-digit numbers in the boxes provided.

#### Section B

If you handle hazardous wastes from the specific industrial sources listed in Part 261.32, enter the appropriate four-digit numbers in the boxes provided.

#### Section C

If you handle any of the commercial chemical products or manufacturing intermediate or material listed in Part 261.33 as wastes, enter the appropriate four-digit numbers in the boxes provided. Manufacturers may include the products or raw materials that can be reasonably anticipated to require treatment, storage, or disposal as wastes from time to time even though you may not have handled them in the past three months.

#### Section D

If you handle any of the hazardous wastes from hospitals, veterinary hospitals, or medical and research laboratories listed in Part 261.34, enter the appropriate four-digit numbers in the boxes provided.

#### Section E

If you handle hazardous wastes which are not listed in Subpart D of Part 261, you should describe these wastes by the characteristics in Subpart C of Part 261. For purposes of notification, it is not necessary to use the four-digit numbers for each characteristic. Rather, you should place an "X" in the box next to the characteristic of those non-listed wastes which you handle.

#### Item X

**Certification:** This certification must be signed by the owner or operator or an authorized representative of your installation. An "authorized representative" is a person responsible for the overall operation of the facility—for example—a plant manager or superintendent, or a person of equivalent responsibility.

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[Editor's note]

# ENVIRONMENTAL PROTECTION AGENCY REGULATIONS FOR HAZARDOUS WASTE TRANSPORTERS

(40 CFR 263; 45 FR 12743, February 26, 1980, Effective August 26, 1980)

[Editor's note: Parts 261, 264, 265, and 266 have not been promulgated by EPA.]

In a separate notice, EPA February 26, 1980 published a notification form for use by generators, transporters, and operators engaged in hazardous waste activities (45 FR 12746). That form is published with the regulations for generators, page 161:1901.]

## PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

### Subpart A—General

Sec.

263.10 Scope.

263.11 EPA Identification Numbers.

### Subpart B—Compliance with the Manifest System and Recordkeeping

263.20 The Manifest System.

263.21 Compliance with the Manifest.

263.22 Recordkeeping.

### Subpart C—Hazardous Waste Discharges

263.30 Immediate Action.

263.31 Discharge Clean Up.

Authority.—Sections 2002(a), 3002, 3003, 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 (42 U.S.C. 6912, 6922, 6923, 6924, 6925).

### Subpart A—General

§ 263.10 Scope.

(a) These regulations establish standards which apply to persons

transporting hazardous waste within the United States if the transportation requires a manifest under 40 CFR Part 262.

Note.—The regulations set forth in Parts 262 and 263 establish the responsibilities of generators and transporters of hazardous waste in the handling, transportation, and management of that waste. In these regulations, EPA has expressly adopted certain regulations of the Department of Transportation (DOT) governing the transportation of hazardous materials. These regulations concern, among other things, labeling, marking, placarding, using proper containers, and reporting discharges. EPA has expressly adopted these regulations in order to satisfy its statutory obligation to promulgate regulations which are necessary to protect human health and the environment in the transportation of hazardous waste. EPA's adoption of these DOT regulations ensures consistency with the requirements of DOT and thus avoids the establishment of duplicative or conflicting requirements with respect to these matters. These EPA regulations which apply to both interstate and intrastate transportation of hazardous waste are enforceable by EPA. DOT has revised its hazardous materials transportation regulations in order to encompass the transportation of hazardous waste and to regulate intrastate, as well as interstate, transportation of hazardous waste. Transporters of hazardous waste are cautioned that DOT's regulations are fully applicable to their activities and enforceable by DOT. These DOT regulations are codified in Title 49, Code of Federal Regulations, Subchapter C. EPA and DOT worked together to develop standards for transporters of hazardous waste in order to avoid conflicting requirements. Except for transporters of bulk shipments of hazardous waste by water, a

transporter who meets all applicable requirements of 49 CFR Parts 171 through 179 and the requirements of 40 CFR 263.11 and 263.31 will be deemed in compliance with this Part. Regardless of DOT's action, EPA retains its authority to enforce these regulations.

(b) These regulations do not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

(c) A transporter of hazardous waste must also comply with 40 CFR Part 262, Standards Applicable to Generators of Hazardous Waste, if he:

(1) Transports hazardous waste into the United States from abroad; or

(2) Mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

Note.—Transporters who store hazardous waste are required to comply with the storage standards in 40 CFR Parts 264 and 265 and the permit requirements of 40 CFR Part 122.

### § 263.11 EPA Identification Numbers.

(a) A transporter must not transport hazardous wastes without having received an EPA identification number from the Administrator.

(b) A transporter who has not received an EPA identification number may obtain one by applying to the Administrator using EPA Form 8700-12. Upon receiving the request, the Administrator will assign an EPA identification number to the transporter.

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[Sec. 263.11(b)]

## Subpart B—Compliance with the Manifest System and Recordkeeping

### § 263.20 The Manifest System.

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest, signed by the generator in accordance with the provisions of 40 CFR Part 262.

(b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(c) The transporter must ensure that the manifest accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) Retain one copy of the manifest in accordance with § 263.22; and

(3) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of paragraphs (c) and (d) of this section do not apply to rail or water (bulk shipment) transporters if:

(1) The hazardous waste is delivered by rail or water (bulk shipment) to the designated facility; and

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) accompanies the hazardous waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the hazardous waste to the initial rail or water (bulk shipment) transporter obtains the date of delivery and signature of the rail or water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(5) A copy of the shipping paper or manifest is retained by each rail or

water (bulk shipment) transporter in accordance with § 263.22.

(f) Transporters who transport hazardous waste out of the United States must:

(1) Indicate on the manifest the date the hazardous waste left the United States; and

(2) Sign the manifest and retain one copy in accordance with § 263.22(c); and

(3) Return a signed copy of the manifest to the generator.

### § 263.21 Compliance with the manifest.

(a) The transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter; or

(4) The place outside the United States designated by the generator.

(b) If the hazardous waste cannot be delivered in accordance with paragraph

(a) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

### § 263.22 Recordkeeping.

(a) A transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by rail or water (bulk shipment), each rail or water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required in § 263.20(e)(2) for a period of three years.

(c) A transporter who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States.

(d) The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

## Subpart C—Hazardous Waste Discharges

### § 263.30 Immediate action.

(a) In the event of a discharge of hazardous waste during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

(b) If a discharge of hazardous waste occurs during transportation, and an official (State or local government or a Federal Agency) acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

(c) An air, rail, highway, or water transporter who has discharged hazardous waste must:

(1) Give notice, if required by 49 CFR 171.15, to the National Response Center (800-424-8802 or in the District of Columbia, 426-2675); and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give notice as required by 33 CFR 153.203 to the National Response Center (800-424-8802 or in the District of Columbia, 426-2675).

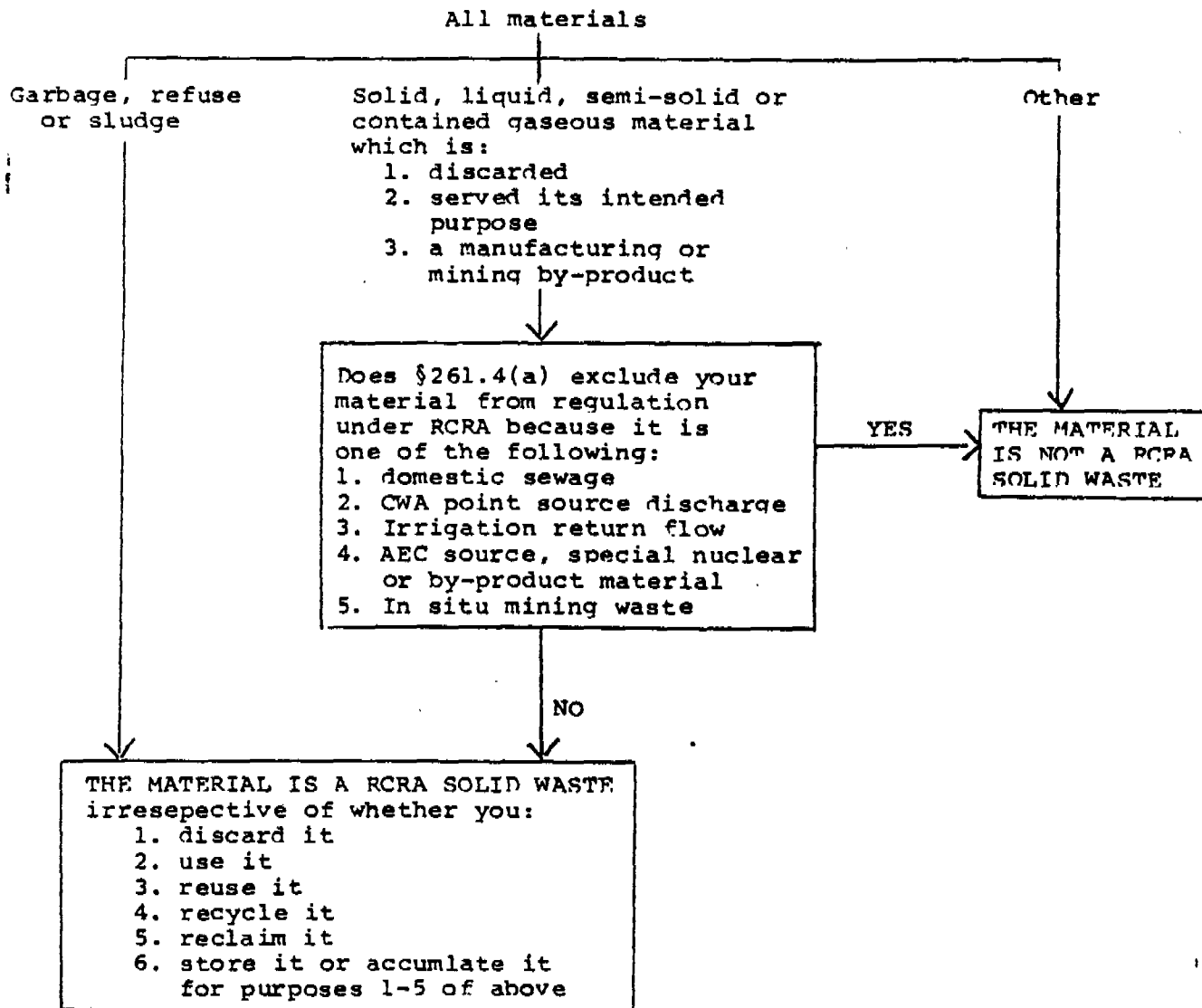
### § 263.31 Discharge clean up.

A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by Federal, State, or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

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FIGURE 1

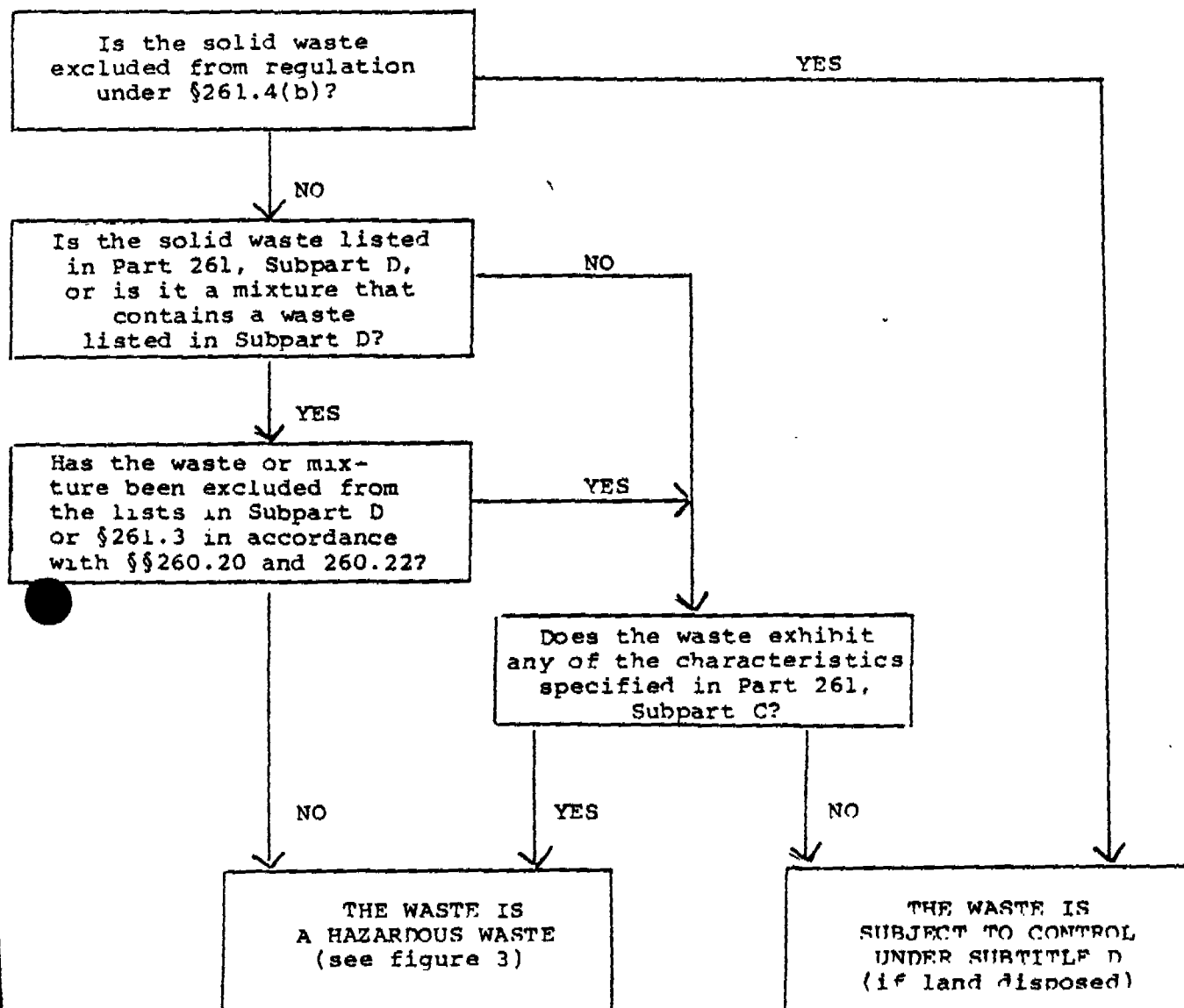
## DEFINITION OF A SOLID WASTE



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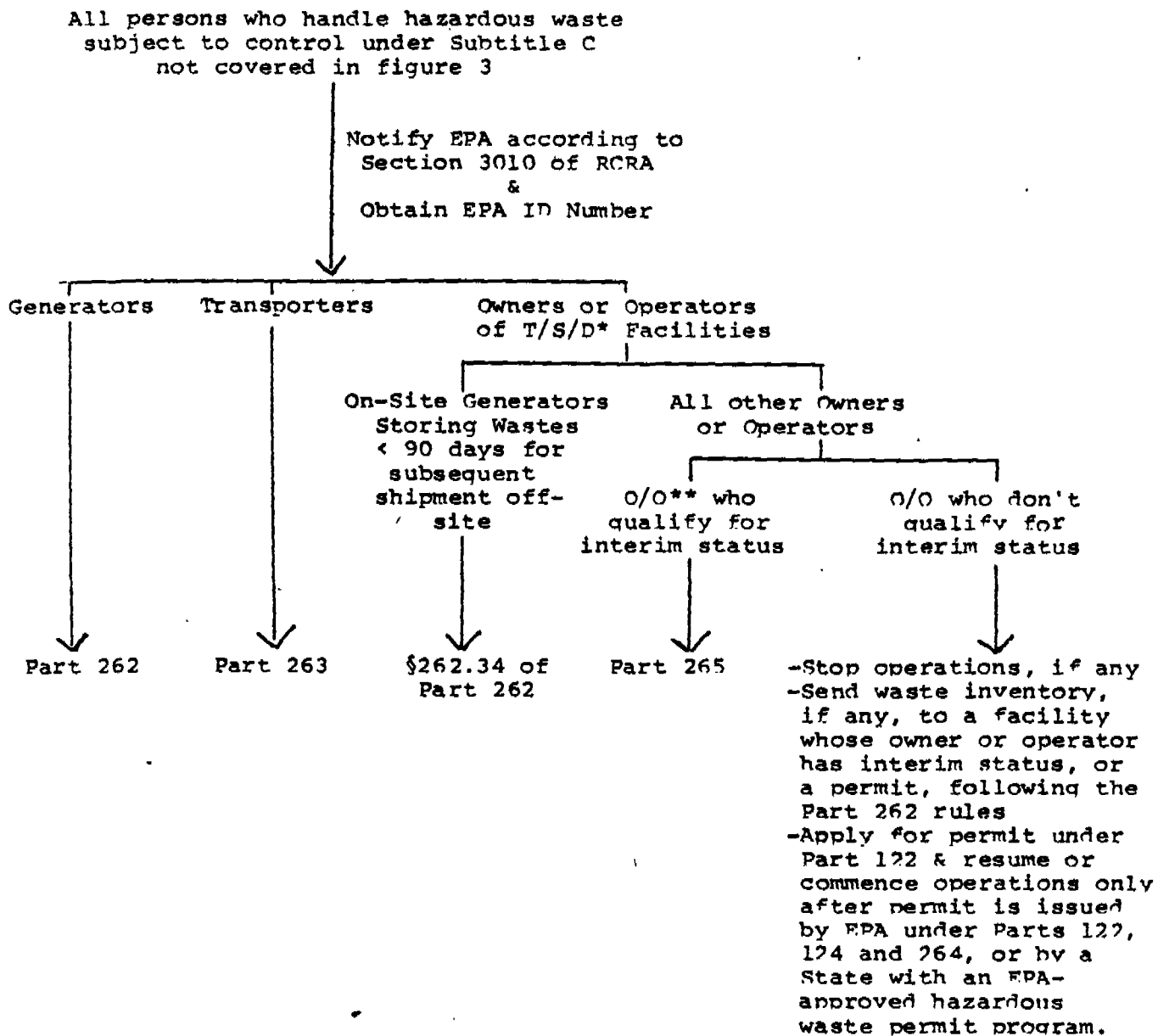
FIGURE 2

## DEFINITION OF A HAZARDOUS WASTE



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FIGURE 4

REGULATIONS FOR HAZARDOUS WASTE  
NOT COVERED IN DIAGRAM 3

\* T/S/D stands for Treatment, Storage, or Disposal

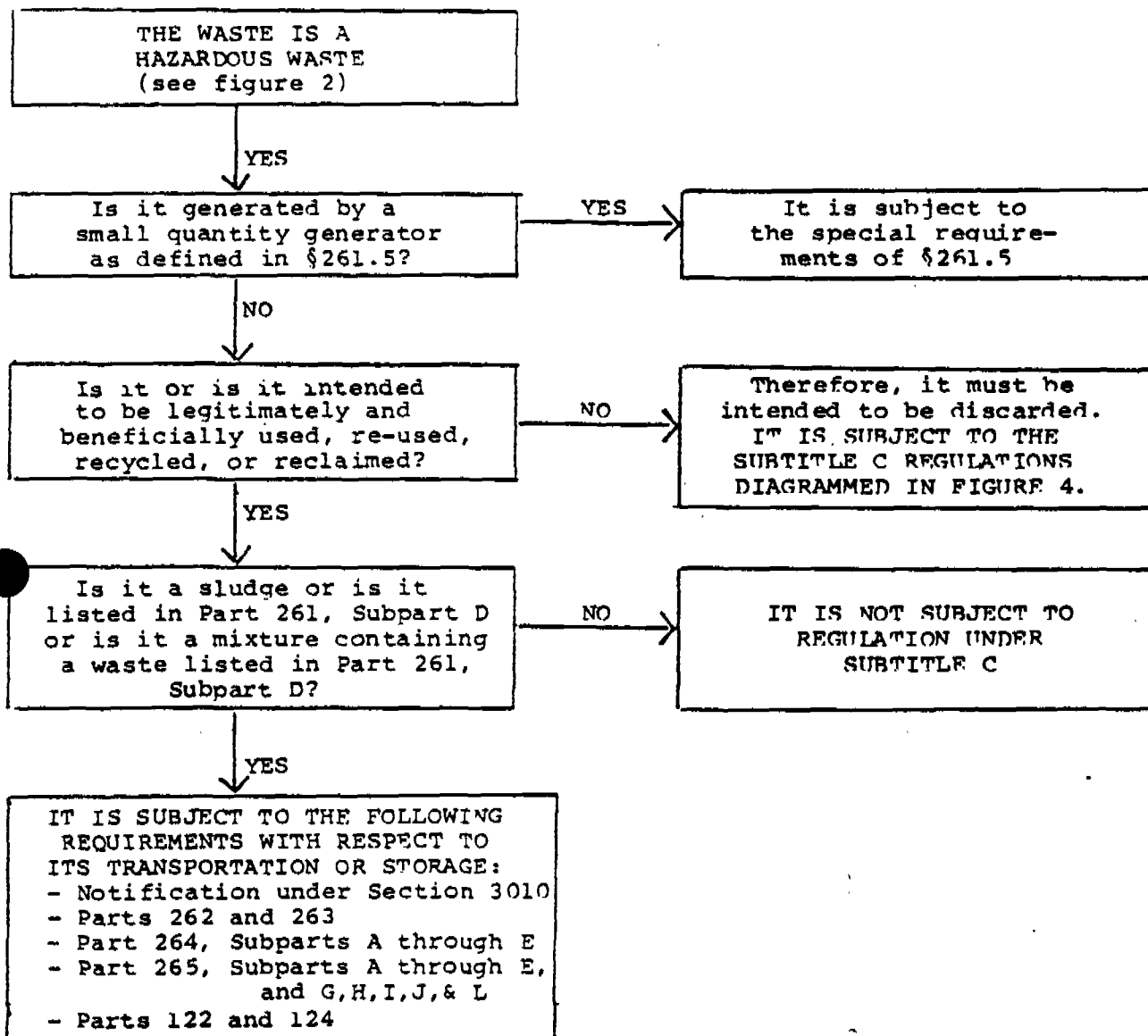
\*\* O/O stands for Owners or Operators

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FIGURE 3

## SPECIAL PROVISIONS FOR CERTAIN HAZARDOUS WASTE



Part 261 of this Chapter, or (2) the waste exhibits any of the characteristics defined in Subpart C of Part 261. However, Parts 260 and 261 also contain provisions which exclude (§§ 261.4(b), 260.20, and 260.22) certain solid wastes from the definition of "hazardous waste", even though they are listed in Subpart D or exhibit one or more of the characteristics defined in Subpart C. Figure 2 depicts the interplay of these special provisions with the definition of "hazardous waste". It presents a series of questions which a person should ask himself concerning his waste. After doing so, the person should be able to determine if the solid waste he handles is a hazardous waste.

#### Hazardous Waste Regulations

If this is the case, the person should look at Figure 3. Figure 3 depicts the special provisions specified in the final Part 261 rules for hazardous waste which:

1. Is generated by a small quantity generator
2. Is or is intended to be legitimately and beneficially used, re-used, recycled, or reclaimed
3. Is a sludge; is listed in Part 261, Subpart D; or is a mixture containing a waste listed in Part 261, Subpart D.

Each of these Groups, Figure 3 indicates with which Subtitle C regulations (if any) the person handling these wastes must comply. Figure 3 also explains that, if a person handles hazardous waste which is not included in any one of the above three categories, his waste is subject to the Subtitle C regulations diagrammed in Figure 4.

Figure 4 is a flowchart which identifies the three categories of activities regulated under the Subtitle C rules, and the corresponding set of rules with which people in each of these categories must comply. It points out that all people who handle hazardous waste are either: (1) Generators of hazardous waste, (2) transporters of hazardous waste, (3) owners or operators of hazardous waste treatment, storage, or disposal facilities, or (4) a combination of the above. Figure 4 indicates that all of these people must notify EPA of their hazardous waste activities in accordance with the Section 3010 Notification Procedures (see 45 FR 12746 *et seq.*), and obtain an EPA identification number.

It should be noted that people handling wastes listed in Subpart D of Part 261 who have filed, or who intend to file an application to exempt their waste from regulation under the Subtitle C rules, must also comply with the

notification requirements of section 3010.

If a person generates hazardous waste, Figure 4 indicates that he must comply with the Part 262 rules. If he transports it, he must comply with the Part 263 rules. The standards in both these Parts are designed to ensure, among other things, proper recordkeeping and reporting, the use of a manifest system to track shipments of hazardous waste, the use of proper labels and containers, and the delivery of the waste to a permitted treatment, storage, or disposal facility.

If a person owns or operates a facility which treats, stores, or disposes of hazardous waste, the standards with which he must comply depend on a number of factors. First of all, if the owner or operator of a storage facility is also the person who generates the waste, and the waste is stored at the facility for less than 90 days for subsequent shipment off-site, then the person must comply with § 262.34 of the Part 262 rules.

All other owners or operators of treatment, storage, or disposal facilities must comply with either the Part 264 or the Part 265 rules. To determine with which of these sets of rules an owner or operator must comply, he must find out whether his facility qualifies for interim status. To qualify, the owner or operator must: (1) Have been treating, storing, or disposing of the hazardous waste, or commenced facility construction on or before October 21, 1976, (2) comply with the Section 3010 notification requirements, and (3) apply for a permit under Part 122 of this Chapter.

If the owner or operator has done all of the above, he qualifies for interim status, and he must comply with the Part 265 rules. These rules contain administrative requirements, monitoring and closure standards, and an abbreviated set of technical and closure and post-closure cost estimate requirements. The owner or operator must comply with these standards until final administrative disposition of his permit application is made. If a permit is issued to the owner or operator, he must then comply with the permit which will be based on the Part 264 rules.

If the owner or operator has not carried out the above three requirements, he does not qualify for interim status. Until he is issued a permit for his facility, the owner or operator must stop waste management operations (if any) at the facility, and send his hazardous waste (if any) to a facility whose owner or operator has interim status or to a storage facility following the Part 262 rules.

In order to apply for a permit, the owner or operator must comply with the procedures specified in Part 122 of this Chapter.

It should be noted that the Agency will be periodically revising the rules depicted in Figures 3 and 4. All persons are encouraged to write to EPA to verify that the regulations which they are reading are up-to-date. To obtain this verification, contact: Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 684-5362.

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produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste and, in the case of an acutely hazardous waste listed under § 261.11(a)(2), that it also does not meet the criterion of § 261.11(a)(3). A waste which is so excluded may still, however, be a hazardous waste by operation of Subpart C of Part 261.

(b) The procedures in this section and § 260.20 may also be used to petition the Administrator for a regulatory amendment to exclude from § 261.3(a)(2)(ii) or (c), a waste which is described in those sections and is either a waste listed in Subpart D, contains a waste listed in Subpart D, or is derived from a waste listed in Subpart D. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by paragraph (a) of this section, except that where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole. A waste which is so excluded may still be a hazardous waste by operation of Subpart C of Part 261.

(c) If the waste is listed with codes "I", "C", "R", or "E" in Subpart D, the petitioner must show that demonstration samples of the waste do not exhibit the relevant characteristic defined in §§ 261.21, 261.22, 261.23, or 261.24 using any applicable test methods prescribed therein.

(d) If the waste is listed with code "T" in Subpart D, the petitioner must demonstrate that:

- (1) Demonstration samples of the waste do not contain the constituent (as defined in Appendix VII) that caused the Administrator to list the waste, using the appropriate test methods prescribed in Appendix III; or
- (2) The waste does not meet the criterion of § 261.11(a)(3) when considering the factors in § 261.11(a)(3) (i) through (xi).

(e) If the waste is listed with the code "H" in Subpart D, the petitioner must demonstrate that the waste does not meet both of the following criteria:

- (1) The criterion of § 261.11(a)(2).
- (2) The criterion of § 261.11(a)(3) when considering the factors listed in § 261.11(a)(3) (i) through (xi).

(f) [Reserved for listing radioactive wastes.]

(g) [Reserved for listed infectious wastes.]

(h) Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(i) Each petition must include, in addition to the information required by § 260.20(b):

- (1) The name and address of the laboratory facility performing the sampling or tests of the waste;
- (2) The names and qualifications of the persons sampling and testing the waste;
- (3) The dates of sampling and testing;
- (4) The location of the generating facility;
- (5) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;
- (6) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;
- (7) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in § 261.11(a)(3);
- (8) A description of the methodologies and equipment used to obtain the representative samples;
- (9) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;
- (10) A description of the tests performed (including results);
- (11) The names and model numbers of the instruments used in performing the tests; and
- (12) The following statement signed by the generator of the waste or his authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(j) After receiving a petition for an exclusion, the Administrator may request any additional information which he may reasonably require to evaluate the petition.

(k) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(l) The Administrator may exclude only part of the waste for which the demonstration is submitted where he has reason to believe that variability of the waste justifies a partial exclusion.

(m) The Administrator may (but shall not be required to) grant a temporary exclusion before making a final decision under § 260.20(d) whenever he finds that there is a substantial likelihood that an exclusion will be finally granted. The Administrator will publish notice of any such temporary exclusion in the **Federal Register**.

#### Appendix I.—Overview of Subtitle C Regulations

The Agency believes that there are many people who suspect, but are not sure, that their activities are subject to control under the RCRA Subtitle C rules. This appendix is written for these people. It is designed to help those who are unfamiliar with the hazardous waste control program to determine with which, if any, of the regulations they should comply.

#### Definition of Solid Waste

The first question which such a person should ask himself is: "Is the material I handle a solid waste?" If the answer to this question is "No", then the material is not subject to control under RCRA and, therefore, the person need not worry about whether he should comply with the Subtitle C rules.

Section 261.2 of this Chapter provides a definition of "solid waste" which expands the statutory definition of that term given in section 1004(27) of RCRA. This definition is diagrammed in Figure 1 below.

Figure 1 explains that all materials are either: (1) Garbage refuse, or sludge; (2) solid, liquid, semi-solid or contained gaseous material; or (3) something else. No materials in the third category are solid waste. All materials in the first category are solid waste. Materials in the second category are solid waste unless they are one of the five exclusions specified in § 261.4(a).

#### Definition of Hazardous Waste

If a person has determined that his material is a "solid waste", the next question he should ask is: "Is the solid waste I handle a hazardous waste?"

Hazardous waste is defined in § 261.3 of this chapter. Section 261.3 provides that, in general, a solid waste is a hazardous waste if: (1) It is, or contains, a hazardous waste listed in Subpart D of

settling, and aeration pits, ponds, and lagoons.

(66) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(69) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)

(70) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

(71) "Transportation" means the movement of hazardous waste by air, rail, highway, or water.

(72) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(73) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(74) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(75) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

(76) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(77) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(78) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(79) "Well injection": (See "underground injection".)

### Subpart C—Rulemaking Petitions

#### § 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provision in Parts 260 through 265 of this Chapter. This section sets forth general requirements which apply to all such petitions. Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to Parts 261, 264 or 265. Section 260.22 sets forth additional requirements for petitions to exclude a waste at a particular facility from § 261.3 of this Chapter or the lists of hazardous wastes in Subpart D of Part 261.

(b) Each petition must be submitted to the Administrator by certified mail and must include:

- (1) The petitioner's name and address;
- (2) A statement of the petitioner's interest in the proposed action;
- (3) A description of the proposed action, including (where appropriate) suggested regulatory language; and
- (4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(c) The Administrator will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, in the *Federal Register* for written public comment.

(d) Upon the written request of any interested person, the Administrator may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Administrator may in any case decide on his own motion to hold an informal public hearing.

(e) After evaluating all public comments the Administrator will make a final decision by publishing in the *Federal Register* a regulatory amendment or a denial of the petition.

#### § 260.21 Petitions for equivalent testing or analytical methods.

(a) Any person seeking to add a testing or analytical method to Parts 261, 264, or 265 of this Chapter may petition for a regulatory amendment under this section and § 260.20. To be successful, the person must demonstrate to the satisfaction of the Administrator that the proposed method is equal to or superior to the corresponding method prescribed in Parts 261, 264, or 265 of this Chapter, in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).

(b) Each petition must include, in addition to the information required by § 260.20(b):

- (1) A full description of the proposed method, including all procedural steps and equipment used in the method;
- (2) A description of the types of wastes or waste matrices for which the proposed method may be used;
- (3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in Parts 261, 264, or 265 of this Chapter;
- (4) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and
- (5) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Administrator may request any additional information on the proposed method which he may reasonably require to evaluate the method.

(d) If the Administrator amends the regulations to permit use of a new testing method, the method will be incorporated in "Test Methods for the Evaluation of Solid Waste: Physical/Chemical Methods," SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460.

[Comment: This manual will be provided to any person on request; and will be available for inspection or copying at EPA headquarters or any EPA Regional Office.]

#### § 260.22 Petitions to amend Part 261 to exclude a waste produced at a particular facility.

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in Subpart D of Part 261 may petition for a regulatory amendment under this section and § 260.20. To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that the waste

construction materials of the tank or container from the contained waste or agents used to treat the waste.

(36) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(37) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.

(38) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(39) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

(40) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(41) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral movement of hazardous waste, hazardous waste constituents, or leachate.

(42) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(43) "Manifest" means the shipping document originated and signed by the generator which contains the information required by Part 262, Subpart B, of this Chapter.

(44) "Manifest document number" means the serially increasing number assigned to the manifest by the generator for recording and reporting purposes.

(45) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(46) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(47) "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after October 21, 1976. (See also "Existing hazardous waste management facility".)

(48) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(49) "Open burning" means the combustion of any material without the following characteristics:

(i) Control of combustion air to maintain adequate temperature for efficient combustion,

(ii) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(iii) Control of emission of the gaseous combustion products.

(See also "incineration" and "thermal treatment".)

(50) "Operator" means the person responsible for the overall operation of a facility.

(51) "Owner" means the person who owns a facility or part of a facility.

(52) "Partial closure" means the closure of a discrete part of a facility in accordance with the applicable closure requirements of Parts 264 or 265 of this Chapter. For example, partial closure may include the closure of a trench, a unit operation, a landfill cell, or a pit, while other parts of the same facility continue in operation or will be placed in operation in the future.

(53) "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

(54) "Personnel" or "facility personnel" means all persons who work, at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Parts 264 or 265 of this Chapter.

(55) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(56) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may

be discharged. This term does not include return flows from irrigated agriculture.

(57) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality" (as defined by Section 502(4) of the CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(58) "Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

(59) "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

(60) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(61) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(62) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

(63) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(64) "Solid waste" means a solid waste as defined in § 261.2 of this Chapter.

(65) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(66) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(67) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage,

impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

(8) "Constituent" or "hazardous waste constituent" means a constituent which caused the Administrator to list the hazardous waste in Part 261, Subpart D, of this Chapter, or a constituent listed in Table 1 of § 261.24 of this Chapter.

(9) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(10) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(11) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 CFR Parts 122 and 124 of this Chapter, or a permit from a State authorized in accordance with Part 123 of this Chapter, that has been designated on the manifest by the generator pursuant to § 262.20.

(12) "Dike" means an embankment or edge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(13) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(14) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(15) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

(16) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Part 261, Subpart D, of this Chapter and to each characteristic identified in Part 261, Subpart C, of this Chapter.

(17) "EPA identification number" means the number assigned by EPA to generator, transporter, and treatment, storage, or disposal facility.

(18) "EPA region" means the states and territories found in any one of the following ten regions:

Region I—Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

Region II—New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Region III—Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

Region IV—Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

Region V—Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

Region VI—New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

Region VII—Nebraska, Kansas, Missouri, and Iowa.

Region VIII—Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

Region IX—California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

Region X—Washington, Oregon, Idaho, and Alaska.

(19) "Equivalent method" means any testing or analytical method approved by the Administrator under §§ 260.20 and 260.21.

(20) "Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction had commenced, on or before October 21, 1976. Construction had commenced if:

(i) The owner or operator has obtained all necessary Federal, State, and local preconstruction approvals or permits; and either

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

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

(21) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(22) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(23) "Food-chain crops" means tobacco, crops grown for human

consumption, and crops grown for feed for animals whose products are consumed by humans.

(24) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(25) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(26) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of this Chapter.

(27) "Ground water" means water below the land surface in a zone of saturation.

(28) "Hazardous waste" means a hazardous waste as defined in § 261.3 of this Chapter.

(29) "Inactive portion" means that portion of a facility which is not operated after the effective date of Part 261 of this Chapter. (See also "active portion" and "closed portion".)

(30) "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kiln, fluidized bed, and liquid injection incinerators.

(31) "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(See Part 265, Appendix V, of this Chapter for examples.)

(32) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(33) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(34) "Injection well" means a well into which fluids are injected. (See also "underground injection".)

(35) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the

assistance. Limited technological assistance may be available.

The Agency has also established an industry assistance program in the Office of Solid Waste. The staff of this program have been charged with (1) identifying industry and community RCRA compliance problems and seeking solutions to them, (2) coordinating assistance activities with the States, other parts of EPA, and other Federal agencies (e.g., the Small Business Administration and the Economic Development Administration), (3) planning and conducting seminars, and (4) coordinating production of written material designed to assist those least able to cope with the regulatory burden.

The Agency would ideally like to provide this assistance to anyone who wants it. However, because the industry assistance program may receive more requests for help than it can initially respond to, it may be necessary to establish priorities to determine which requests should be answered first. If this is the case, the program will concentrate first on the following industry sectors, which the Agency believes most need this help: chrome pigments, chlorine, electroplating (job shops), woven fabric finishing, felt fabric finishing, sheepskin tanneries, vegetable tanners, primary and secondary aluminum, primary and secondary copper, primary and secondary lead, primary tungsten, primary zinc, petroleum rerefining, pesticides, plastics, and pharmaceuticals. EPA plans to meet with the trade associations of these industries in order to define specific assistance responses.

Anyone having suggestions on how the Agency can help industry comply with these regulations should contact: Michael Barclay, RCRA Industry Assistance Coordinator, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 755-9190.

Dated: May 2, 1980.

Douglas M. Costle,  
Administrator.

Title 40 CFR Part 260 is revised to read as follows:

## **PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

### **Subpart A—General**

Sec.

260.1 Purpose, scope and applicability.

260.2 Availability of information, confidentiality of information.

Use of number and gender.

### **Subpart B—Definitions**

260.10 Definitions.

### **Subpart C—Rulemaking Petitions**

260.20 General.

260.21 Petitions for equivalent testing or analytical methods.

260.22 Petitions to amend Part 261 to exclude a waste produced at a particular facility.

### **Appendix I—Overview of Subtitle C Regulations**

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, and 7004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, and 6974).

### **Subpart A—General**

#### **§ 260.1 Purpose, scope, and applicability.**

(a) This part provides definitions of terms, general standards, and overview information applicable to Parts 260 through 265 of this Chapter.

(b) In this part: (1) Section 260.2 sets forth the rules that EPA will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to EPA under Parts 260 through 265 of this Chapter.

(2) Section 260.3 establishes rules of grammatical construction for Parts 260 through 265 of this Chapter.

(3) Section 260.10 defines terms which are used in Parts 260 through 265 of this Chapter.

(4) Section 260.20 establishes procedures for petitioning EPA to amend, modify, or revoke any provision of Parts 260 through 265 of this Chapter and establishes procedures governing EPA's action on such petitions.

(5) Section 260.21 establishes procedures for petitioning EPA to approve testing methods as equivalent to those prescribed in Parts 261, 264, or 265 of this Chapter.

(6) Section 260.22 establishes procedures for petitioning EPA to amend Subpart D of Part 261 to exclude a waste from a particular facility.

#### **§ 260.2 Availability of information; confidentiality of information.**

(a) Any information provided to EPA under Parts 260 through 265 of this Chapter will be made available to the public to the extent and in the manner authorized by the Freedom of Information Act, 5 U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b), Part 2 of this Chapter, as applicable.

(b) Any person who submits information to EPA in accordance with

Parts 260 through 265 of this Chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this Chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Part 2, Subpart B of this Chapter. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.

#### **§ 260.3 Use of number and gender.**

As used in Parts 260 through 265 of this Chapter:

(a) Words in the masculine gender also include the feminine and neuter genders; and

(b) Words in the singular include the plural; and

(c) Words in the plural include the singular.

### **Subpart B—Definitions**

#### **§ 260.10 Definitions.**

(a) When used in Parts 260 through 265 of this Chapter, the following terms have the meanings given below: (1) "Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

(2) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of Part 261 of this Chapter and which is not a closed portion. (See also "closed portion" and "inactive portion".)

(3) "Administrator" means the Administrator of the Environmental Protection Agency, or his designee.

(4) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(5) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

(6) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

(7) "Confined aquifer" means an aquifer bounded above and below by

felted fabric processing in the textile industry. Overall, price increases resulting from the regulation for products from these industries were not found to be substantial except for

projected price increases for electroplating job shops (6.6%) and cattlehide non-chrome tanneries (1-3%). Table II summarizes these impacts.

Table II.—Summary of Costs and Impacts

| Industry                         | Plants generating hazardous waste (#) | Potential closure (#) | Potential employment loss | Possible price increase (percent) | Annual costs (in millions) |
|----------------------------------|---------------------------------------|-----------------------|---------------------------|-----------------------------------|----------------------------|
| Electroplating <sup>1</sup>      | 2,338                                 | 60                    | 1,880                     | 6.6                               | \$80.7                     |
| Inorganic chemicals <sup>2</sup> | 95                                    | 3                     | 807                       | <1                                | 49.8                       |
| Leather tanning <sup>3</sup>     | 271                                   | 11                    | 795                       | <1                                | 11.8                       |
| Nonferrous smelting <sup>4</sup> | 252                                   | 2                     | 1,500                     | <1                                | 84.2                       |
| Organic chemicals <sup>5</sup>   | 45                                    | 0                     | 0                         | 0                                 | 13.3                       |
| Textiles <sup>6</sup>            | 1,186                                 | 10                    | 740                       | 0                                 | 23.3                       |
| Other manufacturing              |                                       |                       |                           |                                   | 258.9                      |
| Service industries               |                                       |                       |                           |                                   | 8.0                        |
| Total                            | 29,000                                |                       |                           |                                   | 510.0                      |

<sup>1</sup>Job shops only.

<sup>2</sup>Cost study covered seven product lines, detailed impact study covered four. Significant impacts possible in sodium dichromate (1 closure of 3 plants—45 jobs) and titanium dioxide (2 closures of 13 plants—582 jobs).

<sup>3</sup>Significant impacts possible in cattlehide (6 closures of 18 plants—685 jobs) and sheepshides (5 closures of 29 plants—100 jobs).

<sup>4</sup>Significant impact possible in primary zinc industry (1 closure of 6 plants—500 to 1,500 jobs).

<sup>5</sup>Cost study covered ten product lines, detailed impact study covered five.

<sup>6</sup>Cost study includes costs for five industry segments whose wastes are no longer listed as hazardous waste. Significant impact possible in the felted fabric processing segment (2 closures of 19 plants—326 jobs).

EPA performed less detailed analyses for the other industry segments in the EIA. This qualitative analysis shows the possibility of plant closures in some sectors of the explosives, petroleum refining, pharmaceuticals, organic chemicals, and plastics industries.

The effects of the Phase I requirements will interact with those of some other EPA regulations. It is too early to estimate these effects in general. But, as an example, the water pretreatment standards for electroplaters were expected to close 587 job shops until the Agency, working with the Small Business Administration, developed a Federal assistance program. As a result of the RCRA Subtitle C program alone, 60 job shops may close, and the Agency may find it more difficult to mitigate the effect of the pretreatment regulations on other plants.

3. *Limits of Analysis.* In order to make the economic analysis practical, the Agency had to make some fundamental assumptions and limit the scope of the analysis to what it believed were the major waste generating industries. The EIA could not cover all industry segments which generate hazardous waste. Simple extrapolation of the compliance cost for the 29,000 generators studied to the 67,000 generators that are expected to be regulated during Phase I, would more than double the EIA estimate. The costs of surface impoundments alone, for

those industries not included in the analysis, have been roughly estimated to be somewhere between \$80-900 million.<sup>8</sup>

The EIA was based on hazardous waste volumes believed to exist in the covered industry segments because their waste appeared on EPA's hazardous waste list or was believed to exhibit one of the four hazardous waste characteristics. The uncertainty over this latter aspect of the analysis is somewhat reflected in the 1980 waste volume estimate which EPA believes could range between 28 million and 56 million metric tons. The 41 million metric tons previously quoted is EPA's best estimate. To the extent these generators delist or discover that their specific wastes do not meet the hazardous waste characteristics, the costs and impacts will be less.

The EIA made two major assumptions: (1) Although disposal prices may increase significantly under RCRA, the study assumed that generators would be unable to reduce

<sup>8</sup>Based on varied assumptions on site life and actual number of hazardous waste sites. Also, this estimation was based on a fixed \$25 million cost assumption for closure of impoundments over 150 acres. The costs would have been nearly double that without this assumption and with strict use of a model cost equation used for impoundments of less area. However, uncertainty in the data base over site life, impoundment size and hazardousness of wastes, and the Agency belief that operators could develop less costly closure plans that EPA would accept, support this assumption.

the volume of waste disposed and will not be able to find a cheaper way to manage it, and (2) acceptable off-site waste disposal capacity will be readily available.

Finally, the analysis is based on final Sections 3002 and 3003 regulations and a January 1980 draft of the Sections 3001 and 3004 requirements. The draft regulations have substantially changed since that time. In most instances, the alterations have led to cost reductions. For instance, a number of changes which would greatly reduce the amount of waste covered by the regulations have not been factored into the analysis. Also, the financial requirements have been deferred in the Part 265 regulations but are still covered in the economic impact study. On the other hand, control of underground injection has been added to the regulations, but it is not covered in the EIA.

The Agency is now analyzing the final Phase I regulations and will make the results publicly available this summer in an economic analysis summary. EPA will publish a notice in the *Federal Register* concerning its availability. In the interim, anyone wishing to review the current version of the economic analysis may do so at EPA Headquarters and Regional Office libraries. A more extensive summary of the economic analysis can be found in the Regulatory Analysis which is also available in the Regional Office and EPA Headquarters libraries.

## II. Environmental Analysis

EPA voluntarily prepared an Environmental Impact Statement (EIS) under the National Environmental Policy Act 42 U.S.C. § 4321 *et seq.* (NEPA). (See the NEPA discussion in the preamble accompanying the Parts 264 and 265 rules issued elsewhere in today's *Federal Register*.) EPA will publish a *Federal Register* notice within 90 days of the promulgation of these regulations announcing the availability of the EIS for those interested in obtaining a copy of it.

## Industry Assistance

The Agency recognizes that these regulations may have a substantial impact on certain industrial sectors, particularly on firms in a poor competitive position. The Agency will provide a limited degree of assistance to such firms. For example, the Agency is preparing guidance manuals which interpret the regulations and offer advice on efficient compliance with substantive requirements. Seminars and public hearings will be held to explain the regulations, respond to questions, and describe available financial

did not reflect the full social cost of production.

Pre-RCRA practices for managing hazardous waste created economic inequities. The costs of disposal often fell randomly on individuals affected by improper management or on the public at large since tax revenues were used to clean up inadequate facilities. It would be more equitable for the costs of adequate hazardous waste management to fall on the consumers and producers of the products which generate the hazardous waste.

Pre-RCRA management practices also caused economic inefficiencies. Because the price of goods did not reflect the cost of properly managing the waste produced as part of the manufacturing process, these goods were priced too low relative to other goods. Because prices were lower than the true social cost of producing the product, consumers were able to buy more of these goods than they could if proper waste management costs were included in the product price. Thus, companies manufactured and sold more of these products and generated more hazardous waste than was economically efficient. These products, thus, had an unfair competitive edge over other products which didn't generate hazardous waste. Furthermore, because companies did not have to either pay the cost of proper waste management or pass it along to customers, the incentives to develop technology and process changes to lessen the quantity of hazardous waste generated or to recover the waste as a useful material were weak compared to what they might have been if proper waste management was required. Additionally, companies which wanted to properly manage their wastes were put at a competitive disadvantage by doing so because they bore costs which their competitors did not.

The RCRA Subtitle C Regulations will ensure that those generating hazardous waste will pay appropriately for their safe management. Most of this cost will be passed on to consumers, while some may be borne by the generator, particularly where price increases are held down in some way (e.g., by foreign competition or competition with other products). In either case, the economy will be more efficient and equitable because those receiving the benefits will also pay the costs, and prices will serve as a more efficient allocator of resources.

In recent years, with increasing frequency, society has been forced to properly dispose of waste that was previously disposed of haphazardly. The best known example of this is Love Canal in New York, where 20,000 tons of

waste were buried over a period of years. The diagnosis of a severe health hazard in the area due to wastes seeping into house basements and surfacing in backyards caused society to take remedial action. The price tag to the State and Federal governments is expected to be about \$36 million for clean up, relocating residents, health and environmental testing services, and other expenses associated with the disaster. Thus, society is spending about \$1,800 per ton in its effort to clean up waste improperly disposed of, and more will be spent before the area is returned to normal. Further, the \$1,800 per ton excludes human health costs and suffering, which might easily outweigh actual dollar costs. Given that average disposal costs after the RCRA regulatory program is in place are estimated to be around \$80 per ton, it clearly pays to do the job right in the first place.

Given that damages from improper hazardous waste management often take decades to surface, we may be paying dearly for past waste mismanagement for many years to come. Further, without a regulatory program, new problem sites would continue to be developed. Ultimately, clean up of all of these sites could cost billions of dollars.

**2. Costs and Impacts.** Phase I of the RCRA Subtitle C program will broadly affect American industry. The Agency focused its Economic Impact Analysis (EIA) on major hazardous waste-generating segments within 22<sup>3</sup> industries. The study covered approximately 29,000 generators who produced an estimated 13.7 million metric tons of hazardous waste in 1978. The RCRA hazardous waste standards are expected to cover about 67,000 hazardous waste generators that are expected to produce about 41 million metric tons of hazardous waste in 1980. The Agency's analysis shows that 62% of this hazardous waste is from the chemical and allied industries.

As a result of the Phase I regulations, the annual hazardous waste disposal costs for the 29,000 generators covered by the EIA are predicted to increase by \$510 million.<sup>4</sup> Of this annual cost, about

50% is for compliance with surface impoundment requirements. Recurring operational and administrative expenses account for \$430 million (1980 dollars) of the total annual cost; the rest is for capital and other initial expenditures (as annualized). Total capital and other initial expenditures are estimated at \$310 million.

The distribution of the annual compliance cost by major RCRA hazardous waste management activity is provided in Table I. The major part of the cost is for treatment and disposal facility closure and post-closure activities which will occur in the future, but which EPA assumes owners will prepare for in advance of their occurrence. The \$510 million annual cost amounts to less than 0.2 percent of the value of sales of the affected industries.

Table I.—Distribution of RCRA Costs by Type of Requirement

| Compliance activity     | Annual incremental cost in millions of dollars | Percent of total cost |
|-------------------------|------------------------------------------------|-----------------------|
| Closure/post-closure    | \$303.3                                        | 59                    |
| Treatment and disposal  | 56.8                                           | 11                    |
| Monitoring/testing      | 67.5                                           | 13                    |
| Administration          | 28.7                                           | 6                     |
| Contingency planning    | 23.2                                           | 5                     |
| Recordkeeping/reporting | 15.2                                           | 3                     |
| Training                | 15.8                                           | 3                     |
| Total                   | \$510.0                                        | 100                   |

<sup>3</sup>Detail does not add to total due to independent rounding.

The Phase I standards establish the RCRA Subtitle C program, and will be followed by Phase II, which will establish the standards for permit issuance. These are scheduled to be promulgated in the fall of 1980. While the regulations have not yet been written, it is conceivable that the added costs of the Phase II regulations could double the total costs for the affected industries.

As part of the EIA, the Agency performed detailed analyses of parts of six major industries which EPA believed could be substantially affected economically by the regulations. They were segments of the textiles, leather tanning, electroplating, inorganic chemicals, organic chemicals, and nonferrous metal smelting and refining industries. The analyses showed that 86 plants may close out of the 4200 studied, costing as many as 5300 jobs. Negative impacts are concentrated in the following industry sectors: Primary zinc and secondary lead smelting and refining, sodium dichromate and titanium dioxide production, cattlehide non-chrome and sheephide (no beamhouse) tanning, electroplating job shops, and woven fabric finishing and

<sup>3</sup>The study included one additional segment, metals mining, which is not included in this summary. The calculations have not been completed and there are major questions as to whether significant quantities of waste from this industry will prove hazardous.

<sup>4</sup>This is an annualized cost developed by multiplying a capital recovery factor by the initial capital cost and adding the product to the recurring program costs. This provides an even projection of expenditures although generators will typically incur disproportionately more expenses in the beginning of the program and at the end of the useful life of the facility.

EPA agrees this would be desirable, and accordingly is adding a subpart to its final rules which (1) establishes the procedures for petitioning EPA to amend, modify, or revoke any provision in Parts 260 through 265 and (2) establishes procedures governing EPA's action on these petitions.

These procedures reflect normal informal rulemaking practice under the Administrative Procedures Act and are largely self-explanatory. Except for two types of petitions—petitions to approve equivalent methods and petitions to amend Part 261 to exclude a waste produced by a particular facility—EPA is not establishing information requirements for petitions. These requirements will of necessity vary with the nature of the regulatory provision which the petitioner is seeking to add or amend, and are not readily susceptible to precise articulation in a regulation. However, petitioners should be able to glean a great deal of information which would be useful in drafting rulemaking petitions from preamble discussions of provisions and associated background documents. In the case of EPA's hazardous waste characteristics and list, the regulations themselves identify the criteria against which all rulemaking (including that initiated by EPA) will be evaluated.

This entire subpart is being published in interim final form to give the public an opportunity to comment on EPA's procedures.

**2. Section 260.21 (Petitions for equivalent testing or analytical methods).** In its proposed Section 3001 regulations, EPA required persons to determine whether their waste exhibited one of the Agency's proposed hazardous waste characteristics using specified testing and analytical methods or "an equivalent method". (See proposed §§ 250.13(a) (i) and (ii), (a)(2)(i), (b)(i), and (d)(2)(ii)). Section 250.11(b)(2) of the proposed rules defined "equivalent method" as any method:

which the Administrator determines to be functionally equivalent or superior to the method specified.

The proposed rules did not, however, provide any procedures for requesting EPA to approve testing or analytical methods as equivalent to those specified in proposed Section 3001. Several commenters suggested that such procedures should be included in the regulations.

EPA agrees and believes the procedures set forth in § 260.20 will work well for petitions for equivalent methods. However, because specific types of data are required to determine whether a testing or analytical protocol

is "equivalent" or "superior" to an existing method, EPA has also established specific information requirements for petitions for equivalent methods. These requirements necessarily require a petitioner to fully evaluate the alternative method and to undertake a thorough comparative analysis of this method and EPA's. Requiring less data would place too large a burden on EPA, considering its limited resources for developing alternative testing methods. The Agency believes that those who desire to use a method other than that prescribed in the final rules will typically have the data required in § 260.21 because they will have found the prescribed method to be inappropriate for their purposes, and will have already committed resources to develop an equivalent method.

**3. Section 260.22 (Petitions to amend Part 261 to exclude a waste produced at a particular facility).** This provision is discussed in Section VII of the preamble to Part 261.

#### Regulatory Analysis

The Agency has prepared for the regulations promulgated under Sections 3001 through 3004 and 3010 of RCRA, an Economic Impact Analysis, an Environmental Impact Statement, a Reports Impact Analysis, an Operations Resources Impact Analysis, and an Evaluation Plan. EPA has prepared a summary regulatory analysis of its final regulations based on the above reports. This Regulatory Analysis describes the various alternative approaches that the Agency might have used to implement the hazardous waste program, and explains why certain choices were made.

Except for the Evaluation Plan (which was prepared under Executive Order 12044), or as otherwise specified below, copies of these documents may be reviewed in the EPA Regional Office libraries, and at the EPA headquarters library, Room 2404, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. The Evaluation Plan will be available for review only at the EPA headquarters library.

#### I. Economic Analysis

The Agency prepared an Economic Impact Analysis under Executive Order 11821, as amended by Executive Order 11949. It indicates that there are both costs and benefits associated with this regulatory program.

**1. Benefits.** The Subtitle C regulatory program will reduce the damage to human health and the environment from improper management of hazardous waste. The following is a brief list of

some of the many expected improvements:

(1) Ground-water pollution from leaching of toxic pollutants from improperly designed and managed landfills and surface impoundments will be reduced.

(2) Poisoning and injury due to direct contact with randomly dumped wastes will be reduced.

(3) Pollution of surface waters from hazardous waste stored or disposed of in fields and on riverbanks will be reduced.

(4) Illicit dumping of waste in farm fields, wooded areas, along roadsides, and in ditches and streams will be reduced.

(5) Emission of toxic gases from improperly run incinerators will be reduced.

(6) Accidents, mistakes, and malfunctions at hazardous waste management facilities, which could affect people near the site, will be reduced in number and in severity, due to improved training of personnel, monitoring and inspections, and required emergency equipment.

(7) Contingency plans will spell out procedures to ensure rapid and effective responses to emergencies to minimize any danger to off-site residents and the environment.

(8) Facilities will be decontaminated or otherwise secured at closure, and disposal sites will be monitored and maintained after closure, to reduce the possibility of future adverse impacts on human health or the environment.

The Agency believes these improvements will be substantial and noticeable. The expected improvements are not quantifiable, however, since records of past practices and problems are extremely limited. Also, it is difficult or impossible to quantify benefits deriving from reduced adverse impacts on health or the environment. The dollar value of preventing a case of cancer, for example, is not truly ascertainable. In addition to the major non-quantifiable economic benefits expected from decreases in human health problems and in pollution of our air, land, and water, EPA expects an improvement in economic efficiency and equity, and substantial direct savings from avoiding clean up costs in the future.

An economy functions efficiently and equitably when the price of goods produced in the society reflects the actual social and private costs of production (i.e., when the costs are internalized). Until now, in most states, firms could dispose of wastes in environmentally unsafe ways at a cost substantially less than that for adequate disposal. Thus, the price of goods often

continuous manner (no breaks greater than 18 months). Nor will it suffice that erection of certain components began off-site.

The alternative requirement is that by the date in question, binding agreements—which cannot be canceled or modified without substantial loss—were established for construction of the facility to be completed within a reasonable time. The words “substantial” and “for construction” are key to this test. In order to minimize administrative burdens and to provide some certainty, the Agency will consider a loss as being substantial if the cost to cancel a construction agreement is more than 10 percent of the total project cost. Whether a loss equal to or less than 10 percent is substantial will be considered on a case-by-case basis. The loss must also be related to contractual obligations for construction. Options to purchase or contracts for feasibility, engineering, or design studies will not be considered to be contractual obligations for construction.

These conditions for “commenced construction” are adopted from EPA’s Prevention of Significant Deterioration (PSD) regulations issued under the Clean Air Act (see 43 FR 28395).

**4. Definition of Generator.** Several comments on the proposed definition of “generator” concerned corporations controlling plants in several locations which each produce hazardous waste. They questioned whether each plant, or only the corporate headquarters, is the generator. Some commenters thought that the latter should be designated as the generator because this would allegedly reduce the number of manifests and records that the corporation would collectively be required to develop.

RCRA directs the Agency to monitor and control the movement of hazardous waste. The only way that the Agency can do so is to know the source of the waste. If the reports which EPA received on hazardous waste identified the corporate headquarters as the generator, EPA would not know which of the corporation’s plants produced the waste and, thus, would be unable to monitor the waste’s movement. For this reason, the final definition has been modified to make it clear that the plant, and not the parent company, is the generator. However, corporate headquarters may prepare and submit separate reports for each of the corporation’s facilities.

Certain producers (e.g., farmers and small generators) were excluded from the proposed definition of “generator.” Because these exclusions are specifically dealt with in the final Part 261 and Part 262 regulations, it is

unnecessary to attempt to include the substance of these regulations in the final definition of “generator”.

**5. Definition of On-Site.** The Agency is amending the definition of “on-site”, which was promulgated in the Part 260 regulations issued on February 26, 1980 (45 FR 12724). In the preamble which accompanied that definition, the Agency pointed out that the manifest is necessary “to safeguard human health and the environment in the transportation of hazardous waste, regardless of the distance that the waste is being transported.” However, the preamble went on to say that:

Merely crossing the public right-of-way to gain access to property under the control of the generator does not create the same dangers to the public that transportation upon public highways entails. [emphasis added]

For this reason, the proposed definition of “on-site” (43 FR 58976) was revised to include as “on-site,” non-contiguous property owned by the generator which is connected by “a right-of-way which he controls and to which the public does not have access.” This revision allowed generators to transport their waste within these confined limits without preparing a manifest for it.

The Agency now realizes, however, that the revised definition of “on-site” (45 FR 12724) could be interpreted to allow unmanifested waste to be transported along a public right-of-way. This was not what the Agency had intended when revising the proposed definition. Therefore, that definition has been amended to make it clear that the entrance and exit of the geographically contiguous property—which may be divided by a public or private right-of-way—must be directly across from each other in order to be considered to be the same site.

**6. Definition of Representative Sample.** The Agency mistakenly provided two definitions of the term “representative sample” in the proposed rules, one in § 250.11(b)(5), and the other in § 250.41(b)(73). The latter was concerned solely with samples characteristic of ground water beneath a facility. Several commenters pointed out that the definition was too restrictive because the proposed regulations required samples to be taken of things other than ground water. The Agency agrees, and has restructured the final ground-water monitoring standards so that a definition of “representative sample” specific to ground water is no longer needed. It has therefore been deleted from the final rules.

The definition provided in § 250.11(b)(5) was broader than that contained in § 250.41(b)(73). § 250.11(b)(5) defined representative sample as:

Any sample of the waste which is statistically equivalent to the total waste in composition, and in physical and chemical properties. Representative samples may be generated using the methods set out in Appendix I of this Subpart. [emphasis added]

Many commenters objected to the aspect of this definition which required that the sample be statistically equivalent to the total waste. They argued that statistical equivalence has an exact meaning, and that interpreted literally, the proposed definition would have required the entire waste stream to be sampled, or a statistical data base established for it, in order to ensure that every constituent of the waste stream was known to some level of accuracy and precision. These commenters felt that this aspect of the definition was unreasonable.

The Agency agrees that requiring a representative sample to be statistically equivalent to the waste is currently infeasible for most waste streams. This is particularly true for “composite” or heterogeneous wastes. The Agency will, in the future, develop and publish in SW-846, “Test Methods for the Evaluation of Solid Waste”, practical procedures for obtaining statistically equivalent representative samples of hazardous waste. However, until they are developed, the Agency agrees that the definition of “representative sample” should not require that the samples be statistically equivalent to the total waste. Therefore, the definition has been changed to require that representative samples exhibit the average properties of the universe or whole (e.g., waste or ground water).

## V. Subpart C

**1. Section 260.20 (General).** Section 7004 of RCRA states that any person may petition EPA for the promulgation, amendment, or repeal of any regulation under RCRA. That section further directs the Administrator to develop and publish minimum guidelines for the public to participate in this process.

EPA’s proposed Subtitle C regulations contained no guidelines to assist the public in framing rulemaking petitions or to advise them of the procedures EPA would follow in acting on their petitions. EPA received a number of comments, often in the context of a specific regulatory provision (e.g., the list of hazardous wastes issued under Section 3001), suggesting that EPA establish rulemaking procedures for Subtitle C.

When Part 260 was published in February, it contained definitions of twelve terms used in EPA's Parts 262 and 263 regulations and a preamble discussion of each (45 FR 12722). Except for the definition of "on-site", which has been revised since February, these terms will not be discussed again here.

Of the new definitions which are being added to Part 260 today, most are self-explanatory and non-controversial and therefore need not be addressed in this preamble. Those which do require explanation are either dealt with in the preambles accompanying the regulation in which the term is used or in the discussion which follows.

**1. Definition of Active Portion.** The proposed definition of "active portion" stated that portions of facilities closed in accordance with the facility closure plan, and all applicable closure requirements, were not active portions. Several commenters were concerned that portions of facilities which were closed before the effective date of the regulations, but not in accordance with the Section 3004 closure requirements, would be considered to be active portions. If this were the case, they argued that it was unreasonable to require owners and operators to re-close these portions in accordance with the RCRA standards.

The Agency believed that the following statement in the preamble to the proposed Section 3004 regulations stated that Agency's intent generally *not* to regulate portions of facilities closed before the effective date of the regulations:

RCRA is written in the present tense and its regulatory scheme is organized in a way which seems to contemplate coverage only of those facilities which continue to operate after the effective date of the regulations. The Subpart D standards and Subpart E permitting procedures are not directed at inactive facilities. (43 FR 58984)

However, the Agency realizes that its original intent would have been more clearly stated if the words "or inactive portions of active facilities" had been added to the above sentence. The Agency's intent is not to regulate under Subtitle C portions of facilities closed before the effective date of the regulations. The only exception to this is that owners and operators of facilities which continue to operate after the effective date of the regulations must ensure that portions of facilities closed before the effective date of these rules do not interfere with the monitoring or control of active portions. This requirement regulates the facility which operates under the RCRA regulations, although it may require the owner or operator, before he receives a permit, or

as a permit condition, to take certain measures on portions of his facility closed before the effective date of these regulations.

**2. Definitions of Disposal and Disposal Facility.** Several commenters suggested that the statutory definition of "disposal" given in Section 1004(3) of RCRA should be reworded to make it clear that an unplanned release or discharge of hazardous waste does not constitute disposal. They argued that this change is necessary because, otherwise, accidental discharges will have to be permitted before they are allowed to occur.

Regardless of whether a discharge of hazardous waste is intentional or not, the human health and environmental effects are the same. Thus, intentional and unintentional discharges are included in the definition of "disposal".

However, the Agency agrees that permits logically can only be required for intentional disposal of hazardous waste. Therefore, the definition of "disposal facility" has been modified to indicate the Agency's intent that the term does not apply to activities involving truly accidental discharge of hazardous waste.

In addition, the definition has been further modified to make it clear that only facilities at which hazardous waste is to remain after closure are, for the purposes of these regulations, disposal facilities. Thus, for example, a surface impoundment used for waste treatment from which the emplaced waste and waste residue is to be removed before closure of the impoundment, for purposes of these regulations, is not both a treatment and a disposal facility, but rather, only a treatment facility. That does not mean it might not be "disposing" of wastes within the meaning of that term in Section 1004(3) of RCRA. It merely means that EPA, for purposes of reference in these regulations, will call it a "treatment facility."

**3. Definition of Existing Facility.** Several commenters pointed out what they perceived as a serious fault in Section 3005(e) of RCRA, which is that the Section limits interim status to owners and operators of facilities "in existence" on or before October 21, 1976. The statute requires that, in order to operate legally, facilities which have come into existence after October 21, 1976, must obtain a permit by the effective date of the Section 3005 regulations (i.e., within 180 days after the promulgation date of the regulations). Because it is unlikely that permits can be issued within 180 days for all facilities not "in existence" by October 21, 1976, the commenters felt

that the language of the statute was unfair to the owners and operators of these facilities.

EPA agrees that the language of the statute as it now stands would make the RCRA program unworkable. However, the language of RCRA is clear and EPA has had no alternative but to follow it in the regulations. As the preamble to the Part 122 regulations discusses, EPA expects that amendments to RCRA now in conference will be passed shortly and will cure this problem.<sup>2</sup>

In the proposed rules, existing facilities were limited to those which were in operation or under "physical construction" by a certain date. Physical construction was defined as:

excavation, movement of earth, erection of forms or structures, the purchase of equipment or any other activity involving the actual preparation of the Hazardous Waste Management facility.

The Agency has expanded this aspect of the definition of "existing facility" in the final rules. The Agency believes that facilities for which substantial financial commitments have been incurred through contractual obligations to purchase specially designed structures or equipment, should also be considered to be existing facilities. Accordingly, the final Part 260 definition provides that a facility which has "commenced construction" by a certain date is an "existing facility".

In determining whether construction has commenced, as the term is defined in Part 260, it is first necessary to determine whether the owner or operator has obtained and continues to hold all necessary preconstruction approvals or permits required by Federal, State, and local laws and regulations. If all such permits have not been obtained or maintained, construction has not commenced.

Assuming that the permit requirement is satisfied, in order to have "commenced construction," it is still necessary for facilities to meet one of two additional requirements. The first requirement is that a continuous physical on-site construction program has begun by the date in question. The words "continuous" and "on-site" are key to this test. It will not suffice merely to have begun erection of auxiliary buildings or construction sheds unless there is clear evidence (through contracts or otherwise) that construction of the entire facility will go forward in a

<sup>2</sup> Accordingly, EPA encourages every facility built or under construction on the promulgation date of the RCRA program regulations to notify EPA and file Part A of the permit application so that it can be quickly processed for Interim Status when the change in the law takes effect.

Table 1<sup>1</sup>

| 40 CFR      | Corresponding RCRA section and descriptive title                                                                                          | Federal Register date |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Part:       |                                                                                                                                           |                       |
| 260         | Definitions used in other Parts corresponding to the Sections 3001 through 3004 rules, and general provisions applicable to these Parts.  | 5/19/80 Part II.      |
| 261         | Section 3001: Identification and Listing of Hazardous Waste.                                                                              | 5/19/80 Part III.     |
| 262         | Section 3002: Standards Applicable to Generators of Hazardous Waste.                                                                      | 5/19/80 Part V.       |
| 263         | Section 3003: Standards Applicable to Transporters of Hazardous Waste.                                                                    | 5/19/80 Part VI.      |
| 264         | Section 3004: Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.                | 5/19/80 Part VII.     |
| 265         | Section 3004: Interim Status Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. | 5/19/80 Part VII.     |
| 122 and 124 | Section 3005: Permits for Treatment, Storage, and Disposal of Hazardous Waste.                                                            | 5/19/80 Part X.       |
| 123         | Section 3006: Guidelines for Authorized State Hazardous Waste Programs.                                                                   | 5/19/80 Part X.       |
|             | Section 3010: Preliminary Notification of Hazardous Waste Activity.                                                                       | 2/26/80 (45 FR 12746) |

<sup>1</sup> This table is self-explanatory except for that portion of it dealing with section 3004 of RCRA. There are three groups of owners and operators of hazardous waste facilities subject to control under this Section: owners and operators with interim status; those who own or operate RCRA permitted facilities; and those with neither interim status nor a permit. Owners and operators in the first group are subject to the Part 265 rules; those in the second group must comply with RCRA permits based on the Part 264 rules; those in the third group must stop operations on the effective date of these regulations. (See the preamble to the Parts 264 and 265 rules issued elsewhere in today's FEDERAL REGISTER for an explanation of how owners and operators qualify for interim status.)

The purpose of this regulation (Part 260) is to consolidate in one place a number of provisions which are applicable to all the Part 261 through 265 regulations. Subpart A contains rules concerning the designation and handling of confidential information and rules of grammatical construction which are generally applicable to Parts 261 through 265. Subpart B contains definitions of key words and phrases which are used in those Parts. Subpart C outlines the general procedures which EPA will follow in acting on petitions to amend Parts 260 through 265 and special procedures applicable to petitions for the approval of equivalent testing and analytical methods and petitions to amend Part 261. Finally, Appendix I contains a "road map" to the Subtitle C regulations which is designed to acquaint persons unfamiliar with EPA's Subtitle C regulations with the most important regulatory provisions in Parts 260 through 265 and Parts 122 through 124. (Note that Appendix I contains guidance, not regulations. If any part of the appendix is inconsistent with the

regulations, the regulations should be considered controlling.)

### III. Subpart A

1. *Section 260.1 (Purpose, scope, and applicability).* This section explains the purpose of Part 260 and outlines the contents of the remaining sections. It is largely self-explanatory.

2. *Section 260.2 (Availability of information; confidentiality of information).* The Agency expressed its basic stance on confidentiality in § 250.27 of the proposed Section 3002 regulations, which stated that all information provided in connection with the requirements of RCRA must be made available to any person, as authorized by Section 3007(b) of RCRA, the Freedom of Information Act (FOIA, 5 U.S.C. 552), and the EPA regulations adopted to implement the FOIA and Section 3007(b) (40 CFR Part 2). Proposed § 250.27 applied also to the recordkeeping and reporting systems under Section 3004 of the proposed regulations, because they were designed to use information supplied on the manifest as the data base.

A number of commenters argued that all RCRA reports and information should be made known to the public because public knowledge of this information is essential to the effective enforcement of RCRA. In particular, they argued that in order for the public oversight and citizen suit provisions of RCRA to be effective, the public must have information on the types and amounts of waste being handled by facilities, data from the monitoring of ground water and surface water, information on the type of process generating the waste and the hazardous properties of the waste, and any information reported to the Agency regarding fires, explosions, and discharges of hazardous waste, including data on the degradation of ground water.

The Agency has sought to balance the public need for information against legitimate claims of confidentiality. Neither Section 3007(b) of RCRA nor the Freedom of Information Act, however, authorize or require full public disclosure of information collected pursuant to RCRA. Section 3007(b) directs the Administrator to consider as confidential any information which would be entitled to protection under Section 1905 of Title 18 of the United States Code, upon a satisfactory showing by the claimant that his information does indeed warrant confidential treatment. The provisions of the Freedom of Information Act concerning the availability of information do not apply to confidential

trade secrets and commercial or financial information (Section 552(b)(4)).

Because of this provision in RCRA, the Agency cannot impose a blanket requirement in the regulations that specific information must be released to the public in all cases. However, the public may obtain information on the type of process producing the wastes listed in the Section 3001 rules from the background documents supporting the Section 3001 regulations. In addition, the Subpart D rules require owners or operators to notify local authorities of fires, explosions, or discharges of hazardous waste which have the potential for adversely affecting human health and the environment outside the facility. Thus, information of this type may also be available to the public.

Several commenters suggested that EPA should clearly state that the confidentiality provisions of proposed § 250.27 apply to the information required in the Section 3004 rules. The Agency agrees, and has therefore placed the provisions concerning confidentiality in Part 260 of the final rules. Section 260.1 of this Part makes it clear that the § 260.2 confidentiality provisions apply to all information required to be submitted under the final Sections 3001 through 3004 standards.

3. *Section 260.3 (Use of number and gender).* This section establishes simple rules of grammatical construction concerning number and gender. It has been added to allow EPA to simplify the drafting of its final Part 261 through 265 regulations by eliminating the need for such awkward phrases as "he/she/it" or "the owner (or in event there is more than one owner, the owners)". It is self-explanatory.

Although there is no direct counterpart to this section in the proposed Subtitle C rules, the Agency is issuing it as a final, rather than interim final standard. This is simply a rule of usage and, therefore, it is unnecessary to solicit comments on it.

### IV. Subpart B

In EPA's proposed regulations, each regulation had its own set of definitions (see §§ 250.11, 250.21, 250.31, and 250.41). To eliminate the unnecessary repetition this produced, all the definitions which are applicable to more than one of EPA's final regulations have been consolidated into this subpart. Definitions of terms which are used only once, or only in conjunction with a single section or subpart, will generally be defined in the section or subpart in which they are used. We hope this reorganization will make the regulations less cumbersome and easier to follow.

CCR 000041278

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 260**

(FRL 1395-71)

**Hazardous Waste Management  
System: General****AGENCY:** Environmental Protection Agency.**ACTION:** Revisions to final rule and interim final rule and request for comments.

**SUMMARY:** Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), directs the Environmental Protection Agency (EPA) to promulgate regulations to protect human health and the environment from the improper management of hazardous waste. The first phase of EPA's regulations implementing this directive are contained in Parts 262 and 263 of this chapter (which were promulgated on February 26, 1980) and Parts 261, 264, 265, 122, 123, and 124 of this chapter (which are being promulgated today).

This regulation (Part 260) sets forth definitions of words and phrases which appear in Parts 261 through 265 and contains provisions which are generally applicable to all those regulations. It was originally published on February 26, 1980, concurrent with the promulgation of EPA's Part 262 and 263 regulations. It is now being amended to add new provisions required by today's publication of Parts 261, 264 and 265 and to revise one of the definitions published in February.

**DATES:** Effective date: November 19, 1980. Comment date: For the interim final portions of this regulation, public comments will be accepted until July 18, 1980.

**ADDRESSES:** Comments on interim final portions should be sent to Docket Clerk [Docket No. 3000], Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The public docket for this regulation is located in Room 2711 of the above address, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Single copies of these regulations will be available approximately 30 days after publication from Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 684-5832. Multiple copies will be available from the Superintendent of Documents, Washington, D.C. 20402.

For information on the implementation of these regulations, contact the EPA Regional Offices below:

**Region I**—Dennis Huebner, Chief, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203 (617) 223-5777;

**Region II**—Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007 (212) 264-0504/5;

**Region III**—Robert L. Allen, Chief, Hazardous Materials Branch, 8th and Walnut Streets, Philadelphia, Pennsylvania 19106 (215) 597-0980;

**Region IV**—James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street N.E., Atlanta, Georgia 30365 (404) 881-3018;

**Region V**—Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6148.

**Region VI**—R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270 (214) 767-2645

**Region VII**—Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106 (816) 374-3307

**Region VIII**—Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203 (303) 837-2221

**Region IX**—Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105 (415) 556-4606

**Region X**—Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101 (206) 442-1280

**FOR FURTHER INFORMATION CONTACT:** John P. Lehman, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460 (202) 755-9185.

**SUPPLEMENTARY INFORMATION:****I. Authority**

This regulation is issued under the authority of Sections 1006, 2002(a), 3001 through 3007, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, and 6974.

**II Background**

Subtitle C of RCRA establishes a Federal program to provide comprehensive regulation of hazardous waste. When fully implemented, this program will provide "cradle-to-grave" regulation of hazardous waste. Section 3001 of Subtitle C directs EPA to identify

the characteristics of and to list those hazardous wastes which are subject to regulation under Subtitle C. Sections 3002 and 3003 require EPA to establish standards for generators and transporters of hazardous waste which will ensure proper recordkeeping and reporting, the use of a manifest system to track shipments of hazardous waste, the use of proper labels and containers, and the delivery of the waste to properly permitted treatment, storage, and disposal facilities. To ensure that these facilities are designed, constructed, and operated in a manner which protects human health and the environment, Section 3004 of RCRA directs EPA to promulgate technical, administrative, monitoring, and financial standards for them. These independently enforceable standards will be used by EPA to issue permits to owners and operators of facilities under Section 3005. For those States interested in administering the RCRA program instead of EPA, Section 3006 requires the Agency to issue guidelines under which States may seek authorization to carry out the program. Finally, under Section 3010, all persons engaging in activities subject to control under Sections 3002 through 3004 above must notify EPA or States having authorized RCRA hazardous waste programs.

Early this year, EPA began issuing the regulations which comprise the Subtitle C hazardous waste management system. On February 26, 1980, it promulgated standards for generators and transporters of hazardous waste under Sections 3002 and 3003 of RCRA, respectively (Parts 262 and 263), and issued a public notice establishing procedures for filing a notice of hazardous waste activity under Section 3010. Today EPA is publishing permit procedures and guidelines for the approval of State hazardous waste programs under Sections 3005 and 3006, respectively (Parts 122, 123, and 124), and the first phase of its Section 3001 hazardous waste list and characteristics and Section 3004 facility standards (Parts 261, 264, and 265). As discussed in the preambles to those two latter regulations, EPA expects to be amending its Sections 3001 and 3004 regulations later this year to bring additional wastes into the hazardous waste management system and to add additional facility standards.

Table 1 below, shows where each of these regulations appears in the Federal Register.