61–79. HAZARDOUS WASTE MANAGEMENT REGULATIONS.


Editor's Note
Added by State Register Volume 8, Issue No. 6, eff June 24, 1984.

61–79.124. PERMIT ADMINISTRATION.

SUBPART A
General Program Requirements

124.1. Purpose and scope.
(a) This part contains procedures for issuing, modifying, revoking and reissuing, or terminating all hazardous waste treatment, storage, and disposal facility permits under these regulations, other than “emergency permits” (see § 270.61) and “permits by rule” (§ 270.60). The latter kind of permits are governed by part 270. Interim status is not a “permit” and is covered by specific provisions in part 270. The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29.
(b) This regulation describes the steps which will be followed in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Also covered is assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision (amended 11/90; edited 12/92).

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

124.2. Definitions.
(a) In addition to the definitions given in R.61-79.270.2 and S.C. Hazardous Waste Management Act Section 44-56-20, the definitions listed below apply to this Part. Terms not defined in this section have the meaning given by the appropriate Act.

“Administrator” means the Administrator of the U.S. Environmental Protection Agency, or an authorized representative (revised 12/92).

“Applicable standards and limitations” means all State, interstate, and Federal standards and limitations to which a “discharge,” a “sludge or disposal practice” or a related activity is subject under the CWA, including “standards for sewage sludge use or disposal,” “effluent limitations,” water quality standards, standards of performance, toxic effluent standards or prohibitions, “best management practices,” and pretreatment standards under Sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA. (amended 11/90; 12/92)

“Application” means the forms for applying for a permit under these regulations, including any additions, revisions, or modifications to the forms. Application also includes the information required under parts 270.14 through 270.29 (contents of Part B of the RCRA application] (revised 12/92).


“Draft permit” means a document prepared under 124.6 indicating the Department’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a “permit”. A notice of intent to terminate a permit and a notice of intent to deny a permit as discussed in 124.5, are types of “draft permits.” A denial of a request for modification, revocation, and reissuance or termination, as discussed in 124.5, is not a “draft permit.” A “proposal permit” is not a “draft permit.” (revised 12/92).
EPA means the U. S. Environmental Protection Agency.

“Facility or activity” means any HWM facility or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA program and the Pollution Control Act.

“Indian Tribe means” (except in the case of RCRA) any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

“Interstate agency” means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Department under the “appropriate Act and regulations.”

“Major facility” means any RCRA “facility or activity” classified as such by the Department.

Owner or operator means owner or operator of any facility or activity subject to regulation under the RCRA program and the Pollution Control Act.

“Permit” means an authorization, license, or equivalent control document issued by South Carolina to implement the requirements of this part and 270. Permit includes RCRA “permit by rule” (270.60). Permit does not include RCRA interim status (270.70) or any permit which has not yet been the subject of final agency action, such as a “draft permit” or a “proposed permit” (revised 12/92).

Person means an individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof.


Regional Administrator” means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator. Schedule of compliance means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the appropriate Act and regulations.

“Site” means the land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity (revised 12/92).

State Safe Drinking Water Act means 44-55-10 et seq.

(b) For the purposes of part 124, the term “Department” means the Department or Regional Administrator and is used when the accompanying provision is required of EPA-administered programs and of State programs under 40 CFR 271.14 (RCRA). The term “Regional Administrator” is used when the accompanying provision applies exclusively to EPA-issued permits and is not applicable to State programs under these sections. While South Carolina is not required to implement these latter provisions, they are not precluded from doing so, notwithstanding use of the term “Regional Administrator.”

(c) The term “formal hearing” means any evidentiary hearing under subpart E or any panel hearing under subpart F but does not mean a public hearing conducted under § 124.12.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

124.3. Application for a permit.

(a) (1) Any person who requires a permit under these regulations shall complete, sign, and submit to the Department an application for each permit required under R.61-79.270.1 and meet the public notice requirements under 124.10. Applications are not required for permits by rule R.61-79.270.60. (amended 6/89; edited 12/92)

(2) The Department shall not begin the processing of a permit under these regulations until the applicant has fully complied with the application requirements for that permit. See R.61-79.270.10, .11, and .13, Subpart B and applicable sections of R-61-79.264 which describe the information required in permit applications. (amended 11/90)

(b) [Reserved]
(c) The Department shall review for completeness every application for a permit under these regulations. Each application for a permit submitted by a new HWM facility should be reviewed for completeness by the Department within 30 days of its receipt. Each application for a permit submitted by an existing HWM facility (both Parts A and B of the application), should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Department shall list the information necessary to make the application complete. When the application is for an existing HWM facility, the Department shall specify in the notice of deficiency a date for submitting the necessary information. After the application is completed, the Department may request additional information from an applicant but only where necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete. (amended 11/90)

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provisions of SC 44-56-140 and RCRA section 3008.

(e) If the Department decides that a site visit is necessary for any reason in conjunction with the processing of an application, it will notify the applicant and a date shall be scheduled.

(f) The effective date of an application is the date on which the Department notifies the applicant that the application is complete as provided in paragraph (c) of this section.

HISTORY: Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 19, Issue No. 6, eff June 23, 1995.

124.5. Modification, revocation and reissuance, or termination of permits under these regulations.

(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Department’s initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in R.61-79.270.41 and 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request. The requirements of this section do not apply to transporter permits.

(b) If the Department decides the request is not justified, it will send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Department may be appealed by requesting of the Board of Health and Environmental Control an adjudicatory hearing as specified under R.61-72 Section II within 15 days of the date of the decision.

(c)(1) If the Department tentatively decides to modify or revoke and reissue a permit under R.61-79.270. Subpart D, it will prepare a draft permit under 124.6 incorporating the proposed changes. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Department shall require the submission of a new application.

(2) In a permit modification under this section, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) “Class 1 and 2 modifications” as defined in R.61-79.270 Subpart D are not subject to the requirements of this section.

(d) If the Department tentatively decides to terminate a permit under 270.43 other than at the request of the permittee, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 124.6.

(e) When the Department is the permitting authority, all draft permits (including notices of intent to terminate) prepared under this section shall be based on the administrative record as defined in § 124.9.
A generator shipping hazardous waste offsite must either be permitted to transport or utilize a transporter permitted pursuant to R.61-79.263. (amended 6/89)

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 25, Issue No. 10, eff October 26, 2001.

124.6. Draft permits under these regulations.

(a) Once an application is complete, the Department shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Department tentatively decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. See 124.6(e). If the Department’s final decision (124.15) is that the tentative decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (d) of this section (revised 12/92).

(c) If the Department decides to prepare a draft permit, the Department shall prepare a draft permit that contains the following information:

(1) The approved permit application;
(2) All conditions under R.61-79.270.30 and 270.32;
(3) All compliance schedules under R.61-79.270.33;
(4) All monitoring requirements under R.61-79.270.31 which have not been specified in the permit applications; and
(5) Any condition established under R.61-79.270.32 necessary to achieve compliance with applicable standards for treatment, storage and/or disposal. Standards for treatment, storage, and/or disposal and other permit conditions under § 270.30.

(d) All draft permits prepared by the Department under this section shall be accompanied by a fact sheet (§ 124.8), shall be based on the administrative record (§ 124.9), publicly noticed (§ 124.10) and made available for public comment (§ 124.11). The Department shall give notice of opportunity for a public hearing (§ 124.12), issue a final decision (§ 124.15), and respond to comments (§ 124.17). An appeal may be taken under § 124.19. Draft permits prepared by the Department shall be accompanied by a fact sheet if required under § 124.8. (revised 12/92).

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.


(a) The Department shall prepare a fact sheet for every draft permit for a HWM facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit;
(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, or disposed of.
(3) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions.
(4) Provisions and appropriate supporting references to the administrative record required by 124.9;
(5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
(6) A description of the procedures for reaching a final decision on the draft permit including:
(i) The beginning and ending dates of the comment period under 124.10 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision.

(7) Name and telephone number of a person to contact for additional information.

HISTORY: Amended by State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

124.9. Administrative record for draft permits under these regulations.

(a) The provisions of a draft permit prepared by the Department under 124.6 shall be based on the administrative record defined in this section.

(b) For preparing a draft permit under Section 124.6 above the record shall consist of:

1. The application, if required, and any supporting data furnished by the applicant;

2. The draft permit or notice of intent to deny the application or to terminate the permit;

3. The fact sheet (§ 124.8);

4. All documents cited in the fact sheet; and

5. Other documents contained in the supporting file for the draft permit.

(c) Material readily available at the Department or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet.

HISTORY: Amended by State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

124.10. Public notice of permit actions and public comment period.

(a) Scope. Public notice of permit actions and public comment periods covered in this section apply only to treatment, storage, and disposal facilities under these regulations. (amended 6/89)

1. The Department will give public notice when the following actions are to be taken:

   (i) A draft permit has been prepared under 124.6; or

   (ii) A hearing has been scheduled under 124.12;

   (iii) A permit application has been tentatively denied under 124.6(b) (revised 12/92);

   (iv) An appeal has been granted under § R.61-72.

2. No public notice will be given when a request for a permit modification, revocation and reissuance, or termination is denied under Section 124.5(b). Written notice of that denial will be given to the requestor and the permittee.

3. Public notice may describe more than one permit or permit action.

4. The applicant will give public notice in accordance with 124.10(c)(5) when an application for a permit is submitted to the Department. The applicant will give public notice of submittal of an application for a permit modification in accordance with R.61-79.270.42 (amended 6/89).

(b) Timing.

1. Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 45 days for public comment (revised 12/92).

2. Public notice of a public hearing will be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(c) Methods. Public notice of activities described in paragraphs (a)(1) and (a)(4) of this section shall be given by the following methods: (amended 6/89)

1. By mailing a copy of a notices of draft permits or hearings to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits); (amended 6/89)
The applicant and those identified in (5); (amended 6/89)

(ii) Any other agency which the Department knows has issued or is required to issue a permit for the same facility or activity;

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any affected States (Indian Tribes). (amended 11/90; revised 12/92)

(iv) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for “area lists” from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press, and in such publications as Regional and State funded newsletters, environmental bulletins, State law journals. (The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of any person who fails to respond to such a request.).

(v) (A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

B) To each State agency having any authority under State law with respect to the construction or operation of such facility.

(2) Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations within the area affected by the facility or activity;

(3) In a manner constituting legal notice to the public under state law; and

(4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(5) Public notice of activities described in paragraph (a)(4) shall be given by the applicant by the following methods: (amended 6/89)

(i) notice to contiguous landowners, as determined by the tax rolls;

(ii) notice to the county in which the facility site is located and all other political subdivisions within twenty miles of the site;

(iii) notice to local daily and weekly newspapers within the area affected by the facility or activity, and the major newspaper in Columbia; and

(iv) notice to the local Chamber of Commerce;

(v) a copy of the permit application to the public library in the county where the site is located.

(d) Contents.

(1) All public notices. All public notices issued under this part shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, fact sheet, and the application; the location of the administrative record required by 124.9, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record (revised 12/92); and
A brief description of the comment procedures required by Section 124.11, and Section 124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

Any additional information considered necessary or proper.

(2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under Section 124.12 will contain the following information:

(i) Reference to the date of previous public notices relating to the permit;
(ii) Date, time, and place of the hearing;
(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

HISTORY: Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

124.11. Public comments and requests for public hearings.

During the public comment period provided under 124.10, any interested person may submit written comments on the draft permit or the permit application and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in 124.17.

HISTORY: Amended by State Register Volume 17, Issue No. 17, eff December 24, 1993.


(a)(1) The Department shall hold a public hearing whenever the Department finds, on the basis of requests, a significant degree of public interest in a draft permit(s) under these regulations (edited 12/92);

(2) The Department may also hold a public hearing at the Department’s discretion, whenever for instance, such a hearing might clarify one or more issues involved in the permit decision;

(3)(i) The Department shall hold a public hearing whenever it receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice under 124.10(b)(1);

(ii) Whenever possible, the Department shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility;

(4) Public notice of the hearing will be given as specified in Section 124.10 above.

(b) Whenever a public hearing will be held and the Department is the permitting authority, the Department shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements and data concerning the application and the draft permit during a hearing. Reasonable limits may be set upon the time allowed for oral statements and the submission of statements in writing may be required. The public comment period under Section 124.10 above shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(e) Public notice of any of the above actions shall be issued under 124.10. (amended 11/90)

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.
124.13. Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe the issuance of a permit under these regulations or any condition of a draft permit is inappropriate or that the Department's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must notify the Department in writing. This notification must contain all reasonably ascertainable issues, and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under 124.10., and factual grounds supporting their position, including any supporting materials which are not already part of the administrative record for the permit. This written notification must be submitted to the Department by the close of the public comment period provided under 124.10 (edited 12/92).

HISTORY: Amended by State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.


(a) If any data, information, or arguments submitted during the public comment period, including information or arguments required under 124.13, appear to raise substantial new questions concerning a permit, the Department may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under Section 124.6 above;

(2) Prepare a revised fact sheet under Section 124.8 above and reopen the comment period under this section; or

(3) Reopen or extend the comment period under Section 124.10 above to give interested persons an opportunity to comment on the information or arguments submitted.

(4) A comment period of longer than 45 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they shall be granted under 124.10 to the extent they appear necessary.

(b) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 124.10 above shall define the scope of the reopening.

(c) Public notice of any of the above actions shall be issued under Section 124.10 above.


124.15. Issuance and effective date of permit.

(a) After the close of the public comment period under 124.10 on a draft permit, the Department shall issue a final permit decision. The Department shall notify in writing the applicant and each person who has submitted written comments or requested notification of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit or for contesting a decision to terminate a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit (edited 12/92).

(b) Permit denials will be public noticed by the Department in accordance with Section 124.10(c)(1) and (2).

(c) A final permit decision shall become effective 30 days after the service of notification of the decision under paragraph (a) of this section, unless:

(1) A later effective date is specified in the decision; or

(2) A request for an adjudicatory hearing, as specified under R.61-72 Section II, is served on the Board within fifteen (15) days after notification of the final permit decision by the Department; or

(3) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.
124.17. Response to comments.
(a) At the time that any final permit decision under these regulations is issued under § 124.15, the Department shall issue a response to comments. States are only required to issue a response to comments when a final permit is issued. This response shall (edited 12/92):
   (1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
   (2) Briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period, or during any hearing.
(b) Any documents cited in the response to comments shall be included in administrative record for the final permit decision as defined in Section 124.18 below. If new points are raised or new material supplied during the public comment period, the Department may document its responses to those matters by adding new materials to the administrative record.
(c) The response to comments shall be available to the public.

124.18. Administrative record for final permit under these regulations.
(a) The Department will base final permit decisions under Section 124.15 above on the administrative record defined in this section.
(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and:
   (1) All comments received during the public comment period provided under Section 124.10 above including any extension or reopening under (Section 124.14);
   (2) The tape or transcript of any hearing(s) held under Section 124.12;
   (3) Any written materials submitted at such a hearing;
   (4) The responses to comments required by Section 124.17 above and any new material placed in the record under that section;
   (5) Other documents contained in the supporting file for the permit; and
   (6) The final permit.
(c) The additional documents required under paragraph (b) of this section should be added to the record as soon as possible after their receipt or publication by the Department. The record shall be complete on the date the final permit is issued.
(d) This section applies to all final permits when the draft permit was subject to the administrative record requirements of Section 124.9 above.
(e) Material readily available at the Department, or published materials which are generally available and which are included in the administrative record under the standards of this section or of § 124.17 ("Response to comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.
HISTORY: Amended by State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

124.19. Appeal of Permit [See also R.61–72, Section II; clarification 12/92].
(a) Department decision involving the issuance, denial, renewal, modification, suspension, or revocation of a permit, license, certificate or certification may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44; Chapter 1; Title 1, Chapter 23; and Title 40, Chapter 61.
(b) Any person to whom an order is issued may appeal it pursuant to applicable law, including S.C. Code Title 44, Chapter 1; Title 1, chapter 23; and Title 40, Chapter 61.
HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992. Amended by State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002; State Register Volume 32, Issue No. 6, eff June 27, 2008.
**SUBPART B**  
*Specific Procedures Applicable to RCRA Permits*

**124.31. Pre-application public meeting and notice.**

(a) **Applicability.** The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a “significant change” is any change that would qualify as a class 3 permit modification under 270.42. The requirements of this section do not apply to permit modifications under 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the Department as a part of the part B application, in accordance with 270.14(b).

(d) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the Department upon request, documentation of the notice.

(1) The applicant shall provide public notice in all of the following forms:

(i) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in paragraph (d)(2) of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Department shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Department determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(ii) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (d)(2) of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(iii) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in paragraph (d)(2) of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Department.

(iv) A notice to the Department. The applicant shall send a copy of the newspaper notice to the Department and to the appropriate units of State and local government, in accordance with Sec. 124.10(c)(1)(v).

(2) The notices required under paragraph (d)(1) of this section must include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(v) The name, address, and telephone number of a contact person for the applicant.

**HISTORY:** Added by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998.
124.32. Public notice requirements at the application stage.

(a) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 270.51. The requirements of this section do not apply to permit modifications under 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Department shall provide public notice as set forth in Sec. 124.10(c)(1)(iv), and notice to appropriate units of State and local government as set forth in Sec. 124.10(c)(1)(v), that a part B permit application has been submitted to the Department and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Department. The notice must include:

(i) The name and telephone number of the applicant’s contact person;

(ii) The name and telephone number of the Department contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) The location where copies of the permit application and any supporting documents can be viewed and copied;

(v) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

(vi) The date that the application was submitted.

(c) Concurrent with the notice required under Sec. 124.32(b) of this subpart, the Department must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the Department's office.


124.33. Information repository.

(a) Applicability. The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units over which Department has permit issuance authority.

(b) The Department may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Department shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Department determines, at any time after submittal of a permit application, that there is a need for a repository, then the Department shall notify the facility that it must establish and maintain an information repository. (See 270.30(m) for similar provisions relating to the information repository during the life of a permit).

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the Department to fulfill the purposes for which the repository is established. The Department shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Department finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Department shall specify a more appropriate site.

(e) The Department shall specify requirements for informing the public about the information repository. At a minimum, the Department shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Department. The Department may close the repository at his or her discretion, based on the factors in paragraph (b) of this section.

61–79.260. HAZARDOUS WASTE MANAGEMENT SYSTEM; GENERAL.

SUBPART A

General

260.1. Purpose, scope, and applicability.

(a) This part provides definitions of terms, general standards, and overview information applicable to R.61–79.260 through R.61–79.266 and R.61–79.268 of this chapter.

(b) In this part:

(1) Section 260.2 sets forth the rules that the Department 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 the Department under R.61–79.260 through R.61–79.266 and R.61–79.268 of this chapter.

(2) Section 260.3 establishes rules of grammatical construction for R.61–79.260 through R.61–79.266 under these regulations and R.61–79.268 of this chapter.

(3) Section 260.10 defines terms which are used in R.61–79.260 through R.61–79.266 and R.61–79.268 of this chapter.

(4) Section 260.20 establishes procedures for petitioning the Department to amend, modify, or revoke any provision of R.61–79.260 through R.61–79.266 and R.61–79.268 of this chapter, and establishes procedures governing the Department’s action on such petitions.

(5) Section 260.21 establishes procedures for petitioning the Department to approve testing methods as equivalent to those prescribed in R.61–79.261, R.61–79.264 or R.61–79.265 of this chapter.

(6) Section 260.22 establishes procedures for petitioning the Department to amend Subpart D of R.61–79.261 to exclude a waste from a particular facility.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992.

260.2. Availability of information; confidentiality of information.

(a) Any information provided to the Department under R.61–79.260 through R.61–79.266 and R.61–79.268 of this chapter will be made available to the public to the extent and in the manner authorized by the Freedom of Information Act, Section 30–4–10 et.seq. of the S.C. Code of Law of 1976 as amended, or 5 U.S.C. section 552, section 3007(b) of RCRA or EPA regulations implementing the Freedom of Information Act, or section 3007(b), 40 CFR part 2 of RCRA as applicable. (revised 12/92).

(b) Any person who submits information to the Department in accordance with R.61–79.260 through R.61–79.266 and R.61–79.268 may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in 30–4–10 et seq. and 40 CFR 2.203(b). Information covered by such a claim will be disclosed by the Department only to the extent, and by means of the provisions contained in the Freedom of Information Acts SC 30–4–10 et seq., and by means of the procedures, set forth in 40 CFR Chapter 1, part 2, subpart B, except that information required by 262.53(a) and 262.83 that is submitted in a notification of intent to export a hazardous waste will be provided to the Department of State and the appropriate authorities in the transit and receiving or importing country regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by the Department, it may be made available to the public without further notice to the person submitting it (revised 12/92; 12/93).

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1995; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998.

260.3. Use of number and gender.

As used in R.61–79.260 through R.61–79.266 and R.61–79.268:
(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.

**HISTORY:** Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992.

**SUBPART B**

**Definitions**

260.10. Definitions.

When used in parts 260 through 273, the following terms have the meanings given below:

“Aboveground tank” means a device meeting the definition of “tank” below and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.


“Active life” of a facility means the period from the initial receipt of hazardous waste at the facility until the Department receives certification of final closure. “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”).

Administrator means the Administrator of the Environmental Protection Agency, or his designee.

“Ancillary equipment” means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal offsite.

“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.

“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.

“Batch tolling” [Removed]

“Battery” means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed. (added 5/96)

“Board” means the South Carolina Board of Health and Environmental Control.

“Boiler” means an enclosed device using controlled flame combustion and having the following characteristics:

(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit’s combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are
not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Department has determined, on case-by-case basis, to be a boiler, after considering the standards in Section 260.32.

“Carbon regeneration unit” means any enclosed thermal treatment device used to regenerate spent activated carbon.

“Cathode Ray Tube” or “CRT” means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

“Certification” means a statement of professional opinion based upon knowledge and belief.

“Certified Laboratory” means a laboratory that has been approved by the Department to perform specific analyses referenced in R.61–79.260 through R.61–79.270. Laboratory certification is necessary for parameters of interest under SW–846 and other methods approved by EPA.

“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”.)

“Commissioner” means the commissioner of the Department or his authorized agent.

“Component” means either the tank or ancillary equipment of a tank system.

“Conditionally exempt small quantity generators” generate less than 100 kg hazardous waste in a month.

“Confined Aquifer” means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

“Contained” means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

(1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

(3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

“Container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

“Containment building” means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of R.61–79.264 or R.61–79.265.
“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.

“Corrosion expert” means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

“CRT collector” means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

“CRT exporter” means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

“CRT glass manufacturer” means an operation or part of an operation that uses a furnace to manufacture CRT glass.

“CRT processing” means conducting all of the following activities:

1. Receiving broken or intact CRTs;
2. Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
3. Sorting or otherwise managing glass removed from CRT monitors

“Department” means the Department of Health and Environmental Control, including personnel thereof authorized by the Board to act on behalf of the Department or Board.

“Designated facility” means:

1. A hazardous waste treatment, storage, or disposal facility which:
   (i) has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of these regulations, or
   (ii) has received a permit (or interim status) from a state authorized in accordance with part 271 of this chapter; or
   (iii) is regulated under 261.6(c)(2) or subpart F of part 266 and
   (iv) that has been designated on the manifest by the generator pursuant to 262.20.
2. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with 264.72(f) or 265.72(f) of this chapter.
3. If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. (12/92; 12/93; 12/94; 6/95).

“Destination facility” means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in paragraphs (a) and (c) of 273.13 and 273.33 of this chapter. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste. (added 5/96)

“Dike” means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

“Dioxins and furans (D/F)” means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

“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.

“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 groundwaters.
“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. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

“Drip pad” is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run on to an associated collection system at wood preserving plants.

“Electronic manifest (or e-Manifest)” means the electronic format of the hazardous waste manifest that is obtained from EPA’s national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700–22 (Manifest) and 8700–22A (Continuation Sheet).

“Electronic Manifest System (or e-Manifest System)” means EPA’s national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

“Elementary neutralization unit” means a device which:

1. Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in R.61–79.261.22 of this chapter, or they are listed in subpart D of R.61–79.261 of the chapter only for this reason; and
2. Meets the definition of tank, tank system, container, transport vehicle, or vessel in R.61–79.260.10. (amended 11/90)

“EPA” means the U. S. Environmental Protection Agency.

“EPA hazardous waste number” means the number assigned by EPA to each hazardous waste listed in 40 CFR Part 261, Subpart D, and to each characteristic identified in R.61–79.261 Subpart C.

“EPA identification number” means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

“Equivalent method” means any testing or analytical method approved by the Department under 260.20 and 260.21.

“Existing hazardous waste management (HWM) facility” or “Existing facility” means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

1. The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction (revised 12/92); and
2. (i) A continuous onsite, physical construction program has begun; or
   (ii) The owner or operator has entered into contractual obligations — which cannot be canceled or modified without substantial loss — for physical construction of the facility to be completed within a reasonable time.

“Existing portion” means that land surface area of an existing waste management unit, included in the original part A permit application, on which wastes have been placed prior to the issuance of a permit (revised 12/92).

“Existing tank system” or “existing component” means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations—which cannot be canceled or modified without substantial loss—for physical construction of the site or installation of the tank system to be completed within a reasonable time.

“Explosives or munitions emergency” means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious
action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

“Explosives or munitions emergency response” means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include inplace rendersafe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

“Explosives or munitions emergency response specialist” means an individual trained in chemical or conventional munitions or explosives handling, transportation, rendersafe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

“Facility” means: (1) 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) (12/92). (2) For the purpose of implementing corrective action under 264.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h). (12/93) (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to 264.101, but is subject to corrective action requirements if the site is located within such a facility.


“Federal State and local approvals or permits necessary to begin physical construction” means permits and approvals required under Federal State or local hazardous waste control statutes, regulations, or ordinances.

“Final closure” means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Parts 264 and 265 of this Chapter are no longer conducted at the facility unless subject to the provisions in R.61–79.262 Section 262.34.

“Food–Chain crops” means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

“Freeboard” means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

“Free liquids” means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

“Generator” means any person, by site, whose act or process produces hazardous waste identified or listed in R.61–79.261, or whose act first causes a hazardous waste to become subject to regulation.

“Ground water” means water below the land surface in a zone of saturation.

“Hazardous secondary material” means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under part 261 of this chapter.

“Hazardous Waste” means a hazardous waste as defined in R.61–79.261.3.

“Hazardous Waste constituent” means a constituent that caused the Department to list the hazardous waste in R.61–79.261 Subpart D, or a constituent listed in Table I of R.61–79.261.24.

“Hazardous waste management unit” is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface
impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

“Inactive portion” means that portion of a facility which is not operated after November 19, 1980 (revised 12/93). (See also “active portion” and “closed portion”.)

“Incinerator” means any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(2) Meets the definition of infrared incinerator or plasma arc incinerator.

“Incompatible waste” means hazardous waste which is unsuitable for:

(1) 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

(2) 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 parts 264 and 265, Appendix V, of this chapter for examples.)

“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.

“Industrial furnace” means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(1) Cement kilns
(2) Lime kilns
(3) Aggregate kilns
(4) Phosphate kilns
(5) Coke ovens
(6) Blast furnaces
(7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)
(8) Titanium dioxide chloride process oxidation reactors
(9) Methane reforming furnaces
(10) Pulping liquor recovery furnaces
(11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid
(12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.
(13) Such other devices as the Department may, after notice and comment, add to this list on the basis of one or more of the following factors:

   (i) The design and use of the device primarily to accomplish recovery of material products;
   (ii) The use of the device to burn or reduce raw materials to make a material product;
   (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
   (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
(v) The use of the device in common industrial practice to produce a material product; and
(vi) Other factors, as appropriate.

“Infrared incinerator” means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace (revised 12/92).

“In-ground tank” means a device meeting the definition of “tank” below whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

“In operation” refers to a facility which is treating, storing, or disposing of hazardous waste.

“Injection well” means a well into which fluids are injected. (see also “underground injection”.)

“Inner liner” means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

“Installation inspector” means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

“International shipment” means the transportation of hazardous waste into or out of the jurisdiction of the United States.

“Laboratory” means any facility, including its agents or employees, that performs analyses related to environmental quality evaluations required by the Department or which will be officially submitted to the Department. The laboratory shall have equipment and instrumentation to enable the laboratory to conduct analyses for the tests for which application is made and for which the laboratory has been certified or approved by the Department to perform.

“Lamp,” also referred to as “universal waste lamp,” is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

“Landfill” means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit (amended 11/90; 12/92).

“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.

“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.

“Leachate” means any liquid including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

“Leak-detection system” means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

“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 escape of hazardous waste, hazardous waste constituents, or leachate.

“Management” or “hazardous waste management” means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
“Manifest” means the shipping document EPA Form 8700–22 (including, if necessary, EPA Form 8700–22A), or the electronic manifest, originated and signed in accordance with the applicable requirements of parts 262 through 265 of this chapter.

“Manifest tracking number” means the alphanumeric identification number (i.e., a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

“Mercury-containing equipment” means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function

“Military munitions” means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE’s nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

“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.

“Miscellaneous unit” means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR part 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under 270.65 or staging pile.

“Monitoring well” means a well used to obtain water samples for water quality analysis or to measure groundwater levels.

“Movement” means that hazardous waste transported to a facility in an individual vehicle.

“New hazardous waste management facility” or “new facility” means a facility which began operation, or for which construction commenced after November 19, 1980. (See Also “Existing hazardous waste management facility.”)

“New tank system” or “new tank component” means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of R.61–79.264.193(g)(2) and R.61–79.265.193(g)(2), a new tank system is one for which construction commences after July 14, 1986. (See also “existing tank system.”)

“No free liquids” as used in 261.4(a)(26) and 261.4(b)(18), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (EPA Publication SW-846), which is incorporated by reference, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by an authorized state.

“NPDES” means National Pollutant Discharge Elimination System.

“On-ground tank” means a device meeting the definition of “tank” below and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.
“Onsite” 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 crossroads intersection, and access is by crossing as opposed to going along, the right-of-way. Noncontiguous 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 onsite property.

“Open burning” means the combustion of any material without the following characteristics:

1. Control of combustion air to maintain adequate temperature for efficient combustion,
2. Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
3. Control of emission of the gaseous combustion products. (See also “incineration” and “thermal treatment”.)

“Operator” means the person responsible for the overall operation of a facility.

“Owner” means the person who owns a facility or part of a facility.

“Partial closure” means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of R.61–79.264 and R.61–79.265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate. (amended 11/90)

“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 (revised 12/92).

“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 non-compliance with the requirements of R.61–79.264 or R.61–79.265.

“Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that: (added 5/96)

1. Is a new animal drug under FFDCA section 201(w), or
2. Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
3. Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this definition.

“Pile” means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

“Plasma arc incinerator” means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace (revised 12/92).

“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. “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”. This includes sewers pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

“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.

“Quarter” means a three (3) month period ending on the last day of March, June, September, and December.
“Regional Administrator” means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

“Remediation waste” means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments), and debris that are managed for implementing cleanup. (12/93, 8/00)

“Remediation waste management site” means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under 40 CFR 264.101, but is subject to corrective action requirements if the site is located in such a facility.

“Replacement unit” means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to treat, store, or dispose of hazardous waste. “Replacement unit” does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

“Reporting Year” means the twelve month time period starting on January 1 of each year and ending on the last day of December.

“Representative sample” means a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

“Run-off” means any rainwater, leachate, or other liquid that drained over land from any part of a facility.

“Run-on” means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

“Saturated zone” or “zone of saturation” means that part of the earth’s crust in which all voids are filled with water.

“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.

“Sludge dryer” means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

“Small quantity generator means a generator who generates less than 1000 kg of hazardous waste in a calendar month. (amended 11/90)

“Solid Waste” means a solid waste as defined in R.60–79.261 Subpart A Section 261.2.

“Solvent-contaminated wipe” means,

(1) a wipe that, after use or after cleaning up a spill, either:

(i) Contains one or more of the F001 through F005 solvents listed in 261.31 or the corresponding P- or U-listed solvents found in 261.33;

(ii) Exhibits a hazardous characteristic found in part 261 subpart C when that characteristic results from a solvent listed in part 261; and/or

(iii) Exhibits only the hazardous waste characteristic of ignitability found in 261.21 due to the presence of one or more solvents that are not listed in part 261.

(2) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at 261.4(a)(26) and 261.4(b)(18).

“Sorbent” means a material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

South Carolina Underground Injection Control R.61–87
South Carolina Water Classification and Standards, R.61–68
South Carolina Water Pollution Control Act 48–1–10 et seq.
“Spill” [Deleted November 23, 1990]

“Staging pile” means an accumulation of solid, non-flowing remediation waste (as defined in this section) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Department according to the requirements of 264.554.

“State” means the State of South Carolina.

State Primary Drinking Water R.61–58


“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.

“Sump” means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, “sump” means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

“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, settling, and aeration pits, ponds, and lagoons.

“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.

“Tank system” means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

“TEQ” means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

“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”.)

“Thermostat” means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of R.61–79. 273.13(c)(2) or R.61–79.273.33(c)(2). (added 5/96)

“These Regulations” refers to all regulations contained under R.61–79 of the State Regulations which have been promulgated by the Board as authorized under Section 44–56–30 of the 1976 Code of Laws, as amended.

“ 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 the treatment. An example is a pipe in which waste acid is neutralized.

“Transfer facility” means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

“Transportation” means the movement of hazardous wastes by air to the rail, highway or water.

“Transporter” means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.
“Transport vehicle” means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad, freight car, etc.) is a separate transport vehicle. “Vessel” includes every description of water craft.

“Treatability study” means a study in which a hazardous waste is subjected to a treatment process to determine (1) whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the 261.4(e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A “treatability study” is not a means to commercially treat or dispose of hazardous waste.

“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.

“Treatment Zone” means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

“Underground injection” means the subsurface emplacement of fluids as defined in R.61–87.

“Underground tank” means a device meeting the definition of “tank” in section 260.10 whose entire surface area is totally below the surface of and covered by the ground.

“Unfit for use tank system” means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

“Universal Waste” means any of the following hazardous wastes that are managed under the universal waste requirements of 273: (5/96)

1. Batteries as described in 273.2;
2. Pesticides as described in 273.3;
3. Mercury-containing equipment as described in 273.4; and
4. Lamps as described in 273.5 of this chapter.

“Universal Waste Handler”: (added 5/96)

1. Means:
   (i) A generator (as defined in this section) of universal waste; or
   (ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

2. Does not mean:
   (i) A person who treats (except under the provisions of R.61–79.273.13 (a) or (c), or 273.33 (a) or (c)), disposes of, or recycles universal waste; or
   (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

“Universal Waste Transporter” means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water. (added 5/96)

“Unsaturated Zone (Zone of Aeration)” means the zone between the land surface and the water table.

“Uppermost aquifer” means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility’s property boundary.

“Used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use, is contaminated by physical or chemical impurities. (amended 6/89)
“User of the electronic manifest system” means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(1) Is required to use a manifest to comply with:

   (i) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

   (ii) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(2) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

(3) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with Section 264.71(a)(2)(v) or Section 265.71(a)(2)(v) of this chapter. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

“Vessel” includes every description of watercraft used or capable of being used as a means of transportation on the water.

“Waste oil” [Deleted 11/90]

“Wastewater treatment unit” means a device which:

(1) is part of a wastewater treatment facility which is subject to regulation under The Pollution Control Act Sections 48–1–10 et seq. of the Code of Laws of 1976 as amended, and either Section 402 or 307(b) of the Clean Water Act; and

(2) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in R.61–79.261.3 or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined by Section 261.3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 261.3 of these Regulations; and

(3) Meets the definition of tank or tank system in Section 260.10. (amended 11/90)

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

“Well” means any excavation which is cored, bored, drilled, jetted, dug or otherwise constructed the depth of which is greater than its largest surface dimension.

“Well injection”: (See “underground injection”.)

“Wipe” means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

“Zone of engineering control” means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

“Zone of incorporation” [Removed]

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 25, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 25, Issue No. 10, eff October 26, 2001; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2003; State Register Volume 28, Issue No. 6, eff June 25, 2004; State Register Volume 31, Issue No. 2, eff February 23, 2007; State Register Volume 31, Issue No. 6, eff June 22, 2007; State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 33, Issue No. 6, eff June 26, 2009; State Register Volume 34, Issue No. 5, eff May 28, 2010. State Register Volume No. 36, Issue No. 3, eff March 23, 2012; State Register Volume No. 36, Issue No. 9, eff September 28, 2012; State Register Volume 39, Issue No. 6, Doc. No. 4541, eff June 26, 2015; State Register Volume 40, Issue No. 5, Doc. No. 4646, eff May 27, 2016.
260.11. References.

(a) When used in R.61–79.260 through R.61–270, the following publications are incorporated by reference. These references will be applied to necessary testing to be performed by a certified laboratory.


(16) Method 1664, Revision A, n–Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n–Hexane Extractable Material (SGT–HEM; Non–polar Material) by Extraction and Gravimetry. Available at NTIS, PB99–121949, U.S. Department of Commerce, 5285 Port Royal, Springfield, Virginia 22161.
(b) The references listed in paragraph (a) of this section are also available for inspection at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington DC. These incorporations by reference were approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register (revised 12/93).

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 12, Issue No. 10, eff October 28, 1988; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 18, Issue No. 12, eff December 23, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 22, Issue No. 9, Part 2 eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002.

SUBPART C
Rulemaking Petitions

260.20. General.
(a) Any person may petition the Department to modify or revoke any provision in parts 260 through 266, 268 and 273. 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 part 261, 264 or 265. Section 260.22 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from 261.3 or the lists of hazardous wastes in subpart D of part 261. Section 260.23 sets forth additional requirements for petitions to amend 40 CFR 273 to include additional hazardous wastes or categories of hazardous waste as universal waste. (revised 11/90; 12/92; 5/96).
(b) Each petition must be submitted to the Department 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 Department 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 State Register for written public comment.
(d) Upon the written request of any interested person, the Department may, at its 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 persons views. The Department may in any case decide on its own motion to hold an informal public hearing.

(e) After evaluating all public comments the Department will make a final decision by publishing in the State Register a regulatory amendment or a denial of the petition.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1995; State Register Volume 20, Issue No. 5, eff May 24, 1996.

260.21. Petitions for equivalent testing or analytical methods.

(a) Any person seeking to add a testing or analytical method to part 261, 264, 265 or 266 may petition for a regulatory amendment under this section and 260.20. To be successful, the person must demonstrate to the satisfaction of the Department and the Regional Administrator of EPA that the proposed method is equal to or superior to the corresponding method prescribed in 261, 264 and 265, in terms of its sensitivity, accuracy, and precision (i.e., reproducibility) (12/92).

(b) Each petition must include, in addition to the information required by section 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 R.61–79.261, R.61–79.264, or R.61–79.265 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 Department and the Regional Administrator may request any additional information on the proposed method which he may reasonably require to evaluate the method.

(d) If the USEPA amend the regulations to permit use of a new testing method, the method will be incorporated in “Test Methods for Evaluating Solid Waste: Physical/Chemical Methods,” SW–846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, DC 20460. As the Federal Regulations incorporate new testing methods, these will be incorporated by reference.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1995; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 28, Issue No. 6, eff June 25, 2004.

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 261 subpart D may petition for a regulatory amendment under this section and section 260.20 to be successful:

(1) The petitioner must demonstrate to the satisfaction of the Department and to the Regional Administrator of EPA that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and

(2) Based on a complete application, the Department and the Regional Administrator must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of subpart C of 261.
(b) The procedures in this Section and 260.20 may also be used to petition the Department and the Regional Administrator for a regulatory amendment to exclude from 261.3(a)(2)(ii) or (c), a waste which is described in these Sections and is either 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. 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 must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of subpart C of part 261. (11/90; 12/92)

(c) If the waste is listed with codes “I,” “C,” “R,” or “E” in 261 subpart D (moved 11/90),

(1) the petitioner must show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in 261.21, 261.22, 261.23, or 261.24 using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in 261.21, 261.22, 261.23, or 261.24 using any applicable methods prescribed therein;

(2) Based on a complete application, the Department and the Regional Administrator must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of subpart C of 261.

(d) If the waste is listed with code “T” in 261 subpart D, (11/90)

(1) The petitioner must demonstrate that the waste:

   (i) Does not contain the constituent or constituents (as defined in appendix VII of 261) that caused the Department to list the waste, using the appropriate test methods prescribed in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW–846, as incorporated by reference in 261.11; or

   (ii) Although containing one or more of the hazardous constituents (as defined in appendix VII of 261) that caused the Department and the EPA to list the waste, does not meet the criterion of 261.11 (a)(3) when considering the factors used by the Department and the EPA in 261.11(a)(3)(i) through (xi) under which the waste was listed as hazardous; and

(2) Based on a complete application, the Department and the Regional Administrator must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and, (11/90; 12/92)

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in Sections 261.21, 261.22, 261.23, and 261.24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be hazardous waste by operation of Subpart C of R.61–79.261.

(e) If the waste is listed with the code “H” in subpart D (12/92; 12/93):

(1) Does not meet the criterion of R.61–79.261.11 (a)(2);

(2) Based on a complete application, the Department and the Regional Administrator must determine, where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in R.61–79.261.21, 261.22, 261.23, and 261.24 using any applicable methods prescribed therein; and

(4) A waste which is so excluded, however, still may be hazardous waste by operation of Subpart C of R.61–79.261.
(f) A waste which is excluded under paragraphs (a), (c), (d), and (e) still may be a hazardous waste by operation of R.61–79.261 Subpart C.

(g) [Reserved]

(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 Section 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 factors in R.61–79.261.11(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 Department and the Regional Administrator may request any additional information which it 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 Department and the Regional 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) [Removed 12/92]

Editorial Note: For information on the availability of a guidance manual for petitions to delist hazardous wastes, see 50 FR 21607, May 28, 1985.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 28, Issue No. 6, eff June 25, 2004.

260.23. Petitions to amend 40 CFR part 273 to include additional hazardous wastes.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of 40 CFR 273 may petition for a regulatory amendment under this section, 40 CFR 260.20, and subpart G of 40 CFR part 273.
(b) To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that regulation under the universal waste regulations of 40 CFR part 273: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by 40 CFR 260.20(b). The petition should also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or category of waste addressed in the petition.

(c) The Administrator will grant or deny a petition using the factors listed in 40 CFR 273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Administrator may request additional information needed to evaluate the merits of the petition.

HISTORY: Added by State Register Volume 20, Issue No. 5, eff May 24, 1996.

260.30. Variances from classification as a solid waste.
In accordance with the standards and criteria in Section 260.31 and the procedures in Section 260.33 the Department may determine on a case by case basis that the following recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in R.61–79.261.1(c)(8);

(b) Materials that are reclaimed and then reused within the original production process in which they were generated; and (revised 5/96)

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.


260.31. Standards and criteria for variances from classification as a solid waste.
(a) The Department may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Department’s decision will be based on the following criteria: (revised 5/96)

(1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

(3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) The extent to which the material is handled to minimize loss; and

(5) Other relevant factors.

(b) The Department may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria: (revised 5/96)

(1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) The extent to which the material is handled before reclamation to minimize loss;

(3) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
(4) The location of the reclamation operation in relation to the production process;

(5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) Whether the person who generates the material also reclaims it; and

(7) Other relevant factors.

(c) The Department may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in 260.43 of this part and on whether all of the following decision criteria are satisfied:

(1) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(2) Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) Whether there is a market for partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading);

(5) Whether the partially-reclaimed material is handled to minimize loss.

(6) Other relevant factors.

HISTORY: Added by State Register Volume 10, Issue No. 1, eff January 24, 1986. Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 40, Issue No. 5, Doc. No. 4646, eff May 27, 2016.

260.32. Variance to be classified as a boiler.

In accordance with the standards and criteria in Section 260.10 (definition of “boiler”), and the procedures in Section 260.33, the Department may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in Section 260.10, after considering the following criteria:

(a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and

(c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(d) The extent to which exported energy is utilized; and

(e) The extent to which the device is in common and customary use as a “boiler” functioning primarily to produce steam, heated fluids, or heated gases; and

(f) Other factors, as appropriate.


260.33. Procedures for variances from classification as a solid waste or to be classified as a boiler, or for non-waste determinations.

The Department will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers: (revised 5/96)
(a) The applicant must apply to the Department for the variance. The application must address the relevant criteria contained in sections 260.31 or 260.32 (revised 12/92; 5/96).

(b) The Department will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the recycler is located. The Department will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at its discretion. The Department will issue a final decision after receipt of comments and after the hearing (if any). (revised 5/96)

(c) In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in Section 260.31, Section 260.32, or Section 260.34 upon which a variance or non-waste determination has been based, the applicant must send a description of the change in circumstances to the Administrator. The Administrator may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination.

(d) Variances and non-waste determinations shall be effective for a fixed term not to exceed ten (10) years. No later than six (6) months prior to the end of this term, facilities must re-apply for a variance or non-waste determination. If a facility re-applies for a variance or non-waste determination within six (6) months, the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the Administrator.

(e) Facilities receiving a variance or non-waste determination must provide notification as required by Section 260.42 of this chapter.


260.40. Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

(a) The Department may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in R.61–79.261.6(a)(2)(iii) should be regulated under R.61–79.261.6(b) and (c) of this chapter. The basis for this decision is that if the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Department will consider the following factors:

(1) The types of materials accumulated or stored and the amounts accumulated or stored;
(2) The method of accumulation or storage;
(3) The length of time the materials have been accumulated or stored before being reclaimed;
(4) Whether any contaminants are being released into the environment, or are likely to be so released; and
(5) Other relevant factors.

The procedures for this decision are set forth in Section 260.41 below of these Regulations.


260.41. Procedures for case-by-case regulation of hazardous waste recycling activities.

The Department will use the following procedures when determining whether to regulate hazardous waste recycling activities described in R.61–79.261.6(a)(2)(iii) under the provisions of R.61–79.261.6(b) and (c), rather than under the provisions of subpart F of R.61–79.266.

(a) If a generator is accumulating the waste, the Department will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of subparts A, C, D, and E of R.61–79.262. The notice will become final within thirty (30)
days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Department will hold a public hearing. The Department will provide notice of the hearing to the public and allow public participation at the hearing. The Department will issue a final order after the hearing stating whether or not compliance with part 262 is required. The order becomes effective 30 days after service of the decision unless the Department specifies a later date or unless review by the Department is requested. The order may be appealed to the Department by any person who participated in the public hearing. The Department may choose to grant or to deny the appeal. Final Department action occurs when a final order is issued and Department review procedures are exhausted.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of R.61–79.270 and R.61–79.124. The owner or operator of the facility must apply for a permit under these regulations within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Department’s decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Department’s determination. The question of whether the Department’s decision was proper will remain open for consideration during the public comment period discussed under 124.11 of this chapter and in any subsequent hearing.


260.42. Notification requirement for hazardous secondary materials.

(a) Facilities managing hazardous secondary materials under Sections 260.30, 261.4(a)(23), 261.4(a)(24), or 261.4(a)(27) must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Regional Administrator using EPA Form 8700–12 that includes the following information:

1. The name, address, and EPA ID number (if applicable) of the facility;
2. The name and telephone number of a contact person;
3. The NAICS code of the facility;
4. The regulation under which the hazardous secondary materials will be managed;
5. When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
6. A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);
7. For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
8. The quantity of each hazardous secondary material to be managed annually; and
9. The certification (included in EPA Form 8700–12) signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the Regional Administrator within thirty (30) days using EPA Form 8700–12. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.


260.43. Legitimate recycling of hazardous secondary materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not
legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph.

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

   (i) Contributes valuable ingredients to a product or intermediate; or
   (ii) Replaces a catalyst or carrier in the recycling process; or
   (iii) Is the source of a valuable constituent recovered in the recycling process; or
   (iv) Is recovered or regenerated by the recycling process; or
   (v) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

   (i) Sold to a third party; or
   (ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(4) The product of the recycling process must be comparable to a legitimate product or intermediate:

   (i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

      (A) The product of the recycling process does not exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit, and
      (B) The concentrations of any hazardous constituents found in appendix VIII of part 261 of this chapter that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

   (ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

      (A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (for example, commodity specification grades for common metals), or
      (B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (for example, closed loop recycling).

   (iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph (a)(4)(i) or (ii) of this section, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Regional Administrator of this activity using EPA Form 8700–12.

Subpart A

General

261.1. Purpose and scope.

(a) This part identifies those solid wastes which are subject to regulation as hazardous wastes under Regulations R.61-79.124, .262 through .266, .268, .270, and 40 CFR 271, and which are subject to the notification requirements of the South Carolina Hazardous Waste Management Act § 44-56-120 and section 3010 of RCRA. In this part: (revised 11/90; 12/92)

1. Subpart A defines the terms “solid waste” and “hazardous waste”, identifies those wastes which are excluded from regulation under R.61-79.262 through 266, R.61-79.268, and R.61-270, and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.

2. Subpart B sets forth the criteria used by the Department to identify characteristics of hazardous waste and to list particular hazardous wastes.

3. Subpart C identifies characteristics of hazardous waste.

4. Subpart D lists particular hazardous wastes.

(b)(1) The definition of solid waste contained in this part applies only to wastes that also are hazardous for purposes of the regulations implementing the South Carolina Hazardous Waste Management Act 44-56-10 et seq. and Subtitle C of RCRA. For example, it does not apply to materials (such as nonhazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled (revised 12/92; 12/93).

(b)(2) This part identifies only some of the materials which are solid wastes and hazardous wastes under SCHWMA 44–56–90 and sections 3007, 3013, and 7003 of RCRA. A material which is not defined as a solid waste in this part, or is not a hazardous waste identified or listed in this part, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of SCHWMA 44–56–90 and sections 3007 and 3013, the Department has reason to believe that the material may be a solid waste within the meaning of section 44–56–20(6) of the S.C. Code of Laws of 1976, as amended or a solid waste within the meaning of section 1004(27) of RCRA and a hazardous waste within the meaning of section 1004(5) of RCRA; or (11/90)

(ii) In the case of SCHWMA 44–56–50 or Section 7003, the statutory elements are established.

(c) For the purposes of sections 261.2 and 261.6:

1. A “spent material” is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

2. “Sludge” has the same meaning used in R.61-79.260.10.

3. A “by-product” is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public’s use and is ordinarily used in the form it is produced by the process.

4. A material is “reclaimed” if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

5. A material is “used or reused” if it is either:

(i) Employed as an ingredient (including use as an inter-mediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material
are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(ii) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(6) “Scrap metal” is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

(7) A material is “recycled” if it is used, reused, or reclaimed.

(8) A material is “accumulated speculatively” if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled, and that during the calendar year (commencing on January 1) the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (for example, slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under Section 261.4(c) are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculated. Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) “Excluded scrap metal” is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) “Processed scrap metal” is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (261.4(a)(14)).

(11) “Home scrap metal” is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) “Prompt scrap metal” is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

(d) [Reserved 5/06]

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 13, Issue No. 5, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 25, 1990; State Register Volume 16, Issue No. 2, eff December 25, 1992; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1993; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 25, Issue No. 11, eff November 26, 1999; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 36, Issue No. 9, eff September 28, 2012; State Register Volume 40, Issue No. 5, Doc. No. 4646, eff May 27, 2016.

261.2. Definition of solid waste.

(a)(1) A solid waste is any discarded material that is not excluded by Section 261.4(a) or that is not excluded by variance granted under R.61-79.260.30 and 260.31.

(2) A discarded material is any material which is:

(i) Abandoned, as explained in paragraph (b) of this section; or

(ii) Recycled, as explained in paragraph (c) of this section; or
(iii) Considered inherently waste-like, as explained in paragraph (d) of this section; or
(iv) A “military munition” identified as a solid waste in 266.202.

(b) Materials are solid waste if they are abandoned by being:
   (1) Disposed of; or
   (2) Burned or incinerated; or
   (3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or
   (4) Sham recycled, as explained in paragraph (g) of this section.

(c) Materials are solid wastes if they are recycled—or accumulated, stored, or treated before recycling—as specified in paragraphs (c)(1) through (c)(4).
   (1) Used in a manner constituting disposal.
      (i) Materials noted with an “x” in Column 1 of Table 1 are solid wastes when they are:
         (A) Applied to or placed on the land in a manner that constitutes disposal; or
         (B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).
      (ii) However, commercial chemical products listed in Section 261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.
   (2) Burning for energy recovery.
      (i) Materials noted with an “x” in column 2 of Table 1 are solid wastes when they are:
         (A) Burned to recover energy;
         (B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).
      (ii) However, commercial chemical products listed in Section 261.33 are not solid wastes if they are themselves fuels.
   (3) Reclaimed. Materials noted with an “x” in column 3 of Table 1 are solid wastes when reclaimed (except as provided under 261.4(a)(17)). Materials noted with a “.....” in column 3 of Table 1 are not solid wastes when reclaimed. (11/99; 8/00).
   (4) Accumulated speculatively. Materials noted with an “x” in column 4 of Table 1 are solid wastes when accumulated speculatively.

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<tr>
<td>By-products (listed in Section 261.31 or 261.32)</td>
<td>(10) (*)</td>
<td>(11) (*)</td>
<td>(12) (*)</td>
</tr>
<tr>
<td>By-products exhibiting a characteristic of hazardous waste</td>
<td>(13) (*)</td>
<td>(14) (*)</td>
<td>(15) (*)</td>
</tr>
<tr>
<td>Commercial chemical products listed in Section 261.33</td>
<td>(16) (*)</td>
<td>(17) (*)</td>
<td>(18) (*)</td>
</tr>
<tr>
<td>Scrap metal that is not excluded under 261.4(a)(13)</td>
<td>(19) (*)</td>
<td>(20) (*)</td>
<td>(21) (*)</td>
</tr>
</tbody>
</table>
Note: The terms “spent materials,” “sludges,” “by-products,” “scrap metal” and “processed scrap metal” are defined in 261.1

d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

1. Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

2. Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subparts C or D of this part, except for brominated material that meets the following criteria: (revised 12/92; 12/93).

   i. The material must contain a bromine concentration of at least 45%; and (added 12/93)

   ii. The material must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and (added 12/93)

   iii. The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping). (added 12/93)

(3) The Department will use the following criteria to add wastes to that list:

   i. (A) The materials are ordinarily disposed of, burned, or incinerated; or

   (B) The materials contain toxic constituents listed in Appendix VIII of R.61-79.261 of these Regulations and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

   ii. The material may pose a substantial hazard to human health and the environment when recycled.

e) Materials that are not solid waste when recycled.

1. Materials are not solid wastes when they can be shown to be recycled by being:

   i. Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed or land disposed; or (revised 5/96)

   ii. Used or reused as effective substitutes for commercial products; or

   iii. Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 261.4(a)(17) apply rather than this paragraph. (5/96, 11/99)

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs (e)(1)(i)-(iii):

   i. Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

   ii. Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

   iii. Materials accumulated speculatively; or

   iv. Materials listed in paragraphs (d)(1) and (d)(2) of this section. (12/93)

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing the SC Hazardous Waste Management Act Sections 44–56–10 et seq. and Subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so (revised 12/93).
(g) Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in Section 260.43.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2005; State Register Volume 36, Issue No. 9, eff September 28, 2012; State Register Volume 40, Issue No. 5, Doc. No. 4646, eff May 27, 2016.

261.3. Definition of hazardous waste.

(a) A solid waste, as defined in 261.2, is a hazardous waste if: (11/99)

(1) It is not excluded from regulation as a hazardous waste under 261.4(b) and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in subpart C of this part. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under 261.4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under subpart C is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table 1 to 261.24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred, or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture. (11/90; 12/93)

(ii) It is listed in subpart D and has not been excluded from the lists in subpart D under 260.20 and 260.22 of this chapter.

(iii) [Reserved] (11/90; 12/93)

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in subpart D of this part and has not been excluded from this paragraph (a)(2) of this section under 260.20 and 260.22, paragraph (g) of this section, or paragraph (h) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in subpart D of this part are not hazardous wastes (except by application of paragraph (a)(2) (i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under the S. C. Pollution Control Act Section 48–1–10 et seq., of the S. C. Code of Laws of 1976, as amended and under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and: (11/90; 12/93)

(A) One or more of the following spent solvents listed in 261.31 - benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived-from the combustion of these spent solvents--- Provided, that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility’s wastewater treatment or pretreatment system does not exceed 1 part per million; or the total measured concentration of these solvents entering the headworks of the facility’s wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Department. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility’s operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and
methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Department. The Department may reject the sampling and analysis plan if the Department finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Department rejects the sampling and analysis plan or if the Department finds that the facility is not following the sampling and analysis plan, the Department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in Section 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived from the combustion of these spent solvents - provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility’s wastewater treatment or pretreatment system does not exceed 25 parts per million; or the total measured concentration of these solvents entering the headworks of the facility’s wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the the Department as the context requires, or an authorized representative. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility’s operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Department. The Department may reject the sampling and analysis plan if the Department finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Department rejects the sampling and analysis plan or if the Department finds that the facility is not following the sampling and analysis plan, the Department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(C) One of the following wastes listed in 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil water solids separation heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050), crude oil storage tank sediment from petroleum refining operations (EPA Hazardous Waste No. K169), clarified slurry oil tank sediment and/or in-line filter separation solids from petroleum refining operations (EPA Hazardous Waste No. K170), spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and spent hydrorefining catalyst (EPA Hazardous Waste No. K172); or

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in 261.31 through 261.33, arising from de minimis losses of these materials. For purposes of this paragraph (a)(2)(iv)(D), “de minimis” losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in 261.31 through 261.32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in subpart D of this part must either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit
application or submission to its pretreatment control authority the constituents for which each waste was listed (in 261 Appendix VII) of this part; and the constituents in the table “Treatment Standards for Hazardous Wastes” in 268.40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority must be placed in the facility's on-site files; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in subpart D of this part, Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or (revised 5/96)

(F) One or more of the following wastes listed in 261.32 - wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157) - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight OR the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Department or an authorized representative. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Department. The Department may reject the sampling and analysis plan if the Department finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Department rejects the sampling and analysis plan or if the Department finds that the facility is not following the sampling and analysis plan, the Department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived-from the treatment of one or more of the following wastes listed in 261.32 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156). - Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter OR the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Department or an authorized representative. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodol-
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(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter). EPA Publication SW-846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954, 202–783–3238 (document number 955–001–00000–1).

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Subpart D when the waste first meets the listing description set forth in Subpart D.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in subpart D is first added to the solid waste.

(3) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in Subpart C.

c) Unless and until it meets the criteria of paragraph (d) of this part:

(1) A hazardous waste will remain a hazardous waste.

(ii) Except as otherwise provided in paragraph (c)(2)(ii), (g) or (h), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal. 6/02)

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

(B) Waste from burning any of the materials exempted from regulation by section 261.6(a)(3)(ii) and (iv) (12/92; 5/96).

(C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in paragraphs (6), (7), and (13) of the
definition for Industrial furnace’’ in 260.10), that are disposed in subtitle D units, provided that
these residues meet the generic exclusion levels identified in the tables in this paragraph for all
constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be
incorporated in a facility’s waste analysis plan or a generator’s self-implementing waste analysis
plan; at a minimum, composite samples of residues must be collected and analyzed quarterly
and/or when the process or operation generating the waste changes. Persons claiming this
exclusion in an enforcement action will have the burden of proving by clear and convincing
evidence that the material meets all of the exclusion requirements. (revised 12/92; 12/93)

(2) A one-time notification and certification must be placed in the facility’s files and sent to
the Department for K061, K062, or F006 HTMR residues that meet the generic exclusion
levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units.
The notification and certification that is placed in the generators or treaters files must be
updated if the process or operation generating the waste changes and/or if the subtitle D unit
receiving the waste changes. However, the generator or treater need only notify the Depart-
ment on an annual basis if such changes occur. Such notification and certification should be
sent to the Department by the end of the calendar year, but no later than December 31. The
notification must include the following information: The name and address of the subtitle D
unit receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability
group(s) at the initial point of generation; and, the treatment standards applicable to the
waste at the initial point of generation. The certification must be signed by an authorized
representative and must state as follows: “I certify under penalty of law that the generic
exclusion levels for all constituents have been met without impermissible dilution and that no
characteristic of hazardous waste is exhibited. I am aware that there are significant penalties
for submitting a false certification, including the possibility of fine and imprisonment.” (added
12/93; revised 5/96)

(D) Biological treatment sludge from the treatment of one of the following wastes listed in
261.32-organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates,
and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous
Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes

(E) Catalyst inert support media separated from one of the following wastes listed in 261.32
Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining

<table>
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<tr>
<th>CONSTITUENT</th>
<th>Maximum for any single composite sample (mg/l)</th>
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</thead>
<tbody>
<tr>
<td><strong>Antimony</strong></td>
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<tr>
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<td>0.020</td>
</tr>
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<td>Zinc</td>
<td>70.</td>
</tr>
</tbody>
</table>

(d) Any solid waste described in paragraph (c) is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in subpart C. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of part 268, even if they no longer exhibit a characteristic at the point of land disposal.)

(2) In the case of a waste which is a listed waste under Subpart D, contains a waste listed under Subpart D or is derived from a waste listed in Subpart D, it also has been excluded from paragraph (c) under R.61-79.260.20 and 260.22.

(e) For the purposes of this regulation the wastes listed in Appendix XI will be considered hazardous.

(f) Notwithstanding paragraphs (a) through (d) of this section and provided the debris as defined in part 268 of this chapter does not exhibit a characteristic identified at subpart C of this part, the following materials are not subject to regulation under 260, 261 to 266, 268, or 270: (added 12/93)

(1) Hazardous debris as defined in part 268 of this chapter that has been treated using one of the required extraction or destruction technologies specified in Table 1 of § 268.45 of this chapter; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or (added 12/93)

(2) Debris as defined in part 268 of this chapter that the Department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste. (added 12/93)

(g)(1) A hazardous waste that is listed in subpart D of this part solely because it exhibits one or more characteristics of ignitability as defined under 261.21, corrosivity as defined under 261.22, or reactivity as defined under 261.23 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in subpart C of this part.

(2) The exclusion described in paragraph (g)(1) of this section also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in subpart D of this part solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section; and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in subpart D of this part solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (c)(2)(i) of this section.

(3) Wastes excluded under this section are subject to part 268 of this chapter (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under 261.4(b)(7) and a hazardous waste listed in Subpart D solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C for which the hazardous waste listed in Subpart D was listed.

(h)(1) Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of 266, Subpart N (“eligible radioactive mixed waste”).

(2) The exemption described in paragraph (h)(1) of this section also pertains to:
(i) Any mixture of a solid waste and an eligible radioactive mixed waste; and
(ii) Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.

(3) Waste exempted under this section must meet the eligibility criteria and specified conditions in 266.225 and 266.230 (for storage and treatment). Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986 Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2003; State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 36, Issue No. 9, eff September 28, 2012.

**261.4. Exclusions.**

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of this part:

(1)(i) Domestic sewage; and
(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment. “Domestic sewage” means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 48-1-10 et seq., of the S. C. Code of Laws of 1976, and section 402 of the Clean Water Act, as amended.

[Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment] (revised 12/92).

(3) Irrigation return flows.


(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Section 261.1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Section 261.1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;
(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);
(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and
(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and
(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.
(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in paragraphs (a)(9)(i) and (a)(9)(ii) of this section, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in part 265, subpart W of this chapter, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: “I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation.” The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Department for reinstatement. The Department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke byproducts processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in section 261.24 of this part when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or are mixed with coal tar prior to the tar’s sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except, as provided in paragraph (a)(12)(ii) of this section, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under subpart D of this part, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii)Recovered oil that is recycled in the same manner and with the same conditions as described in paragraph (a)(12)(i) of this section. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172.) Recovered oil does not include oil-bearing hazardous wastes listed in subpart D of this part; however, oil
recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 40 CFR 279.1.

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(14) Shredded circuit boards being recycled provided that they are:

- Stored in containers sufficient to prevent a release to the environment prior to recovery; and
- Free of mercury switches, mercury relays and nickel cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) [Reserved]

(17) Spent materials (as defined in 261.1) (other than hazardous wastes listed in subpart D of this part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

- The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;
- The spent material is not accumulated speculatively;
- Except as provided in paragraph (a)(17)(iv) of this section, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in 260.10), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.
- The Department may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Department must provide notice and the opportunity for comment to all persons potentially interested in the determina-
tion. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Department, providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process. (8/00)

(vi) For purposes of 261.4(b)(7) mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in 261.21) and/or toxicity for benzene (261.24, waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An “associated organic chemical manufacturing facility” is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. “Petrochemical recovered oil” is oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in 261.1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in 261.1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

   (A) Submit a one-time notice to the Department which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

   (B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthan materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

   (1) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

   (2) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and
(3) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of this paragraph (a)(20).

(D) Maintain at the generator’s or intermediate handler’s facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

1. Name of the transporter and date of the shipment;

2. Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

3. Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in paragraph (a)(20)(ii)(B) of this section.

(B) Submit a one-time notification to the Department that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Department an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in paragraph (a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of 264 and 265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under paragraph (a)(20) of this section, provided that:

(i) The fertilizers meet the following contaminant limits:

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>0.3</td>
</tr>
<tr>
<td>Cadmium</td>
<td>1.4</td>
</tr>
<tr>
<td>Chromium</td>
<td>0.6</td>
</tr>
<tr>
<td>Lead</td>
<td>2.8</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.3</td>
</tr>
</tbody>
</table>

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins
no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of paragraph (a)(21)(ii) of this section. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;
(B) The names and qualifications of the person(s) taking the samples;
(C) A description of the methods and equipment used to take the samples;
(D) The name and address of the laboratory facility at which analyses of the samples were performed;
(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and
(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this paragraph (a)(21).

(22) Used Cathode Ray Tubes (CRTs)

(i) Used, intact CRTs as defined in Sec. 260.10 of this chapter are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in 261.1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in Sec. 260.10 of this chapter are not solid wastes when exported for recycling provided that they meet the requirements of Sec. 261.40.

(iii) Used, broken CRTs as defined in Sec. 260.10 of this chapter are not solid wastes provided that they meet the requirements of 261.39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of 261.39(c).

(23) [Reserved and Withdrawn]

(24) [Withdrawn]

(25) [Reserved]

(26) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that:

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled “Excluded Solvent-Contaminated Wipes.” The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in Section 260.10 of this chapter.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in parts 260 through 273:
(v) Generators must maintain at their site the following documentation:
   (A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminat-
        ed wipes;
   (B) Documentation that the 180-day accumulation time limit in 261.4(a)(26)(ii) is being met;
   (C) Description of the process the generator is using to ensure the solvent-contaminated wipes
        contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of
        being transported off-site for laundering or dry cleaning;
   (vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if
        any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous
wastes:

(1) Household waste, including household waste that has been collected, transported, stored,
treated, disposed, recovered (e.g., refuse-derived fuel) or reused. “Household waste” means any
material (including garbage, trash and sanitary wastes in septic tanks) derived from households
(including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew
quarters, campgrounds, picnic grounds and day use recreation areas). A resource recovery facility
managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or
otherwise managing hazardous wastes for the purposes of these regulations, if such facility:
   (i) Receives and burns only
      (A) Household waste (from single and multiple dwellings, hotels, motels, and other residential
          sources) and
      (B) Solid waste from commercial or industrial sources that does not contain hazardous waste;
      and
   (ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has
        established contractual requirements or other appropriate notification or inspection procedures to
        assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:
   (i) The growing and harvesting of agricultural crops.
   (ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site if such overburden is handled in compliance
with all applicable provisions of the S. C. Mining Act, Section 48–20–10 et seq., S. C. Code of Laws,
1976, as amended.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated
primarily from the combustion of coal or other fossil fuels, except as provided by 266.112 for
facilities that burn or process hazardous waste (revised 12/92).

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, develop-
ment, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are
listed in Subpart D due to the presence of chromium, which do not fail the test for the Toxicity
Characteristic for any other constituent or are not listed due to the presence of any other
constituent, and which do not fail the test for any other characteristic, if it is shown by a waste
generator or by waste generators that:
      (A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
      (B) The waste is generated from an industrial process which uses trivalent chromium
          exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
      (C) The waste is typically and frequently managed in non-oxidizing environments.
   (ii) Specific wastes which meet the standard in paragraphs (b)(6)(i) (A), (B), and (C) (so long as
they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit
any other characteristic) are: (amended 11/90)
(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; no beamhouse; through-the-blue; and shearling. (amended 11/90)

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO\textsubscript{2} pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by 266.112 for facilities that burn or process hazardous waste. For purposes of 261.4(b)(7), beneficiation of ores and minerals is restricted to the following activities: Crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching. For the purposes of 261.4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes:

(i) For the purposes of 261.4(b)(7), beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching. (12/92)

(ii) For the purposes of 261.4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;
(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
(I) Slag tailings from primary copper processing;
(J) Fluorogypsum from hydrofluoric acid production;
(K) Process wastewater from hydrofluoric acid production;
(L) Air pollution control dust/sludge from iron blast furnaces;
(M) Iron blast furnace slag;
(N) Treated residue from roasting/leaching of chrome ore;
(O) Process wastewater from primary magnesium processing by the anhydrous process;
(P) Process wastewater from phosphoric acid production;
(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
(S) Chloride process waste solids from titanium tetrachloride production;
(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under paragraph (b) of this section if the owner or operator:  
(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,
(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by 266.112 for facilities that burn or process hazardous waste (revised 12/92).

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason, if the waste is generated by persons who utilize the arsenical-treated wood and wood product for these materials’ intended end use. (amended 11/90; 12/92)

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of Section 261.24 [Hazardous Waste Codes D016 through D043 only] and are subject to the corrective action requirements of 40 CFR 280.

(11) [Blank]

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Subpart D of this part if these oil filters have been gravity hot-drained using one of the following methods:
   (i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;
   (ii) Hot-draining and crushing;
   (iii) Dismantling and hot-draining; or
   (iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:  
   (i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181, if these wastes had been generated after the effective date of the listing;  
   (6/03)
(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169–K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2005, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends. (6/03)

(16) [Reserved]

(17) [Reserved]

(18) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that:

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled “Excluded Solvent-Contaminated Wipes.” The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in section 260.10 of this chapter.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in parts 260 through 273;

(v) Generators must maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in 261.4(b)(18)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal:

(A) To a municipal solid waste landfill regulated under part 258, including 258.40, or to a hazardous waste landfill regulated under parts 264 or 265; or

(B) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under parts 264, 265, or 266 subpart H.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or
vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under R.61-79.262 through R.61-79.266, R.61-79.268, R.61-79.270, and R.61-79.124 or the notification requirements of South Carolina Hazardous Waste Management Act 44-56-120 and section 3010 RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials. (amended 11/90)

(d) Samples. (1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this part or R.61-79.262 through R.61-79.266, R.61-79.268, R.61-79.270, or R.61-79.124 or to the notification requirements of Section 3010 of RCRA and the South Carolina Hazardous Waste Management Act 44-56-120 when: (amended 11/90)

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in paragraph (d)(1)(i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(i) Comply with U. S. Department of Transportation (DOT), U. S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector’s name, mailing address, and telephone number;

(2) The laboratory’s name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1).

(e) Treatability Study Samples.

(1) Except as provided in paragraph (e)(2) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in section 260.10, are not subject to any requirement of parts 261 through 263 of this chapter or to the notification requirements of SC 44-56-120 and Section 3010 of RCRA, nor are such samples included in the quantity determinations of 261.5 and 262.34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.
(2) The exemption in paragraph (e)(1) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in “treatability studies”) no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), South Carolina Public Service Commission or any other applicable shipping requirements; or

(B) If the DOT, USPS, South Carolina Public Service Commission or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(1) The name, mailing address, and telephone number of the originator of the sample;

(2) The name, address, and telephone number of the facility that will perform the treatability study;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under 261.4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(1) The amount of waste shipped under this exemption;

(2) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) The date the shipment was made; and

(4) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under paragraph (e)(2)(v)(C) of this section in its annual report.

(3) The Department may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Department may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2)(i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste;

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.
(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treated process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e)(1) and (e)(2)(iii) through (vi) of this section. The generator or sample collector must apply to the Department and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Department considers necessary.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to any requirement of this part, part 124, parts 262 through 266, 268, and 270, or to the notification requirements SCHWMA 44-56-120 and Section 3010 of RCRA provided that the conditions of paragraphs (f) (1) through (11) of this section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f) (1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f) (1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU. (amended 11/90)

(1) No less than 45 days before conducting treatability studies, the facility notifies the Department in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of “as received” media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other “as received” hazardous waste is subject to initiation of treatment in all treatability studies in any single day. “As received” waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of “as received” hazardous waste stored as the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials (including nonhazardous solid waste) added to “as received” hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from
treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for 3 years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;
(ii) The date the shipment was received;
(iii) The quantity of waste accepted;
(iv) The quantity of “as received” waste in storage each day;
(v) The date the treatment study was initiated and the amount of “as received” waste introduced to treatment each day;
(vi) The date the treatability study was concluded;
(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, onsite, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Department by March 15 of each year, that includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;
(ii) The types (by process) of treatability studies conducted;
(iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);
(iv) The total quantity of waste in storage each day;
(v) The quantity and types of waste subjected to treatability studies;
(vi) When each treatability study was conducted;
(vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under 261.3 and, if so, are subject to Parts 261 through 268, and Part 270 of this Chapter, unless the residues and unused samples are returned to the sample originator under the 261.4(e) exemption.

(11) The facility notifies the Department by letter when the facility is no longer planning to conduct any treatability studies at the site.

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

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

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 3, eff March 27, 1987; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 17, eff December 24, 1993; State Register Volume 18, Issue No. 12, eff December 23, 1994; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 23, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2003; State Register Volume 28, Issue No. 6, eff June 25, 2004; State Register Volume 31, Issue No. 2, eff February 23, 2007; State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 33, Issue No. 6, eff June 26, 2009; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 36, Issue No. 9, eff September 28, 2012; State Register Volume 38, Issue No. 6, Doc. No. 4541, eff June 26, 2015; State Register Volume 40, Issue No. 5, Doc. No. 4646, eff May 27, 2016.

261.5. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month. (amended 6/89)

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) a conditionally exempt small quantity generator’s hazardous wastes are not subject to regulation under R.61-79.262 through R.61-79.266, R.61-79.268, R.61-79.270 and R.61-79.124, and the notification requirements of Section 3010 RCRA and the notification requirements of the South Carolina Hazardous Waste Management Act and provided the generator complies with the requirements of paragraphs (f), (g), and (j).

(c) When making the quantity determinations of this part and R.61-79.262, the generator must include all hazardous waste that it generates, except hazardous waste that: (revised 5/96)

   (1) Is exempt from regulation under R.61-79.261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8; or (added 5/96)
   (2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in R.61-79.260.10; or (added 5/96)
   (3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under R.61-79.261.6(c)(2); or (added 5/96)
   (4) Is used oil managed under the requirements of R.61-79.261.6(a)(4) or (added 5/96)
   (5) Is spent lead-acid batteries managed under the requirements of R.61-79.266 subpart G; or (added 5/96)
   (6) Is universal waste managed under R.61-79.261.9 and R. 61–79.273; or
   (7) Is a hazardous waste that is an unused commercial chemical product (listed in part 261, subpart D or exhibiting one or more characteristics in part 261, subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to 262.213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in 262.200 of Part 262.

(d) In determining the quantity of hazardous waste he generates, a generator need not include:

   (1) His hazardous waste when it is removed from onsite storage; or
   (2) Hazardous waste produced by onsite treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or
   (3) Spent materials that are generated, reclaimed, and subsequently reused onsite, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under R.61-79.262 through R.61-79.266, R.61-79.268, R.61-79.270 and R.61-79.124 and the notification
requirements of the South Carolina Hazardous Waste Management Act § 44-56-120 and section 3010 of RCRA: (amended 11/90; 12/92)

(1) A total of one kilogram of acute hazardous wastes listed in sections 261.31 or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in sections 261.31 or 261.33(e).

[Comment: “Full regulation” means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.]

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

1. Sections 262.11 of R.61-79.262;

2. The generator may accumulate acute hazardous waste onsite. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e) (1) or (2) of this section, all of those accumulated wastes are subject to regulation under R.61-79.262 through R.61-79.266, R.61-79.268, R.61-79.270 and R.61-79.124 and the applicable notification requirements of Section 3010 RCRA and the applicable notification requirements of the South Carolina Hazardous Waste Management Act 44-56-120. The time period of R.61-79.262.34(a) for accumulation of wastes onsite, begins when the accumulated wastes exceed the applicable exclusion limit; (amended 11/90)

3. A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an onsite facility, or ensure delivery to an offsite storage, treatment or disposal facility, either of which, if located in the U.S., is:

   i. Permitted under R.61-79.270,


   iii. Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR 271;

   iv. Permitted, licensed, or registered by the Department to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to R.61–107.258; (revised 12/92; 5/96)

   v. Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in R.61–107.257.5 through 257.30; or

   vi. A facility which:

      A. Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

      B. Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

   (revised 5/96)

   vii. For universal waste managed under part 273, a universal waste handler or destination facility subject to the requirements of R.61–79.273. (added 5/96)

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

1. Sections 262.11 of R.61-79.262;

2. The conditionally exempt small quantity generator may accumulate hazardous waste onsite. If he accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of 263 through 266, 268, and 270 and 124, and the applicable notification requirements of section 3010 of RCRA. The time period of 262.34(d) for accumulation of wastes onsite begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms.
(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is: **

(i) Permitted under R.61-79.270;

(ii) In interim status under R.61-79.270 and R.61-79.265;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR 271 (revised 12/92);

(iv) Permitted, licensed, or registered by the Department to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to R.61–107.258; (revised 6/89; 2/92; 5/96)

(v) Permitted, licensed, or registered by the Department to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in R.61–107.257.5 through 257.30; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclams its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under part 273, a universal waste handler or destination facility subject to the requirements of R.61–79.273. (added 5/96)

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section unless the mixture meets any of the characteristics of hazardous waste identified in Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

(j) If a conditionally exempt small quantity generator’s wastes are mixed with used oil, the mixture is subject to R.61–107.279. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated. (6/89)

(k) [Reserved–moved to 262.42(b)]

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 15, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 36, Issue No. 3, eff March 23, 2012; State Register Volume 36, Issue No. 9, eff September 28, 2012.

261.6. Requirements for recyclable materials.

(a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled will be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of .266 and all applicable provisions in 268, 270 and .124

(i) Recyclable materials used in a manner constituting disposal (part 266, subpart C);

(ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of 264 or 265 (Part 266, Subpart H);

(iii) [Reserved 6/06]

(iv) Recyclable materials from which precious metals are reclaimed (40 CFR part 266, subpart F);

(v) Spent lead-acid batteries that are being reclaimed (40 CFR part 266, subpart G).
(3) The following recyclable materials are not subject to regulation under 262 through 266, or 268, 270 or 124 and are not subject to the notification requirements of the South Carolina Hazardous Waste Management Act 44–56–120 and section 3010 RCRA.

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in 262.58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in R.61-79.262 Sections 262.53, 262.56 (a)(1) through (4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Subpart E of R.61-79.262 and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under 261.4(a)(13). (10/01);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 261.4(a)(12); (10/01)

(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under R.61–79.107.279 and so long as no other hazardous wastes are used to produce the hazardous waste fuel; (12/92, 5/96, 6/03)

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under R.61–79.107.279; and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under R.61–79.107.279; and

(v) [Reserved 5/06]

(vi) Used oil that exhibits one or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery (2/92, 8/00, 9/01, 6/03)

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of parts 260 through 268, but is regulated under R.61–79.107.279.11. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed. (12/93)

(5) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in 262.58(a)(1)) for purpose of recovery is subject to the requirements of part 262, subpart H, if it is subject to either the federal manifesting requirements of Part 262, to the universal waste management standards of Part 273.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of R.61-79.262 and R.61-79.263 of these Regulations, and the notification requirements under 44-56-120 and Section 3010 of RCRA, except as provided in paragraph (a) of this section.
(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L, AA, BB and CC of R.61-79.264 and R.61-79.265, and under R.61-79.266, R.61-79.268, R.61-79.270, and R.61-79.124 and the notification requirements of section 3010 RCRA and the notification requirements of the South Carolina Hazardous Waste Management Act 44-56-120, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in 261.6(d).) (amended 11/90; 12/92)

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

(i) Notification requirements under SCHWMA 44-56-120, and section 264.5 or section 265.5 and section 3010 of RCRA;

(ii) Sections 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies) of R.61-79.265.

(iii) Section 261.6(d) of this chapter.

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of part 264 or 265 of this chapter.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 13, Issue No. 6, eff June 25, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1993; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 25, Issue No. 10, eff October 26, 2001; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2003; State Register Volume 28, Issue No. 6, eff June 25, 2004; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 36, Issue No. 9, eff September 28, 2012.

261.7. Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either (i) an empty container or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under R.61-79.261 through R.61-79.266, or R.61-79.268, R.61-79.124, and R.61-79.270 or to the notification requirements of Section 3010 RCRA and the South Carolina Hazardous Waste Management Act 44-56-120. (amended 11/90)

(2) Any hazardous waste in either (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under R.61-79.261 through R.61-79.266, and R.61-79.268, R.61-79.124, and R.61-79.270 and to the notification requirements of section 3010 RCRA and the South Carolina Hazardous Waste Management Act 44-56-120. (amended 11/90)

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in sections 261.31 or 261.33(e) of this regulation, is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, or

(iii)(A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in sections 261.31 or 261.33(e) of this regulation is empty if:
(i) the container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 31, Issue No. 2, eff February 23, 2007; State Register Volume 36, Issue No. 9, eff September 28, 2012.

261.8. PCB wastes regulated under Toxic Substance Control Act.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under 40 CFR 761 and that are hazardous only because they fail the test for the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) are exempt from regulation under parts 261 through 266, and parts 268, 270, and 124, and the notification requirements of section 3010 of RCRA and the South Carolina Hazardous Waste Management Act 44-56-120. (amended 11/90)


261.9. Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under parts 262 through 270 except as specified in part 273 and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under 273: (5/96)

(a) Batteries as described in 273.2;

(b) Pesticides as described in 273.3;

(c) Mercury-containing equipment as described in 273; and

(d) Lamps as described in 273.5.

HISTORY: Added by State Register Volume 20, Issue No. 5, eff May 24, 1996; Amended by State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 31, Issue No. 6, eff June 22, 2007.

SUBPART B

Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Wastes

261.10. Criteria for identifying the characteristics of hazardous waste.

(a) The Department shall identify and define a characteristic of hazardous waste in subpart C only upon determination that:

(1) A solid waste that exhibits the characteristic may:

(i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(2) The characteristic can be:

(i) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(ii) Reasonably detected by generators of solid waste through their knowledge of their waste.


261.11. Criteria for listing hazardous waste.

(a) The Department shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:
(1) It exhibits any of the characteristics of hazardous waste identified in Subpart C.

(2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.)

(3) It contains any of the toxic constituents listed in appendix VIII and, after considering the following factors, the Department concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(i) The nature of the toxicity presented by the constituent.

(ii) The concentration of the constituent in the waste.

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (a)(3)(vii).

(iv) The persistence of the constituent or any toxic degradation product of the constituent.

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) The plausible types of improper management to which the waste could be subjected.

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) Such other factors as may be appropriate. Substances will be listed in Appendix VIII only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. (Wastes listed in accordance with these criteria will be designated Toxic wastes.)

(b) The Department list classes or types of solid waste as hazardous waste if there is reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste in Section 261.3 and found in section 1004(5) of RCRA.

(c) The Department will use the criteria for listing specified in this section to establish the exclusion limits referred to in Section 261.5(c).


**SUBPART C**

**Characteristics of Hazardous Waste**

**261.20.** General.

(a) A solid waste, as defined in section 261.2, which is not excluded from regulation as a hazardous waste under section 261.4(b), is a hazardous waste if it exhibits any of the characteristics identified in this subpart.

[Comment: 262.11 of this chapter sets forth the generators responsibility to determine whether his waste exhibits one or more of the characteristics identified in this subpart]

(b) A hazardous waste which is identified by a characteristic in this subpart is assigned every EPA Hazardous Waste Number that is applicable as set forth in this subpart. This number must be used in complying with the notification requirements of section 3010 of the Act and all applicable recordkeep-

(c) For purposes of this subpart, the Department will consider a sample obtained using any of the applicable sampling methods specified in Appendix I to be a representative sample within the meaning of R.61-79.260.

[Comment: Since the appendix I sampling methods are not being formally adopted by the Department, a person who desires to employ an alternative sampling method is not required to demonstrate the equivalency of his method under the procedures set forth in 260.20 and 260.21.]

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992.


(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60 degrees C (140 degrees F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 (incorporated by reference, see 260.11) or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78 (incorporated by reference, see 260.11) or as determined by an equivalent test method approved by the Department under procedures set forth in R.61-79.260.20 and 260.21. (amended 11/90)

(2) It is not a liquid and is capable under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes, and when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas.

(i) The term “compressed gas” shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70 degrees F or, regardless of the pressure at 70 degrees F, having an absolute pressure exceeding 104 p.s.i. at 130 degrees F; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100 degrees F as determined by ASTM Test D-323.

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the Department, Pipeline and Hazardous Materials Technology, US. Department of Transportation (see Note 2).

(B) Using the Bureau of Explosives’ Flame Projection Apparatus (see Note 1), the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives’ Open Drum Apparatus (see Note 1), there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives’ Closed Drum Apparatus (see Note 1), there is any explosion of the vapor-air mixture in the drum.

(4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter. (See Note 4)

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in 261.23(a)(8), in which case it must be classed as an explosive,
(B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21.

(C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide, or

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

Note 1: A description of the Bureau of Explosives’ Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in 173.151 of 49 CFR and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 34, Issue No. 8, eff August 27, 2010.

261.22. Characteristic of corrosivity.

(a)(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in 260.11. (12/93)

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA publication SW-846, incorporated by reference in R.61-79.260.11 (revised 12/93)

(b) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 18, Issue No. 12, eff December 23, 1994; State Register Volume 25, Issue No. 10, eff October 26, 2001.

261.23. Characteristic of reactivity.

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(1) It is normally unstable and readily undergoes violent change without detonating.

(2) It reacts violently with water.

(3) It forms potentially explosive mixtures with water.

(4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.
(5) It is a cyanide or sulfire bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(6) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(8) It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

(b) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

**HISTORY:** Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 36, Issue No. 9, eff September 28, 2012.

261.24. Toxicity characteristic.

(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in 260.11, the extract from a representative sample of the waste contains any of the contaminants listed in Table I at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this section. (12/92; 12/93; 12/94)

(b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

Table I.—Maximum Concentration of Contaminants for the Toxicity Characteristic

<table>
<thead>
<tr>
<th>EPA HW No.</th>
<th>Contaminant</th>
<th>CAS No.</th>
<th>Regulatory Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>D004</td>
<td>Arsenic</td>
<td>7440-38-2</td>
<td>5.0</td>
</tr>
<tr>
<td>D005</td>
<td>Barium</td>
<td>7440-39-3</td>
<td>100.0</td>
</tr>
<tr>
<td>D018</td>
<td>Benzene</td>
<td>71-43-2</td>
<td>0.5</td>
</tr>
<tr>
<td>D006</td>
<td>Cadmium</td>
<td>7440-43-9</td>
<td>1.0</td>
</tr>
<tr>
<td>D019</td>
<td>Carbon tetrachloride</td>
<td>56-23-5</td>
<td>0.5</td>
</tr>
<tr>
<td>D020</td>
<td>Chlordane</td>
<td>57-74-0</td>
<td>0.03</td>
</tr>
<tr>
<td>D021</td>
<td>Chlorobenzene</td>
<td>108-90-7</td>
<td>100.0</td>
</tr>
<tr>
<td>D022</td>
<td>Chloroform</td>
<td>67-66-3</td>
<td>6.0</td>
</tr>
<tr>
<td>D007</td>
<td>Chromium</td>
<td>7440-47-3</td>
<td>5.0</td>
</tr>
<tr>
<td>D023</td>
<td>o-Cresol</td>
<td>95-48-7</td>
<td>4200.0</td>
</tr>
<tr>
<td>D024</td>
<td>m-Cresol</td>
<td>108-39-4</td>
<td>4200.0</td>
</tr>
<tr>
<td>D025</td>
<td>p-Cresol</td>
<td>106-44-5</td>
<td>4200.0</td>
</tr>
<tr>
<td>D026</td>
<td>Cresol</td>
<td>107-06-2</td>
<td>4200.0</td>
</tr>
<tr>
<td>D016</td>
<td>2,4-D</td>
<td>94-75-7</td>
<td>10.0</td>
</tr>
<tr>
<td>D027</td>
<td>1,4-Dichlorobenzene</td>
<td>106-46-7</td>
<td>7.5</td>
</tr>
<tr>
<td>D028</td>
<td>1,2-Dichloroethane</td>
<td>107-06-2</td>
<td>0.5</td>
</tr>
<tr>
<td>D029</td>
<td>1,1-Dichloroethylene</td>
<td>75-35-4</td>
<td>0.7</td>
</tr>
<tr>
<td>D030</td>
<td>2,4-Dinitrotoluene</td>
<td>121-14-2</td>
<td>30.15</td>
</tr>
<tr>
<td>D012</td>
<td>Endrin</td>
<td>72-20-8</td>
<td>0.02</td>
</tr>
<tr>
<td>D031</td>
<td>Heptachlor (and its epoxide)</td>
<td>76-44-8</td>
<td>0.008</td>
</tr>
<tr>
<td>D032</td>
<td>Hexachlorobenzene</td>
<td>118-74-1</td>
<td>30.13</td>
</tr>
<tr>
<td>D033</td>
<td>Hexachlorobutadiene</td>
<td>87-68-3</td>
<td>0.5</td>
</tr>
<tr>
<td>D034</td>
<td>Hexachloroethane</td>
<td>67-72-1</td>
<td>3.0</td>
</tr>
<tr>
<td>D008</td>
<td>Lead</td>
<td>7439-92-1</td>
<td>5.0</td>
</tr>
<tr>
<td>D013</td>
<td>Lindane</td>
<td>58-89-9</td>
<td>0.4</td>
</tr>
<tr>
<td>D009</td>
<td>Mercury</td>
<td>7439-97-6</td>
<td>0.2</td>
</tr>
<tr>
<td>D014</td>
<td>Methoxychlor</td>
<td>72-43-5</td>
<td>10.0</td>
</tr>
</tbody>
</table>
EPA HW No. 1 Contaminant CAS No. 2 Regulatory Level

D035 . . . . . Methy ethyl ketone 78–93–3 200.0
D036 . . . . . Nitrobenzene 98–56–3 2.0
D037 . . . . . Pentachlorophenol 87–86–5 100.0
D038 . . . . . Pyridine 110–86–1 35.0
D010 . . . . . Selenium 7782–49–2 1.0
D011 . . . . . Silver 7440–22–4 0.5
D015 . . . . . Toxaphene 8001–35–2 0.5
D040 . . . . . Trichloroethylene 79–01–6 0.5
D041 . . . . . 2,4,5-Trichlorophenol 95–95–4 400.0
D042 . . . . . 2,4,5-Trichlorophenol 88–06–2 2.0
D017 . . . . . 2,4,5-TP (Silvex) 93–72–1 1.0
D043 . . . . . Vinyl chloride 75–01–4 0.2

1 Hazardous waste number.
2 Chemical abstracts service number.
3 Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.
4 If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/1.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 18, Issue No. 12, eff December 23, 1994; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2003.

SUBPART D
Lists of Toxic Hazardous Wastes

261.30. General.
(a) A solid waste is a hazardous waste if it is listed in this Subpart, unless it has been excluded from this list under R.61-79.260.20 and 260.22.
(b) The Department will indicate the basis for listing the classes or types of wastes listed in this Subpart by employing one or more of the following Hazard Codes:

<table>
<thead>
<tr>
<th>Hazard Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Ignitable Waste</td>
</tr>
<tr>
<td>C</td>
<td>Corrosive Waste</td>
</tr>
<tr>
<td>R</td>
<td>Reactive Waste</td>
</tr>
<tr>
<td>E</td>
<td>Toxicity Characteristic Waste</td>
</tr>
<tr>
<td>H</td>
<td>Acute Hazardous Waste</td>
</tr>
<tr>
<td>T</td>
<td>Toxic Waste</td>
</tr>
</tbody>
</table>

Appendix VII identifies the constituent which caused the Department to list the waste as a Toxic Characteristic (E) or Toxic Waste (T) in Sections 261.31 and 261.32.

c) Each hazardous waste listed in this Subpart is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with notification requirements and certain recordkeeping and reporting requirements under R.61-79.262 through R.61-79.265, R.61-79.268, and R.61-79.270.

d) The following hazardous wastes listed in section 261.31 are subject to the exclusion limits for acutely hazardous wastes established in section 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 1, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 36, Issue No. 9, eff September 28, 2012.

261.31. Hazardous wastes from nonspecific sources.
(a) The following solid wastes are listed hazardous wastes from non-specific sources unless they are excluded under R.61-79.260.20 and 260.22 and listed in appendix IX; [only changes are listed; see Appendix A-1].
<table>
<thead>
<tr>
<th>HW #</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>F001</td>
<td>The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005, and still bottoms from the recovery of these spent solvents and spent solvent mixtures.</td>
</tr>
<tr>
<td>F002</td>
<td>The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F003, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.</td>
</tr>
<tr>
<td>F003</td>
<td>The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.</td>
</tr>
<tr>
<td>F004</td>
<td>The following spent non-halogenated solvents: Cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.</td>
</tr>
<tr>
<td>F005</td>
<td>The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.</td>
</tr>
<tr>
<td>F006</td>
<td>Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating a carbon steel; (5) cleaning/striping associated with ten, zinc and aluminum plating a carbon steel, and (6) chemical etching and milling of aluminum.</td>
</tr>
<tr>
<td>F007</td>
<td>Spent cyanide plating bath solutions from electroplating operations.</td>
</tr>
<tr>
<td>F008</td>
<td>Spent cyanide plating bath solutions from electroplating operations.</td>
</tr>
<tr>
<td>F009</td>
<td>Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.</td>
</tr>
<tr>
<td>Industry and EPA HW #</td>
<td>Table 261.31 Hazardous waste from nonspecific sources (amended 11/90; 12/92)</td>
</tr>
<tr>
<td>----------------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>F010</td>
<td>Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process. (R,T)</td>
</tr>
<tr>
<td>F011</td>
<td>Spent cyanide solutions from salt bath pot clearing from metal heat treating operations. (R,T)</td>
</tr>
<tr>
<td>F012</td>
<td>Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process. (T)</td>
</tr>
<tr>
<td>F019</td>
<td>Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. (revised 12/93) Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in 258.40, 264.301 or 265.301. For the purposes of this listing, motor vehicle manufacturing is defined in paragraph (b)(4)(i) of this section and (b)(4)(ii) of this section describes the recordkeeping requirements for motor vehicle manufacturing facilities.</td>
</tr>
<tr>
<td>F020</td>
<td>Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol).</td>
</tr>
<tr>
<td>F021</td>
<td>Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol or of intermediates used to produce its derivatives.</td>
</tr>
<tr>
<td>F022</td>
<td>Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra, penta-, or hexachlorobenzenes under alkaline conditions.</td>
</tr>
<tr>
<td>F023</td>
<td>Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) or tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)</td>
</tr>
<tr>
<td>F024</td>
<td>Process wastes, including, but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. [This listing does not include wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 261.31 or 261.32]. (revised 12/93)</td>
</tr>
<tr>
<td>F025</td>
<td>Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having</td>
</tr>
</tbody>
</table>
Industry Table 261.31 Hazardous waste from nonspecific sources

<table>
<thead>
<tr>
<th>HW #</th>
<th>Hazard code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>F026</td>
<td>(H)</td>
<td>Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.</td>
</tr>
<tr>
<td>F027</td>
<td>(H)</td>
<td>Discarded unused formulations containing tri-, tetra- or penta-chlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from pre-purified 2,4,5-trichlorophenol as the sole component.)</td>
</tr>
<tr>
<td>F028</td>
<td>(T)</td>
<td>Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.</td>
</tr>
<tr>
<td>F032</td>
<td>(T)</td>
<td>Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with 261.35 or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (revised 12/93)</td>
</tr>
<tr>
<td>F034</td>
<td>(T)</td>
<td>Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (revised 12/93)</td>
</tr>
<tr>
<td>F035</td>
<td>(T)</td>
<td>Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (revised 12/93)</td>
</tr>
</tbody>
</table>
| F037 | (T) | Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to: those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-
Industry Table 261.31 Hazardous waste from nonspecific sources and EPA (amended 11/90; 12/92) Hazard code HW #

<table>
<thead>
<tr>
<th>HW #</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>F038</td>
<td>Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing (revised 12/92). Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F023, F026, F027, and/or F028.) (revised 12/92; 12/93).</td>
</tr>
<tr>
<td>F039</td>
<td>Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F023, F026, F027, and/or F028.) (revised 12/92; 12/93).</td>
</tr>
</tbody>
</table>

* (I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

(b) Listing Specific Definitions:

(1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2)(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and (A) the units employs a minimum of 6 hp per million gallons of treatment volume; and either (B) the hydraulic retention time of the unit is no longer than 5 days; or (C) the hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities must maintain, in their operating or other onsite records, documents and data sufficient to prove that:

(A) the unit is an aggressive biological treatment unit as defined in this subsection; and

(B) the sludges sought to be exempted from the definitions of F037 and/or F038 were actually generated in the aggressive biological treatment unit.

(3)(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(ii) For the purposes of the F038 listing,

(A) sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement and

(B) floats are considered to be generated at the moment they are formed in the top of the unit.
(4) For the purposes of F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles. Facilities must be engaged in manufacturing complete vehicles or chassis only.

(ii) Generators must maintain records, to prove that the exempted sludges meet the conditions of the listing. Records must include: volume of waste generated and disposed off site; when the wastes were generated and sent off site; name and address of receiving facility; documentation confirming receipt. Generators must maintain these documents no less than three years. Retention period for documentation is automatically extended during an enforcement action or as requested by the Regional Administrator or state regulatory authority.

**HISTORY:** Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 18, Issue No. 12, eff December 23, 1994; State Register Volume 24, Issue No. 12, eff August 25, 2000; State Register Volume 25, Issue No. 10, eff October 26, 2001; State Register Volume 34, Issue No. 5, eff May 28, 2010.

### 261.32. Hazardous wastes from specific sources.

(a) The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under 260.20 and 260.22 and listed in Appendix IX. 261.32. Table is now also (a) (12/92, 5/96, 9/98, 9/01)

<table>
<thead>
<tr>
<th>Industry, SC &amp; EPA HW #</th>
<th>261.32 Hazardous Wastes from specific sources - Hazardous waste</th>
<th>Hazard code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Wood preservation:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>K001</td>
<td>Bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.</td>
<td>(T)</td>
</tr>
<tr>
<td><strong>Inorganic pigments:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>K002</td>
<td>Wastewater treatment sludge from the production of chrome yellow and orange pigments.</td>
<td>(T)</td>
</tr>
<tr>
<td>K003</td>
<td>Wastewater treatment sludge from the production of molybdate orange pigments.</td>
<td>(T)</td>
</tr>
<tr>
<td>K004</td>
<td>Wastewater treatment sludge from the production of zinc yellow pigments.</td>
<td>(T)</td>
</tr>
<tr>
<td>K005</td>
<td>Wastewater treatment sludge from the production of chrome green pigments.</td>
<td>(T)</td>
</tr>
<tr>
<td>K006</td>
<td>Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).</td>
<td>(T)</td>
</tr>
<tr>
<td>K007</td>
<td>Wastewater treatment sludge from the production of iron blue pigments.</td>
<td>(T)</td>
</tr>
<tr>
<td>K008</td>
<td>Oven residue from the production of chrome oxide green pigments.</td>
<td>(T)</td>
</tr>
<tr>
<td><strong>Organic chemicals:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>K009</td>
<td>Distillation bottoms from the production of acetaldehyde from ethylene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K010</td>
<td>Distillation side cuts from the production of acetaldehyde from ethylene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K011</td>
<td>Bottom stream from the wastewater stripper in the production of acrylonitrile.</td>
<td>(R, T)</td>
</tr>
<tr>
<td>K013</td>
<td>Bottom stream from the acetonitrile column in the production of acrylonitrile.</td>
<td>(R, T)</td>
</tr>
<tr>
<td>K014</td>
<td>Bottoms from the acetonitrile purification column in the production of acrylonitrile.</td>
<td>(T)</td>
</tr>
<tr>
<td>Industry, SC &amp; EPA HW #</td>
<td>261.32 Hazardous Wastes from specific sources - Hazardous waste</td>
<td>Hazard code</td>
</tr>
<tr>
<td>------------------------</td>
<td>-------------------------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>K015</td>
<td>Still bottoms from the distillation of benzyl chloride.</td>
<td>(T)</td>
</tr>
<tr>
<td>K016</td>
<td>Heavy ends or distillation residues from the production of carbon tetrachloride.</td>
<td>(T)</td>
</tr>
<tr>
<td>K017</td>
<td>Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.</td>
<td>(T)</td>
</tr>
<tr>
<td>K018</td>
<td>Heavy ends from the fractionation column in ethyl chloride production.</td>
<td>(T)</td>
</tr>
<tr>
<td>K019</td>
<td>Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.</td>
<td>(T)</td>
</tr>
<tr>
<td>K020</td>
<td>Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.</td>
<td>(T)</td>
</tr>
<tr>
<td>K021</td>
<td>Aqueous spent antimony catalyst waste from fluoromethanes production.</td>
<td>(T)</td>
</tr>
<tr>
<td>K022</td>
<td>Distillation bottom tars from the production of phenol/acetone from cumene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K023</td>
<td>Distillation light ends from the production of phthalic anhydride from naphthalene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K024</td>
<td>Distillation bottoms from the production of phthalic anhydride from naphthalene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K025</td>
<td>Distillation bottoms from the production of nitrobenzene by the nitration of benzene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K026</td>
<td>Stripping still tails from the production of methy ethyl pyridines.</td>
<td>(T)</td>
</tr>
<tr>
<td>K027</td>
<td>Centrifuge and distillation residues from toluene diisocyanate production.</td>
<td>(R, T)</td>
</tr>
<tr>
<td>K028</td>
<td>Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.</td>
<td>(T)</td>
</tr>
<tr>
<td>K029</td>
<td>Waste from the product steam stripper in the production of 1,1,1-trichloroethane.</td>
<td>(T)</td>
</tr>
<tr>
<td>K030</td>
<td>Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K083</td>
<td>Distillation bottoms from aniline production.</td>
<td>(T)</td>
</tr>
<tr>
<td>K085</td>
<td>Distillation or fractionation column bottoms from the production of chlorobenzenes.</td>
<td>(T)</td>
</tr>
<tr>
<td>K093</td>
<td>Distillation light ends from the production of phthalic anhydride from ortho-xylene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K094</td>
<td>Distillation bottoms from the production of phthalic anhydride from ortho-xylene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K095</td>
<td>Distillation bottoms from the production of 1,1,1-trichloroethane.</td>
<td>(T)</td>
</tr>
<tr>
<td>K096</td>
<td>Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.</td>
<td>(T)</td>
</tr>
<tr>
<td>K103</td>
<td>Process residues from aniline extraction from the production of aniline.</td>
<td>(T)</td>
</tr>
<tr>
<td>K104</td>
<td>Combined wastewater streams generated from nitrobenzene/aniline production.</td>
<td>(T)</td>
</tr>
<tr>
<td>K105</td>
<td>Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.</td>
<td>(T)</td>
</tr>
<tr>
<td>K107</td>
<td>Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.</td>
<td>(C, T)</td>
</tr>
<tr>
<td>K108</td>
<td>Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.</td>
<td>(I, T)</td>
</tr>
<tr>
<td>Industry, SC &amp; EPA HW #</td>
<td>261.32 Hazardous Wastes from specific sources - Hazardous waste</td>
<td>Hazard code</td>
</tr>
<tr>
<td>-------------------------</td>
<td>------------------------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>K109</td>
<td>Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.</td>
<td>(T)</td>
</tr>
<tr>
<td>K110</td>
<td>Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.</td>
<td>(T)</td>
</tr>
<tr>
<td>K111</td>
<td>Product washwaters from the production of dinitrotoluene via nitration of toluene.</td>
<td>(C, T)</td>
</tr>
<tr>
<td>K112</td>
<td>Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K113</td>
<td>Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K114</td>
<td>Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K115</td>
<td>Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K116</td>
<td>Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.</td>
<td>(T)</td>
</tr>
<tr>
<td>K117</td>
<td>Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K118</td>
<td>Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K136</td>
<td>Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.</td>
<td>(T)</td>
</tr>
<tr>
<td>K149</td>
<td>Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.).</td>
<td>(T)</td>
</tr>
<tr>
<td>K150</td>
<td>Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.</td>
<td>(T)</td>
</tr>
<tr>
<td>K151</td>
<td>Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.</td>
<td>(T)</td>
</tr>
<tr>
<td>K156</td>
<td>Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butyricarbamate.).</td>
<td>(T)</td>
</tr>
<tr>
<td>K157</td>
<td>Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This</td>
<td>(T)</td>
</tr>
</tbody>
</table>
Indstry, SC & EPA HW # | 261.32 Hazardous Wastes from specific sources - Hazardous waste | Hazard code
--- | --- | ---
K158 | Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate). | (T)
K159 | Organics from the treatment of thiocarbamate wastes | (T)
K161 | Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.). | (R, T)
K174 | Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or non-hazardous landfill licensed or permitted by the state or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met. (6/02) | (T)
K175 | Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. (6/02) | (T)
K181 | Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (c) of this section that are equal to or greater than the corresponding paragraph (c) levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) disposed in a Subtitle D landfill unit subject to the design criteria in R 61–107.258.40, (ii) disposed in a Subtitle C landfill unit subject to either 264.301 or 265.301, (iii) disposed in other Subtitle D landfill units that meet the design criteria in R. 61–107.258.40, 264.301, or 265.301, or (iv) treated in a combustion unit that is permitted under Subtitle C, or an onsite combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in paragraph (b)(I) of this section. Paragraph (d) of this section describes the process for demonstrating that a facility’s nonwastewaters are not K181. This listing does not apply to wastes that are
Industry, SC & EPA HW # | 261.32 Hazardous Wastes from specific sources - Hazardous waste | Hazard code (Description)
--- | --- | ---
otherwise identified as hazardous under 261.21–261.24 and 261.31–261.33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met. (2/07)

Inorganic chemicals:

K071 | Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used. | (T)
K073 | Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production. | (T)
K106 | Wastewater treatment sludge from the mercury cell process in chlorine production. | (T)
K176 | Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide). (6/03) | (E)
K177 | Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide). (6/03). | (T)
K178 | Residues from manufacturing and manufacturing site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process. (6/03) | (T)

Pesticides:

K031 | By-product salts generated in the production of MSMA and cacodylic acid. | (T)
K032 | Wastewater treatment sludge from the production of chlordane. | (T)
K033 | Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane. | (T)
K034 | Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane. | (T)
K035 | Wastewater treatment sludges generated in the production of creosote. | (T)
K036 | Still bottoms from toluene reclamation distillation in the production of disulfoton. | (T)
K037 | Wastewater treatment sludges from the production of disulfoton. | (T)
K038 | Wastewater from the washing and stripping of phorate production. | (T)
K039 | Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate. | (T)
K040 | Wastewater treatment sludge from the production of toxaphene. | (T)
K041 | Wastewater treatment sludge from the production of toxaphene. | (T)
K042 | Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T. | (T)
K043 | 2,6-Dichlorophenol waste from the production of 2,4-D. | (T)
K097 | Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane. | (T)
K098 | Untreated process wastewater from the production of toxaphene. | (T)
<table>
<thead>
<tr>
<th>Industry, SC &amp; EPA HW #</th>
<th>261.32 Hazardous Wastes from specific sources - Hazardous waste</th>
<th>Hazard code</th>
</tr>
</thead>
<tbody>
<tr>
<td>K099</td>
<td>Untreated wastewater from the production of 2,4-D.</td>
<td>(T)</td>
</tr>
<tr>
<td>K123</td>
<td>Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenedibithiocarbamic acid and its salt.</td>
<td>(T)</td>
</tr>
<tr>
<td>K124</td>
<td>Reactor vent scrubber water from the production of ethylenedibithiocarbamic acid and its salts.</td>
<td>(C, T)</td>
</tr>
<tr>
<td>K125</td>
<td>Filtration, evaporation, and centrifugation solids from the production of ethylenedibithiocarbamic acid and its salts.</td>
<td>(T)</td>
</tr>
<tr>
<td>K126</td>
<td>Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenedibithiocarbamic acid and its salts.</td>
<td>(T)</td>
</tr>
<tr>
<td>K131</td>
<td>Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.</td>
<td>(C, T)</td>
</tr>
<tr>
<td>K132</td>
<td>Spent absorbent and wastewater separator solids from the production of methyl bromide.</td>
<td>(T)</td>
</tr>
<tr>
<td>Explosives:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>K044</td>
<td>Wastewater treatment sludges from the manufacturing and processing of explosives.</td>
<td>(R)</td>
</tr>
<tr>
<td>K045</td>
<td>Spent carbon from the treatment of wastewater containing explosives.</td>
<td>(R)</td>
</tr>
<tr>
<td>K046</td>
<td>Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.</td>
<td>(T)</td>
</tr>
<tr>
<td>K047</td>
<td>Pink/red water from TNT operations.</td>
<td>(R)</td>
</tr>
<tr>
<td>Petroleum refining:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>K048</td>
<td>Dissolved air flotation (DAF) float from the petroleum refining industry.</td>
<td>(T)</td>
</tr>
<tr>
<td>K049</td>
<td>Slop oil emulsion solids from the petroleum refining industry.</td>
<td>(T)</td>
</tr>
<tr>
<td>K050</td>
<td>Heat exchanger bundle cleaning sludge from the petroleum refining industry.</td>
<td>(T)</td>
</tr>
<tr>
<td>K051</td>
<td>API separator sludge from the petroleum refining industry.</td>
<td>(T)</td>
</tr>
<tr>
<td>K052</td>
<td>Tank bottoms (leaded) from the petroleum refining industry.</td>
<td>(T)</td>
</tr>
<tr>
<td>K169</td>
<td>Crude oil storage tank sediment from petroleum refining operations (8/00)</td>
<td>(T)</td>
</tr>
<tr>
<td>K170</td>
<td>Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (8/00)</td>
<td>(T)</td>
</tr>
<tr>
<td>K171</td>
<td>Spent Hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media)</td>
<td>(I, T)</td>
</tr>
<tr>
<td>K172</td>
<td>Spent Hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media.) (8/00)</td>
<td>(I, T)</td>
</tr>
<tr>
<td>Iron and Steel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>K061</td>
<td>Emission control dust/sludge from the primary production of steel in electric furnaces.</td>
<td>(T)</td>
</tr>
<tr>
<td>K062</td>
<td>Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).</td>
<td>(C, T)</td>
</tr>
</tbody>
</table>

Primary aluminum:
<table>
<thead>
<tr>
<th>Industry, SC &amp; EPA HW #</th>
<th>261.32 Hazardous Wastes from specific sources - Hazardous waste</th>
<th>Hazard code</th>
</tr>
</thead>
<tbody>
<tr>
<td>K088</td>
<td>Spent potliners from primary aluminum reduction.</td>
<td>(T)</td>
</tr>
<tr>
<td>Secondary lead:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>K069</td>
<td>Emission control dust/sludge from secondary lead smelting.</td>
<td>(T)</td>
</tr>
<tr>
<td></td>
<td>(Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action affecting this stay, EPA will publish a notice of the action in the Federal Register).</td>
<td></td>
</tr>
<tr>
<td>K100</td>
<td>Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.</td>
<td>(T)</td>
</tr>
<tr>
<td>Veterinary pharmaceuticals:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>K084</td>
<td>Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.</td>
<td>(T)</td>
</tr>
<tr>
<td>K101</td>
<td>Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.</td>
<td>(T)</td>
</tr>
<tr>
<td>K102</td>
<td>Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.</td>
<td>(T)</td>
</tr>
<tr>
<td>Ink formulation:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>K086</td>
<td>Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.</td>
<td>(T)</td>
</tr>
<tr>
<td>Coking:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>K060</td>
<td>Ammonia still lime sludge from coking operations.</td>
<td>(T)</td>
</tr>
<tr>
<td>K087</td>
<td>Decanter tank tar sludge from coking operations(6/95).</td>
<td>(T)</td>
</tr>
<tr>
<td>K141</td>
<td>Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations).</td>
<td>(T)</td>
</tr>
<tr>
<td>K142</td>
<td>Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.</td>
<td>(T)</td>
</tr>
<tr>
<td>K143</td>
<td>Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.</td>
<td>(T)</td>
</tr>
<tr>
<td>K144</td>
<td>Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.</td>
<td>(T)</td>
</tr>
<tr>
<td>K145</td>
<td>Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.</td>
<td>(T)</td>
</tr>
<tr>
<td>K147</td>
<td>Tar storage tank residues from coal tar refining.</td>
<td>(T)</td>
</tr>
<tr>
<td>K148</td>
<td>Residues from coal tar distillation, including but not limited to, still bottoms.</td>
<td>(T)</td>
</tr>
<tr>
<td>Organotins:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>K000</td>
<td>Waste residues from the manufacture of organotin compounds which contain tri-(organ) substituted tin</td>
<td>(T)</td>
</tr>
</tbody>
</table>
Industry, SC & EPA HW #: 261.32 Hazardous Wastes from specific sources - Hazardous waste compounds, to include tributyltin and its analogs.

(b) Listing Specific Definitions:

(1) For the purposes of the K181 listing, dyes and/or pigments production is defined to include manufacture of the following product classes: dyes, pigments, or FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products. Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

(c) K181 Listing Levels. Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Chemical abstracts No.</th>
<th>Mass levels (kg/yr)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aniline</td>
<td>62–53–3</td>
<td>9,300</td>
</tr>
<tr>
<td>o-Anisidine</td>
<td>90–04–0</td>
<td>110</td>
</tr>
<tr>
<td>4-Chloroaniline</td>
<td>106–47–8</td>
<td>4,800</td>
</tr>
<tr>
<td>p-Cresidine</td>
<td>120–71–8</td>
<td>660</td>
</tr>
<tr>
<td>2,4-Dimethylaniline</td>
<td>95–68–1</td>
<td>100</td>
</tr>
<tr>
<td>1,2-Phenylenediamine</td>
<td>95–54–5</td>
<td>710</td>
</tr>
<tr>
<td>1,3-Phenylenediamine</td>
<td>108–45–2</td>
<td>1,200</td>
</tr>
</tbody>
</table>

(d) Procedures for demonstrating that dyes and/or pigment nonwastewaters are not K181. The procedures described in paragraphs (d)(1)–(d)(3) and (d)(5) of this section establish when nonwastewaters from the production of dyes/pigments would not be hazardous (these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in paragraph (a) of this section). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in paragraph (a) of this section, then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator must maintain documentation as described in paragraph (d)(4) of this section.

(1) Determination based on no K181 constituents. Generators that have knowledge (e.g., knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed) that their wastes contain none of the K181 constituents (see paragraph (c) of this section) can use their knowledge to determine that their waste is not K181. The generator must document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

(2) Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes (e.g., knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the listing levels of paragraph (c) of this section. To make this determination, the generator must:

(i) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons.

(ii) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator must comply with the requirements of paragraph (d)(5) of this section for the remainder of the year.

(iii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.
(iv) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The quantity of dyes and/or pigment nonwastewaters generated.

(B) The relevant process information used.

(C) The calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.

(3) Determination for generated quantities greater than 1,000 MT/yr for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator must perform all of the steps described in paragraphs (d)(3)(i)–(d)(3)(xi) of this section in order to make a determination that its waste is not K181.

(i) Determine which K181 constituents (see paragraph (c) of this section) are reasonably expected to be present in the wastes based on knowledge of the wastes (e.g., based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed).

(ii) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator must comply with the procedures for using knowledge described in paragraph (d)(2) of this section and keep the records described in paragraph (d)(2)(iv) of this section. For determinations based on sampling and analysis, the generator must comply with the sampling and analysis and recordkeeping requirements described below in this section.

(iii) Develop a waste sampling and analysis plan (or modify an existing plan) to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan must include:

(A) A discussion of the number of samples needed to characterize the wastes fully;

(B) The planned sample collection method to obtain representative waste samples;

(C) A discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes.

(D) A detailed description of the test methods to be used, including sample preparation, clean up (if necessary), and determinative methods.

(iv) Collect and analyze samples in accordance with the waste sampling and analysis plan.

(A) The sampling and analysis must be unbiased, precise, and representative of the wastes.

(B) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of paragraph (c) of this section.

(v) Record the analytical results.

(vi) Record the waste quantity represented by the sampling and analysis results.

(vii) Calculate constituent-specific mass loadings (product of concentrations and waste quantity).

(viii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(ix) Determine whether the mass of any of the K181 constituents listed in paragraph (c) of this section generated between January 1 and December 31 of any year is below the K181 listing levels.

(x) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The sampling and analysis plan.

(B) The sampling and analysis results (including QA/QC data)

(C) The quantity of dyes and/or pigment nonwastewaters generated.

(D) The calculations performed to determine annual mass loadings.

(xi) Nonhazardous waste determinations must be conducted annually to verify that the wastes remain nonhazardous.
(A) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.

(B) The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.

(C) If the annual testing requirements are suspended, the generator must keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change must be retained.

(4) Recordkeeping for the landfill disposal and combustion exemptions. For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator must maintain on site for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

(5) Waste holding and handling. During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the subtitle C requirements during the interim period, the generator could be subject to an enforcement action for improper management.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 19, Issue No. 6, eff June 25, 1995; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 25, Issue No. 10, eff October 26, 2001; State Register Volume 26, Issue No. 5, eff May 24, 2002; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2003; State Register Volume 31, Issue No. 2, eff February 25, 2007; State Register Volume 36, Issue No. 9, eff September 28, 2012; State Register Volume 39, Issue No. 6, Doc. No. 4541, eff June 26, 2015.

261.33. Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Section 261.2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f).

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, unless the container is empty as defined in Section 261.7(h).

[Comment: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, reuse, recycling or reclamation, the Department considers the residue to be intended for discard, and thus, a hazardous waste. An example of a legitimate reuse of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue
would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.]

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section.

[Comment: The phrase “commercial chemical product or manufacturing chemical intermediate having the generic name listed in ...” refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraph (e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in paragraph (e) or (f), such waste will be listed in either sections 261.31 or 261.32 or will be identified as a hazardous waste by the characteristics set forth in subpart C of this part.]

(e) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in section 261.5(e).

[Comment: For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity (revised 12/92). Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number.]

These wastes and their corresponding EPA Hazardous Waste Numbers are:

<table>
<thead>
<tr>
<th>HW No.</th>
<th>Chemical Abstracts No.</th>
<th>Substance</th>
</tr>
</thead>
<tbody>
<tr>
<td>P023</td>
<td>107-20-0</td>
<td>Acetaldehyde, chloro-</td>
</tr>
<tr>
<td>P002</td>
<td>591-08-2</td>
<td>Acetamide, N-(aminothioxomethyl)-</td>
</tr>
<tr>
<td>P057</td>
<td>640-19-7</td>
<td>Acetamide, 2-fluoro-</td>
</tr>
<tr>
<td>P058</td>
<td>62-74-8</td>
<td>Acetic acid, fluoro-, sodium salt</td>
</tr>
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<td>P002</td>
<td>591-08-2</td>
<td>1-Acetyl-2-thiourea</td>
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<td>P003</td>
<td>107-02-8</td>
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<td>P070</td>
<td>116-06-3</td>
<td>Aldicarb</td>
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<td>P203</td>
<td>1646-88-4</td>
<td>Aldicarb sulfone.(added 5/96)</td>
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<td>Aldrin</td>
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<td>P005</td>
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<td>Allyl alcohol</td>
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<td>P006</td>
<td>20859-73-8</td>
<td>Aluminum phosphide (R,T)</td>
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<td>P007</td>
<td>2763-96-4</td>
<td>5-(Aminomethyl)-3-isoxazolol</td>
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<td>P008</td>
<td>504-24-5</td>
<td>4-Aminopyridine</td>
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<td>131-74-8</td>
<td>Ammonium picrate (R)</td>
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<td>P119</td>
<td>7803-55-6</td>
<td>Ammonium vanadate</td>
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<td>506-61-6</td>
<td>Argentate(1-), bis(cyano-C-), potassium</td>
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<td>Arsenic acid H₃AsO₄</td>
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<td>Arsenic oxide As₂O₃</td>
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<td>Arsenic oxide As₂O₅</td>
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<td>Arsenic trioxide</td>
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<td>Arsine, diethyl-</td>
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<td>P036</td>
<td>696-28-6</td>
<td>Arsonous dichloride, phenyl-</td>
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<td>Aziridine, 2-methyl-</td>
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<td>Barium cyanide</td>
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<td>P024</td>
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<td>Benzenamine, 4-chloro-</td>
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<td>HW No.</td>
<td>Chemical Abstracts No.</td>
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<td>Benzenamine, 4-nitro-</td>
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<td>100-44-7</td>
<td>Benzene, (chloromethyl)</td>
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<td>1,2-Benzenediol, 4-[1-hydroxy-2- (methylamino)ethyl]-, (R)</td>
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<td>P046</td>
<td>122-09-8</td>
<td>Benzenethanamine, alpha, alpha-dimethyl-</td>
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<td>Benzenethiol</td>
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<td>7-Benzofuranol, 2,3-dihydro-2, 2-dimethyl-, methylycarbamate. (added 5/96)</td>
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<td>P188</td>
<td>57-64-7</td>
<td>Benzoic acid, 2-hydroxy-, compd. with (3aS-(cis))-1,2,3,3a,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylycarbamate ester (1:1). (added 5/96)</td>
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<td>P001</td>
<td>181-81-2</td>
<td>2H-1-Benzopyran-2-one, 4- hydroxy-3- (3-oxo-1-phenylbutyl)-, &amp; salts, when present at concentrations greater than 0.3%</td>
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<td>P028</td>
<td>100-44-7</td>
<td>Benzyl chloride</td>
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<td>P015</td>
<td>7440-41-7</td>
<td>Beryllium powder</td>
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<td>P017</td>
<td>598-31-2</td>
<td>Bromoacetone</td>
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<td>P018</td>
<td>357-57-3</td>
<td>Brucine</td>
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<td>P045</td>
<td>39196-18-4</td>
<td>2-Butanone, 3,3-dimethyl-1- (methylthio)-O-[(methyl-amino)carbonyl]oxime</td>
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<td>P021</td>
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<td>Calcium cyanide</td>
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<td>592-01-8</td>
<td>Calcium cyanide Ca(CN)₂</td>
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<td>P022</td>
<td>75-15-0</td>
<td>Carbon disulfide</td>
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<td>P189</td>
<td>55285-14-8</td>
<td>Carbamic acid, [dibutylamino]-thio)methyl-,2,3-dihydro-2, 2-dimethyl- 7-benzofuranyl ester (added 5/96)</td>
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<td>P191</td>
<td>644-64-4</td>
<td>Carbamic acid, dimethyl-, 1- [(dimethylamino)carbonyl]- 5-methyl-1H-pyrazol-3-yl ester. (added 5/96)</td>
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<td>P192</td>
<td>119-38-0</td>
<td>Carbamic acid, dimethyl-, 3- methyl-1- (1-methyl-ethyl) -1H-pyrazol-5-yl ester. (added 5/96)</td>
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<td>P190</td>
<td>1129-41-5</td>
<td>Carbamic acid, methyl-, 3-methylphenyl ester. (added 5/96)</td>
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<td>Carbofuran. (added 5/96)</td>
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<td>75-44-5</td>
<td>Carbamic dichloride</td>
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<td>Chloroacetaldelhyde</td>
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<td>p-Chloroaniline</td>
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<td>5344-82-1</td>
<td>1-(o-Chlorophenyl)thiourea</td>
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<td>3-Chloropropionitrile</td>
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<td>Copper cyanide</td>
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<td>544-92-3</td>
<td>Copper cyanide Cu(CN)</td>
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<td>m-Cumenyl methylcarbamate. (added 5/96)</td>
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<td>Cyanides (soluble cyanide salts), not otherwise specified</td>
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<td>Cyanogen</td>
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<td>Cyanogen chloride</td>
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<td>Cyanogen chloride (CN)Cl</td>
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<td>2-Cyclohexyl-4,6-dinitrophenol</td>
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<td>Dichloromethyl ether</td>
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<td>Diethyl-p-nitrophenyl phosphate</td>
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<td>O.O-Diethyl O-pyrazinyl phosphorothioate</td>
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<td>Disopropylfluorophosphate (DFP)</td>
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<td>1,4,5,8-Dimethanomphthalene, 1,2,3,4,10,10-hexa- chloro- 1,4,4a,5,8,8a-, hexahydro-, (1alpha,4alpha,4beta, 5alpha,8alpha,Sabeta)-</td>
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<td>HW No.</td>
<td>Chemical Abstracts No.</td>
<td>Substance</td>
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<td>1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro, (1alpha,4alpha,4beta,5beta,8beta,8abeta)-</td>
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<td>2,7,3,6-Dimethanonaphth[2,3-b] oxirene, 3,4,5,6,9,9- hexachloro-1a,2,2a,3,6,6a,7a-octahydro-, (1alpha,2beta,2alpha,3beta,6beta,6alpha,7beta,7alpha)-</td>
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<td>172-20-8</td>
<td>2,7,3,6-Dimethanonaphth[2,3-b] oxirene, 3,4,5,6,9,9- hexachloro-1a,2,2a,3,6,6a,7a-octahydro-, (1alpha,2alpha,2beta,3alpha,6alpha,6beta,7beta,7alpha)-, &amp; metabolites</td>
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<td>Dimethoate</td>
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<td>P191</td>
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<td>alpha.alpha-Dimethyl-phenethylamine</td>
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<td>4,6-Dinitro-o-cresol, &amp; salts</td>
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<td>2,4-Dinitrophenol</td>
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<td>Dinoseb</td>
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<td>Diphosphoramid, octamethyl-</td>
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<td>Diphosphoric acid, tetraethyl ester</td>
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<td>Dithiobisulphide</td>
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<td>1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methyl amino)carbonyloxime]. (added 5/96)</td>
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<td>Endrin</td>
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<td>72-20-8</td>
<td>Endrin, &amp; metabolites</td>
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<td>Ethanimidothioic acid, 2- (dimethylamino)-N-[[methylamino]carbonyl]oxy]-2-oxo-, methyl ester, (added 5/96)</td>
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<td>Fluoracetamide</td>
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<td>Formetanate hydrochloride. (added 5/96)</td>
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<td>Formparanate.(added 5/96)</td>
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<td>62-74-8</td>
<td>Fluoracetic acid, sodium salt</td>
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<td>Fulminic acid, mercury(2+) salt (R,T)</td>
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<td>3-Isopropylphenyl N-methyl- carbamate. (added 5/96)</td>
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<td>3(2H)-Izoxazolone, 5- (aminomethyl)-</td>
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<td>Manganese, bis(dimethyl- carbamothioato-S,S'), (added 5/96)</td>
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<td>Manganese dimethylthio- carbamate. (added 5/96)</td>
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<td>Mercury fulminate (R,T)</td>
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<td>62-75-9</td>
<td>Methanamine, N-methyl-N-nitroso-</td>
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<td>Substance</td>
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<td>Methane, oxybis(chloro-</td>
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<td>Methanimidamide, N,N-dimethyl- N'-[2-methyl-4-[[methylamino]carbonyl]oxy]phenyl]- (added 5/96)</td>
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<td>Methiocarb. (added 5/96)</td>
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<td>75-70-7</td>
<td>Methanethiol, trichloro-</td>
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<td>6.9-Methano-2,4,3- benzodialkoxathiepin, 6.7, 8.9,10,10- hexachloro-1,5, 5a,6,9,9a-hexahydro-, 5-oxide</td>
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<td>Methyl hydrazine</td>
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<td>Mexacarbate. (added 5/96)</td>
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<td>Nickel carbonyl</td>
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<td>Nickel carbonyl Ni(CO)₄ (T-4)-</td>
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<td>Nickel cyanide</td>
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<td>Nitric oxide</td>
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<td>p-Nitroaniline</td>
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<td>Nitroglycerine (R)</td>
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<td>N-Nitrosodimethylamine</td>
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<td>N-Nitrosomethylvinylamine</td>
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<td>Octamethylpyrophosphoramide</td>
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<td>Osmium oxide OsO₄ (T-4)-</td>
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<td>Osmium tetroxide</td>
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<td>7-Oxabicyclo[2.2.1]heptane-2, 3-dicarboxylic acid</td>
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<td>Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1, 3a,8-trimethyl-, methyl-carbamate (ester), (3aS-cis)-. (added 5/96)</td>
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<td>Thioimidodicarbonic diamide [(H₂N)(S)]₂NH</td>
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<td>Thiophenol</td>
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<td>P001</td>
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<td>Warfarin, &amp; salts, when present at concentrations greater than 0.3%</td>
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<td>Zinc, bis(dimethyl)carbamodithioato-S,S'-, (added 5/96)</td>
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<td>P121</td>
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<td>Zinc phosphide Zn₃P₂, when present at concentrations greater than 10% (R,T)</td>
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<td>P205</td>
<td>137-30-4</td>
<td>Ziram. (added 5/96)</td>
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FOOTNOTE: 1 CAS Number given for parent compound only.

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (a) through (d) of this section, are identified as toxic wastes (T), unless otherwise designated and are subject to the small quantity generator exclusion defined in Section 261.5(a) and (g). (revised 5/96)

[Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R ( Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity (revised 12/92; 5/96). Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number.]

These wastes and their corresponding EPA Hazardous Waste Numbers are:

### 261.33(f) Lists of Subpart D Toxic Hazardous Wastes

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<td>A2213 (5/96)</td>
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<td>U001</td>
<td>75-07-0</td>
<td>Acetaldehyde (I)</td>
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<td>Acetamide, N-(4-ethoxyphenyl)-</td>
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<td>U005</td>
<td>53-96-3</td>
<td>Acetamide, N-9H-fluoren-2-yl-</td>
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<td>U240</td>
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<td>Acetic acid, (2,4-dichlorophenoxy)-, salts &amp; esters</td>
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<td>Benzene, 1,3-dichloro-</td>
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<td>Benzene, 1,4-dichloro-</td>
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<td>U060</td>
<td>72–54–8</td>
<td>Benzene, 1, 1’-[(2,2-dichloroethylidene)bis[4-chloro-</td>
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<td>U017</td>
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<td>Benzene, (dichloromethyl)-</td>
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<td>U220</td>
<td>26471–62–5</td>
<td>Benzene, 1,3-diisocyanatomethyl- (R,T)</td>
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<td>1330–20–7</td>
<td>Benzene, dimethyl- (1)</td>
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<td>U105</td>
<td>121–14–2</td>
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### Lists of Subpart D Toxic Hazardous Wastes

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<td>Benzene, (1-methylethyl)-(I)</td>
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<td>Benzene, pentachloro-</td>
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<td>Benzene, pentachloronitro-</td>
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<td>U020</td>
<td>98–09–9</td>
<td>Benzenesulfonic acid chloride (C.R)</td>
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<td>98–09–9</td>
<td>Benzenesulfonyl chloride (C.R)</td>
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<td>Benzene, 1,2,4,5-tetrachloro-</td>
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<td>Benzene, 1,1’-(2,2,2-trichloroethylidene)bis(4-chloro-</td>
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<td>Benzene, 1,1’-(2,2,2-trichloroethylidene)bis(4-methoxy-</td>
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<td>Benzene, 1,3,5-trinitro-</td>
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<td>Benzidine</td>
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<td>1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, &amp; salts</td>
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<td>1,3-Benzodioxol-4ol, 2,2dimethyl, methyl carbamate, (5/96)</td>
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<td>1,3-Benzodioxole, 5-(1-propenyl)-</td>
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<td>1563–38–8</td>
<td>7-Benzofuranol, 2,3-dihydro2,2-dimethyl (5/96)</td>
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<td>1,3-Benzodioxole, 5-propyl-</td>
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<td>Benzo[cd]pentaphene</td>
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<td>U248</td>
<td>181–81–2</td>
<td>2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl- butyl)-, &amp; salts, when present at concentrations of 0.3% or less</td>
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<td>Benzo[al]pyrene</td>
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<td>Benzetrichloride (C.R,T)</td>
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<td>2-Butanone (I,T)</td>
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<td>764–41–0</td>
<td>2-Butene, 1,4-dichloro- (I,T)</td>
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<td>U145</td>
<td>303–34–4</td>
<td>2-Butenoic acid, 2-methyl-, 7-[2,3-dihydroxy-2-(1-methoxyethyl]-3-methyl-1-oxobutoxy[methyl]- 2,3,5,7a-tetrahydro-1H-pyrolizin-1-yl ester,... [1S-[1alpha(Z),7(2S*,3R*),7aalpha]-</td>
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<td>n-Butyl alcool (I)</td>
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<td>Cacodylic acid</td>
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<td>Calcium chromate</td>
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<td>10605–21–7</td>
<td>Carbamic acid, 1H-benzimidazol-2-yl, methyl</td>
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<td>Carbamic acid, [1-(butylamino)carbonyl]-1H- benzimidazol-2-yl]-methyl ester. (5/96)</td>
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<td>Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester. (5/96)</td>
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<td>Carbaryl. (5/96)</td>
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<td>Carbendazim. (5/96)</td>
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<td>Carbofuran phenol. (5/96)</td>
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<td>Carbamic acid, dithallium(1 +) salt</td>
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<td>Chlorodane, alpha &amp; gamma isomers</td>
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<td>Diethylene glycol, dicarbamate (5/96)</td>
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<td>O.O-Diethyl S-methyl dithiophosphate</td>
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<td>Dimethylamine (I)</td>
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<td>p-Dimethylanilinoazobenzene</td>
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<td>alpha,alpha-Dimethylbenzylhydroperoxide (R)</td>
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<td>142–84–7</td>
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<td>Epichlorohydrin</td>
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<td>Ethanamine, N-ethyl-N-nitrosourea</td>
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<td>Ethyl carbamate (urethane)</td>
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<td>2,5-Furandione</td>
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<td>U206</td>
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<td>Glucopyranose, 2-deoxy-2-(3-methyl-3- nitrosoureido)-, D-</td>
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| U206 | 18883–66–4 | D-Glucose, 2-deoxy-2-[(methylnitrosoamino)- carbonyl]amino]-
### 261.33(f) Lists of Subpart D Toxic Hazardous Wastes

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<tr>
<th>HW #</th>
<th>CAS#</th>
<th>Substance</th>
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<td>U126</td>
<td>765–34–4</td>
<td>Glycidylaldehyde</td>
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<td>Guanidine, N-methyl-N′-nitro-N-nitroso-</td>
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<td>U127</td>
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<td>Hexachlorobenzene</td>
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<td>87–68–3</td>
<td>Hexachlorobutadiene</td>
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<td>Hexachloropropene</td>
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<td>Hydrazine, 1,1-dimethyl-</td>
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<td>Hydrazine, 1,2-diphenyl-</td>
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<td>Hydrofluoric acid (C, T)</td>
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<td>1,3-Isobenzofurandione</td>
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<td>Isosafrole</td>
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<td>U144</td>
<td>301–04–2</td>
<td>Lead acetate</td>
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| U146 | 1335–32–6| Lead, bis(acetato-O)tetrahydroxytri-
| U145 | 7446–27–7| Lead phosphate                   |
| U146 | 1335–32–6| Lead subacetate                  |
| U129 | 58–89–9  | Lindane                          |
| U165 | 70–25–7  | MNNG                             |
| U147 | 108–31–6 | Maleic anhydride                 |
| U148 | 123–33–1 | Maleic hydrazide                 |
| U149 | 109–77–3 | Malononitrile                    |
| U150 | 148–82–3 | Melphalan                        |
| U151 | 7439–97–6| Mercury                          |
| U152 | 126–98–7 | Methacrylonitrile (I, T)         |
| U092 | 124–40–3 | Methanamine, N-methyl- (I)       |
| U029 | 74–83–9  | Methane, bromo-                  |
| U045 | 74–87–3  | Methane, chloro- (I, T)          |
| U046 | 107–30–2 | Methane, chloromethoxy-          |
| U068 | 74–95–3  | Methane, dibromo-                |
| U080 | 75–09–2  | Methane, dichloro-               |
| U075 | 75–71–8  | Methane, dichlorodifluoro-        |
| U138 | 74–88–4  | Methane, iodo-                   |
| U119 | 62–50–0  | Methanesulfonic acid, ethyl ester|
| U211 | 56–23–5  | Methane, tetrachloro-            |
| U153 | 74–93–1  | Methanethiol (I, T)              |
| U225 | 75–25–2  | Methane, tribromo-               |
| U044 | 67–66–3  | Methane, trichloro-              |
| U121 | 75–69–4  | Methane, trichlorofluoro-        |
### 261.33(f) Lists of Subpart D Toxic Hazardous Wastes

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<td>1,3,4-Metheno-2H-cyclobutac[cd]pentalen-2-1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-</td>
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<td>1-Methylbutadiene (I)</td>
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<td>2,7-Naphthalenedisulfonic acid, 3,3'-(3,3',-dimethyl[1,1'-biphenyl]-4,4'-divl)bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt</td>
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### 261.33(f) Lists of Subpart D Toxic Hazardous Wastes

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<th>CAS#</th>
<th>Substance</th>
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<td>99–55–8</td>
<td>5-Nitro-o-toluidine</td>
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<td>U193</td>
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<td>Oxirane, (chloromethyl)-</td>
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<td>Paraldehyde</td>
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<td>U185</td>
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<td>Pentachlorobenzene</td>
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<td>82–68–8</td>
<td>Pentachloronitrobenzene (PCNB)</td>
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<td>See F027 Pentachlorophenol</td>
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<td>U161</td>
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<td>Pentanol, 4-methyl-</td>
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<td>504–60–9</td>
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<td>U187</td>
<td>62–44–2</td>
<td>Phenacetin</td>
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<td>U188</td>
<td>108–95–2</td>
<td>Phenol</td>
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<td>U048</td>
<td>95–57–8</td>
<td>Phenol, 2-chloro-</td>
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<td>U039</td>
<td>59–50–7</td>
<td>Phenol, 4-chloro-3-methyl-</td>
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<td>U081</td>
<td>120–83–2</td>
<td>Phenol, 2,4-dichloro-</td>
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<td>U082</td>
<td>87–65–0</td>
<td>Phenol, 2,6-dichloro-</td>
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<td>Phenol, 4,4′-(1,2-diethyl-1,2-ethenediyli)bis- (E)-</td>
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<td>105–67–9</td>
<td>Phenol, 2,4-dimethyl-</td>
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<td>Phenol, methyl-</td>
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<td>U132</td>
<td>70–30–4</td>
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<td>114–26–1</td>
<td>Phenol, 2-(1-methylethoxy)-methylcarbamate. (5/96)</td>
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<td>100–92–7</td>
<td>Phenol, 4-nitro-</td>
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<td>See F027 Phenol, pentachloro-</td>
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<td>See F027 Phenol, 2,3,4,6-tetrachloro-</td>
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<td>Phosphorodithioic acid, O,O-diethyl S-methyl ester</td>
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<td>U189</td>
<td>1314–80–3</td>
<td>Phosphorus sulfide (R)</td>
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<td>U190</td>
<td>85–44–9</td>
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<td>109–06–8</td>
<td>2-Picoline</td>
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<td>100–75–4</td>
<td>Piperidine, 1-nitroso-</td>
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<td>23950–58–5</td>
<td>Pronamide</td>
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<td>107–10–8</td>
<td>1-Propanamine (I, T)</td>
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<td>621–64–7</td>
<td>1-Propanamine, N-nitroso-N-propyl-</td>
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<td>142–84–7</td>
<td>1-Propanamine, N-propyl- (I)</td>
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<td>96–12–8</td>
<td>Propane, 1,2-dibromo-3-chloro-</td>
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<td>U085</td>
<td>78–87–5</td>
<td>Propane, 1,2-dichloro-</td>
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<td>Propanedinitrile</td>
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<td>79–46–9</td>
<td>Propane, 2-nitro- (I, T)</td>
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<td>1120–71–4</td>
<td>1,3-Propane sulfone</td>
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<td>See F027 Propanoic acid, 2-(2,4,5-trichlorophenoxy)-</td>
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<td>U235</td>
<td>126–72–7</td>
<td>1-Propanol, 2,3-dibromo-, phosphate (3:1)</td>
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<td>78–83–1</td>
<td>1-Propanol, 2-methyl- (I, T)</td>
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<td>2-Propenoic acid, 2-methyl-, methyl ester (I, T)</td>
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<td>Pyridine, 2-methyl-</td>
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<td>Selenium sulfide SeS (R, T)</td>
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<td>L-Serine, diazoacetate (ester)</td>
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<td>Silvex (2,4,5-TP)</td>
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<td>2,3,4,6-Tetrachlorophenol</td>
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<td>Tetrahydrofuran (I)</td>
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<td>Thallium(I) acetate</td>
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<td>6533–73–9</td>
<td>Thallium(I) carbonate</td>
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<td>7791–12–0</td>
<td>Thallium(I) chloride</td>
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<td>Thiophene (I)</td>
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<td>Thiophene (I)</td>
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<td>Thiophen-2-carboxylic acid (I)</td>
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<td>Thiophen-3-carboxylic acid (I)</td>
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<td>Thiophen-2-carboxylic acid (I)</td>
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<td>Thiophen-3-carboxylic acid (I)</td>
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<td>Thiophene (I)</td>
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261.33(f) Lists of Subpart D Toxic Hazardous Wastes

<table>
<thead>
<tr>
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<th>CAS#</th>
<th>Substance (11/90; 12/92; 12/93; 5/96, 9/98)</th>
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<tr>
<td>U220</td>
<td>108–88–3</td>
<td>Toluene</td>
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<td>U221</td>
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<td>Toluenediamine</td>
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<td>26471–62–5</td>
<td>Toluene diisocyanate (R, T)</td>
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<td>U328</td>
<td>95–53–4</td>
<td>o-Toluidine</td>
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<td>U355</td>
<td>106–49–0</td>
<td>p-Toluidine</td>
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<td>U222</td>
<td>636–21–5</td>
<td>o-Toluidine hydrochloride</td>
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<td>U389</td>
<td>2303–17–5</td>
<td>Triallate (5/96)</td>
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<td>U011</td>
<td>61–82–5</td>
<td>1H–1,2,4-Triazol-3-amine</td>
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<td>1,1,2-Trichloroethane</td>
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<td>Trichloroethylene</td>
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<td>Trichloromonofluoromethane</td>
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<td>95–95–4</td>
<td>2,4,5-Trichlorophenol</td>
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<td>88–06–2</td>
<td>2,4,6-Trichlorophenol</td>
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<td>121–44–8</td>
<td>Triethylamine (5/96)</td>
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<td>1,3,5-Trinitrobenzene (R, T)</td>
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<td>1,3,5-Trioxane, 2,4,6-trimethyl-</td>
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<td>126–72–7</td>
<td>Tri(2,3-dibromopropyl) phosphate</td>
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<td>72–57–1</td>
<td>Trypan blue</td>
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<td>U237</td>
<td>60–75–1</td>
<td>Uracil mustard</td>
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<td>759–73–9</td>
<td>Urea, N-ethyl-N-nitroso-</td>
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<td>684–93–5</td>
<td>Urea, N-methyl-N-nitroso-</td>
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<td>Vinyl chloride</td>
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<td>U248</td>
<td>1381–81–2</td>
<td>Warfarin, &amp; salts, when present at concentrations of 0.3% or less</td>
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<td>U239</td>
<td>1330–20–7</td>
<td>Xylene (I)</td>
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<td>U200</td>
<td>50–55–5</td>
<td>Yohimbain-16-carboxylic acid, 11.17- dimethoxy-18-[(3,4,5- trimethoxybenzoyl)oxy]-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-</td>
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<td>U249</td>
<td>1314–84–7</td>
<td>Zinc phosphide Zn₃P₂, when present at concentrations of 10% or less</td>
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* CAS Number given for parent compound only.

HISTORY: Amended by State Register Volume 12, Issue No. 11, eff November 25, 1988; State Register Volume 14, Issue No. 11, eff November 25, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1995; State Register Volume 18, Issue No. 12, eff December 23, 1994; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 25, Issue No. 10, eff October 26, 2001; State Register Volume 36, Issue No. 9, eff September 28, 2012; State Register Volume 39, Issue No. 6, Doc. No. 4541, eff June 26, 2015.

261.35. Deletion of certain hazardous waste codes following equipment cleaning and replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of paragraphs (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;
(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or
(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservatives.

(2) Cleaning Requirements.
(i) Prepare and sign a written equipment cleaning plan that describes:
   (A) The equipment to be cleaned;
   (B) How the equipment will be cleaned;
   (C) The solvent to be used in cleaning;
   (D) How solvent rinses will be tested; and
   (E) How cleaning residues will be disposed.
(ii) Equipment must be cleaned as follows:
   (A) Remove all visible residues from process equipment;
   (B) Rinse process equipment with an appropriate solvent until dioxins and dibenzo furans are not detected in the final solvent rinse.
(iii) Analytical requirements.
   (A) Rinses must be tested in accordance with SW-846, Method 8290.
   (B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.
(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.
(i) Prepare and sign a written equipment replacement plan that describes:
   (A) The equipment to be replaced;
   (B) How the equipment will be replaced; and
   (C) How the equipment will be disposed.
(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.
(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.
(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:
   (1) The name and address of the facility;
   (2) Formulations previously used and the date on which their use ceased in each process at the plant;
   (3) Formulations currently used in each process at the plant;
   (4) The equipment cleaning or replacement plan;
   (5) The name and address of any persons who conducted the cleaning and replacement;
   (6) The dates on which cleaning and replacement were accomplished;
   (7) The dates of sampling and testing;
   (8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;
   (9) A description of the tests performed, the date the tests were performed, and the results of the tests;
   (10) The name and model numbers of the instrument(s) used in performing the tests;
   (11) QA/QC documentation; and
   (12) The following statement signed by the generator or his authorized representative:
I certify under penalty of law that all process equipment required to be cleaned or replaced under 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.


SUBPART E
Exclusions/Exemptions

261.38.  [Reserved].

HISTORY:  Former Regulation, titled Exclusion of comparable fuel and syngas fuel, had the following history:
Added by State Register Volume 23, Issue No. 11, eff November 26, 1999;  Amended by State Register Volume
25, Issue No. 10, eff October 26, 2001;  State Register Volume 26, Issue No. 6, Part 1, June 28, 2002;  State
Register Volume 36, Issue No. 9, eff September 28, 2012.  Reserved by State Register Volume 40, Issue No. 5,
Doc. No. 4646, eff May 27, 2016.

261.39.  Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) Prior to processing:  These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) Storage.  The broken CRTs must be either:

   (i) Stored in a building with a roof, floor, and walls, or

   (ii) Placed in a container (i.e., a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(2) Labeling.  Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: “Used Cathode Ray Tube(s)-contains leaded glass” or “Leaded glass from televisions or computers.”  It must also be labeled: “Do not mix with other glass materials.”

(3) Transportation.  The used, broken CRTs must be transported in a container meeting the requirements of paragraphs (a)(1)(ii) and (2) of this section.

(4) Speculative accumulation and use constituting disposal.  The used, broken CRTs are subject to the limitations on speculative accumulation as defined in paragraph (c)(8) of this section.  If they are used in a manner constituting disposal, they must comply with the applicable requirements of part 266, subpart C instead of the requirements of this section.

(5) Exports.  In addition to the applicable conditions specified in paragraphs (a)(1)-(4) of this section, exporters of used, broken CRTs must comply with the following requirements:

   (i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States.  A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off-site.  This notification may cover export activities extending over a twelve (12) month or lesser period.  The notification must be in writing, signed by the exporter, and include the following information:

      (A) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

      (B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

      (C) The estimated total quantity of CRTs specified in kilograms.

      (D) All points of entry to and departure from each foreign country through which the CRTs will pass.

      (E) A description of the means by which each shipment of the CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).
(F) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: “Attention: Notification of Intent to Export CRTs.”

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(5)(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(5)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (a)(5)(i)(H) of this section) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country’s consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with paragraph (a)(5)(vi) of this section and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of theAcknowledgment.

(x) CRT exporters must file with EPA no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (for example, the facility or facilities where the recycling occurs) of all used CRTs exported during the previous calendar year. Such reports must also include the following:

(A) The name, EPA ID number (if applicable), and mailing and site address of the exporter;

(B) The calendar year covered by the report;

(C) A certification signed by the CRT exporter that states:
“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 this 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.”

(xi) Annual reports must be submitted to the office specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three (3) years from the due date of the report.

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in Sec. 260.10 of this chapter are not solid wastes if they meet the following requirements:

(1) Storage. Used, broken CRTs undergoing processing are subject to the requirement of paragraph (a)(4) of this section.

(2) Processing.

(i) All activities specified in paragraphs (2) and (3) of the definition of “CRT processing” in Sec. 260.10 of this chapter must be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in Sec. 261.1(c)(8).

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of 40 CFR part 266, subpart C instead of the requirements of this section.


Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of Sec. 261.39(a)(5), and if they are not speculatively accumulated as defined in Sec. 261.1(c)(8).

HISTORY: Added by State Register Volume 33, Issue No. 6, eff June 26, 2009.

261.41. Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) Persons who export used, intact CRTs for reuse must send a notification to the Regional Administrator. The notification may cover export activities extending over a twelve (12) month or lesser period.

(1) The notification must be in writing, signed by the exporter, and include the following information:

(i) Name, mailing address, telephone number, and EPA ID number (if applicable) of the exporter of the used, intact CRTs;

(ii) The estimated frequency or rate at which the used, intact CRTs are to be exported and the period of time over which they are to be exported;

(iii) The estimated total quantity of used, intact CRTs specified in kilograms;

(iv) All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their handling while there;

(v) A description of the means by which each shipment of the used, intact CRTs will be transported (for example, mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));
(vi) The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;

(vii) A description of the manner in which the used, intact CRTs will be reused (including reuse after refurbishment) in the foreign country that will be receiving the used, intact CRTs; and

(viii) A certification signed by the CRT exporter that states:

“I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. 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.”

(2) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, William Jefferson Clinton Building, Room 6144, 1200 Pennsylvania Ave. NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: “Attention: Notification of Intent to Export CRTs.”

(b) CRT exporters of used, intact CRTs sent for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse must provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within thirty (30) days upon request by EPA.


APPENDICES

Appendix I. Representative Sampling Methods

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the Agency to be representative of the waste.

- Extremely viscous liquid—ASTM Standard D140-70
- Crushed or powdered material—ASTM Standard D346-75
- Soil or rock-like material—ASTM Standard D1452-65
- Fly Ash-like material—ASTM Standard D2234-76
- Liquid waste in pits, ponds, lagoons, and similar reservoirs. “Pond Sampler” described in “Test Methods for the Evaluating Solid Waste, Physical/Chemical Methods.” 1A
- This manual also contains additional information on application of these protocols.

1A These methods are also described in Samplers and Sampling Procedures for Hazardous Waste Streams, EPA 600/2-80-018, January 1980. The Department will consider other methodologies for testing from other sources (such as) i.e., Standard Methods, other Federal Regulations, as long as the proper QA/QC is provided.
Appendix II. Method 1311 Toxicity Characteristic Leaching Procedure (TCLP)

Editor’s Note

NOTE: The TCLP (Method 1311) is published in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in 260.11; This appendix no longer is included in R.61-79.261.

Appendix III. CHEMICAL ANALYSIS TEST METHODS

Note: Appropriate analytical procedures to determine whether a sample contains a given toxic constituent are specified in Chapter Two, “Choosing the Correct Procedure” found in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in 260.11. Prior to final sampling and analysis method selection, the individual should consult the specific section or method described in SW-846 for additional guidance on which of the approved methods should be employed for a specific sample analysis situation.

HISTORY: Amended by State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1995.

Appendix VII. BASIS FOR LISTING HAZARDOUS WASTE

<table>
<thead>
<tr>
<th>EPA Hazardous Waste No.</th>
<th>Hazardous constituents for which listed</th>
</tr>
</thead>
<tbody>
<tr>
<td>F001</td>
<td>Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.</td>
</tr>
<tr>
<td>F002</td>
<td>Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.</td>
</tr>
<tr>
<td>F003</td>
<td>N.A.</td>
</tr>
<tr>
<td>F004</td>
<td>Cresols and cresylic acid, nitrobenzene.</td>
</tr>
<tr>
<td>F005</td>
<td>Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.</td>
</tr>
<tr>
<td>F006</td>
<td>Cadmium, hexavalent chromium, nickel, cyanide (complexed).</td>
</tr>
<tr>
<td>F007</td>
<td>Cyanide (salts).</td>
</tr>
<tr>
<td>F008</td>
<td>Cyanide (salts).</td>
</tr>
<tr>
<td>F009</td>
<td>Cyanide (salts).</td>
</tr>
<tr>
<td>F010</td>
<td>Cyanide (salts).</td>
</tr>
<tr>
<td>F011</td>
<td>Cyanide (salts).</td>
</tr>
<tr>
<td>F012</td>
<td>Cyanide (complexed).</td>
</tr>
<tr>
<td>F019</td>
<td>Hexavalent chromium, cyanide (complexed).</td>
</tr>
<tr>
<td>F020</td>
<td>Tetra- and pentachlorodibenzo-p-dioxins; tetra and pentachlorodi-benzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.</td>
</tr>
<tr>
<td>F021</td>
<td>Penta- and hexachlorodibenzo-p-dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives.</td>
</tr>
<tr>
<td>F022</td>
<td>Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.</td>
</tr>
<tr>
<td>F023</td>
<td>Tetra- and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.</td>
</tr>
<tr>
<td>F024</td>
<td>Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1-2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,2,2-tetra-chloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3-chloropropene), dichloropropane, dichloropropene, 2-chloro-1,3-buta diene, hexachloro-1,3-buta diene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorobenzene, dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, napthalene.</td>
</tr>
</tbody>
</table>
| F025                    | Chloromethane; Dichloromethane; Trichloromethane; Carbon tetrachloride; Chloroethylene, 1,1-Dichloroethane; 1,2-Dichloroethane; trans-1,2-Dichloroethylene; 1,1-Dichloroethylene; 1,1,1-Trichloroethane; 1,1,2-Trichloroeth-
EPA Hazardous Waste No. 1,1,1,2-Tetrachloroethane; 1,1,2,2-Tetrachloroethylene; Tetrachloroethylene; Pentachloroethane; Hexachloroethylene; Allyl chloride (3-Chloropropene); Dichloropropane; Dichloropropene; 2-Chloro-1,3-butadiene; Hexachloro-1,3-butadiene; Hexachlorocyclopentadiene; Benzene; Chlorobenzene; Dichlorobenzene; 1,2,4-Trichlorobenzene; Tetrachlorobenzene; Pentachlorobenzene; Hexachlorobenzene; Toluene; Naphthalene.

F026 Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.

F027 Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenox derivative acids, esters, ethers, amine and other salts.

F028 Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenox derivative acids, esters, ethers, amine and other salts.

F032 Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans (added 12/92).

F034 Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium (added 12/92).

F035 Arsenic, chromium, lead (added 12/92).

F037 Benzene, benzo(a)pyrene, chrysene, lead, chromium (added 12/92).

F038 Benzene, benzo(a)pyrene, chrysene, lead, chromium (added 12/92).

F039 All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under 268.43, Table CCW (added 12/92).

K001 Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, cresote, chrysene, naphthalene, fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.

K002 Hexavalent chromium, lead.

K003 Hexavalent chromium, lead.

K004 Hexavalent chromium.

K005 Hexavalent chromium.

K006 Hexavalent chromium.

K007 Cyanide (complexed), hexavalent chromium.

K008 Hexavalent chromium.

K009 Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.

K010 Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.

K011 Acrylonitrile, acetonitrile, hydrocyanic acid.

K012 Hydrocyanic acid, acrylonitrile, acetonitrile.

K013 Acetonitrile, acrylamide.

K014 Benzyl chloride, chlorobenzene, toluene, benzotrichloride.

K015 Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.

K017 Epichlorohydrin, chloroethers [bis(chloromethyl) ether and bis (2-chloroethyl) ethers], trichloropropene, dichloropropanols.

K018 1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.

K019 Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinyldene chloride.

K020 Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinyldene chloride.
<table>
<thead>
<tr>
<th>EPA Waste No.</th>
<th>Hazardous constituents for which listed</th>
</tr>
</thead>
<tbody>
<tr>
<td>K021</td>
<td>Antimony, carbon tetrachloride, chloroform.</td>
</tr>
<tr>
<td>K022</td>
<td>Phenol, tars (polycyclic aromatic hydrocarbons).</td>
</tr>
<tr>
<td>K023</td>
<td>Phthalic anhydride, maleic anhydride.</td>
</tr>
<tr>
<td>K024</td>
<td>Phthalic anhydride, 1,4-naphthoquinone.</td>
</tr>
<tr>
<td>K025</td>
<td>Meta-dinitrobenzene, 2,4-dinitrotoluene.</td>
</tr>
<tr>
<td>K026</td>
<td>Paraaldehyde, pyridines, 2-picoline.</td>
</tr>
<tr>
<td>K027</td>
<td>Toluene disocyanate, toluene-2, 4-diamine.</td>
</tr>
<tr>
<td>K028</td>
<td>1,1,1-trichloroethane, vinyl chloride.</td>
</tr>
<tr>
<td>K029</td>
<td>1,2-dichloroethane, 1,1,1-trichloroethane, vinyl chloride, vinylidene chloride, chloroform.</td>
</tr>
<tr>
<td>K030</td>
<td>Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride.</td>
</tr>
<tr>
<td>K031</td>
<td>Arsenic.</td>
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<tr>
<td>K032</td>
<td>Hexachlorocyclopentadiene.</td>
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<tr>
<td>K033</td>
<td>Hexachlorocyclopentadiene.</td>
</tr>
<tr>
<td>K034</td>
<td>Hexachlorocyclopentadiene.</td>
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<td>K035</td>
<td>Creosote, chrysene, naphthalene, fluoranthene benzo(b) fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthene.</td>
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<tr>
<td>K036</td>
<td>Toluene, phosphorodithioic and phosphorothioic acid esters.</td>
</tr>
<tr>
<td>K037</td>
<td>Toluene, phosphorodithioic and phosphorothioic acid esters.</td>
</tr>
<tr>
<td>K038</td>
<td>Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.</td>
</tr>
<tr>
<td>K039</td>
<td>Phosphorodithioic and phosphorothioic acid esters.</td>
</tr>
<tr>
<td>K040</td>
<td>Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.</td>
</tr>
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<td>K041</td>
<td>Toxaphene.</td>
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<td>K042</td>
<td>Hexachlorobenzene, ortho-dichlorobenzene.</td>
</tr>
<tr>
<td>K043</td>
<td>2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol.</td>
</tr>
<tr>
<td>K044</td>
<td>N.A.</td>
</tr>
<tr>
<td>K045</td>
<td>N.A.</td>
</tr>
<tr>
<td>K046</td>
<td>Lead.</td>
</tr>
<tr>
<td>K047</td>
<td>N.A.</td>
</tr>
<tr>
<td>K048</td>
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<tr>
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</tr>
<tr>
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<td>Hexavalent chromium.</td>
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<td>K051</td>
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<tr>
<td>K052</td>
<td>Lead.</td>
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<td>K060</td>
<td>Cyanide, naphthalene, phenolic compounds, arsenic.</td>
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<td>K061</td>
<td>Hexavalent chromium, lead, cadmium.</td>
</tr>
<tr>
<td>K062</td>
<td>Hexavalent chromium, lead.</td>
</tr>
<tr>
<td>K069</td>
<td>Hexavalent chromium, lead, cadmium.</td>
</tr>
<tr>
<td>K071</td>
<td>Mercury.</td>
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<td>K073</td>
<td>Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane.</td>
</tr>
<tr>
<td>K083</td>
<td>Aniline, diphenylamine, nitrobenzene, phenylenediamine.</td>
</tr>
<tr>
<td>K084</td>
<td>Arsenic.</td>
</tr>
<tr>
<td>K085</td>
<td>Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.</td>
</tr>
<tr>
<td>K086</td>
<td>Lead, hexavalent chromium.</td>
</tr>
<tr>
<td>K087</td>
<td>Phenol, naphthalene.</td>
</tr>
<tr>
<td>K088</td>
<td>Cyanide (complexes).</td>
</tr>
<tr>
<td>K093</td>
<td>Phthalic anhydride, maleic anhydride.</td>
</tr>
<tr>
<td>K094</td>
<td>Phthalic anhydride.</td>
</tr>
<tr>
<td>K095</td>
<td>1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane.</td>
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<td>K096</td>
<td>1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane.</td>
</tr>
<tr>
<td>K097</td>
<td>Chlordane, heptachlor.</td>
</tr>
<tr>
<td>K098</td>
<td>Toxaphene.</td>
</tr>
<tr>
<td>K099</td>
<td>2,4-dichlorophenol, 2,4,6-trichlorophenol.</td>
</tr>
<tr>
<td>K100</td>
<td>Hexavalent chromium, lead, cadmium.</td>
</tr>
<tr>
<td>K101</td>
<td>Arsenic.</td>
</tr>
<tr>
<td>K102</td>
<td>Arsenic.</td>
</tr>
<tr>
<td>K103</td>
<td>Aniline, nitrobenzene, phenylenediamine.</td>
</tr>
<tr>
<td>K104</td>
<td>Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine.</td>
</tr>
</tbody>
</table>
EPA Hazardous Waste No. | Hazardous constituents for which listed
---|---
K105 | Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6-trichlorophenol.
K106 | Mercury.
K107 | 1,1-Dimethylhydrazine (UDMH) (added 12/92).
K108 | 1,1-Dimethylhydrazine (UDMH) (added 12/92).
K109 | 1,1-Dimethylhydrazine (UDMH) (added 12/92).
K110 | 1,1-Dimethylhydrazine (UDMH) (added 12/92).
K111 | 2,4-Dinitrotoluene.
K112 | 2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K113 | 2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K114 | 2,4-Toluenediamine, o-toluidine, p-toluidine.
K115 | 2,4-Toluenediamine.
K116 | Carbon tetrachloride, tetrachloroethylene, chloroform, phosgene.
K117 | Ethylene dibromide.
K118 | Ethylene dibromide.
K119 | Ethylene thiourea.
K120 | Ethylene thiourea.
K121 | Ethylene thiourea.
K122 | Dimethyl sulfate, methyl bromide.
K123 | Methyl bromide.
K124 | Ethylene dibromide.
K125 | Ethylene dibromide.
K126 | Ethylene dibromide.
K127 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K128 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K129 | Benzene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene. (added 12/93)
K130 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene. (added 12/93)
K131 | Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, naphthalene. (added 12/93)
K132 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K133 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K134 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K135 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K136 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K137 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K138 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K139 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K140 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K141 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K142 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K143 | Benzene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene. (added 12/93)
K144 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene. (added 12/93)
K145 | Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, naphthalene. (added 12/93)
K146 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K147 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K148 | Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene. (added 12/93)
K149 | Benzotrichloride, benzyl chloride, chloroform, chloromethane, chlorobenzene, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, toluene. (added 12/93)
K150 | Carbon tetrachloride, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethylene, 1,2,4-trichlorobenzene. (added 12/93)
K151 | Benzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, toluene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene. (added 12/93)
K152 | Benomyl, carbaryl, carbandazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine. (added 5/96)
K153 | Benomyl, carbandazim, carbofuran, carbosulfan, chloroform, methylene chloride. (added 5/96)
K154 | Benomyl, carbaryl, carbandazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine. (added 5/96)
K155 | Benomyl, carbandazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine. (added 5/96)
K156 | Benomyl, carbaryl, carbandazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine. (added 5/96)
K157 | Benomyl, carbandazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine. (added 5/96)
K158 | Benomyl, carbandazim, carbofuran, carbosulfan, chloroform, methylene chloride. (added 5/96)
K159 | Benomyl, carbandazim, carbofuran, carbosulfan, chloroform, methylene chloride. (added 5/96)
K160 | Benomyl, carbandazim, carbofuran, carbosulfan, chloroform, methylene chloride. (added 5/96)
K161 | Antimony, arsenic, metam-sodium, ziram. (added 5/96)
K162 | Benzenes. (added 5/96)
K163 | Benzenes, arsenic. (added 5/96)
K164 | Benzenes, arsenic. (added 5/96)
EPA
Hazardous Waste No. Hazardous constituents for which listed
K174 1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD), 1,2,3,4,6,7,8-Heptachlorodibenzo-furan (1,2,3,4,6,7,8-HpCDF), 1,2,3,4,7,8,9-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8,9-HpCDD), HxCDDs (All Hexachlorodibenzo-p-dioxins), HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-p-dioxins), OCDD (1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin, OCDF (1,2,3,4,6,7,8,9-Octachlorodibenzo-furan), PeCDFs (All Pentachlorodibenzofurans), TCDDs (All tetrachlorodi-benzo-p-dioxins), TCDFs (All tetrachlorodibenzofurans).

K175 Mercury
K176 Arsenic, Lead.
K177 Antimony.
K178 Thallium.
K181 Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, 1,3-phenylenediamine.

K900 Tributyltin, Tributyltin Oxide, Tributyltin Chloride, Tributyltin Hydroxide, Tributyltin Bromide, Tributyltin Acetate, Tributyltin Fluoride, Triethyltin, Triethyltin Chloride

N.A.—Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity.

HISTORY: Amended by State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1995; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 25, Issue No. 10, eff October 26, 2001; State Register Volume 26, Issue No. 5, Part 1, eff May 24, 2002; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2003; State Register Volume 31, Issue No. 2, eff February 23, 2007; State Register Volume 36, Issue No. 9, eff September 28, 2012.

Appendix VIII. HAZARDOUS CONSTITUENTS
(amended 11/90, 12/92, 12/93)

Appendix VIII to Part 261—Hazardous Constituents

<table>
<thead>
<tr>
<th>Appendix VIII Hazardous Constituents</th>
<th>Chemical abstracts name (9/98)</th>
<th>CAS #</th>
</tr>
</thead>
<tbody>
<tr>
<td>A2213 (5/96) Ethanimidothioic acid, 2- (dimethylamino)-N-hydroxy-2-oxo-, methyl ester</td>
<td>30558-43-1</td>
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<tr>
<td>Acetonitrile Same</td>
<td>75-05-8</td>
<td></td>
</tr>
<tr>
<td>Acetophenone Ethanone, 1-phenyl-</td>
<td>98-86-2</td>
<td></td>
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<tr>
<td>2-Acetylaminofluorone Acetamide, N-9H-fluoren-2-yl-</td>
<td>53-96-3</td>
<td></td>
</tr>
<tr>
<td>Acetyl chloride Same</td>
<td>75-36-5</td>
<td></td>
</tr>
<tr>
<td>1-Acetyl-2-thiourea</td>
<td>591-08-2</td>
<td></td>
</tr>
<tr>
<td>Acrolein 2-Propenal</td>
<td>107-02-8</td>
<td></td>
</tr>
<tr>
<td>Acrylamide 2-Propenamide</td>
<td>79-06-1</td>
<td></td>
</tr>
<tr>
<td>Acrylonitrile 2-Propenynitrile</td>
<td>107-13-1</td>
<td></td>
</tr>
<tr>
<td>Aflatoxins Same</td>
<td>1402-68-2</td>
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<tr>
<td>Aldicarb Propanal, 2-methyl-2-(methylthio)-, O-{(methylamino)carbonyloxime</td>
<td>116-06-3</td>
<td></td>
</tr>
<tr>
<td>Aldicarb sulfone (5/96) Propanal, 2-methyl-2-(methylsulfanyl), O-{(methylamino)carbonyloxime</td>
<td>1646-88-4</td>
<td></td>
</tr>
<tr>
<td>Aldrin 1,4,5,8-Dimethanophthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro- (1alpha,4alpha,4abeta,5alpha,8alpha, 8abeta)-</td>
<td>309-00-2</td>
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<tr>
<td>Allyl alcohol 2-Propen-1-ol</td>
<td>107-18-6</td>
<td></td>
</tr>
<tr>
<td>Allyl chloride 1-Propane, 3-chloro</td>
<td>107-05-1</td>
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</table>
### Appendix VIII Hazardous Constituents

<table>
<thead>
<tr>
<th>Common name</th>
<th>Chemical abstracts name (9/98)</th>
<th>CAS #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aluminum phosphide</td>
<td>Same</td>
<td>20859-73-8</td>
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<tr>
<td>4-Aminobiphenyl</td>
<td>[1,1’-Biphenyl]-4-amine</td>
<td>92-67-1</td>
</tr>
<tr>
<td>5-(Aminomethyl)-3-isoxazol</td>
<td>3(2H)-Isoxazolone, 5-(aminomethyl)-</td>
<td>2763-96-4</td>
</tr>
<tr>
<td>4-Aminopyridine</td>
<td>4-Pyrindamine</td>
<td>504-24-5</td>
</tr>
<tr>
<td>Amitrole</td>
<td>1H–1,2,4-Triazol-3-amine</td>
<td>61-82-5</td>
</tr>
<tr>
<td>Ammonium vanadate</td>
<td>Vanadic acid, ammonium salt</td>
<td>7803-55-6</td>
</tr>
<tr>
<td>Aniline</td>
<td>Benzenamine</td>
<td>62-53-3</td>
</tr>
<tr>
<td>o-Anisidine (2-methoxyani-</td>
<td>line) Benzenamine, 2-Methoxy-</td>
<td>90-04-0</td>
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<tr>
<td>Antimony compounds, N.O.S.1</td>
<td>Same</td>
<td>7440-36-0</td>
</tr>
<tr>
<td>Aramite</td>
<td>Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester</td>
<td>140-57-8</td>
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<tr>
<td>Arsenic</td>
<td>Same</td>
<td>7440-38-2</td>
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<td>Arsenic acid compounds, N.O.S.1</td>
<td>Arsenic acid H$_2$AsO$_4$</td>
<td>7778-39-4</td>
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<tr>
<td>Arsenic pentoxide</td>
<td>Arsenic oxide As$_2$O$_3$</td>
<td>1303-28-2</td>
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<tr>
<td>Arsenic trioxide</td>
<td>Arsenic oxide As$_2$O$_5$</td>
<td>1327-53-3</td>
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<td>Auramine</td>
<td>Benzenamine, 4,4’-carbonimidovlbis[N,N-dimethyl</td>
<td>492-80-8</td>
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<tr>
<td>Azaserine</td>
<td>L-Serine, diazooacetate (ester)</td>
<td>115-02-6</td>
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<tr>
<td>Barban (5/96)</td>
<td>Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butylnyl ester</td>
<td>101-27-9</td>
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<tr>
<td>Barium compounds, N.O.S.1</td>
<td>Same</td>
<td>7440-39-3</td>
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<td>Barium cyanide</td>
<td>Same</td>
<td>542-62-1</td>
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<tr>
<td>Bendiocarb (5/96)</td>
<td>1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbonate</td>
<td>22781-23-3</td>
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<tr>
<td>Bendiocarb phenol (5/96)</td>
<td>1,3-Benzodioxol-4-ol, 2,2-dimethyl-</td>
<td>22961-82-6</td>
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<td>Benomyl (5/96)</td>
<td>Carbamic acid, [1- [(butylamino) carbonyl]-1H-benzimidazol-2-yl]-, methyl ester</td>
<td>17804-53-2</td>
</tr>
<tr>
<td>Benz[c]acridine</td>
<td>Same</td>
<td>225-51-4</td>
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<td>Benz[a]anthracene</td>
<td>Same</td>
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<td>Benzal chloride</td>
<td>Benzenec, (dichloromethyl)-</td>
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<td>Benzene</td>
<td>Same</td>
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<td>Benzenearsonic acid</td>
<td>Arsonic acid, phenyl-</td>
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<td>Benzidine</td>
<td>[1,1’-Biphenyl]-4,4’-diamine</td>
<td>92-87-5</td>
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<td>Benzo[b]fluoranthene</td>
<td>Benzenec,acephenanthrylene</td>
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<td>Benzo[j]fluoranthene</td>
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<td>Benzo[k]fluoranthene</td>
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<td>207-08-9</td>
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<td>Benzo[a]pyrene</td>
<td>Same</td>
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<td>p-Benzoquinone</td>
<td>2,5-Cyclohexadiene-1,4-dione</td>
<td>106-51-4</td>
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<td>Benzo[trichloride]</td>
<td>Benzenec, (trichloromethyl)-</td>
<td>98-07-7</td>
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<td>Benzyl chloride</td>
<td>Benzenec, (chloromethyl)-</td>
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<td>Beryllium powder</td>
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<td>Beryllium compounds, N.O.S.1</td>
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<td>Bis (pentamethylene)-thiuram tetrasulfide.</td>
<td>Piperidine, 1,1’-(tetrathiodicarbonothioyl)-bis-</td>
<td>120-54-7</td>
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<tr>
<td>Common name</td>
<td>Chemical abstracts name (9/98)</td>
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<tr>
<td>Bromoacetone</td>
<td>2-Propanone, 1-bromo-</td>
<td>598–31–2</td>
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<td>Bromoform</td>
<td>Methane, tribromo-</td>
<td>75–25–2</td>
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<td>4-Bromophenyl ether</td>
<td>Benzene, 1-bromo-4-phenoxy-</td>
<td>101–55–3</td>
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<td>Brucine</td>
<td>Strychnidin-10-one, 2,3-dimethoxy-</td>
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<td>Butyl benzyl phthalate</td>
<td>1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester</td>
<td>85–68–7</td>
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<td>Butylate (5/96)</td>
<td>Carboxothioic acid, bis (2-methylpropyl)-, S-ethyl ester</td>
<td>2008–41–5</td>
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<td>Cacodylic acid</td>
<td>Arsinic acid, dimethyl-</td>
<td>75–60–5</td>
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<td>Cadmium</td>
<td>Same</td>
<td>7440–43–9</td>
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<td>Calcium chromate</td>
<td>Chromic acid H₂CrO₄, calcium salt</td>
<td>13765–19–0</td>
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<td>Calcium cyanide</td>
<td>Calcium cyanide Ca(CN)₆</td>
<td>592–01–8</td>
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<tr>
<td>Carbaryl (5/96)</td>
<td>1-Naphthalenol, methylcarbamate</td>
<td>63–25–2</td>
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<td>Carbendazim (5/96)</td>
<td>Carboxamic acid, 1H-benzimidazol-2-yl, methyl ester</td>
<td>10605–21–7</td>
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<tr>
<td>Carbofuran (5/96)</td>
<td>7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methyl carbamate</td>
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<td>Carbofuran phenol (9/96)</td>
<td>7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-</td>
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<td>Carbon disulfide</td>
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<td>Carbon oxyfluoride</td>
<td>Carbonic difluoride</td>
<td>355–50–4</td>
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<td>Carbon tetrachloride</td>
<td>Methane, tetrachloro-</td>
<td>56–23–5</td>
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<td>Carbosulfan (6/96)</td>
<td>Carbamic acid, [(dibutylamino) thio] methyl-2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester</td>
<td>55285–14–8</td>
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<td>Chloral</td>
<td>Acetaldehyde, trichloro-</td>
<td>75–87–6</td>
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<td>Chlorambucil</td>
<td>Benzenebutanoic acid, 4-{bis(2-chloroethyl)amino}-</td>
<td>305–03–3</td>
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<td>Chlordane</td>
<td>4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-</td>
<td>57–74–9</td>
</tr>
</tbody>
</table>

Chlordane (alpha and gamma isomers)

| Chlorinated benzenes, N.O.S.¹ |                                |          |
| Chlorinated ethane, N.O.S.¹   |                                |          |
| Chlorinated fluorocarbons, N.O.S.¹ |                            |          |
| Chlorinated naphthalene, N.O.S.¹ |                            |          |
| Chlorinated phenol, N.O.S.¹   |                                |          |
| Chloronaphazin                | Naphthalenamine, N,N'-bis(2-chloroethyl)- | 494–03–1 |
| Chloroacetaldehyde            | Acetaldehyde, chloro-         | 107–20–0 |
| Chloroalkyl ethers, N.O.S.¹   |                                |          |
| p-Chloroaniline               | Benzenamine, 4-chloro-        | 106–47–8 |
| Chlorobenzene                 | Benzenes, chloro-            | 108–90–7 |
| Chlorobenzilate               | Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)alpha-hydroxy-, ethyl ester | 510–15–6 |
| p-Chloro-m-cresol             | Phenol, 4-chloro-3-methyl-    | 59–50–7  |
| 2-Chloroethoxy vinyl ether    | Ethene, (2-chloroethoxy)-     | 110–75–8 |
| Chloroform                    | Methane, trichloro-          | 67–66–3  |
| Chloromethyl methyl ether     | Methane, chloromethoxy-      | 107–30–2 |
| beta-Chlornaphthalene         | Naphthalene, 2-chloro-        | 91–58–7  |
| o-Chlorophenol                | Phenol, 2-chloro-            | 95–57–8  |
### Appendix VIII Hazardous Constituents

<table>
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<th>Common name</th>
<th>Chemical abstracts name (9/98)</th>
<th>CAS #</th>
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<tr>
<td>1-(o-Chlorophenyl)thiourea</td>
<td>Thiourea, (2-chlorophenyl)-</td>
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<td>Chloroprene</td>
<td>1,3-Butadiene, 2-chloro-</td>
<td>126–99–8</td>
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<td>3-Chloropropionitrile</td>
<td>Propanenitrile, 3-chloro-</td>
<td>542–76–7</td>
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<tr>
<td>Chromium</td>
<td>Same</td>
<td>7440–47–3</td>
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<td>Chromium compounds, N.O.S.</td>
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<td>218–01–9</td>
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<td>Citrus red No. 2</td>
<td>2-Naphthalenol, 1-[(2,5-dimethoxyphenyl)azo]-</td>
<td>6358–53–8</td>
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<td>Coal tar creosote</td>
<td>Same</td>
<td>8007–45–2</td>
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<tr>
<td>Copper cyanide</td>
<td>Copper cyanide CuCN</td>
<td>544–92–3</td>
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<td>Copper dimethyldithiocarbamate</td>
<td>Copper, bis(dimethylcarbamothioato-S,S')-, (6/96)</td>
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<td>Creosote</td>
<td>Same</td>
<td>120–71–8</td>
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<td>Cresol ( Cresylic acid)</td>
<td>Phenol, methyl-</td>
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<td>Crotonaldehyde</td>
<td>2-Butenal</td>
<td>4170–30–3</td>
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<td>m-Cumenyl methylcarbamate</td>
<td>Phenol, 3-(methylcarbamate (5/96)</td>
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<td>Cyanides (soluble salts and complexes) N.O.S.</td>
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<td>Cyanogen</td>
<td>Ethanedinitrile</td>
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<td>Cyanogen bromide</td>
<td>Cyanogen bromide (CN)Br</td>
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<td>Cyanogen chloride</td>
<td>Cyanogen chloride (CN)Cl</td>
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<td>Cycasin</td>
<td>beta-D-Glucopyranoside, (methyl-ONN-azoxymethyl</td>
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<td>Cycloate</td>
<td>Carbamothioic acid, cyclohexylethyl-, S-ethyl ester</td>
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<td>Cyclohexyl-4,6-dinitrophenol</td>
<td>Phenol, 2-cyclohexyl-4,6-dinitro-</td>
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<td>Cyclophosphamide</td>
<td>2H–1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide</td>
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<td>DDD</td>
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<td>Diallate</td>
<td>Carbamothioic acid, bis(1-methylthioethyl)-, S-(2,3-di-</td>
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<td>Dibenz[a,h]acridine</td>
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<td>7H-Dibenzo[c,g]carbazole</td>
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<td>Naphtho[1,2,3,4-def]chrysene</td>
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<td>Dibenzo[a,h]pyrene</td>
<td>Dibenzo[b,def]chrysene</td>
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<td>1,2-Dibromo-3-chloropropane</td>
<td>Propane, 1,2-dibromo-3-chloro-</td>
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<td>Dibutyl phthalate</td>
<td>1,2-Benzene dicarboxylic acid, dibutyl ester</td>
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### Appendix VIII Hazardous Constituents

<table>
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<th>Common name</th>
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<td>o-Dichlorobenzene</td>
<td>Benzene, 1,2-dichloro-</td>
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<td>p-Dichlorobenzene</td>
<td>Benzene, 1,4-dichloro-</td>
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<td>Dichlorobenzene, N.O.S.¹</td>
<td>Benzene, dichloro-</td>
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<td>3,3’-Dichlorobenzidine</td>
<td>[1,1’-Biphenyl]-4,4’-diamine, 3,3’-dichloro-</td>
<td>91–94–1</td>
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<td>1,4-Dichloro-2-butene</td>
<td>2-Butene, 1,4-dichloro-</td>
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<td>Ethene, 1,2-dichloro-, (E)-</td>
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<td>Dichloroethyl ether</td>
<td>Ethane, 1,1’-oxybis[2-chloro-</td>
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<td>Dichloroisopropyl ether</td>
<td>Propane, 2,2’-oxybis[2-chloro-</td>
<td>108–60–1</td>
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<td>Dichloromethoxy ethane</td>
<td>Ethane, 1,1’-[methylenebis(oxy)]bis[2-chloro-</td>
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<td>Dichloromethyl ether</td>
<td>Methane, oxybis[chloro-</td>
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<td>2,6-Dichlorophenol</td>
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<td>Arsonous dichloride, phenyl-</td>
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<td>Dichloropropene, N.O.S.¹</td>
<td>Propane, diethyl-</td>
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<td>Dieldrin</td>
<td>2,7;3,6-Dimethanophaph[2,3-b]oxirene, 3,4,5,6,9-hexachloro-1,2,2,2a,3,6,6a,7,7a-octahydro-</td>
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<td>1,2,3,4-Diepoxybutane</td>
<td>1,2-Dioxane</td>
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<td>Diethylarsine</td>
<td>Arsenic, diethyl-</td>
<td>692–42–2</td>
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<td>Diethylene glycol, dicarbamate (5/96)</td>
<td>Ethanol, 2,2’-oxybis-, dicarbamate</td>
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<td>1,4-Diethylhexyl phthalate</td>
<td>1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester</td>
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<td>N,N’-Diethylhydrazine</td>
<td>Hydrazine, 1,2-diethyl-</td>
<td>1615–80–1</td>
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<td>O,O-Diethyl S-methyl di-</td>
<td>Phosphorothioic acid, O,O-diethyl S-methyl ester</td>
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<td>Diethylphthalate</td>
<td>Phosphoric acid, diethyl 4-nitrophenyl ester</td>
<td>311–45–5</td>
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<td>Diethyl phthalate</td>
<td>1,2-Benzenedicarboxylic acid, diethyl ester</td>
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<td>O,O-Diethyl O-pyrazinyl phosphoro-thioate</td>
<td>Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester</td>
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<td>Diethylosbesterol</td>
<td>Phenol, 4,4’-(1,2-diethyl-1,2-ethenedi)bis-, (E)-</td>
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<td>Dihydrosafrole</td>
<td>1,3-Benzodioxole, 5-propyl-</td>
<td>94–58–6</td>
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<td>Disopropylfluorophosphate (DFP)</td>
<td>Phosphorofluoridic acid, bis(1-methylethyl) ester</td>
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<td>Dimethoate</td>
<td>Phosphorothioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester</td>
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<td>3,3’-Dimethoxybenzidine</td>
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<td>p-Dimethylaminosobenzene</td>
<td>Benzenamine, N,N-dimethyl-4-(phenylazo)-</td>
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<td>2,4-Dimethylaniline (2,4-xylidine)</td>
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<td>7,12-Dimethylbenz[a]anthracene</td>
<td>Benz[a]anthracene, 7,12-dimethyl-</td>
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<td>[1,1’-Biphenyl]-4,4’-diamine, 3,3’-dimethyl-</td>
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## Appendix VIII Hazardous Constituents

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<th>Common name</th>
<th>Chemical abstracts name (9/98)</th>
<th>CAS #</th>
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<td>1,2-Dimethylhydrazine</td>
<td>Hydrazine, 1,2-dimethyl-</td>
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<td>alpha,alpha-Dimethylphenethylamine</td>
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<td>Sulfuric acid, dimethyl ester</td>
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<td>Dimetilan (5/96)</td>
<td>Carbamic acid, dimethyl-, 1-[(dimethylamino) carbonyl]-3-methyl-1H-pyrazol-3-yl ester</td>
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<td>1-Propanamine, N-nitroso-N-propyl-</td>
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<td>Thioperoxydicarbonic diamide, tetraethyl</td>
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<td>Dithiobiuret</td>
<td>Thiosulfinimidocarbamic diamide [(H₂N(CS)₂)₄NH]</td>
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<td>Endosulfan</td>
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<td>7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid</td>
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<td>Epichlorohydrin</td>
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<td>Propanenitrile</td>
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<td>Formparanate (5/96)</td>
<td>Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[methylene</td>
<td>17702–57–7</td>
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<tr>
<td>Glycidylvaldehde</td>
<td>Oxiranecarboxaldehyde</td>
<td>765–34–4</td>
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<td>Halomethanes, N.O.S.</td>
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<tr>
<td>Heptachlor</td>
<td>4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-</td>
<td>76–44–8</td>
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<tr>
<td>Heptachlor epoxide</td>
<td>2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7-heptachloro-1a,1b,5,5a,6a-hexahydro-, (1alpha,1beta,2alpha,5alpha,5bete</td>
<td>1024–57–3</td>
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<td>Heptachlor epoxide (alpha, beta, and gamma isomers)</td>
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<tr>
<td>Heptachlorodibenzo-furan (5/96)</td>
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<tr>
<td>Heptachlorodibenzo-p-dioxins (5/96)</td>
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<td>Hexachlorobenzene</td>
<td>Benzene, hexachloro-</td>
<td>118–74–1</td>
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<tr>
<td>Hexachlorobutadiene</td>
<td>1,3-Butadiene, 1,1,2,3,4,4-hexachloro-</td>
<td>87–68–3</td>
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<td>Hexachlorocyclopentadiene</td>
<td>1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-</td>
<td>77–47–4</td>
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<td>Hexachlorodibenzo-p-dioxins</td>
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<td>Hexachlorodibenzofuran</td>
<td>Ethane, hexachloro-</td>
<td>67–72–1</td>
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<td>Hexachloroethane</td>
<td>Phenol, 2,2'-methylenebis[3,4,6-trichloro-</td>
<td>70–30–4</td>
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<td>Hexachloropropene</td>
<td>1-Propene, 1,1,2,3,3,3-hexachloro-</td>
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<td>Hexachloro tetrabromom</td>
<td>Tetraphosphoric acid, hexaethyl ester</td>
<td>757–58–4</td>
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<td>Hydrazine</td>
<td>Same</td>
<td>302–01–2</td>
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<tr>
<td>Hydrogen cyanide</td>
<td>Hydrocyanic acid</td>
<td>74–90–8</td>
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<tr>
<td>Hydrogen fluoride</td>
<td>Hydrofluoric acid</td>
<td>7664–39–3</td>
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<td>Hydrogen sulfide</td>
<td>Hydrogen sulfide H$_2$S</td>
<td>7783–06–4</td>
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<td>Indeno[1,2,3-cd]pyrene</td>
<td>Same</td>
<td>193–39–5</td>
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<td>Isobutyl alcohol</td>
<td>1-Propanol, 2-methyl-</td>
<td>78–83–1</td>
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<td>Isodrin</td>
<td>1,4,5,8-Dimethanophthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,3,8,8a-hexahydro-,(1alpha,4al</td>
<td>465–73–6</td>
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<td>Isolan (5/96)</td>
<td>Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester</td>
<td>119–38–0</td>
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<tr>
<td>Common name</td>
<td>Chemical abstracts name (9/98)</td>
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<td>Isosafrole</td>
<td>1,3-Benzodioxole, 5-(1-propenyl)-</td>
<td>129–58–1</td>
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<td>Kepone</td>
<td>1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachloro-octahydro-</td>
<td>143–50–0</td>
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<td>Lasiocarpine</td>
<td>2-Butenoic acid, 2-methyl-7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy-][methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7alpha]]-</td>
<td>303–34–4</td>
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<td>Lead</td>
<td>Same</td>
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<td>Lead compounds, N.O.S.¹</td>
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<tr>
<td>Lead acetate</td>
<td>Acetic acid, lead(2+) salt</td>
<td>301–04–2</td>
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<td>Lead phosphate</td>
<td>Phosphoric acid, lead(2+) salt (2/3)</td>
<td>7446–27–7</td>
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<td>Lead subacetate</td>
<td>Lead, bis(acetato-O-tetrahydroxytri-</td>
<td>1335–32–6</td>
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<td>Lindane</td>
<td>Cyclohexane, 1.2.3.4.5.6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-</td>
<td>58–89–9</td>
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<tr>
<td>Maleic anhydride</td>
<td>2,5-Furandione</td>
<td>108–31–6</td>
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<td>Maleic hydrazide</td>
<td>3,6-Pyridazinedione, 1,2-dihydro-</td>
<td>123–33–1</td>
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<td>Malononitrile</td>
<td>Propanedinitrile</td>
<td>109–77–3</td>
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<tr>
<td>Manganese dimethylidithiocarbamate (5/96)</td>
<td>Manganese, bis(dimethylcarbodithioato-S,S')-</td>
<td>15339–36–3</td>
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<td>Melphalan</td>
<td>L-Phenylalanine, 4-[bis(2-chloroethyl)aminol]-</td>
<td>148–82–3</td>
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<td>Mercury</td>
<td>Same</td>
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<td>Mercury compounds, N.O.S.¹</td>
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<td>Mercury fulminate</td>
<td>Fulminic acid, mercury(2+) salt</td>
<td>628–86–4</td>
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<td>Metam Sodium (5/96)</td>
<td>Carbamodithioic acid, methyl-, monosodium salt</td>
<td>137–42–8</td>
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<td>Methacrylonitrile</td>
<td>2-Propenenitrile, 2-methyl-</td>
<td>126–98–7</td>
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<td>Methaprylene</td>
<td>1,2-Ethanediamine, N,N-dimethyl-N’-2-pyridinyl-N’-(2-thienylmethyl)-</td>
<td>91–80–5</td>
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<td>Methiocarb (5/96)</td>
<td>Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate</td>
<td>2032–65–7</td>
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<td>Methomyl</td>
<td>Ethanimidothioic acid, N-[(methylamino)carbonyloxyl]-, methyl ester</td>
<td>16752–77–5</td>
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<td>Methoxychlor</td>
<td>Benzene, 1,1’-2,2,2-trichloroethylidenebis[4-methoxy-</td>
<td>72–43–5</td>
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<td>Methyl bromide</td>
<td>Methane, bromo</td>
<td>74–83–9</td>
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<tr>
<td>Methyl chloride</td>
<td>Methane, chloro</td>
<td>74–87–3</td>
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<td>Methyl chloroform</td>
<td>Carbonochloridic acid, methyl ester</td>
<td>79–22–1</td>
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<td>Methyl chloroform</td>
<td>Ethanole, 1,1,1-trichloro-</td>
<td>71–55–6</td>
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<td>3-Methylcholanthrene</td>
<td>Benzene, 1,2-dihydro-3-methyl-</td>
<td>56–49–5</td>
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<td>4,4’-Methylenedis (2-chloroaniline)</td>
<td>Benzenamine, 4,4’-methylenedis[2-chloro-</td>
<td>101–14–4</td>
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<td>Methylene bromide</td>
<td>Methane, dibromo</td>
<td>74–95–3</td>
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<td>Methylene chloride</td>
<td>Methane, dichloro</td>
<td>75–09–2</td>
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<td>Methyl ethyl ketone (MEK)</td>
<td>2-Butanone</td>
<td>78–93–3</td>
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<td>Methyl ethyl ketone peroxide</td>
<td>2-Butanone, peroxide</td>
<td>1338–23–4</td>
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<td>Methyl hydrazine</td>
<td>Hydrazine, methyl</td>
<td>60–34–4</td>
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<td>Methyl iodide</td>
<td>Methane, iodo</td>
<td>74–88–4</td>
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<td>Methyl isocyanate</td>
<td>Methane, isocyanato</td>
<td>624–83–9</td>
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<td>2-Methylformanitirle</td>
<td>Propanenitrile, 2-hydroxy-2-methyl-</td>
<td>75–86–5</td>
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<td>Methyl methacyrlate</td>
<td>2-Propenoic acid, 2-methyl-, methyl ester</td>
<td>80–62–6</td>
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<td>Methyl methanesulfonate</td>
<td>Methanesulfonic acid, methyl ester</td>
<td>66–27–3</td>
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<td>Methyl parathion</td>
<td>Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester</td>
<td>298–00–0</td>
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<tr>
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<td>Chemical abstracts name (9/98)</td>
<td>CAS #</td>
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<td>Methylthiouracil</td>
<td>4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-</td>
<td>56–04–2</td>
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<td>Metolcarb (5/96)</td>
<td>Carboxylic acid, methyl-, 3-methylphenyl ester</td>
<td>1129–41–5</td>
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<td>Mexacarbate (5/96)</td>
<td>Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)</td>
<td>315–18–4</td>
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<td>Mitomycin C</td>
<td>Azirino[2',3':5,4']pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-([(aminocarbonyloxy)methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS((1alpha,8beta,8alpha,8balpha,8alpha)]=)</td>
<td>50–07–7</td>
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<td>MNNG</td>
<td>Guanidine, N-methyl-N'-nitro-N-nitroso-</td>
<td>70–25–7</td>
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<td>Molinate (5/96)</td>
<td>1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester</td>
<td>2212–67–1</td>
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<td>Mustard gas</td>
<td>Ethane, 1,1’-thiobis[2-chloro-</td>
<td>505–60–2</td>
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<td>Naphthalene</td>
<td>Same</td>
<td>91–20–3</td>
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<tr>
<td>1,4-Naphthalenedione</td>
<td>1,4-Naphthalenedione</td>
<td>130–13–4</td>
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<td>alpha-Naphthylamine</td>
<td>1-Naphthalenamine</td>
<td>134–32–7</td>
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<td>beta-Naphthylamine</td>
<td>2-Naphthalenamine</td>
<td>91–59–8</td>
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<td>alpha-Naphthiylourea</td>
<td>Thiourea, 1-naphthalenyl-</td>
<td>86–88–4</td>
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<td>Nickel</td>
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<td>Nickel compounds, N.O.S.</td>
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<td>Nickel carbonyl</td>
<td>Nickel carbonyl Ni(CO)4, (T-4)</td>
<td>13463–39–3</td>
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<td>Nickel cyanide</td>
<td>Nickel cyanide Ni(CN)2</td>
<td>557–19–7</td>
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<td>Nicotine</td>
<td>Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-</td>
<td>54–11–5</td>
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<td>Nicotine salts</td>
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<td>Nitric oxide</td>
<td>Nitrogen oxide NO</td>
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<td>p-Nitroaniline</td>
<td>Benzenamine, 4-nitro</td>
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<td>Benzene, nitro</td>
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<td>Nitrogen dioxide</td>
<td>Nitrogen oxide NO2</td>
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<td>Nitrogen mustard</td>
<td>Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-</td>
<td>51–75–2</td>
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<td>Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-N-oxide</td>
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<td>Nitroglycerin</td>
<td>1,2,3-Propanetriol, trinitrate</td>
<td>55–63–0</td>
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<td>p-Nitrophenol</td>
<td>Phenol, 4-nitro</td>
<td>100–02–7</td>
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<td>2-Nitropropane</td>
<td>Propane, 2-nitro</td>
<td>79–46–9</td>
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<td>Nitrosamines, N.O.S.</td>
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<td>N-Nitrosodi-n-butylamine</td>
<td>1-Butanamine, N-butyl-N-nitroso-</td>
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<td>N-Nitrosodienolamine</td>
<td>Ethanol, 2,2'-((nitrosoimino)bis</td>
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<td>N-Nitrosodiethylamine</td>
<td>Ethanamine, N-ethyl-N-nitroso</td>
<td>55–18–5</td>
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<td>N-Nitrosodimethylamine</td>
<td>Methanamine, N-methyl-N-nitroso</td>
<td>62–75–9</td>
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<td>Ethanamine, N-methyl-N-nitroso</td>
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<td>Urea, N-ethyl-N-nitroso</td>
<td>10595–95–6</td>
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<td>Urea, N-methyl-N-nitroso</td>
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<td>Carbamic acid, methylnitroso-, ethyl ester</td>
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<td>N-Nitrosomethylvinylamide</td>
<td>Vinylnamidie, N-methyl-N-nitroso</td>
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<td>N-Nitrosomorpholine</td>
<td>Morpholine, 4-nitro</td>
<td>59–89–2</td>
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<td>N-Nitrosonornicotine</td>
<td>Pyridine, 3-((1-nitroso-2-pyrrolidinyl)-, (S)-</td>
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<td>N-Nitrosopiperidine</td>
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<td>N-Nitrosopyrrolidine</td>
<td>Pyrrolidine, 1-nitroso-</td>
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<td>N-Nitrososarcosine</td>
<td>Glycine, N-methyl-N-nitroso-</td>
<td>13256–22–9</td>
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<td>5-Nitro-o-toluidine</td>
<td>Benzenamine, 2-methyl-5-nitro-</td>
<td>99–55–8</td>
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<td>Octachlorodibenzo-p-dioxin</td>
<td>1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (7/02)</td>
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<td>Octachlorodibenzofuran</td>
<td>1,2,3,4,6,7,8,9-Octachlorodibenzofuran (7/02)</td>
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<td>Diphosphoramidine, octamethyl-</td>
<td>152–16–9</td>
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<td>Osmium tetroxide</td>
<td>Osmium oxide OsO$_4$, (T-4)-</td>
<td>20816–12–0</td>
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<td>Oxamyl (5/96)</td>
<td>Ethanimidothioc acid, 2-(dimethylamino)-N-[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester</td>
<td>23135–22–0</td>
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<td>Paraldehyde</td>
<td>1,3,5-Trioxane, 2,4,6-trimethyl-</td>
<td>123–63–7</td>
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<td>Parathion</td>
<td>Phosphorothioic acid, O,O-diethyl O-(4-nitropheno)yl ester</td>
<td>56–38–2</td>
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<td>Pebulate</td>
<td>Carbamothioc acid, butylethyl-, S-propyl ester</td>
<td>1114–71–2</td>
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<td>Pentachlorobenzene</td>
<td>Benzene, pentachloro-</td>
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<td>Pentachlorodibenzo-p-dioxins</td>
<td>Pentachlorodibenzofurans</td>
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<td>Pentachloroethane</td>
<td>Ethane, pentachloro-</td>
<td>76–01–7</td>
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<td>Pentachloronitrobenzene</td>
<td>Benzene, pentachloronitro-</td>
<td>82–68–8</td>
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<td>Pentachlorophenol</td>
<td>Phenol, pentachloro-</td>
<td>87–86–5</td>
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<td>Phenacetin</td>
<td>Acetamide, N-(4-ethoxyphenyl)-</td>
<td>62–44–2</td>
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<td>Phenol</td>
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<td>1,2-Phenylenediamine</td>
<td>1,2-Benzenediamine</td>
<td>95–54–5</td>
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<td>1,3-Benzenediamine</td>
<td>108–45–2</td>
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<td>Mercury, (acetato-O)phenyl-</td>
<td>62–38–4</td>
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<td>Phenylthiourea</td>
<td>Thiourea, phenyl-</td>
<td>103–85–5</td>
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<td>Phosgene</td>
<td>Carbonic dichloride</td>
<td>75–44–5</td>
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<td>Phosphine</td>
<td>Same</td>
<td>7803–51–2</td>
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<td>Phorate</td>
<td>Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester</td>
<td>298–02–2</td>
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<td>Phthalic acid esters, N.O.S.</td>
<td>Phthalic anhydride</td>
<td>85–44–9</td>
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<td>Physostigmine (5/96)</td>
<td>Pyrrolo[2.3-b]indol-5-01, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-</td>
<td>57–47–6</td>
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<tr>
<td>Physostigmine salicylate</td>
<td>Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2.3-b]indol-5-yl methylcarbamate ester (1:1).</td>
<td>57–64–7</td>
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<tr>
<td>2-Picoline</td>
<td>Pyridine, 2-methyl-</td>
<td>109–06–8</td>
</tr>
<tr>
<td>Polychlorinated biphenyls, N.O.S.</td>
<td>Potassium cyanide</td>
<td>151–50–8</td>
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<tr>
<td>Potassium cyanide</td>
<td>Potassium cyanide K(CN)</td>
<td></td>
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<tr>
<td>Potassium dimethylthiocarbamate (5/96)</td>
<td>Carbamodithioc acid, dimethyl, potassium salt</td>
<td>128–03–0</td>
</tr>
<tr>
<td>Potassium α-hydroxymethyl-n-methyl-dithiocarbamate</td>
<td>Carbamodithioc acid, (hydroxymethyl)methyl-, monopotassium salt</td>
<td>51026–28–9</td>
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## Appendix VIII Hazardous Constituents

<table>
<thead>
<tr>
<th>Common name</th>
<th>Chemical abstracts name (9/98)</th>
<th>CAS #</th>
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<tr>
<td>Potassium n-methyldithiocarbamate (5/96)</td>
<td>Carbamodithioc acid, methyl-monopotassium salt</td>
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<td>Potassium pentachlorophenate</td>
<td>Pentachlorophenol, potassium salt</td>
<td>7778736</td>
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<td>Potassium silver cyanide</td>
<td>Argentate(1-), bis(cyano-C)-, potassium</td>
<td>506–61–6</td>
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<td>Promecarb (5/96)</td>
<td>Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate</td>
<td>2631–37–0</td>
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<tr>
<td>Pronamide</td>
<td>Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-</td>
<td>23950–58–5</td>
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<td>1,3-Propane sultone</td>
<td>1,2-Oxathiolane, 2,2-dioxide</td>
<td>1120–71–4</td>
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<td>n-Propylamine</td>
<td>1-Propanamine</td>
<td>107–10–8</td>
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<td>Propargyl alcohol</td>
<td>2-Propyn-1-ol</td>
<td>107–19–7</td>
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<td>Propham</td>
<td>Carbamic acid, phenyl-, 1-methylethyl ester</td>
<td>122–42–9</td>
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<td>Propoxur</td>
<td>Phenol, 2-(1-methylthoxy)-, methylcarbamate</td>
<td>114–26–1</td>
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<td>Propylene dichloride</td>
<td>Propane, 1,2-dichloro-</td>
<td>78–87–5</td>
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<td>1,2-Propanenime</td>
<td>Aziridine, 2-methyl-</td>
<td>75–55–8</td>
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<td>Propylthiouacil</td>
<td>4(1H)-Pyrimidinone, 2,3-dihydro-6-propyl-2-thioxo-</td>
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<td>Prosullocarb</td>
<td>Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester</td>
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<td>Pyridine</td>
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<td>Resorcinol</td>
<td>1,3-Benzene diol</td>
<td>108–46–3</td>
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<td>Safrole</td>
<td>1,3-Benzodioxole, 3-(2-propenyl)-</td>
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<td>Selenium compounds, N.O.S.1</td>
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<td>Selenium dioxide</td>
<td>Selenious acid</td>
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<td>Selenium sulfide</td>
<td>Selenium sulfide Se₂</td>
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<td>Selenium, tetrakis (dimethylthio- carbamate)</td>
<td>Carbamothioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid.</td>
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<td>Selenourea</td>
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<td>Silver</td>
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<td>Silver cyanide Ag(CN)</td>
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<td>Silvex (2,4,5-TP)</td>
<td>Propanoic acid, 2-(2,4,5-trichlorophenoxy)-</td>
<td>93–72–1</td>
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<td>Sodium cyanide</td>
<td>Sodium cyanide Na(CN)</td>
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<td>Sodium dibutylthiodiocarbamate</td>
<td>Carbamothioic acid, dibutyl, sodium salt (5/96)</td>
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<td>Sodium diethylthiodiocarbamate</td>
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<td>Sodium dimethylthiodiocarbamate</td>
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<td>Sodium pentachlorophenate</td>
<td>Pentachlorophenol, sodium salt</td>
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<td>Streptozotocin</td>
<td>D-Glucose, 2-deoxy-2-[(methylitrosamino)carbonyl]amino-</td>
<td>18883–66–4</td>
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<td>Strychnine</td>
<td>Strychnidin-10-one</td>
<td>57–24–9</td>
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<tr>
<td>Strychnine salts</td>
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<td></td>
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<tr>
<td>Sulfallate (5/96)</td>
<td>Carbamothioic acid, diethyl-, 2-chloro-2-propenyl ester</td>
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<td>TCDD</td>
<td>Dibenzo[b,e]1,4-dioxin, 2,3,7,8-tetrachloro-</td>
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### Appendix VIII Hazardous Constituents

<table>
<thead>
<tr>
<th>Common name</th>
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<th>CAS #</th>
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<tr>
<td>Tetrabutylthiuram disulfide</td>
<td>Thioperoxydicarbonic diamide, tetrabutyl (5/96)</td>
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<td>1,2,4,5-Tetrachlorobenzene</td>
<td>Benzene, 1,2,4,5-tetrachloro-</td>
<td>95–94–3</td>
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<tr>
<td>Tetrachlorodibenzofurans</td>
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<td>Tetrachlorodibenzo-p-dioxins</td>
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<td>Ethane, tetrachloro-, N.O.S.</td>
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<td>1,1,2,2-Tetrachloroethane</td>
<td>Ethane, 1,1,2,2-tetrachloro-</td>
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<td>Tetrachloroethylene</td>
<td>Ethene, tetrachloro-</td>
<td>127–18–4</td>
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<td>2,3,4,6-Tetrachlorophenol</td>
<td>Phenol, 2,3,4,6-tetrachloro-</td>
<td>58–90–2</td>
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<td>2,3,4,6-tetrachlorophenol, potassium salt</td>
<td>same</td>
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<td>2,3,4,6-tetrachlorophenol, sodium salt</td>
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<td>Tetraethylthiophosphate</td>
<td>Thiodiphosphoric acid, tetraethyl ester</td>
<td>3689–24–5</td>
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<td>Tetraethyl lead</td>
<td>Plumbane, tetraethyl-</td>
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<td>Tetraethyl pyrophosphate</td>
<td>Diphosphoric acid, tetraethyl ester</td>
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<td>Tetramethylthiuram monosulfide</td>
<td>Bis(dimethylthiocarbamoyl) sulfide</td>
<td>97–74–5</td>
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<td>Tetrani triomethane</td>
<td>Methane, tetranitro-</td>
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<td>Same</td>
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<td>Thallium compounds, N.O.S.</td>
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<td>Thallium oxide</td>
<td>Thallium oxide $\text{TL}_2\text{O}_4$</td>
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<tr>
<td>Thallium(1) acetate</td>
<td>Acetic acid, thallium(1+) salt</td>
<td>563–68–8</td>
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<td>Thallium(1) carbonate</td>
<td>Carbonic acid, dithallium(1+) salt</td>
<td>6533–73–9</td>
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<tr>
<td>Thallium(1) chloride</td>
<td>Thallium chloride $\text{TLCl}$</td>
<td>7791–12–0</td>
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<tr>
<td>Thallium(1) nitrate</td>
<td>Nitric acid, thallium(1+) salt</td>
<td>10102–45–1</td>
</tr>
<tr>
<td>Thallium selenite</td>
<td>Selenious acid, dithallium(1+) salt</td>
<td>12039–52–0</td>
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<tr>
<td>Thallium(1) sulfate</td>
<td>Sulfuric acid, dithallium(1+) salt</td>
<td>7446–18–6</td>
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<tr>
<td>Thioacetamide</td>
<td>Ethanethioamide</td>
<td>62–55–5</td>
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<td>Thiodi carb (5/96)</td>
<td>Ethanimidothioic acid, N,N'-[thiobis [methylimino] carbonyloxy]] bis-, dimethyl ester.</td>
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<td>Thiof ox ox</td>
<td>2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl] oxime</td>
<td>39196–18–4</td>
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<tr>
<td>Thi o methane</td>
<td>Methanethiol</td>
<td>74–93–1</td>
</tr>
<tr>
<td>Thiophanate-methyl</td>
<td>Carboxic acid, [1,2-phy enylenebis (imino carbonyloxy)] bis-, dimethyl ester</td>
<td>23564–05–8</td>
</tr>
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<td>Thiophenol</td>
<td>Benzethiol</td>
<td>108–98–5</td>
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<td>Thios e micarbazide</td>
<td>Hydrazinecarbothioamide</td>
<td>79–19–6</td>
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<td>Thio urea</td>
<td>Same</td>
<td>62–56–6</td>
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<tr>
<td>Thiram</td>
<td>Thioper oxy dicarbonic diamide $[(\text{H}_2\text{N})\text{C(S)}]_2\text{S}_2$ tetramethyl-</td>
<td>137–26–8</td>
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<tr>
<td>Tirpate (5/96)</td>
<td>1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[methylaminocarbonyl] oxime</td>
<td>26419–73–8</td>
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<td>Toluene</td>
<td>Benzene, methyl-</td>
<td>108–88–3</td>
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<td>Toluenediamine</td>
<td>Benzenedia mine, ar-methyl-</td>
<td>25376–45–8</td>
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<td>Toluene-2,4-diamine</td>
<td>1,3-Benzenediamine, 4-methyl-</td>
<td>95–80–7</td>
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<td>Toluene-2,6-diamine</td>
<td>1,3-Benzenediamine, 2-methyl-</td>
<td>823–40–5</td>
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<td>Toluene-3,4-diamine</td>
<td>1,2-Benzenediamine, 4-methyl-</td>
<td>496–72–0</td>
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<td>Toluene diisocyanate</td>
<td>Benzene, 1,3-diisocyanatomethyl-</td>
<td>26471–62–5</td>
</tr>
<tr>
<td>o-Toluidine</td>
<td>Benzenamine, 2-methyl-</td>
<td>95–53–4</td>
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</tbody>
</table>
## Appendix VIII Hazardous Constituents

<table>
<thead>
<tr>
<th>Common name</th>
<th>Chemical abstracts name (9/98)</th>
<th>CAS #</th>
</tr>
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<tbody>
<tr>
<td>o-Toluidine hydrochloride</td>
<td>Benzenamine, 2-methyl-, hydrochloride</td>
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<td>p-Toluidine</td>
<td>Benzenamine, 4-methyl-</td>
<td>106–49–0</td>
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<td>Triallate (5/96)</td>
<td>Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester</td>
<td>2303–17–5</td>
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<td>Tribromophenol, 2,4,6-</td>
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<td>Tributyltin</td>
<td>Tributylstannane (6/02)</td>
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<td>Bis(tri-n-butyl) Oxide (6/02)</td>
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<td>Tributyltin Chloride</td>
<td>Tributylchlorostannane (6/02)</td>
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<td>Tributyltin Hydroxide</td>
<td>Tributylhydroxystannane (6/02)</td>
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<td>Tributyltin Bromide</td>
<td>Tributylbromostannane (6/02)</td>
<td>1461–23–0</td>
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<td>Tributyltin Acetate</td>
<td>(acetyl)oxytributylstannane (6/02)</td>
<td>56–36–0</td>
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<td>Tributyltin Fluoride</td>
<td>Tributylfluorostannane (6/02)</td>
<td>1983–23–0</td>
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<td>Triethyltin</td>
<td>Triethylstannane (6/02)</td>
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<td>Triethyltin Chloride (6/02)</td>
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<tr>
<td>Trichloroethylene</td>
<td>Ethene, trichloro-</td>
<td>79–01–6</td>
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<td>Trichloromethanethiol</td>
<td>Methanethiol, trichloro-</td>
<td>75–70–7</td>
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<td>Trichloromonofluoromethane</td>
<td>Methane, trichlorofluoro-</td>
<td>75–69–4</td>
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<td>2,4,5-Trichlorophenol</td>
<td>Phenol, 2,4,5-trichloro-</td>
<td>95–95–4</td>
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<td>2,4,6-Trichlorophenol</td>
<td>Phenol, 2,4,6-trichloro-</td>
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<td>2,4,5-T</td>
<td>Acetic acid, (2,4,5-trichlorophenoxy)-</td>
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<td>1,2,3-Trichloropropane</td>
<td>Propane, 1,2,3-trichloro-</td>
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<td>Triethylamine (5/96)</td>
<td>Ethanamine, N,N-diethyl-</td>
<td>121–44–8</td>
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<td>O,O,O-Triethyl phosphorothioate</td>
<td>Phosphorothioic acid, O,O,O-triethyl ester</td>
<td>120–68–1</td>
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<td>1,3,5-Trinitrobenzene</td>
<td>Benzene, 1,3,5-trinitro-</td>
<td>99–35–4</td>
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<td>Tris(1-aziridinyl)phosphine sulfide</td>
<td>Aziridine, 1,1’,1’-phosphinooxyldienetris-</td>
<td>52–24–4</td>
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<td>Tris(2,3-dibromopropyl) phosphate</td>
<td>1-Propanol, 2,3-dibromo-, phosphate (3:1)</td>
<td>126–72–7</td>
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<td>Trypan blue</td>
<td>2,7-Naphthalenedisulfonic acid, 3,3’-{[3,3’-dimethyl[1,1’-biphenyl]-4,4’diy]bis(azo)}-bis[5-aminono-4-hydroxy-, tetrasodium salt</td>
<td>72–57–1</td>
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<td>Uracil mustard</td>
<td>2,4-(1H,3H)-Pyrimidinedione, 5-{bis(2-chloroethyl)amino}</td>
<td>66–75–1</td>
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<td>Vanadium pentoxide</td>
<td>Vanadium oxide V\textsubscript{2}O\textsubscript{5}</td>
<td>1314–62–1</td>
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<td>Vinyl chloride</td>
<td>Ethene, chloro-</td>
<td>75–01–4</td>
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<td>Warfarin</td>
<td>2H–1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations less than 0.3%</td>
<td>81–81–2</td>
</tr>
<tr>
<td>Warfarin salts, when present at concentrations less than 0.3%</td>
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<td></td>
</tr>
<tr>
<td>Warfarin</td>
<td>2H–1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations greater than 0.3%</td>
<td>81–81–2</td>
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</table>
Appendix VIII Hazardous Constituents

<table>
<thead>
<tr>
<th>Common name</th>
<th>Chemical abstracts name (9/98)</th>
<th>CAS #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warfarin salts, when present at concentrations greater than 0.3%</td>
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</tr>
<tr>
<td>Zinc cyanide</td>
<td>Zinc cyanide Zn(CN)₂</td>
<td>557–21–1</td>
</tr>
<tr>
<td>Zinc phosphide</td>
<td>Zinc phosphide Zn₃P₂, when present at concentrations greater than 10%</td>
<td>1314–84–7</td>
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<tr>
<td>Zinc phosphide</td>
<td>Zinc phosphide Zn₃P₂, when present at concentrations of 10% or less</td>
<td>1314–84–7</td>
</tr>
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<td>Ziram</td>
<td>Zinc, bis(dimethylcarbamodiithioato-S,S)₈, (T-4)-</td>
<td>137–30–4</td>
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</table>

1. The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

HISTORY: Amended by State Register Volume 12, Issue No. 11, eff November 25, 1988; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 18, Issue No. 12, eff December 23, 1994; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 25, Issue No. 10, eff October 26, 2001; State Register Volume 26, Issue No. 5, Part 1, eff May 24, 2002; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002; State Register Volume 31, Issue No. 2, eff February 23, 2007; State Register Volume 39, Issue No. 6, Doc. No. 4541, eff June 26, 2015.

Appendix IX. Wastes Excluded Under 260.20 and 260.22

TABLE 1 - WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

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<th>Waste description</th>
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<tbody>
<tr>
<td>Ford Motor Company, Michigan Truck Plant and Wayne Integrated Stamping and Assembly Plant, - Wayne, Michigan</td>
<td>Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Wayne Integrated Stamping and Assembly Plant from wastewaters from both the Wayne Integrated Stamping and Assembly Plant and the Michigan Truck Plant, Wayne, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003, per 68 FR 44657, 44658.</td>
</tr>
<tr>
<td>Ford Motor Company, Wixom Assembly Plant: - Wixom, Michigan</td>
<td>Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Wixom Assembly Plant, Wixom, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003, per 68 FR 44657, 44658.</td>
</tr>
<tr>
<td>General Motors Corporation, Flint Truck: - Flint, Michigan</td>
<td>Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Flint Truck, Flint, Michigan at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003, per 68 FR 44657, 44658.</td>
</tr>
<tr>
<td>General Motors Corporation, Hamtramck: -Detroit, Michigan</td>
<td>Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Hamtramck, Detroit, Michigan at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permi-</td>
</tr>
</tbody>
</table>
ted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003, per 68 FR 44657, 44658.

General Motors Corporation, Pontiac East: Pontiac, Michigan

Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Pontiac East, Pontiac, Michigan at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003, per 68 FR 44657, 44658.

Trigen/Cinergy-USFOS of Lansing LLC at General Motors Corporation, Lansing Grand River: Lansing, Michigan

Waste water treatment plant sludge, F019, that is generated at General Motors Corporation’s Lansing Grand River (GM-Grand River) facility by Trigen/Cinergy-USFOS of Lansing LLC exclusively from wastewaters from GM Grand River, Lansing, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR Part 258. The exclusion becomes effective as of July 30, 2003, per 68 FR 44657, 44658.

HISTORY: Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

Appendix XI. OTHER DESIGNATED WASTES

<table>
<thead>
<tr>
<th>Hazardous Waste No.</th>
<th>Substance</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 5555</td>
<td>Any solid waste the Department determines constitutes a hazard and requires greater control</td>
</tr>
<tr>
<td>§ 6666</td>
<td>Any waste that is declared hazardous by the generator, transporter, treater, storer, or disposer of such waste. (Deleted)</td>
</tr>
<tr>
<td>§ 7777</td>
<td>Non-hazardous waste received by a hazardous waste facility.</td>
</tr>
<tr>
<td>§ 8888</td>
<td>Waste lubricating, hydraulic and cutting oil (Deleted June 23, 1989)</td>
</tr>
<tr>
<td>§ 9999</td>
<td>Waste batteries (Deleted Jan 24, 1986)</td>
</tr>
</tbody>
</table>

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 15, Issue No. 6, eff June 23, 1989; State Register Volume 19, Issue No. 6, eff June 23, 1995.

61–79.262. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

SUBPART A General

262.10. Purpose, scope, and applicability.

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

(b) R.61–79.261.5(c) and (d) must be used to determine the applicability of provisions of this part that are dependent on calculations of the quantity of hazardous waste generated per month. (revised 5/96)

(c) A generator who treats, stores, or disposes of hazardous waste onsite must only comply with the following sections of this part with respect to that waste: Section 262.11 for determining whether or not he has a hazardous waste, 262.12 for obtaining an EPA identification number, 262.34 for accumulation of hazardous waste, 262.40 (c) and (d) for recordkeeping, 262.43 for additional reporting, and if applicable, 262.70 for farmers. (amended 11/90, 12/92; 5/96)

(d) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from the countries listed in 262.58(a)(1) for recovery must comply with subpart H of
A waste is considered hazardous under U.S. national procedures if the waste meets the federal definition of hazardous waste in 40 CFR 261.3 and is subject to either the Federal RCRA manifesting requirements at part 262, subpart B, the universal waste management standards of part 273, State requirements analogous to part 273, the export requirements in the spent lead-acid battery management standards of part 266, subpart G, or State requirements analogous to the export requirements analogous to the export requirements in part 266, subpart G.

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

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of 262.70 is not required to comply with other standards in this part or R.61–79.270, R.61–79.264, or R.61–79.265 or .268 with respect to such pesticides.

(g) A person who generates a hazardous waste as defined by R.61–79.261 is subject to the compliance requirements and penalties prescribed in the South Carolina Hazardous Waste Management Act, section 44–56–140 of the Code of Laws of 1976 as amended, and section 3008 of the Act if he does not comply with the requirements of this part.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this part.

(i) Persons responding to an explosives or munitions emergency in accordance with 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part.

Note 1: The provisions of 262.34 are applicable to the onsite accumulation of hazardous waste by generators. Therefore, the provisions of 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste onsite must comply with the applicable standards and permit requirements set forth in parts 264, 265, 266, 268, and 270.

(j) [Reserved]

(k) [Reserved]

(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of Subpart K of this part are not subject to (for purposes of this paragraph, the terms “laboratory” and “eligible academic entity” shall have the meaning as defined in 262.200 of Subpart K of this part.):

1. the requirements of 262.11 or 262.34(c), for large quantity generators and small quantity generators, except as provided in Subpart K, and

2. the conditions of 261.5(b), for conditionally exempt small quantity generators, except as provided in Subpart K.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1993; State Register Volume 18, Issue No. 12, eff December 23, 1994; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 36, Issue No. 3, eff March 23, 2012; State Register Volume 36, Issue No. 9, eff September 28, 2012.

262.11. Hazardous waste determination.

A person who generates a solid waste, as defined in R.61–79.261.2 must accurately 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 R.61–79.261.4.

(b) He must then determine if the waste is listed as a hazardous waste in subpart D of R.61–79.261.

Note: Even if the waste is listed, the generator still has an opportunity under 260.22 to demonstrate to the Department that the waste from his particular facility or operation is not a hazardous waste.
(c) For purposes of compliance with 268, or if the waste is not listed in subpart D of R.61–79.261, the generator must then determine whether the waste is identified in subpart C of R.61–79.261 by either:

(1) Testing the waste according to the methods set forth in Subpart C of R.61–79.261, or according to an equivalent method approved by the Department under R.61–79.260.21; or

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

(d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 268 and 273 for possible exclusions or restrictions pertaining to management of the specific waste. (amended 11/90; 5/96)

(e) Finally, he must make a determination if the waste is listed in Appendix XI of R.61–79.261.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 20, Issue No. 5, eff May 24, 1996.

262.12. 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 Department.

(b) A generator who has not received an EPA identification number may obtain one by submitting the Notification Form required under Section 262.13. Upon receipt of the completed form the Department 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 or a Department permit. A facility which has interim status is deemed permitted until issuance of a permit is made by the Department.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990.

262.13. Notification Requirements upon Generators.

(a) Every generator within the State who produces a hazardous waste and has not previously done so shall file with the Department a Notification Form for that waste within thirty (30) days of the effective date of this regulation.

(b) Every generator within the State who produces a new hazardous waste shall file with the Department a revised or new Notification Form for that waste within thirty (30) days after such waste is first produced.

(c) Every generator within the State who produces a hazardous waste which is classified or listed for the first time by a revision of R.61–79.261 shall file with the Department a revised or new Notification Form for that waste within ninety (90) days after the effective date of such revision.

(d) The notification shall be on a form designated by the Department, shall be completed as required by the instructions supplied with such forms. The information to be furnished on the form shall include but not be limited to the location and general description of such activity, the identified or listed hazardous wastes handled by such person and, if applicable, a description of the production of energy recovery activity carried out at the facility and such other information as the Department deems necessary. A generator shall file a revised or new Notification form whenever the information previously provided becomes outdated or inaccurate.

(e) Persons engaged in the following activities are required to make a separate notification:

(1) Producers of fuels from:

   (i) Any hazardous waste identified or listed in R.61–79.261;

   (ii) Used oil; and

   (iii) Used oil and any other material.

(2) Burners (other than a single or two-family residence) for purposes of energy recovery any fuel produced as identified in paragraph 1.
(3) Distributors or marketers of any fuel as identified in paragraph 1.

(f) Every generator within the State who no longer produces any hazardous waste shall file with the Department one subsequent Notification form.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1993; State Register Volume 19, Issue No. 6, eff June 23, 1995.

SUBPART B
The Manifest

262.20. General requirements.

(a)(1) A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050–0039) on EPA Form 8700–22, and, if necessary, EPA Form 8700–22A, according to the instructions included in the Appendix to this part.

(2) The revised manifest form and procedures in 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, 262.34, 262.54, 262.60, and the Appendix to 262, shall not apply until September 5, 2006. The manifest form and procedures in 260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, 262.60, and the Appendix to 262, contained in the parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

(3) Electronic manifest. In lieu of using the manifest form specified in paragraph (a)(1) of this section, a person required to prepare a manifest under paragraph (a)(1) of this section may prepare and use an electronic manifest, provided that the person:

(i) Complies with the requirements in Section 262.24 for use of electronic manifests, and

(ii) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

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

(c) 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.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(e) The requirements of this subpart do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

(f) The requirements of this subpart and 262.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding 263.10(a), the generator or transporter must comply with the requirements for transporters set forth in 263.30 and 263.31 in the event of a discharge of hazardous waste on a public or private right-of-way.

(g) A generator shipping hazardous waste offsite must either be permitted to transport or utilize a transporter permitted pursuant to R.61–79.263. (amended 6/89; moved 12/96)

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State
262.21. Manifest tracking numbers, manifest printing, and obtaining manifests.

The manifest shall be on a form designated in 262.20(a), shall be completed as required by the instructions, and must contain all of the following information: 262.21 Note: Generators are required to use EPA forms from a registered source.

(a)(1) A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the EPA Director of the Office of Solid Waste to do so under paragraphs (c) and (e) of this section.

(2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of this section. The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) A registrant must submit an initial application to the EPA Director of the Office of Solid Waste that contains the following information:

(1) Name and mailing address of registrant;
(2) Name, telephone number and email address of contact person;
(3) Brief description of registrant’s government or business activity;
(4) EPA identification number of the registrant if applicable;
(5) Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:

(i) A description of the printing operation. The description should include an explanation of whether the registrant intends to print its manifests in-house (i.e., using its own printing establishments) or through a separate (i.e., unaffiliated) printing company. If the registrant intends to use a separate printing company to print the manifest on its behalf, the application must identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries (e.g., prime and subcontractor relationships), the role of each must be discussed. The application must provide the name and mailing address of each company. It also must provide the name and telephone number of the contact person at each company;

(ii) A description of how the registrant will ensure that its organization and unaffiliated companies, if any, comply with the requirements of this section. The application must discuss how the registrant will ensure that a unique manifest tracking number will be pre-printed on each manifest. The application must describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application must describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application must also indicate how the printer will pre-print a unique number on each form (e.g., crash or press numbering). The application also must explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time;

(iii) An indication of whether the registrant intends to use the manifests for its own business operations or to distribute the manifests to a separate company or to the general public (e.g., for purchase);

(6) A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so (e.g., corporate brochures, product samples, customer references, documentation of ISO certification), so long as such information pertains to the establishments or company being proposed to print the manifest.
(7) Proposed unique three-letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant must use this suffix to pre-print a unique manifest tracking number on each manifest;

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of this section and that it will notify the EPA Director of OSW of any duplicated manifest tracking numbers as soon as it becomes known.

(c) EPA will review the application submitted under paragraph (b) of this section and either approve it or request additional information or modification before approving it.

(d)(1) Upon EPA approval of the application under paragraph (c) of this section, EPA will provide registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in paragraph (d)(3) of this section. The registrant's samples must meet all of the specifications in paragraph (f) of this section and be printed by the company that will print the manifest as identified in the application approved under paragraph (c) of this section.

(2) The registrant must submit a description of the manifest samples as follows:
   (i) Paper type (i.e., manufacturer and grade of the manifest paper);
   (ii) Paper weight of each copy;
   (iii) Ink color of the manifest's instructions. If screening of the ink was used, the registrant must indicate the extent of the screening; and
   (iv) Method of binding the copies.

(3) The registrant need not submit samples of the continuation sheet if it will print its continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.

(e) EPA will evaluate the forms and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its forms until EPA approves them. An approved registrant must print the manifest and continuation sheet according to its application approved under paragraph (c) and the manifest specifications in paragraph (f) of this section. It also must print the forms according to the paper type, paper weight, ink color of the manifest instructions, and binding method of its approved forms.

(f) Paper manifests and continuation sheets must be printed according to the following specifications:

(1) The manifest and continuation sheet must be printed with the exact format and appearance as EPA Forms 8700-22 and 8700-22A, respectively. However, information required to complete the manifest may be pre-printed on the manifest form.

(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA must be pre-printed in Item 4. The tracking number must consist of a unique three-letter suffix following nine digits.

(3) The manifest and continuation sheet must be printed on durable 8.5x11 inch white paper, excluding common stubs (e.g., top- or side-bound stubs). The paper must be durable enough to withstand normal use.

(4) The manifest and continuation sheet must be printed in black ink that can be legibly photocopied, scanned, and faxed, except that the marginal words indicating copy distribution must be in red ink.

(5) The manifest and continuation sheet must be printed as six copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all six copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:
   (i) Page 1: (top copy): “Designated facility to destination state (if required).”
(ii) Page 2: “Designated facility to generator state (if required)”.
(iii) Page 3: “Designated facility to generator”.
(iv) Page 4: “Designated facility’s copy”.
(v) Page 5: “Transporter’s copy”.
(vi) Page 6: (bottom copy) “Generator’s initial copy.”

7. The instructions in the appendix to part 262 must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

(i) Manifest Form 8700–22:
(A) The “Instructions for Generators” on Copy 6;  
(B) The “Instructions for International Shipment Block” and “Instructions for Transporters” on Copy 5; and
(C) The “Instructions for Treatment, Storage, and Disposal Facilities” on Copy 4.

(ii) Manifest Form 8700-22A:
(A) The “Instructions for Generators” on Copy 6; 
(B) The “Instructions for Transporters” on Copy 5; and
(C) The “Instructions for Treatment, Storage, and Disposal Facilities” on Copy 4.

(g)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under paragraphs (c) and (e) of this section. A registered source may be a:
(i) State agency;
(ii) Commercial printer;
(iii) Hazardous waste generator, transporter or TSDF; or
(iv) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

2. A generator must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under these states’ authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator’s state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(h)(1) If an approved registrant would like to update any of the information provided in its application approved under paragraph (c) of this section (e.g., to update a company phone number or name of contact person), the registrant must revise the application and submit it to the EPA Director of the Office of Resource Conservation and Recovery, along with an indication or explanation of update as soon as practicable after the change occurs. The Agency either will approve or deny the revision. If the Agency denies the revision, it will explain the reasons for the denial, and it will contact the registrant and request further modification before approval.

2. If registrant would like a new tracking number suffix, the registrant must submit a proposed suffix to the EPA Director of the Office of Resource Conservation and Recovery, along with the reason for requesting it. The Agency will approve the suffix or deny the suffix and provide an explanation why it is not acceptable.

3. If a registrant would like to change paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval under paragraph (e) of this section, then the registrant must submit three samples of the revised form for EPA review and approval. If the approved registrant would like to use a new printer, the registrant must submit three manifest samples printed by the new printer, along with a brief description of the printer’s qualifications to print the manifest. EPA will evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decisions by mail. The registrant cannot use or distribute its revised forms until EPA approves them.
(i) If, subsequent to its approval under paragraph (e) of this section, a registrant typesets its manifest or continuation sheet instead of using the electronic file of the forms provided by EPA, it must submit three samples of the manifest or continuation sheet to the registry for approval. EPA will evaluate the manifests or continuation sheet to the registry for approval. EPA will evaluate the manifests or continuation sheets and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its typeset forms until EPA approves them.

(j) EPA may exempt a registrant from the requirement to submit form samples under paragraph (d) or (h)(3) of this section if the Agency is persuaded that a separate review of the registrant’s forms would serve little purpose in informing an approval decision (e.g., a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for some other registrant). A registrant may request an exemption from EPA by indicating why an exemption is warranted.

(k) An approved registrant must notify EPA by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.

(l) If, subsequent to approval of a registrant under paragraph (e) of this section, EPA becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant’s forms is unsatisfactory, EPA will contact the registrant and require modifications to the form.

(m)(1) EPA may suspend and, if necessary, revoke printing privileges if we find that the registrant:

(i) Has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or

(ii) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate tracking numbers.

(2) EPA will send a warning letter to the registrant that specifies the date by which it must come into compliance with the requirements. If the registrant does not come into compliance by the specified date, EPA will send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. An approved registrant must provide information on its printing activities to EPA if requested.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 31, Issue No. 2, eff February 23, 2007; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 36, Issue No. 9, eff September 28, 2012.

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 copies to be returned to the generator from the facility.


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 shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three (3) copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter. (amended 11/90)
(d) For rail shipments of hazardous wastes within the United States which originate at the site of generation, the generator must send at least three (3) copies of the manifest dated and signed in accordance with this section to:

1. The next nonrail transporter, if any; or
2. The designated facility if transported solely by rail; or
3. The last rail transporter to handle the waste within the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility. (amended 11/90)

Note: See 263.20(e) and (f) for special provisions for rail or water (bulk shipment) transporters.

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility (following the procedures of 40 CFR 264.72(f) or 265.72(f)), the generator must:

1. Sign either:
   1. Item 20 of the new manifest if a new manifest is used for the returned shipment; or
   2. Item 18c of the original manifest if the original manifest is used for the returned shipment;
2. Provide the transporter a copy of the manifest;
3. Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and
4. Retain at the generator’s site a copy of each manifest for at least three years from the date of delivery.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 18, Issue No. 12, eff December 25, 1994; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 36, Issue No. 9, eff September 28, 2012.

262.24. Use of the electronic manifest.

(a) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with Section 262.20(a)(3), and used in accordance with this section instead of EPA Forms 8700–22 and 8700–22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

1. Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 262.25.
2. Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.
3. Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator’s account on the national e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.
4. No generator may be held liable for the inability to produce an electronic manifest for inspection under this section if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

(b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator’s site by the transporter who accepts the hazardous waste shipment from the generator for off-site transportation.
(c) Restriction on use of electronic manifests. A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.

(d) Requirement for one printed copy. To the extent the Hazardous Materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest.

(e) Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700–22 and 8700–22A) in accordance with the manifest instructions in the appendix to this part, and use these paper forms from this point forward in accordance with the requirements of Section 262.23.

(f) Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the generator/offeror certification on the printed copy of the manifest provided under paragraph (d) of this section.

(g) Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to this part.


262.25. Electronic manifest signatures.
Electronic signature methods for the e-Manifest system shall:

(a) Be a legally valid and enforceable signature under applicable EPA and other Federal requirements pertaining to electronic signatures; and

(b) Be a method that is designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible for the users of the manifest.


262.27. Waste minimization certification.
A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) “I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;” or

(b) “I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.”


SUBPART C
Pre–Transport Requirements

262.30. Packaging.
Before transporting hazardous waste or offering hazardous waste for transportation offsite, a generator must package the waste in accordance with the applicable Federal Department of Transpor-
tation regulations on packaging under 49 CFR Parts 173, 178, and 179 and the S.C. Public Service Commissions.

262.31. Labeling.

Before transporting or offering hazardous waste for transportation offsite, a generator must label each package in accordance with the applicable S. C. Public Service Commission regulations and Federal Department of Transportation regulations on hazardous materials under 49 CFR Part 172.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

262.32. Marking.

(a) Before transporting or offering hazardous waste for transportation offsite, a generator must mark each package of hazardous waste in accordance with the applicable S. C. Public Service Commission regulations and Federal Department of Transportation regulations on hazardous materials under 49 CFR Part 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 119 gallons or less used in such transportation with the following words and information 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 __________

Generator’s EPA Identification Number __________

Manifest Tracking Number __________

HISTORY: Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1993; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 31, Issue No. 2, eff February 23, 2007; State Register Volume 36, Issue No. 9, eff September 28, 2012.

262.33. Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F and the S. C. Public Service Commission. If placards are not required a generator must mark each motor vehicle according to 49 CFR 171.3(b)(1).


262.34. Accumulation time.

(a) Except as provided in paragraphs (d), and (f) of this section, a generator may accumulate hazardous waste onsite for 90 days or less without a permit or without having interim status, provided that: (5/93)

(1) The waste is placed:

(i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 265; and/or

(ii) In tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of 265 except 265.197(c) and 265.200; and/or

(iii) On drip pads and the generator complies with subpart W of 265 and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or
In containment buildings and the generator complies with subpart DD of 265, has placed its professional engineer certification that the building complies with the design standards specified in 265.1101 in the facility’s operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

In addition, such a generator is exempt from all the requirements in subparts G and H of R.61–79.265, except for 265.111 and 265.114.

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

(3) While being accumulated onsite, each container and tank is labeled or marked clearly with the EPA Hazardous Waste Number and the words: “Hazardous Waste—federal laws prohibit improper disposal.”

(4) The generator complies with the requirements for owners or operators in subparts C and D in R.61–79.265, with 265.15(d) and 265.16, and with all applicable requirements under part 268.

(5) A generator may not stack containers of hazardous waste more than two containers high without first obtaining written approval from the Department. This requirement will become effective 90 days after publication in the State Register.

(b) A generator who accumulates 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of parts 264 and 265, and the permit requirements of 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by the Department if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Department on a case-by-case basis.

(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 261.31 or 261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) of this section provided he:

(i) Complies with R.61–79.265 Sections 265.171, 265.172, and 265.173(a) of these Regulations; and

(ii) Marks his containers either with the words: “HAZARDOUS WASTE” or with other words that identify the contents of the container.

(iii) Complies with R.61–79.265.16(a) (1) and (d)(4). The requirements of R.61–79.265.16(a) must be repeated as necessary when there is a change in the hazardous waste being accumulated.

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 261.31 or 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions. During the three-day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste onsite for 180 days or less without a permit or without having interim status [see 262.40(e)] provided that: (amended 6/89)

(1) The quantity of waste accumulated onsite never exceeds 6000 kilograms;
(2) The generator complies with the requirements of subpart I of R.61–79.265, except 265.175, .176, and 178.

(3) The generator complies with the requirements of Subpart J, R.61–79.265.201.

(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of subpart C of R.61–79.265, the requirements of all applicable requirements under part 268; and

(5) The generator complies with the following requirements:

(i) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d)(5)(iv) of this section. This employee is the emergency coordinator. (amended 11/90)

(ii) The generator must post the following information next to the telephone:

(A) The name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies:

(iv) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(C) In the event of a fire, explosion, other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number 800/424–8802) and the Department emergency response number 803/253–6488. The report must include the following information:

1. The name, address, and U.S. EPA Identification Number of the generator;
2. Date, time, and type of incident (i.e., spill or fire);
3. Quantity and type of hazardous waste involved in the incident;
4. Extent of injuries, if any; and
5. Estimated quantity and disposition of recovered materials, if any.

(e) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of paragraph (d) of this section.

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of R.61–79.264 and R.61–79.265, and the permit requirements of R.61–79.270 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the Department if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Department on a case-by-case basis.
(g) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

1. The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;

2. The F006 waste is legitimately recycled through metals recovery;

3. No more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

4. The F006 waste is managed in accordance with the following:
   (i) The F006 waste is placed:
      (A) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of part 265; and/or
      (B) In tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of part 265, except 265.197(c) and 265.200; and/or 262.34(g)(4)(i)(C)
      (C) In containment buildings and the generator complies with subpart DD of part 265, and has placed its professional engineer certification that the building complies with the design standards specified in 265.1101 in the facility’s operating record prior to operation of the unit.

The owner or operator must maintain the following records at the facility:

(i) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

(ii) In addition, such a generator is exempt from all the requirements in subparts G and H of part 265, except for 265.111 and 265.114.

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

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

(v) The generator complies with the requirements for owners or operators in subparts C and D in part 265, with 265.16, and with 268.7(a)(5).

(h) [Reserved]

(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste on-site for more than 180 days, or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a storage facility and is subject to the requirements of parts 264 and 265 and the permit requirements of part 270 unless the generator has been granted an extension to the 180-day period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted if F006 waste must remain on-site for longer than 180 days or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrorollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Bureau on a case-by-case basis.

(j) [Reserved]

(k) [Reserved]

(l) [Reserved]

(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of 264.72 or 265.72 of this chapter may accumulate the returned waste on-site in accordance with
paragraphs (a) and (b) or (d), (e) and (f) of this section, depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1993; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 25, Issue No. 10, eff October 26, 2001; State Register Volume 28, Issue No. 6, eff June 25, 2004; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 31, Issue No. 2, eff February 23, 2007; State Register Volume 36, Issue No. 3, eff March 23, 2012; State Register Volume 36, Issue No. 9, eff September 28, 2012; State Register Volume 39, Issue No. 6, Doc. No. 4541, eff June 26, 2015.

SUBPART D
Recordkeeping and Reporting

262.40. Recordkeeping.

(a) A generator must keep a copy of each manifest signed in accordance with section 262.23(a) onsite 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 Quarterly Report and Exception Report onsite for a period of at least three years from the due date of the report as set by the Department.

(c) A generator must keep records onsite of any test results, waste analyses, or other determinations made in accordance with R.61–79.262.11 for at least three years from the date that the waste was last sent to onsite or offsite treatment, storage, or disposal.

(d) The periods or 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 Department.

(e) [Reserved]

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1995; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

Editor’s Note
Paragraph (d) added in 2012 to correct a typographical error.

262.41. Quarterly reporting.

(a) Each generator of more than 1000 kg/mo of hazardous waste who ships any hazardous waste offsite to a treatment, storage or disposal facility within the United States must prepare and, no later than thirty (30) days after the end of each calendar quarter, submit a written report to the Department including, but not limited to, the following information unless otherwise indicated (amended 11/90).

(1) The EPA identification number, name, and address of the generator;

(2) The calendar quarter covered by the report;

(3) The EPA identification number, name, and address for each offsite treatment, storage, or disposal facility in the United States to which waste was shipped during the quarter.

(4) The name and EPA identification number of each transporter used during the reporting quarter for shipments to a treatment, storage or disposal facility within the United States;

(5) A description, the EPA hazardous waste number [from R.61–79.261 Subpart C or D], DOT hazardous class, and quantity of each hazardous waste shipped offsite for shipments to a treatment,
storage, or disposal facility within the United States. This information must be listed by the EPA identification number of each such facility to which waste was shipped.

(6) The types and quantities of such wastes shipped for offsite treatment and disposal;
(7) The types and quantities of such wastes remaining in storage at the end of the reporting period; and
(8) Certification of information signed by the generator or his authorized representative.

(b) Any generator must submit the information required by paragraph (a) on a form designated by the Department and according to the instructions included with such form. Reporting for exports of hazardous waste is not required on the Report form. A separate annual report requirement is set forth at 262.56.

(c) [moved to 262.45 12/93]

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 19, Issue 6, eff June 23, 1995; State Register Volume 21, Issue No. 2, eff June 27, 1997; State Register Volume 23, Issue No. 10, eff October 26, 2001.

262.42. Exception reporting.

(a)(1) A generator with 1000 kilograms or greater of hazardous waste in a calendar month 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.

(2) A generator of 1000 kilograms or greater of hazardous waste in a calendar month must submit an Exception Report to the Agency 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:

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

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Agency. (12/92)

Note: The submission need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received. (12/92)

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of 264.72(e)(1) through (6) or 265.72(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) or (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) or (b) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and
(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.
262.43. Additional reporting.

(a) Any generator within the State who treats or disposes or stores hazardous wastes onsite for more than ninety (90) days shall also comply with the reporting requirements of R.61–79.264.75 or R.61–79.265.75.

(b) The Department may require, as deemed necessary, generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in R.61–79.261.

(c) With the fourth quarter’s report, a description of the efforts undertaken during the year to reduce the volume and toxicity of wastes generated;

(d) With the fourth quarter’s report, a description of the changes in volume and toxicity of wastes actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.

262.44. Special requirements for generators of between 100 and 1000 kg/mo.

A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject only to the following requirements of this Subpart:

(a) Section 262.40(a), (c), and (d), recordkeeping;

(b) Annual declaration: must declare status annually on or before January 31 by submission of a completed form as designated by the Department on which he certifies that he is a small quantity generator and provisionally exempt from full regulation and that should his status change during the calendar year he will comply fully with all requirements including quarterly reporting; (amended 6/89, 11/90; edited and moved 12/92 from 261.5(k))

(c) Section 262.42, exception reporting; and

(d) Section 262.43, additional reporting.


262.45. Hazardous waste contingency fund fees.

The Department will notify each in–State generator the fee to be paid for his wastes which are land filled or other means of land disposal in this State. A check made payable to the Department [See § 44–56–170 and § 44–56–510] of fees of $34.00 per ton of hazardous waste and $13.70 per ton of nonhazardous wastes. $10 per ton of hazardous waste incinerated must be paid to the facility receiving the waste and remitted to the Department. (moved 12/93 from 262.41(c))

HISTORY: Added by State Register Volume 17, Issue No. 12, eff December 24, 1993.
262.51. Definitions.

In addition to the definitions set forth at R.61–79.260.10, the following definitions apply to this subpart:

“Consignee” means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

“EPA Acknowledgment of Consent” means the cable sent to EPA and to the Department from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country’s consent to the shipment.

“Primary Exporter” means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with R.61–79.262, Subpart B, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

“Receiving Country” means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

“Transit Country” means any foreign country, other than a receiving country, through which a hazardous waste is transported.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 25, 1990.

262.52. General requirements.

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this Subpart and R.61–79.263. Exports of hazardous waste are prohibited unless:

(a) Notification in accordance with Section 262.53 has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest [or shipping paper for exports by water (bulk shipment)].

(d) The hazardous waste shipment conforms to the terms of the receiving country’s written consent as reflected in the EPA Acknowledgment of Consent.


262.53. Notification of intent to export.

(a) A primary exporter in this State of hazardous waste must notify EPA and the Department of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped offsite. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the primary exporter, and include the following information:

(1) Name, mailing address, telephone number and EPA ID number of the primary exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from R.61–79.261, Subparts C and D), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste, as identified in 49 CFR Part 171–177.

(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700–12 DHEC);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 25, 1990.
A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

The name and site address of the consignee and any alternate consignee; and

The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St., and Pennsylvania Ave., NW., Washington, DC, 20004. In both cases, the following shall be prominently displayed on the front of the envelope: “Attention: Notification of Intent to Export.” (revised 12/93)

(c) Except for changes to the telephone number in paragraph(a)(1) of this section, changes to paragraph (a)(2)(v) of this section and decreases in the quantity indicated pursuant to paragraph (a)(2)(iii) of this section when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter must provide EPA and the Department with a written renunciation of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to paragraph(a)(2)(viii)of this section and in the ports of entry to and departure from transit countries pursuant to paragraph (a)(2)(iv)of this section) has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country’s consent to the changes.

(d) Upon request by either EPA or the Department, a primary exporter shall furnish to EPA and the Department any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA and the Department receives a notification which EPA determines satisfies the requirements of paragraph (a) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with R.61–79.260.2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of Section 262.54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.


262.54. Special manifest requirements.

A primary exporter must comply with the manifest requirements of Sections 262.20 through 262.23 except that:

(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.

(c) In the International Shipments block, the primary exporter must check the export box and enter the point of exit (city and state) from the United States.
(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: “and conforms to the terms of the attached EPA Acknowledgment of Consent”;

(e) The primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(f) The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of Section 262.20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

1. Renotify EPA and the Department of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Section 262.53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

2. Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

3. Instruct the transporter to revise the manifest in accordance with the primary exporter’s instructions.

(h) The primary exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA Acknowledgment of Consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with R.61-79.263.20(g)(4).


262.55. Exception reports.

In lieu of the requirements of 262.42, a primary exporter must file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(a) 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 forty-five (45) days from the date it was accepted by the initial transporter;

(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.


262.56. Annual reports.

(a) Primary exporters of hazardous waste shall file with the EPA Administrator and the Department no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

1. The EPA identification number, name, and mailing and site address of the exporter;
(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number from part 261, subpart C or D), DOT hazard class, the name and US EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(5) Except for hazardous waste produced by exporters of greater than 100 kilograms but less than 1000 kilograms in a calendar month, unless provided pursuant to 262.41 (quarterly reporting), in even numbered years: (amended 6/89)
   (i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and
   (ii) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(6) A certification signed by the primary exporter which states:

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.

(b) Reports shall be sent to the following mailing addresses: Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and the Bureau of Land and Waste Management, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201. (amended 11/90; 12/93)


262.57. Recordkeeping.

(a) For all exports a primary exporter must:
   (1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;
   (2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;
   (3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and
   (4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) 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 EPA Administrator or the Department.


262.58. International agreements.

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this section for purposes of recovery is subject to subpart H of this part. The requirements of subparts E and F of this part do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in part 261.3 and is subject to either the Federal RCRA manifesting requirements at part 262, subpart B, the universal waste management standards of part 273, state requirements analogous to part 273, the export requirements in the spent lead-acid
battery management standards of part 266, subpart G or state requirements analogous to the export requirements of part 266, subpart G.

(1) For the purposes of Subpart H, the designated OECD countries consist of Australia, Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, the Republic of Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

(2) For the purposes of this Subpart, Canada and Mexico are considered OECD member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: a designated OECD Member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of subparts E and F of this part and is not subject to the requirements of subpart H of this part.

HISTORY: Amended by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 36, Issue No. 9, eff September 28, 2012.

SUBPART F
Imports of Hazardous Waste

262.60. Imports of hazardous waste.

(a) Any person who imports hazardous waste from a foreign country into this State must comply with the requirements of these Regulations and the special requirements of this subpart.

(b) When importing hazardous waste, a person must meet all the requirements of 262.20 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.

(c) A person who imports hazardous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(d) In the International Shipments block, the importer must check the import box and enter the point of entry (city and state) into the United States.

(e) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with 264.71(a)(3) and 265.71(a)(3) of this chapter.


SUBPART G
Farmers

262.70. 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 regulation or other standards in R.61–79.270, R.61–79.264, R.61–79.265 or R.61–79.268 for those wastes provided he triple rinses each emptied pesticide container in accordance with R.61–79.261.7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

SUBPART H
Transboundary Movements of Hazardous Waste for Recovery within the OECD

262.80. Applicability.
(a) The requirements of this subpart apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in 262.58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:
(1) Meets the federal definition of hazardous waste in 40 CFR 261.3; and
(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of part 273, State requirements analogous to part 273, the export requirements in the spent lead-acid battery management standards of part 266, subpart G, or State requirements analogous to the export requirements in part 266, subpart G.
(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and nonhazardous wastes) or otherwise subjects two or more wastes (including hazardous and nonhazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.


262.81. Definitions.
The following definitions apply to this subpart.
“Competent authority” means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.
“Countries concerned” means the OECD member countries of export or import and any OECD member countries of transit.
“Country of export” means any designated OECD Member country listed in 262.58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.
“Country of import” means any designated OECD Member country listed in 262.58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.
“Country of transit” means any designated OECD Member country listed in 262.58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.
“Exporter” means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, exporter is interpreted to mean a person domiciled in the United States.
“Importer” means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.
“OECD” means the Organization for Economic Cooperation and Development.
“OECD area” means all land or marine areas under the national jurisdiction of any OECD Member country listed in 262.58. When the regulations refer to shipments to or from an OECD country, this means OECD area.
“Recognized trader” means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.
“Recovery facility” means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.
“Recovery operations” means activities leading to resource recovery, recycling, reclamation, direct reuse or alternative uses which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy
R2 Solvent reclamation/regeneration
R3 Recycling/reclamation of organic substances which are not used as solvents
R4 Recycling/reclamation of metals and metal compounds
R5 Recycling/reclamation of other inorganic materials
R6 Regeneration of acids or bases
R7 Recovery of components used for pollution abatement.
R8 Recovery of components used from catalysts
R9 Used oil re-refining or other reuses of previously used oil
R10 Land treatment resulting in benefit to agriculture or ecological improvement
R11 Uses of residual materials obtained from any of the operations numbered R1 to R10
R12 Exchange of wastes for submission to any of the operations numbered R1 to R11
R13 Accumulation of material intended for any operation numbered R1-R12.

“Transboundary movement” means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.


262.82. General conditions.

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in 262.80(a). The OECD Green and Amber lists are incorporated by reference in 262.89(d)

(1) Listed wastes subject to the Green control procedures.
   (i) Green wastes that are not considered hazardous under U.S. national procedures as defined in 262.80(a) are subject to existing controls normally applied to commercial transactions.
   (ii) Green wastes that are considered hazardous under U.S. national procedures as defined in 262.80(a) are subject to the Amber control procedures set forth in this subpart.

(2) Listed wastes subject to the Amber control procedures.
   (i) Amber wastes that are considered hazardous under U.S. national procedures as defined in 262.80(a) are subject to the Amber control procedures set forth in this subpart.
   (ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in 262.80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in 262.58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:
      (A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.
      (B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.
   (iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in 262.80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts.
(a) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in 262.80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in 262.80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

Note to Paragraph (a)(3)(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(c) Provisions relating to re-export for recovery to a third country.

(1) Re-export of wastes subject to the Amber control procedures from the U.S., as the country of import, to a third country listed in 262.58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in 262.85 for all countries concerned and the original country of export. The competent authorities of the original country of export as well as the competent authorities of all other countries concerned have thirty (30) days to object to the proposed movement.

(i) The thirty (30) day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgments of Receipt of the notification.

(ii) The transboundary movement may commence if no objection has been lodged after the thirty (30) day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) In the case of re-export of Amber wastes to a country other than those listed in 262.58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of
export and any OECD Member countries of transit is required as specified in paragraph (c)(1) of this section, in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.

(d) Duty to return or re-export wastes subject to the Amber control procedures. When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. The provisions of paragraph (c) of this section apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

(1) Return from the United States to the country of export: The U.S. importer must inform EPA at the specified address in 262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

(2) Return from the country of import to the United States: The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with 262.87(b).

(e) Duty to return wastes subject to the Amber control procedures from a country of transit. When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:

(1) Return from the United States (as country of transit) to the country of export: The U.S. transporter must inform EPA at the specified address in 262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

(2) Return from the country of transit to the United States (as country of export): The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with 262.87(b).

(f) Requirements for wastes destined for and received by R12 and R13 facilities. The transboundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in 262.83 and for the movement document as set forth in 262.84. Additional responsibilities of R12/R13 facilities include:

(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place.

(2) Within three (3) days of the receipt of the waste by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three (3) years.

(3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the
R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the
competent authority of the country of export and to the Office of Enforcement and Compliance
Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Envi-
ronmental Protection Agency, 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460, by mail, e-
mail without digital signature followed by mail, or fax followed by mail.

(4) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility
located in the country of import, it shall obtain as soon as possible, but no later than one (1) calendar
year following delivery of the waste, a certification from the R1-R11 facility that recovery of the
wastes at that facility has been completed. The R12/R13 facility must promptly transmit the
applicable certification to the competent authorities of the countries of import and export, identify-
ing the transboundary movements to which the certification pertain.

(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility
located:

(i) In the initial country of export, Amber control procedures apply, including a new notifica-
tion;

(ii) In a third country other than the initial country of export, Amber control procedures apply,
with the additional provision that the competent authority of the initial country of export shall also
be notified of the transboundary movement.

(g) Laboratory analysis exemption. The transboundary movement of an Amber waste is exempt
from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to
assess its physical or chemical characteristics, or to determine its suitability for recovery operations.
The quantity of such waste shall be determined by the minimum quantity reasonably needed to
perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms (25
kg). Waste destined for laboratory analysis must still be appropriately packaged and labeled.

HISTORY: Added by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998. Amended by State
Register Volume 36, Issue No. 9, eff September 28, 2012.

262.83. Notification and consent.

(a) Applicability. Consent must be obtained from the competent authorities of the relevant OECD
countries of import and transit prior to exporting hazardous waste destined for recovery operations
subject to this subpart. Hazardous wastes subject to the Amber control procedures are subject to the
requirements of paragraph (b) of this section; and wastes not identified on any list are subject to the
requirements of paragraph (c) of this section.

(b) Amber wastes. Exports of hazardous wastes from the United States as described in 262.80(a)
that are subject to the Amber control procedures are prohibited unless the notification and consent
requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met.

(1) Transactions requiring specific consent:

(i) Notification. At least forty-five (45) days prior to commencement of each transboundary
movement, the exporter must provide written notification in English of the proposed transboun-
dary movement to the Office of Enforcement and Compliance Assurance, Office of Federal
Activities, International Compliance Assurance Division (2254A), Environmental Protection Agen-
cy, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words “Attention: OECD
Export Notification” prominently displayed on the envelope. This notification must include all of
the information identified in paragraph (d) of this section. In cases where wastes having similar
physical and chemical characteristics, the same United Nations classification, the same RCRA waste
codes, and are to be sent periodically to the same recovery facility by the same exporter, the
exporter may submit one general notification of intent to export these wastes in multiple
shipments during a period of up to one (1) year. Even when a general notification is used for
multiple shipments, each shipment still must be accompanied by its own movement document
pursuant to 262.84.

(ii) Tacit consent. If no objection has been lodged by any countries concerned (i.e., exporting,
importing, or transit) to a notification provided pursuant to paragraph (b)(1)(i) of this section
within thirty (30) days after the date of issuance of the Acknowledgement of Receipt of notification
by the competent authority of the country of import, the transboundary movement may com-
Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

(iii) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty (30) days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one (1) calendar year after the date of that country’s consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) Notification. The exporter must provide EPA a notification that contains all the information identified in paragraph (d) of this section in English, at least ten (10) days in advance of commencing shipment to a pre-approved facility. The notification must indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words “OECD Export Notification-Pre-approved Facility” prominently displayed on the envelope. General notifications that cover multiple shipments as described in paragraph (b)(1)(i) of this section may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to 262.84.

(ii) Exports to pre-approved facilities may take place after the lapse of seven (7) working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

(c) Wastes not covered in the OECD Green and Amber lists. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in 262.89(d), but which are considered hazardous under U.S. national procedures as defined in 262.80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with paragraph (b) of this section. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in 262.89(d), and are not considered hazardous under U.S. national procedures as defined by 262.80(a) are subject to the Green control procedures.

(d) Notifications submitted under this section must include the information specified in paragraphs (d)(1) through (d)(14) of this section:

(1) Serial number or other accepted identifier of the notification document;
(2) Exporter name and EPA identification number (if applicable), address, telephone, fax numbers, and e-mail address;
(3) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;
(4) Importer name (if not the owner or operator of the recovery facility), address, telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;
(5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;
(6) Country of export and relevant competent authority, and point of departure;
(7) Countries of transit and relevant competent authorities and points of entry and departure;
(8) Country of import and relevant competent authority, and point of entry;
(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;
(10) Date(s) foreseen for commencement of transboundary movement(s);
(11) Means of transport envisaged;
(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in 262.89(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;
(13) Specification of the recovery operation(s) as defined in 262.81.
(14) Certification/Declaration signed by the exporter that states:
I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.
Name: 
Signature: 
Date: 
Note to Paragraph (d)(14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

(e) Certificate of Recovery. As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under 262.85.


262.84. Movement document.
(a) All U.S. parties subject to the contract provisions of 262.85 must ensure that a movement document meeting the conditions of paragraph (b) of this section accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in paragraphs (a)(1) and (2) of this section.

(1) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water, (in accordance with the manifest routing procedures at 262.23(c)).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the movement document with the manifest (in accordance with the routing procedures for the manifest in 262.23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document must include all information required under 262.83 (for notification), as well as the following paragraphs (b)(1) through (b)(7) of this section:

(1) Date movement commenced;

(2) Name (if not exporter), address, telephone, fax numbers, and e-mail of primary exporter;

(3) Company name and EPA ID number of all transporters;

(4) Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;

(5) Any special precautions to be taken by transporter(s);

(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:
I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. All necessary consents have been received; OR
2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period; OR
3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned (Delete sentences that are not applicable)

Name: Signature: Date:

(7) Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the recovery facility).

(c) Exporters also must comply with the special manifest requirements of 262.54(a), (b), (c), (e), and (i) and importers must comply with the import requirements of 262, subpart F.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the movement document (e.g., transporter, importer, and owner or operator of the recovery facility).

(e) Within three (3) working days of the receipt of imports subject to this subpart, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under 262.81, the facility shall retain the original of the movement document for three (3) years.


262.85. Contracts.

(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (b)(1) through (b)(4) of this section:

(1) The generator of each type of waste;
(2) Each person who will have physical custody of the wastes;
(3) Each person who will have legal control of the wastes; and
(4) The recovery facility.

(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and
(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts must specify that the importer will provide the notification required in 262.82(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned in accordance with applicable national or international law requirements.

Note to Paragraph (e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 260.2.

Note to Paragraph (g): Although the United States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.


262.86. Provisions relating to recognized traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable federal laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of this subpart associated with being an exporter or importer.


262.87. Reporting and recordkeeping.

(a) Annual reports. For all waste movements subject to this subpart, persons (e.g., exporters, recognized traders) who meet the definition of primary exporter in 262.51 or who initiate the movement documentation under 262.84 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254-A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement document under 262.84 is required to file an annual report for waste exports that are not covered under this subpart, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section.) Such reports shall include all of the following paragraphs (a)(1) through (a)(6) of this section specified as follows:
(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from part 261, subpart C or D), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in 262.89(d), DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this subpart, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to 262.41:

   (i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

   (ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter or initiator of the movement document under 262.84 that states:

(b) Exception reports. Any person who meets the definition of primary exporter in 262.51 or who initiates the movement document under 262.84 must file an exception report in lieu of the requirements of 262.42 (if applicable) with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

   (1) He has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

   (2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

(c) Recordkeeping.

(1) Persons who meet the definition of primary exporter in 262.51 or who initiate the movement document under 262.84 shall keep the following records in paragraphs (c)(1)(i) through (c)(1)(iv) of this section:

   (i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

   (ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

   (iii) A copy of any exception reports and a copy of each confirmation of delivery (i.e., movement document) sent by the recovery facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

   (iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed processing the waste shipment.

(2) 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 Department.

262.89. OECD Waste Lists.

(a) General. For the purposes of this Subpart, a waste is considered hazardous under U.S. national procedures, and hence subject to this Subpart, if the waste:

(1) Meets the Federal definition of hazardous waste in 261.3; and

(2) Is subject to either the Federal RCRA manifesting requirements at 262, subpart B, the universal waste management standards of 273, State requirements analogous to 273, the export requirements in the spent lead-acid battery management standards of 266, subpart G, or State requirements analogous to the export requirements in part 266, subpart G.

(b) If a waste is hazardous under paragraph (a) of this section, it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in 262.81.

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in 262.82.

(d) The OECD waste lists, as set forth in Annex B (“Green List”) and Annex C (“Amber List”) (collectively “OECD waste lists”) of the 2009 “Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations,” are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202−741−6030, or go to: http://www.archives.gov/federal-register/cfr/ibr-locations.html. To contact the EPA Docket Center Public Reading Room, call (202) 566−1744. To contact the OECD, call +33 (0) 1 45 24 81 67.


SUBPART I
Hazardous Waste Discharge Reporting

262.90. Discharge clean up.

A generator must clean up any hazardous waste discharge that occurs during generation or processing or storage and take such other 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. See also 262.34(a)(4) and 265 Subpart D.

SUBPART K
Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities

262.200. Definitions.

“Central Accumulation Area” means an on-site hazardous waste accumulation area subject to either 262.34(a)-(b) of this part (large quantity generators) or 262.34(d)-(f) of this part (small quantity generators). A central accumulation area at an eligible academic entity that chooses to be subject to this subpart must also comply with 262.211 when accumulating unwanted material and/or hazardous waste.

“College/University” means a private or public, post-secondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the U.S. Department of Education.

“Eligible academic entity” means a college or university, or a non-profit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.
“Formal written affiliation agreement” for a non-profit research institute means a written document that establishes a relationship between institutions for the purposes of research and/or education and is signed by authorized representatives, as defined by 260.10, from each institution. A relationship on a project-by-project or grant-by-grant basis is not considered a formal written affiliation agreement. A formal written affiliation agreement for a teaching hospital means a master affiliation agreement and program letter of agreement, as defined by the Accreditation Council for Graduate Medical Education, with an accredited medical program or medical school.

“Laboratory” means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching or research (or diagnostic purposes at a teaching hospital) and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories (or diagnostic laboratories at teaching hospitals) are also considered laboratories.

“Laboratory clean-out” means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis (e.g., at the end of a semester or academic year) or as a result of a renovation, relocation, or change in laboratory supervisor/occupant. A regularly scheduled removal of unwanted material as required by 262.208 does not qualify as a laboratory clean-out.

“Laboratory worker” means a person who handles chemicals and/or unwanted material in a laboratory and may include, but is not limited to, faculty, staff, post-doctoral fellows, interns, researchers, technicians, supervisors/managers, and principal investigators. A person does not need to be paid or otherwise compensated for his/her work in the laboratory to be considered a laboratory worker. Undergraduate and graduate students in a supervised classroom setting are not laboratory workers.

“Non-profit research institute” means an organization that conducts research as its primary function and files as a non-profit organization under the tax code of 26 U.S.C. 501(c)(3).

“Reactive acutely hazardous unwanted material” means an unwanted material that is one of the acutely hazardous commercial chemical products listed in 261.33(e) for reactivity.

“Teaching hospital” means a hospital that trains students to become physicians, nurses or other health or laboratory personnel.

“Trained professional” means a person who has completed the applicable RCRA training requirements of 265.16 for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with 262.34(d)(5)(iii) for small quantity generators and conditionally exempt small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

“Unwanted material” means any chemical, mixtures of chemicals, products of experiments or other material from a laboratory that is no longer needed, wanted or usable in the laboratory and that is destined for hazardous waste determination by a trained professional. Unwanted materials include reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to 261.2, or a hazardous waste pursuant to 261.3. If an eligible academic entity elects to use another equally effective term in lieu of “unwanted material,” as allowed by 262.206(a)(1)(i), the equally effective term has the same meaning and is subject to the same requirements as “unwanted material” under this subpart.

“Working container” means a small container (i.e., two gallons or less) that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.


262.201. Applicability of this subpart.

(a) Large quantity generators and small quantity generators This subpart provides alternative requirements to the requirements in 262.11 and 262.34(c) for the hazardous waste determination and
accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to this subpart, provided that they complete the notification requirements of 262.203.

(b) Conditionally exempt small quantity generators. This subpart provides alternative requirements to the conditional exemption in 261.5(b) for the accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to this subpart, provided that they complete the notification requirements of 262.203.


262.202. This subpart is optional.

(a) Large quantity generators and small quantity generators: Eligible academic entities have the option of complying with this subpart with respect to their laboratories, as an alternative to complying with the requirements of 262.11 and 262.34(c).

(b) Conditionally exempt small quantity generators. Eligible academic entities have the option of complying with this subpart with respect to their laboratories, as an alternative to complying with the conditional exemption of 261.5(b).


262.203. How an eligible academic entity indicates it will be subject to the requirements of this subpart.

(a) An eligible academic entity must notify the Department in writing, using Department’s Notification and Reporting Form (DHEC Form 2701).

(b) When submitting the Notification and Reporting Form, the eligible academic entity must, at a minimum, fill out the following fields on the form:

1. Reason for Submittal.
2. Site EPA Identification Number (except for conditionally exempt small quantity generators).
3. Site Name.
4. Site Location Information.
5. Site Land Type.
7. Site Mailing Address.
8. Site Contact Person.
10. Type of Regulated Waste Activity.
11. Certification.

(c) An eligible academic entity must keep a copy of the notification on file at the eligible academic entity for as long as its laboratories are subject to this subpart.

(d) A teaching hospital that is not owned by a college or university must keep a copy of its formal written affiliation agreement with a college or university on file at the teaching hospital for as long as its laboratories are subject to this subpart.

(e) A non-profit research institute that is not owned by a college or university must keep a copy of its formal written affiliation agreement with a college or university on file at the non-profit research institute for as long as its laboratories are subject to this subpart.


262.204. How an eligible academic entity indicates it will withdraw from the requirements of this subpart.

(a) An eligible academic entity must notify the Department in writing, using the Department’s Notification and Reporting Form (DHEC Form 2701), that it is electing to no longer be subject to the requirements of this subpart for all the laboratories owned by the eligible academic entity under the same EPA Identification Number and that it will comply with the requirements of 262.11 and 262.34(c)
for small quantity generators and large quantity generators. An eligible academic entity that is a conditioned exempt small quantity generator and does not have an EPA identification number must notify that it is withdrawing from the requirements of this subpart for all the laboratories owned by the eligible academic entity that are on-site and that it will comply with the conditional exemption in 261.5(b). An eligible academic entity must submit a separate notification (Site Identification Form) for each EPA Identification Number (or site, for conditionally exempt small quantity generators) that is withdrawing from the requirements of the subpart and must submit the Site Identification Form before it begins operating under the requirements of 262.11 and 262.34(c) for small quantity generators and large quantity generators, or 261.5(b) for conditionally exempt small quantity generators.

(b) When submitting the Notification and Reporting Form, the eligible academic entity must, at a minimum, fill out the following fields on the form:

(1) Reason for Submittal.
(2) Site EPA Identification Number (except for conditionally exempt small quantity generators).
(3) Site Name.
(4) Site Location Information.
(5) Site Land Type.
(6) North American Industry Classification System (NAICS) Code(s) for the Site.
(7) Site Mailing Address.
(8) Site Contact Person.
(9) Operator and Legal Owner of the Site.
(10) Type of Regulated Waste Activity.
(11) Certification.

(c) An eligible academic entity must keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.


262.205. Summary of the requirements of this subpart.
An eligible academic entity that chooses to be subject to this subpart is not required to have interim status or a RCRA Part B permit for the accumulation of unwanted material and hazardous waste in its laboratories, provided the laboratories comply with the provisions of this subpart and the eligible academic entity has a Laboratory Management Plan (LMP) in accordance with 262.214 that describes how the laboratories owned by the eligible academic entity will comply with the requirements of this subpart.


262.206. Labeling and Management Standards for Containers of Unwanted Material in the Laboratory.
An eligible academic entity must manage containers of unwanted material while in the laboratory in accordance with the requirements in this section.

(a) Labeling: Label unwanted material as follows:

(1) The following information must be affixed or attached to the container:

(i) The words “unwanted material” or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in Part I of the Laboratory Management Plan, and

(ii) Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to:

(A) The name of the chemical(s)

(B) The type or class of chemical, such as organic solvents or halogenated organic solvents
(2) The following information may be affixed or attached to the container, but must at a minimum be associated with the container:

(i) The date that the unwanted material first began accumulating in the container, and
(ii) Information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid and hazardous waste and to assign the proper hazardous waste code(s), pursuant to 262.11. Examples of information that would allow a trained professional to properly identify whether an unwanted material is a solid or hazardous waste include, but are not limited to:
   (A) The name and/or description of the chemical contents or composition of the unwanted material, or, if known, the product of the chemical reaction,
   (B) Whether the unwanted material has been used or is unused,
   (C) description of the manner in which the chemical was produced or processed, if applicable.

(b) An eligible academic entity must properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management must include the following:

(1) Containers are maintained and kept in good condition and damaged containers are replaced, overpacked, or repaired, and
(2) Containers are compatible with their contents to avoid reactions between the contents and the container; and are made of, or lined with, material that is compatible with the unwanted material so that the container’s integrity is not impaired, and
(3) Containers must be kept closed at all times, except:
   (i) When adding, removing or bulking unwanted material, or
   (ii) A working container may be open until the end of the procedure or work shift, or until it is full, whichever comes first, at which time the working container must either be closed or the contents emptied into a separate container that is then closed, or
   (iii) When venting of a container is necessary.
   (A) For the proper operation of laboratory equipment, such as with in-line collection of unwanted materials from high performance liquid chromatographs, or
   (B) To prevent dangerous situations, such as build-up of extreme pressure.


262.207. Training.

An eligible academic entity must provide training to all individuals working in a laboratory at the eligible academic entity, as follows:

(a) Training for laboratory workers and students must be commensurate with their duties so they understand the requirements in this subpart and can implement them.

(b) An eligible academic entity can provide training for laboratory workers and students in a variety of ways, including, but not limited to:

   (1) Instruction by the professor or laboratory manager before or during an experiment; or
   (2) Formal classroom training; or
   (3) Electronic/written training; or
   (4) On-the-job training; or
   (5) Written or oral exams.

(c) An eligible academic entity that is a large quantity generator must maintain documentation for the durations specified in 265.16(e) demonstrating training for all laboratory workers that is sufficient to determine whether laboratory workers have been trained. Examples of documentation demonstrating training can include, but are not limited to, the following:

   (1) Sign-in/attendance sheet(s) for training session(s); or
(2) Syllabus for training session; or
(3) Certificate of training completion; or
(4) Test results.
(d) A trained professional must:
(1) accompany the transfer of unwanted material and hazardous waste when the unwanted material and hazardous waste is removed from the laboratory, and
(2) make the hazardous waste determination, pursuant to 262.11, for unwanted material.


262.208. Removing containers of unwanted material from the laboratory.
(a) Removing containers of unwanted material on a regular schedule. An eligible academic entity must either:
   (1) Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed 6 months; or
   (2) Remove containers of unwanted material from each laboratory within 6 months of each container’s accumulation start date.
(b) The eligible academic entity must specify in Part I of its Laboratory Management Plan whether it will comply with paragraph (a)(1) or (a)(2) of this section for the regular removal of unwanted material from its laboratories.
(c) The eligible academic entity must specify in Part II of its Laboratory Management Plan how it will comply with paragraph (a)(1) or (a)(2) of this section and develop a schedule for regular removals of unwanted material from its laboratories.
(d) Removing containers of unwanted material when volumes are exceeded.
   (1) If a laboratory accumulates a total volume of unwanted material (including reactive acutely hazardous unwanted material) in excess of 55 gallons before the regularly scheduled removal, the eligible academic entity must ensure that all containers of unwanted material in the laboratory (including reactive acutely hazardous unwanted material):
      (i) Are marked on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) with the date that 55 gallons is exceeded; and
      (ii) Are removed from the laboratory within 10 calendar days of the date that 55 gallons was exceeded, or at the next regularly scheduled removal, whichever comes first.
   (2) If a laboratory accumulates more than 1 quart of reactive acutely hazardous unwanted material before the regularly scheduled removal, then the eligible academic entity must ensure that all containers of reactive acutely hazardous unwanted material:
      (i) Are marked on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) with the date that 1 quart is exceeded; and
      (ii) Are removed from the laboratory within 10 calendar days of the date that 1 quart was exceeded, or at the next regularly scheduled removal, whichever comes first.


262.209. Where and when to make the hazardous waste determination and where to send containers of unwanted material upon removal from the laboratory.
(a) Large quantity generators and small quantity generators - an eligible academic entity must ensure that a trained professional makes a hazardous waste determination, pursuant to 262.11, for unwanted material in any of the following areas:
   (1) In the laboratory before the unwanted material is removed from the laboratory, in accordance with 262.210;
   (2) Within 4 calendar days of arriving at an on-site central accumulation area, in accordance with 262.211; and within 4 calendar days of arriving at an on-site interim status or permitted treatment, storage or disposal facility, in accordance with 262.212.
(3) Within 4 calendar days of arriving at an on-site interim status or permitted treatment, storage or disposal facility, in accordance with 262.212

(b) Conditionally exempt small quantity generators - an eligible academic entity must ensure that a trained professional makes a hazardous waste determination, pursuant to 262.11, for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with 262.210.


262.210. Making the hazardous waste determination in the laboratory before the unwanted material is removed from the laboratory.

If an eligible academic entity makes the hazardous waste determination, pursuant to 262.11, for unwanted material in the laboratory, it must comply with the following:

(a) A trained professional must make the hazardous waste determination, pursuant to 262.11, before the unwanted material is removed from the laboratory.

(b) If an unwanted material is a hazardous waste, the eligible academic entity must:

(1) Write the words “hazardous waste” on the container label that is affixed or attached to the container, before the hazardous waste may be removed from the laboratory; and

(2) Write the appropriate hazardous waste codes(s) on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the hazardous waste is transported off-site.

(3) Count the hazardous waste toward the eligible academic entity’s generator status, pursuant to 261.5(c) and (d), in the calendar month that the hazardous waste determination was made.

(c) A trained professional must accompany all hazardous waste that is transferred from the laboratory(ies) to an on-site central accumulation area or on-site interim status or permitted treatment, storage or disposal facility.

(d) When hazardous waste is removed from the laboratory.

(1) Large quantity generators and small quantity generators must ensure it is taken directly from the laboratory(ies) to an on-site central accumulation area, or on-site interim status or permitted treatment, storage or disposal facility, or transported off-site.

(2) Conditionally exempt small quantity generators must ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in 261.5(f)(3) for acute hazardous waste, or 261.5(g)(3) for hazardous waste.

(e) An unwanted material that is a hazardous waste is subject to all applicable hazardous waste regulations when it is removed from the laboratory.


262.211. Making the hazardous waste determination at an on-site central accumulation area.

If an eligible academic entity makes the hazardous waste determination, pursuant to 262.11, for unwanted material at an on-site central accumulation area, it must comply with the following:

(a) A trained professional must accompany all unwanted material that is transferred from the laboratory(ies) to an on-site central accumulation area.

(b) All unwanted material removed from the laboratory(ies) must be taken directly from the laboratory(ies) to the on-site central accumulation area.

(c) The unwanted material becomes subject to the generator accumulation regulations of 262.34(a) for large quantity generators or 262.34(d)-e(l) for small quantity generators as soon as it arrives in the central accumulation area, except for the “hazardous waste” labeling requirements of 262.34(a)(3).

(d) A trained professional must determine, pursuant to 262.11, if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials’ arrival at the on-site central accumulation area.

(e) If the unwanted material is a hazardous waste, the eligible academic entity must:
(1) Write the words “hazardous waste” on the container label that is affixed or attached to the container, within 4 calendar days of arriving at the on-site central accumulation area and before the hazardous waste may be removed from the on-site central accumulation area, and

(2) Write the appropriate hazardous waste code(s) on the container label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the hazardous waste may be treated or disposed of on-site or transported off-site, and

(3) Count the hazardous waste toward the eligible academic entity’s generator status, pursuant to 261.5(c) and (d) in the calendar month that the hazardous waste determination was made, and

(4) Manage the hazardous waste according to all applicable hazardous waste regulations.


262.212. Making the hazardous waste determination at an on-site interim status or permitted treatment, storage or disposal facility.

If an eligible academic entity makes the hazardous waste determination, pursuant to 262.11, for unwanted material at an on-site interim status or permitted treatment, storage or disposal facility, it must comply with the following:

(a) A trained professional must accompany all unwanted material that is transferred from the laboratory(ies) to an on-site interim status or permitted treatment, storage or disposal facility.

(b) All unwanted material removed from the laboratory(ies) must be taken directly from the laboratory(ies) to the on-site interim status or permitted treatment, storage or disposal facility.

(c) The unwanted material becomes subject to the terms of the eligible academic entity’s hazardous waste permit or interim status as soon as it arrives in the on-site treatment, storage or disposal facility.

(d) A trained professional must determine, pursuant to 262.11, if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials’ arrival at an on-site interim status or permitted treatment, storage or disposal facility.

(e) If the unwanted material is a hazardous waste, the eligible academic entity must:

(1) Write the words “hazardous waste” on the container label that is affixed or attached to the container, within 4 calendar days of arriving at the on-site interim status or permitted treatment, storage or disposal facility and before the hazardous waste may be removed from the on-site interim status or permitted treatment, storage or disposal facility, and

(2) Write the appropriate hazardous waste code(s) on the container label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the hazardous waste may be treated or disposed on-site or transported off-site, and

(3) Count the hazardous waste toward the eligible academic entity’s generator status, pursuant to 261.5(c) and (d) in the calendar month that the hazardous waste determination was made, and

(4) Manage the hazardous waste according to all applicable hazardous waste regulations.


262.213. Laboratory clean-outs.

(a) One time per 12 month period for each laboratory, an eligible academic entity may opt to conduct a laboratory clean-out that is subject to all the applicable requirements of this subpart, except that:

(1) If the volume of unwanted material in the laboratory exceeds 55 gallons (or 1 quart of reactive acutely hazardous unwanted material), the eligible academic entity is not required to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons (or 1 quart of reactive acutely hazardous unwanted material), as required by 262.208. Instead, the eligible academic entity must remove all unwanted materials from the laboratory within 30 calendar days from the start of the laboratory clean-out; and

(2) For the purposes of on-site accumulation, an eligible academic entity is not required to count a hazardous waste that is an unused commercial chemical product (listed in part 261, subpart D or exhibiting one or more characteristics in part 261, subpart C) generated solely during the laboratory
clean-out toward its hazardous waste generator status, pursuant to 261.5(c) and (d). An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences must be counted toward hazardous waste generator status, pursuant to 261.5(c) and (d), if it is determined to be hazardous waste; and

(3) For the purposes of off-site management, an eligible academic entity must count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator status under paragraph (a)(2) of this section, and if it generates more than 1 kg/month of acute hazardous waste or more than 100 kg/month of hazardous waste (i.e., the conditionally exempt small quantity generator limits of 261.5), the hazardous waste is subject to all applicable hazardous waste regulations when it is transported off-site; and

(4) An eligible academic entity must document the activities of the laboratory clean-out. The documentation must, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity must maintain the records for a period of three years from the date the clean-out ends; and

(b) For all other laboratory clean-outs conducted during the same 12-month period, an eligible academic entity is subject to all the applicable requirements of this subpart, including, but not limited to:

(1) The requirement to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons (or 1 quart of reactive acutely hazardous unwanted material), as required by 262.208; and

(2) The requirement to count all hazardous waste, including unused hazardous waste, generated during the laboratory clean-out toward its hazardous waste generator status, pursuant to 261.5(c) and (d).


262.214. Laboratory management plans.

An eligible academic entity must develop and retain a written Laboratory Management Plan, or revise an existing written plan. The Laboratory Management Plan must contain two parts with a total of nine elements identified in paragraphs (a) and (b) of this section. In Part I of its Laboratory Management Plan, an eligible academic entity must describe its procedures for each of the elements listed in paragraph (a) of this section. An eligible academic entity must implement and comply with the specific provisions that it develops to address the elements in Part I of the Laboratory Management Plan. In Part II of its Laboratory Management Plan, an eligible academic entity must describe its best management practices for each of the elements listed in paragraph (b) of this section.

(a) The eligible academic entity must implement and comply with the specific provisions of Part I of its Laboratory Management Plan. In Part I of its Laboratory Management Plan, an eligible academic entity must:

(1) Describe procedures for container labeling in accordance with 262.206(a), as follows:

(i) Identifying whether the eligible academic entity will use the term “unwanted material” on the containers in the laboratory. If not, identify an equally effective term that will be used in lieu of “unwanted material” and consistently by the eligible academic entity. The equally effective term, if used, has the same meaning and is subject to the same requirements as “unwanted material.”

(ii) Identifying the manner in which information that is “associated with the container” will be imparted.

(2) Identify whether the eligible academic entity will comply with 262.208(a)(1) or (a)(2) for regularly scheduled removals of unwanted material from the laboratory.

(b) In Part II of its Laboratory Management Plan, an eligible academic entity must:

(1) Describe its intended best practices for container labeling and management, (see the required standards at 262.206).

(2) Describe its intended best practices for providing training for laboratory workers and students commensurate with their duties (see the required standards at 262.207(a)).
(3) Describe its intended best practices for providing training to ensure safe on-site transfers of unwanted material and hazardous waste by trained professionals (see the required standards at 262.207(d)(1)).

(4) Describe its intended best practices for removing unwanted material from the laboratory, including:
   (i) For regularly scheduled removals - Develop a regular schedule for identifying and removing unwanted materials from its laboratories (see the required standards at 262.208(a)(1) and (a)(2)).
   (ii) For removals when maximum volumes are exceeded:
         (A) Describe its intended best practices for removing unwanted materials from the laboratory within 10 calendar days when unwanted materials have exceeded their maximum volumes (see the required standards at 262.208(d)).
         (B) Describe its intended best practices for communicating that unwanted materials have exceeded their maximum volumes.

(5) Describe its intended best practices for making hazardous waste determinations, including specifying the duties of the individuals involved in the process (see the required standards at 262.11 and 262.209 through 262.212).

(6) Describe its intended best practices for laboratory clean-outs, if the eligible academic entity plans to use the incentives for laboratory clean-outs provided in 262.213, including:
   (i) Procedures for conducting laboratory clean-outs (see the required standards at 262.213(a)(1) through (3)); and
   (ii) Procedures for documenting laboratory clean-outs (see the required standards at 262.213(a)(4)).

(7) Describe its intended best practices for emergency prevention, including:
   (i) Procedures for emergency prevention, notification, and response, appropriate to the hazards in the laboratory; and
   (ii) A list of chemicals that the eligible academic entity has, or is likely to have, that become more dangerous when they exceed their expiration date and/or as they degrade; and
   (iii) Procedures to safely dispose of chemicals that become more dangerous when they exceed their expiration date and/or as they degrade; and
   (iv) Procedures for the timely characterization of unknown chemicals.

(c) An eligible academic entity must make its Laboratory Management Plan available to laboratory workers, students, or any others at the eligible academic entity who request it.

(d) An eligible academic entity must review and revise its Laboratory Management Plan, as needed.


262.215. Unwanted material that is not solid or hazardous waste.

(a) If an unwanted material does not meet the definition of solid waste in 261.2, it is no longer subject to this subpart or to the RCRA hazardous waste regulations.

(b) If an unwanted material does not meet the definition of hazardous waste in 261.3, it is no longer subject to this subpart or to the RCRA hazardous waste regulations, but must be managed in compliance with any other applicable regulations and/or conditions.


262.216. Non-laboratory hazardous waste generated at an eligible academic entity.

An eligible academic entity that generates hazardous waste outside of a laboratory is not eligible to manage that hazardous waste under this subpart; and

(a) Remains subject to the generator requirements of 262.11 and 262.34(c) for large quantity generators and small quantity generators (if the hazardous waste is managed in a satellite accumulation area), and all other applicable generator requirements of part 262, with respect to that hazardous waste; or
(b) Remains subject to the conditional exemption of 261.5(b) for conditionally exempt small quantity generators, with respect to that hazardous waste.


Appendix

APPENDIX TO PART 262—UNIFORM HAZARDOUS WASTE MANIFEST AND INSTRUCTIONS (EPA FORMS 8700–22 AND 8700–22A AND THEIR INSTRUCTIONS) U.S. EPA Form 8700–22

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used—press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700–22) and, if necessary, the continuation sheet (FORM 8700–22A) for both inter- and intrastate transportation of hazardous waste.
1. **Instructions for Generators**

   **Manifest 8700–22**

   The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

   Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Send comments regarding the burden estimate, including suggestions for reducing this burden to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency Ariel Rios Building; 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to
the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Instructions for Generators

Item 1. Generator’s U.S. EPA Identification Number
Enter the generator’s U.S. EPA twelve digit identification number, or the state generator identification number if the generator site does not have an EPA identification number.

Item 2. Page 1 of ___
Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700–22) plus the number of Continuation Sheets (EPA Form 8700–22A), if any.

Item 3. Emergency Response Phone Number
Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

Item 4. Manifest Tracking Number
This unique tracking number must be pre-printed on the manifest by the forms printer.

Item 5. Generator’s Mailing Address, Phone Number and Site Address
Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator’s telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 Company Name, and U.S. EPA ID Number
Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 Company Name and U.S. EPA ID Number
If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here.

If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700–22A).

Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number
Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility’s phone number and the U.S. EPA twelve digit identification number of the facility.

Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)
Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an ‘X’ in this Item next to the corresponding hazardous material identified in Item 9b.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700-22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.

Item 10. Containers (Number and Type)

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

Table I—Types of Containers
BA = Burlap, cloth, paper, or plastic bags.
CF = Fiber or plastic boxes, cartons, cases.
CM = Metal boxes, cartons, cases (including roll-offs).
CW = Wooden boxes, cartons, cases.
CY = Cylinders.
DF = Fiberboard or plastic drums, barrels, kegs.
DM = Metal drums, barrels, kegs.
DT = Dump truck.
DW = Wooden drums, barrels, kegs.
HG = Hopper or gondola cars.
TC = Tank cars.
TP = Portable tanks.
TT = Cargo tanks (tank trucks).

Item 11. Total Quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Item 12. Units of Measure (Weight/Volume)

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

Table II—Units of Measure
G = Gallons (liquids only).
K = Kilograms.
L = Liters (liquids only).
M = Metric Tons (1000 kilograms).
N = Cubic Meters.
P = Pounds.
T = Tons (2000 pounds).
Y = Cubic Yards.

Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

Item 13. Waste Codes

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special Handling Instructions and Additional Information.

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator’s or other handler’s business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

Item 15. Generator’s/Offeror’s Certifications

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator’s Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper’s certification). The content of the shipper’s certification statement is as follows: “I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent.” When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper’s certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre-printed.

II. Instructions for International Shipment Block

Item 16. International Shipment

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States. Transporters of hazardous waste shipments must deliver a copy of the manifest to the U.S. Customs when exporting the waste across U.S. borders.

III. Instructions for Transporters

Item 17. Transporters’ Acknowledgments of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required
to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

IV. Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities

Item 18. Discrepancy

Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility’s owner or operator must note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by 264.72(b) and 265.72(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 CFR 261.7(b).

2. For rejected loads and residues (40 CFR 264.72(d), (e), and (f), or 40 CFR 265.72(d), (e), or (f)), check the appropriate box if the shipment is a rejected load (i.e., rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized states (i.e., states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste must submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (40 CFR 264.72(e) and 265.72(e)).

4. Owners or operators of facilities located in authorized states (i.e., those states that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their state agency for information on where to report discrepancies involving "significant differences" to state officials.

Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator’s site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

Item 18c. Alternate Facility (or Generator) Signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.


Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.
Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues must be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

Manifest Continuation Sheet
Instructions—Continuation Sheet, U.S. EPA Form 8700–22A
Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used—press down hard.
This form must be used as a continuation sheet to U.S. EPA Form 8700–22 if:
• More than two transporters are to be used to transport the waste; or
• More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700–22.
Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700–22) and, if necessary, this continuation sheet (EPA Form 8700–22A) for both interstate and intrastate transportation.
Item 21. Generator’s ID Number
Enter the generator’s U.S. EPA twelve digit identification number or, the state generator identification number if the generator site does not have an EPA identification number.

Item 22. Page ___
Enter the page number of this Continuation Sheet.

Item 23. Manifest Tracking Number
Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

Item 24. Generator’s Name—
Enter the generator’s name as it appears in Item 5 on the first page of the Manifest.

Item 25. Transporter—Company Name
If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word “Transporter” the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26. Transporter—Company Name
If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word “Transporter” the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)
For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28. Containers (No. And Type)
Refer to the instructions for Item 10 of the manifest for information to be entered.

Item 29. Total Quantity
Refer to the instructions for Item 11 of the manifest form.

Item 30. Units of Measure (Weight/Volume)
Refer to the instructions for Item 12 of the manifest form.

Item 31. Waste Codes
Refer to the instructions for Item 13 of the manifest form.

Item 32. Special Handling Instructions and Additional Information
Refer to the instructions for Item 14 of the manifest form.

Transports
Item 33. Transporter—Acknowledgment of Receipt of Materials
Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter—Acknowledgment of Receipt of Materials
Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Owner and Operators of Treatment, Storage, or Disposal Facilities
Item 35. Discrepancy Indication Space

Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.

Item 36. Hazardous Waste Report Management Method Codes

For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

[45 FR 33142, May 19, 1980, as amended at 70 FR 10818, Mar. 4, 2005]


Editor’s Note
Republished in 2016 to correct a typographical error.

61–79.263. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

SUBPART A
Standards Applicable to Transporters of Hazardous Waste

263.10. Scope.

(a) These regulations establish standards which apply to persons transporting hazardous waste within the State.

(b) These regulations do not apply to onsite 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 R.61-79.262 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.

(3) Spills hazardous waste during transportation and generates additional waste subsequent to cleanup as required under Section 263.30. The treatment, storage, and disposal of any additional waste must be in accordance with 263.21.

(d) A transporter of hazardous waste subject to the federal manifesting requirements of 262, or subject to the waste management standards of 273, or subject to State requirements analogous to 273, that is being imported from or exported to any of the countries listed in 262.58(a)(1) for purposes of recovery is subject to this subpart and to all other relevant requirements of subpart H of part 262, including, but not limited to, 262.84 for movement documents.

(e) The regulations in this part do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with 264.1(g)(8)(i)(D) or (iv) or 263.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii).

(f) Section 266.203 of this chapter identifies how the requirements of this part apply to military munitions classified as solid waste under 266.202.

(g) Every person transporting a hazardous waste within the State must be permitted by the Department except as specifically exempted in paragraph (b).

(h) Every transporter shall insure that all equipment, such as tankers, vans, dumpsters, and roll-off containers, are leakproof and properly secured prior to their being used for transporting hazardous waste within the state.

(i) Every person who is permitted as a transporter shall ensure that personnel have completed a training program that is acceptable to the Department.

263.11. EPA Identification number.

(a) A transporter must not transport hazardous wastes without having received an EPA identification number from the Department.

(b) A transporter who has not received an identification number may obtain one by submitting the Notification Form required under Section 263.13. Upon receipt, the Department will assign an identification number to the transporter.


263.12. Transfer facility requirements.

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of R.61-79.262.30 at a transfer facility for a period of ten days or less is not subject to regulation under R.61-79.270, R.61-79.264, R.61-79.265 and R.61-79.268 with respect to the storage of those wastes.


263.13. Notification.

(a) Any person who transports hazardous waste within the State and has not previously done so shall file with the Department a Notification Form for that activity within thirty (30) days after the effective date of this regulation.

(b) Any person who transports or accepts for transportation within the State a hazardous waste which is classified or listed for the first time by a revision of R.61-79.261 shall file with the Department a revised or new Notification Form for that waste within ninety (90) days after the effective date of such revision.

(c) This notification shall be on a form designed by the Department and shall be completed as required by the instructions supplied with such form. The information to be furnished on the form shall include but not be limited to the location and general description of such activity and the identified or listed hazardous wastes handled by such person.


(a) Except as provided in paragraph (b), a transporter of hazardous waste granted a transporter permit under R.61-79.270 shall have and maintain financial responsibility for sudden and accidental occurrences in the amount of at least one million dollars ($1,000,000) per occurrence exclusive of legal defense costs. Coverage must provide for claims arising out of injury to persons, property or the environment including the spillage of hazardous wastes while such wastes are being transported and including the costs of cleaning up the spill. Such liability coverage must be maintained at all times while the permit is in force.

(b) [Reserved]

(c) The financial responsibility required in paragraphs (a) and (b) may be established by any one or a combination of the following:

(1) Evidence of liability insurance, either on a claim made or an occurrence basis, with or without a deductible with the deductible, if any, to be on a per occurrence or per accident basis and not to exceed ten (10) percent of the equity of the permittee;

(2) Self insurance, the level of which shall not exceed ten (10) percent of equity of the permittee; or

(3) Other evidence of financial responsibility approved by the Department.

SUBPART B
Compliance with the Manifest System and Recordkeeping

263.20. The manifest system.

(a)(1) Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the provisions of R.61–79.262, subpart B

(2) Exports. In the case of exports other than those subject to subpart H of 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water [bulk shipment]). For exports of hazardous waste subject to the requirements of subpart H of 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by 262.84. (12/92, 12/93, 9/98)

(3) Compliance Date for Form Revisions. The revised Manifest form and procedures in 260.10, 261.7, 263.20, and 263.21, had an effective date of September 5, 2006. The Manifest form and procedures in 260.10, 261.7, 263.20, and 263.21, contained in 260 to 265, edition revised as of July 1, 2004, were applicable until September 5, 2006.

(4) Use of electronic manifest-legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with 262.20(a)(3) of this chapter, and used in accordance with this section instead of EPA Forms 8700–22 and 8700–22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(i) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.

(ii) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the system.

(iii) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the Hazardous Materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

(iv) Any requirement in these regulations for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter’s account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.

(v) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the EPA system for which the transporter bears no responsibility.

(5) A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter’s own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

(6) Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:
(i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to paragraph (a)(4)(iii)(A) of this section, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

(ii) On each printed copy, the transporter shall include a notation in the Special Handling and Additional Description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not pre-printed on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(iii) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

(7) Special procedures for electronic signature methods undergoing tests. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with paragraph (a)(4)(iii)(A) of this section. This printed copy bearing the generator’s and transporter’s ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

(8) Imposition of user fee for electronic manifest use. A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of this Chapter.

(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. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent also 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 Section 263.22; and
3. Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of paragraph (c), (d) and (f) of this section do not apply to water (bulk shipment) transporters if:

1. The hazardous waste is delivered by 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) and, for exports, an EPA Acknowledgment of Consent 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 water (bulk shipment) transporter obtains the date of delivery and signature of the 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 water (bulk shipment) transporter in accordance with Section 263.22.

(f) For shipments involving rail transportation, the requirements of paragraphs (c), (d), and (e) do not apply and the following requirements do apply:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter must:
   (i) Sign and date the manifest acknowledging acceptance of the hazardous waste;
   (ii) Return a signed copy of the manifest to the non-rail transporter;
   (iii) Forward at least three copies of the manifest to:
       (A) The next non-rail transporter, if any; or
       (B) The designated facility, if the shipment is delivered to that facility by rail; or
       (C) The last rail transporter designated to handle the waste in the United States;
   (iv) Retain one copy of the manifest and rail shipping paper in accordance with Section 263.22.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste at all times. (amended 11/90)

[Note: Intermediate rail transporters are not required to sign either the manifest or shipping paper.]

(3) When delivering hazardous waste to the designated facility, a rail transporter must:
   (i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and
   (ii) Retain a copy of the manifest or signed shipping paper in accordance with Section 263.22.

(4) When delivering hazardous waste to a non-rail transporter a rail transporter must:
   (i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and
   (ii) Retain a copy of the manifest in accordance with Section 263.22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States must:

(1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;
(2) Retain one copy in accordance with 263.22(d);
(3) Return a signed copy of the manifest to the generator; and
(4) Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(h) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those of 263.22 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in 262.20(e);
(2) The transporter records, on a log or shipping paper, the following information for each shipment:

(i) The name, address, and U.S. EPA Identification Number of the generator of the waste;

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility; and

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 25, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 20, Issue No. 12, eff December 27, 1996; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 31, Issue No. 2, eff February 23, 2007; State Register Volume 40, Issue No. 5, Doc. No. 4646, eff May 27, 2016.

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)(1) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator’s instructions.

(2) If hazardous waste is rejected by the designated facility while the transporter is on the facility’s premises, then the transporter must obtain the following:

(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility’s date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with 263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 264.72(e)(1) through (6) or (f)(1) through (6) or 265.72(e)(1) through (6) or (f)(1) through (6).

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility’s signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with 263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 264.72(e)(1) through (6) or 265.72(e)(1) through (6).


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 water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in Section 263.20(e)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

c) For shipments of hazardous waste by rail within the United States:

(1) The initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in Section 263.20(f)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

(2) The final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

Note: Intermediate rail transporters are not required to keep records pursuant to these regulations.

d) 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 for a period of three years from the date the hazardous waste was accepted by the initial transporter.

e) 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 Department.


263.23. Treatment/storage by transporter.

(a) If a transporter while in the State removes a hazardous waste from a transport vehicle for the purpose of blending, mixing, treating, disposing, or storing; the blending mixing, treating, disposing or storing shall be performed at a facility in the State having a permit under R.61–79.270.

(b) The transporter shall not allow hazardous wastes from different generators or separate wastes from the same generator to become mixed during transport, unless the transporter obtains prior written approval from the Department and complies with the generator standards under R.61-79.262, or can demonstrate that the information designated on the manifest(s) as required under R.61-79.262 Subpart B still identifies the hazardous waste.


263.25. Electronic manifest signatures.

(a) Electronic manifest signatures shall meet the criteria described in Section 262.25 of this chapter.


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 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 202-426-2675); and
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, DC 20590.

Immediately telephone the Department’s 24-hour emergency telephone number (803) 253-6488, giving all requested information.

A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 16, Issue No. 12, eff December 25, 1992.

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.


SUBPART A

General

264.1. Purpose, scope and applicability.

(a) The purpose of this regulation is to establish minimum State standards which define the acceptable management of hazardous waste.

(b) The standards in this regulation apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in R.61-79.261 or 264.

(c) The requirements of this regulation apply to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act only to the extent they are included under R.61-79.270, in a RCRA-type permit.

[Comment: These R.61-79.264 regulations apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea.]

(d) The requirements of this regulation apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under the Underground Injection Control (UIC) Regulations R.61-87-87 only to the extent required by R.61-79.270.60(b) and 44-55-10 et seq.

[Comment: These R.61-79.264 regulations apply to the aboveground treatment or storage of hazardous waste before it is injected underground.]

(e) The requirements of this regulation apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a permit by rule granted to such a person under R.61-79.270.

(f) [Reserved]

(g) The requirements of this regulation do not apply to:

1. The owner or operator of a facility permitted, licensed, or registered by the Department to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded under R.61-79.261.5;

2. The owner or operator of a facility managing recyclable materials described in R.61–79.261.6 (a)(2), (3), and (4) (except to the extent that requirements of this subpart are referred to in R.61–79.107.279 or subparts C, F, G or H of 266). (12/93)

3. A generator accumulating waste onsite in compliance with R.61-79.262.34;

4. A farmer disposing of waste pesticides from his own use in compliance with R.61-79.262.70; or

5. The owner or operator of a totally enclosed treatment facility, as defined in R.61-79.260.10;

6. The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R.61-79.260.10, provided that if the owner or operator is diluting hazardous ignitable
(D001) wastes (other than the D001 High TOC Subcategory defined in 268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in 264.17(b). (revised 12/93; 5/96)

(7) [Reserved]

(8)(i) Except as provided in paragraph (g)(8)(ii) of this Section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;
(B) An imminent and substantial threat of a discharge of hazardous waste;
(C) A discharge of a material which, when discharged, becomes a hazardous waste;
(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 260.10.

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

(iii) Any person who is covered by paragraph (g)(8)(i) of this Section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this regulation and R.61-79.124 and R.61-79.270 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist’s organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(9) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R.61-79.262.30 at a transfer facility for a period of ten days or less.

(10) The addition of absorbent material to waste in a container (as defined in R.61-79.260.10) or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and Sections 264.17(b), 264.171 and 264.172 are complied with.

(11) Universal waste handlers and universal waste transporters (as defined in R.61-79.260.10) handling the wastes listed below. These handlers are subject to regulation under R.61-79.273, when handling the below listed universal wastes. (added 5/96)

(i) Batteries as described in R.61-79.273.2;
(ii) Pesticides as described in R.61-79.273.3; and
(iii) Mercury-containing equipment as described in 273.4; and
(iv) Lamps as described in 273.5.

(h) The requirements of this part apply to owners or operators of all facilities which treat, store or dispose of hazardous wastes referred to in Part 268.

(i) Section 266.205 of this chapter identifies when the requirements of this part apply to the storage of military munitions classified as solid waste under 266.202 of this chapter. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 260 through 270.

(j) The requirements of subparts B, C, and D of this part and 264.101 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or
disposing of hazardous wastes that are not remediation wastes. In these cases, Subparts B, C, and D of this part, and 264.101 do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of subparts B, C, and D of this part, owners or operators of remediation waste management sites must:

1. Obtain an EPA identification number by applying to the Department using EPA Form 8700–12;

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

3. Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Department that:

   i. Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

   ii. Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of this part;

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

5. Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of this part, and on how to respond effectively to emergencies;

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

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

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

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

10. Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

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

(12) Develop, maintain and implement a plan to meet the requirements in paragraphs (j)(2) through (j)(6) and (j)(9) through (j)(10) of this section; and

(13) Maintain records documenting compliance with paragraphs (j)(1) through (j)(12) of this section.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1995; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 31, Issue No. 6, eff June 22, 2007.

264.3. Relationship to interim status standards.

A facility owner or operator who has fully complied with the requirements for interim status — as defined under R.61-79.270.70 and in section 3005(e) of RCRA — must comply with the regulations specified in R.61-79.265 in lieu of the regulations in this part, until final administrative disposition of his permit application is made, except as provided under R.61-79.264, subpart S. (revised 12/92)

[Comment: As stated in § 44-56-60 and section 3005(a) of RCRA, after the effective date of regulations under that section, i.e., parts 270 and 124 of this chapter, the treatment, storage, or disposal of hazardous waste is prohibited except in accordance with a permit under these regulations; the statutes, 44-56-60 and Section 3005(e) of RCRA provide for the continued operation of an existing facility which meets certain conditions until final administrative disposition of the owner’s or operator’s permit application is made.] (revised 12/92)

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 17, eff December 24, 1993.

264.4. Imminent hazard action.

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to Section 44-56-50 of the 1976 South Carolina Code of Laws, as amended, and pursuant to section 7003 of RCRA.


264.5. Notification requirements upon owners and operators of hazardous waste facilities.

(a) Any person who owns or operates a facility within the State which treats, store, or disposed of a hazardous waste and has not previously done so shall file a completed Notification Form with the Department within thirty (30) days of the effective date of this regulation.

(b) Any person who plans to construct a new facility to treat, store or dispose of hazardous waste shall file a completed Notification Form with the Department as part of his permit application.

(c) This notification shall be on a form designated by the Department and shall be completed as required by the instructions supplied with such form.

(d) Any person who owns or operates a facility which treats, stores, or disposed of a hazardous waste which is classified or listed for the first time by a revision of R.61-79.261 and has not previously done so shall file a revised or new Notification Form for that waste within ninety (90) days after the effective date of such revision. The information to be furnished on the form shall include but not be limited to the location and general description of such activity, the identified or listed hazardous wastes handled by such person and, if applicable, a description of the production or energy recovery activity carried out at the facility and such other information as the Department deems necessary.

(e) Persons engaged in the following activities are required to make a separate notification:

(i) Any hazardous wastes listed in R.61-79.261;
(ii) Used oil; and
(iii) Used oil and any other material.

(2) Burners (other than a single or two-family residence) for purposes of energy recovery any fuel produced identified in paragraph 1 above.

(3) Distributors or marketers of any fuel as identified in paragraph 1 above.


SUBPART B
General Facility Standards

264.10. Applicability.

(a) The regulations in this Subpart apply to owners and operators of all hazardous waste facilities, except as provided in Section 264.1 and in paragraph (b).

(b) Section 264.18(b) applies only to facilities subject to regulation under Subparts I through O of this part and Subpart X.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.11. Identification number.

(a) No owner or operator of a hazardous waste facility shall treat, store, or dispose of hazardous waste or accept for treatment, storage or disposal hazardous waste without having received an EPA identification number.

(b) An owner or operator of a hazardous waste facility who has not previously received an EPA identification number may obtain one by submitting the Notification Form required under 264.5. Every facility owner or operator must apply for an EPA identification number in accordance with the notification procedures under 264.5. (revised 12/92).

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 17, eff December 24, 1993.

264.12. Required notices.

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

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

(b) The owner or operator of a facility that receives hazardous waste from an offsite source (except where the owner or operator is also the generator) must inform the generator in writing that he has the appropriate permit(s) under these regulations for, and will accept, the waste the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.
(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the postclosure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this part and R.61-79.270.

[Comment: An owner’s or operator’s failure to notify the new owner or operator of the requirements of this part in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.]

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 36, Issue No. 9, eff September 28, 2012.


(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or nonhazardous wastes if applicable under 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this regulation or with the conditions of a permit issued under R.61-79.268, .270, Subparts A and B, and R.61-79.124. (amended 11/90)

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

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

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

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste or non-hazardous waste if applicable under 264.113(d) has changed; and

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

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

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

(1) The parameters for which each hazardous waste or non-hazardous waste if applicable under 264.113(d) will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste’s properties to comply with paragraph (a);

(2) The test methods which will be used to test for these parameters;

(3) The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

(i) One of the sampling methods described in Appendix I of R.61-79.261; or

(ii) An equivalent sampling method.

[Comment: See 260.21 of this chapter for related discussion.]
(4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(5) For offsite facilities, the waste analyses that hazardous waste generators have agreed to supply;

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in 264.17, 264.314, 264.341, 264.1034(d), 264.1063(d), 264.1083, and 268.7. (revised 12/92)

(7) For surface impoundments exempted from land disposal restrictions under Section 268.4(a), the procedures and schedules for:

(i) The sampling of impoundment contents:

(ii) The analysis of test data; and

(iii) The annual removal of residues which are not delisted under Section 260.22 of this chapter or which exhibit a characteristic of hazardous waste and either:

(A) Do not meet applicable treatment standards of Part 268, Subpart D; or

(B) Where no treatment standards have been established:

(1) Such residues are prohibited from land disposal under Section 268.32 or RCRA section 3004(d); or

(2) Such residues are prohibited from land disposal under Section 268.33(f).

(8) For owners and operators seeking an exemption to the air emission standards of subpart CC in accordance with 264.1082–

(i) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the results of the analysis of test data to verify the exemption.

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

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

(1) The procedures which will be used to determine the identity of each movement of waste managed at the facility; and

(2) The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

(3) The procedures that the owner or operator of an offsite landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

[Comment: R.61-79.270 requires that the waste analysis plan be submitted with Part B of the permit application.] (revised 12/92)

(d) [Removed 12/92]

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 12, Issue No. 10, eff October 28, 1988; State Register Volume 12, Issue No. 11, eff November 25, 1988; State Register Volume 14, Issue No. 11, eff November 25, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998.


(a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless he can demonstrate to the Department that:

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

[Comment: R.61-79.270 requires an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application issued under these regulations.]

(3) [Removed 12/92]

(b) Unless the owner or operator has made a successful demonstration under paragraphs (a)(1) and (a)(2) above, a facility must have:

(1) A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(2)(i) An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

(ii) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

[Comment: The requirements of paragraph (b) are satisfied if the facility or plant within which the active portion is located itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of paragraph (b) (1) or (2).]

(3) [Removed 12/92]

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

[Comment: See 264.117(b) for discussion of security requirements at disposal facilities during the postclosure care period.]

HISTORY: Amended by State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.15. General inspection requirements.

(a) The owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing—or may lead to—(1) release of hazardous waste constituents to the environment or (2) a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

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

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

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

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347,
264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 where applicable.

[Comment: Part 270 of this chapter requires the inspection schedule to be submitted with Part B of the permit application. The Department will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, the Department may modify or amend the schedule as may be necessary. (revised 12/92)]

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

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

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 12, Issue No. 10, eff October 28, 1988; State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 36, Issue No. 3, eff March, 23, 2012.

264.16. Personnel training.

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

[Comment: Part 270 requires that owners and operators submit with Part B of the permit application, an outline of the training program used (or to be used) at the facility and a brief description of how the training program is designed to meet actual job tasks.]

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

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

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(ii) Key parameters for automatic waste feed cut-off system;

(iii) Communications or alarm systems;

(iv) Response to fires or explosions;

(v) Response to groundwater contamination incidents; and,

(vi) Shutdown of operations.

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this Section within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this Section.
(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this Section.

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job titles for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this Section;

(4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this Section has been given to, and completed by, facility personnel.

(e) Training records on current personnel must be kept until closure of the facility; training records on former employees must be kept for at least three years from the date of the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(f) R.61-79.270 Subpart B requires that owners and operator submit, with Part B of the permit application, an outline of the training program used (or to be used) at the facility and a brief description of how the training program is designed to meet actual job tasks.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.17. General requirements for ignitable, reactive, or incompatible wastes.

(a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. “No Smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other Sections of this regulation, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, must take precautions to prevent reactions which:

(1) Generate extreme heat or pressure, fire or explosions, or violent reactions;

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(4) Damage the structural integrity of the device or facility;

(5) Through other like means threaten human health or the environment.

(c) When required to comply with paragraphs (a) or (b) of this Section, the owner or operator must document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analysis (as specified in Section 264.13 above), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.


264.18. Location standards. [See also R.61–104]

(a) Seismic considerations.
(1) Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted must not be located within 61 meters (200 feet) of a fault which has had displacement in Holocene time.

(2) As used in paragraph (a)(1) of this section:

(i) “Fault” means a fracture along which rocks on one side have been displaced with respect to those on the other side.

(ii) “Displacement” means the relative movement of any two sides of a fault measured in any direction.

(iii) “Holocene” means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

[Comment: Comment: Procedures for demonstrating compliance with this standard in Part B of the permit application are specified in R.61-79.270.14(b)(11). Facilities which are located in political jurisdictions other than those listed in Appendix VI of this part, are assumed to be in compliance with this requirement.] (revised 12/92)

(3) [Removed 12/92]

(b) Floodplains.

(1) A facility located in a 100-year floodplain must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood, unless the owner or operator can demonstrate to the Department satisfaction that:

(i) Procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters; or,

(ii) For existing surface impoundments, waste piles, land treatment units, landfills and miscellaneous units, no adverse effects on human health or the environment will result if washout occurs, considering:

(A) The volume and physical and chemical characteristics of the waste in the facility;

(B) The concentration of hazardous constituents that would potentially affect surface waters as a result of washout;

(C) The impact of such concentrations on the current or potential uses of and water quality standards established for the affected surface waters; and,

(D) The impact of hazardous constituents on the sediments of affected surface waters or the soils of the 100-year floodplain that could result from washout.

[Comment: The location where wastes are moved must be a facility which is either permitted under part 270 or in interim status under parts 270 and 265.]

(2) As used in paragraph (b)(1) of this Section:

(i) “100-year floodplain” means any land area which is subject to a one percent or greater chance of flooding in any given year from any source.

(ii) “Washout” means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(iii) As used in paragraph (b)(1) of this Section: “100-year flood” means a flood that has a one percent chance of being equalled or exceeded in any given year.

[Comment: (1) Requirements pertaining to other laws which affect the location and permitting of facilities are found in 270.3 of this chapter and R.61-104. For details, see also EPA's manual for SEA (special environmental area) requirements for hazardous waste facility permits. Applicants are advised to consider them in planning the location of a facility to help prevent subsequent project delays.]

(c) Salt dome formations, salt bed formations, underground mines and caves. The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited.

(a) CQA program.

1. A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with 264.221(c) and (d), 264.251(c) and (d), and 264.301(c) and (d). The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program must be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

2. The CQA program must address the following physical components, where applicable:
   
   i. Foundations;
   ii. Dikes;
   iii. Low-permeability soil liners;
   iv. Geomembranes (flexible membrane liners);
   v. Leachate collection and removal systems and leak detection systems; and
   vi. Final cover systems.

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

1. Identification of applicable units, and a description of how they will be constructed.

2. Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

3. A description of inspection and sampling activities for all unit components identified in paragraph (a)(2) of this section, including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under 264.73.

(c) Contents of program.

1. The CQA program must include observations, inspections, tests, and measurements sufficient to ensure:

   i. Structural stability and integrity of all components of the unit identified in paragraph (a)(2) of this section;
   ii. Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;
   iii. Conformity of all materials used with design and other material specifications under 264.221, 264.251, and 264.301.

2. The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of 264.221(c)(1)(i)(B), 264.251(c)(1)(i)(B), and 264.301(c)(1)(i)(B) in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The Department may accept an alternative demonstration, in lieu of a test fill, where data are sufficient to show that a constructed soil liner will meet the hydraulic conductivity requirements of 264.221(c)(1)(i)(B), 264.251(c)(1)(i)(B), and 264.301(c)(1)(i)(B) in the field.
(d) Certification. Waste shall not be received in a unit subject to 264.19 until the owner or operator has submitted to the Department by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of 264.221 (c) or (d), 264.251 (c) or (d), or 264.301 (c) or (d); and the procedure in 270.30(l)(2)(ii) of this chapter has been completed. Documentation supporting the CQA officer’s certification must be furnished to the Department upon request.

HISTORY: Added by State Register Volume 17, Issue No. 12, eff December 24, 1993.

SUBPART C
Preparedness and Prevention

264.30. Applicability.

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities, except as Subpart A, Section 264.1 provides otherwise.

264.31. Design and operation of facility.

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

264.32. Required equipment.

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

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and,

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(e) [Removed 12/92]

[Comment: Part 270 requires that an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.]


264.33. Testing and maintenance of equipment.

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

264.34. Access to communications or alarm system.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the Department has ruled that such a device is not required under Section 264.32 above.

(b) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless the Department has ruled that such a device is not required under Section 264.32 above.
264.35. Required aisle space.

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

[Comment: Part 270 of this chapter requires that an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.]


264.37. Arrangements with local authorities.

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

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

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

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

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

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

SUBPART D
Contingency Plan and Emergency Procedures

264.50. Applicability.

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities, except as Subpart A, Section 264.1 provides otherwise.

264.51. Purpose and implementation of contingency plan.

(a) Each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

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

264.52. Content of contingency plan.

(a) The contingency plan must describe the actions facility personnel must take to comply with Sections 264.51 and 264.56 below in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water at the facility.

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

(c) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Subpart C Section 264.37.

(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see Section 264.55) and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. For new facilities, this information must be supplied to the Department at the time of certification, rather than at the time of permit application.

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

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

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 36, Issue No. 9, eff September 28, 2012.

A copy of the contingency plan and all revisions to the plan must be:
(a) Maintained at the facility; and
(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

[Comment: The contingency plan must be submitted to the Department with Part B of the permit application under part 270 and, after modification or approval, will become a condition of any permit.]


264.54. Amendment of contingency plan.
The contingency plan must be reviewed, and immediately amended, if necessary, whenever:
(a) The facility permit is revised;
(b) The plan fails in an emergency;
(c) The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.
(d) The list of emergency coordinators changes; or
(e) The list of emergency equipment changes.
(f) [Reserved]

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.55. Emergency coordinator.
At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be
thoroughly familiar with all aspects of the facility’s contingency plan, all operations and activities at the
facility, the location and characteristics of waste handled, the location of all records within the facility,
and the facility layout. In addition, this person must have the authority to commit the resources
needed to carry out the contingency plan.

[Comment: The emergency coordinator’s responsibilities are more fully spelled out in 264.56.
Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and
variety of waste(s) handled by the facility, and type and complexity of the facility.]

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume
16, Issue No. 12, eff December 25, 1992.

264.56. Emergency procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his
designee when the emergency coordinator is on call) must immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all
facility personnel; and

(2) Notify appropriate State and local agencies with designated response roles if their help is
needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately
identify the character, exact source, amount, and areal extent of any released materials. He may do this
by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator must access possible hazards to human health or the
environment that may result from the release, fire, or explosion. This assessment must consider both
direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or
asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water
or chemical agents used to control fire and heat-induced explosions).

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion
which could threaten human health, or the environment, outside the facility, he must report his
findings as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately
notify appropriate local authorities. He must be available to help appropriate officials decide whether
local areas should be evacuated; and

(2) He must immediately notify the Department (using its 24-hour number 803–253–6488) and
the government official designated as the on-scene coordinator for that geographical area, and the
National Response Center (using their 24-hour toll free number 800/424–8802). The report must
include:

(i) Name and telephone number of reporter;
(ii) Name and address of facility;
(iii) Time and type of incident (e.g., release fire);
(iv) Name and quantity of material(s) involved, to the extent known;
(v) The extent of injuries, if any; and
(vi) The possible hazards to human health or the environment, outside the facility.

(e) During an emergency, the emergency coordinator must take all reasonable measures necessary
to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at
the facility. These measures must include, where applicable, stopping processes and operations,
collecting and containing release waste, and removing or isolating containers.

(f) If the facility stops operations in response to a fire, explosion, or release, the emergency
coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or
other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator must provide for treating, storing,
or disposing of recovered waste, contaminated soil or surface water, or any other material that results
from a release, fire, or explosion at the facility.
Unless the owner or operator can demonstrate, in accordance with R.61-79.261.3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of R.61-79.262 Standards Applicable to Generators of Hazardous Waste, R.61-79.263 Standards Applicable to Transporters of Hazardous Waste and R.61-79.264. (amended 11/90)

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

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

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

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

1. Name, address, and telephone number of the owner or operator;
2. Name, address, and telephone number of the facility;
3. Date, time, and type of incident (e.g., fire, explosion);
4. Name and quantity of material(s) involved;
5. The extent of injuries, if any;
6. An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
7. Estimated quantity and disposition of recovered material that resulted from the incident.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 36, Issue No. 9, eff September 28, 2012.

264.70. Applicability.

(a) The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as 264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 266.203(a). Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.


264.71. Use of manifest system.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

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

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in 264.72(a)) on each copy of the manifest;
(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (Page 3) of the manifest to the generator.

(v) Within thirty (30) days of delivery, send the top copy (Page 1) of the Manifest to the e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system.

(vi) Retain at the facility a copy of each manifest for at least three (3) years from the date of delivery.

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

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

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in 264.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

[Comment: The Department does not intend that the owner or operator of a facility whose procedures under 264.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 264.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator; and

[Comment: Section 262.23(c) of this chapter requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).]

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of R.61-79.262.

[Comment: The provisions of R.61-79.262.34 are applicable to the onsite accumulation of hazardous wastes by generators. Therefore, the provisions of 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]

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

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

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with Section 262.20(a)(3) of this chapter, and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized Department inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner’s or operator’s electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner’s or operator’s site by the transporter who delivers the waste shipment to the facility.

(h) Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest.

(2) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest.

(3) Within thirty (30) days of delivery of the waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system, and

(4) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three (3) years from the date of delivery.

(i) Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility’s certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least three (3) years from the date of delivery of the waste.

(j) Imposition of user fee for electronic manifest use. An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each
An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under Section 264.71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of this chapter.

(k) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in Section 262.25 of this chapter.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 31, Issue No. 2, eff February 23, 2007; State Register Volume 36, Issue No. 9, eff September 28, 2012; State Register Volume 40, Issue No. 5, Doc. No. 4646, eff May 27, 2016.

264.72. Manifest discrepancies.

(a) Manifest discrepancies are:

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

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

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

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

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

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

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

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

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

(2) Write the name of the alternate designated facility and the facility’s U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.
(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator’s/Offeror’s Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with 262.20(a) of this chapter and the following instructions:

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

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

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

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator’s/Offeror’s Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator’s information in the Alternate Facility space. The facility must retain a copy of its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in 262.42(a).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for “empty” containers set forth in 261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of
amendment, and must within 30 days, send a copy of the amended manifest to the transporter and
generator that received copies prior to their being amended.


264.73. Operating record.

(a) The owner or operator must keep a written operating record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted as follows:

   (1) A description and the quantity of each hazardous waste received, and the method(s) and
date(s) of its treatment, storage, or disposal at the facility as required by Appendix I. This
information must be maintained in the operating record until closure of the facility;

   (2) The location of each hazardous waste within the facility and the quantity at each location. For
disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or
diagram that shows each cell or disposal area. For all facilities, this information must include cross
references to manifest document numbers if the waste was accompanied by a manifest. This
information must be maintained in the operating record until closure of the facility.

   [Comment: See 264.119 for related requirements] (amended 11/90)

   (3) Records and results of waste analyses and waste determinations performed as specified in
264.13, 264.17, 264.314, 264.341, 264.1034, 264.1063, 264.1083, 268.4(a), and 268.7; (amended
6/89, 12/92; 12/93)

   (4) Summary reports and details of all incidents that require implementing the contingency plan
as specified in 264.56(j);

   (5) Records and results of inspections as required by 264.15(d) (except these data need be kept
only three years);

   (6) Monitoring, testing or analytical data, and corrective action where required by subpart F and
264.280, 264.302-264.304, 264.309, 264.602, 264.1034(c)-264.1034(f), 264.1035,
264.1063(d)-264.1063(i), 264.1064, and 264.1082 through 264.1090. Maintain in the operating
record for three years, except for records and results pertaining to ground-water monitoring and
cleanup which must be maintained in the operating record until closure of the facility.

   (7) For offsite facilities, notices to generators as specified in Subpart B Section 264.12(b); and

   (8) All closure cost estimates under 264.142, and for disposal facilities, all postclosure cost
estimates under 264.144. This information must be maintained in the operating record until
closure of the facility.

   (9) A certification by the permittee no less often than annually, that the permittee has a program
in place to reduce the volume and toxicity of hazardous waste that he generates to the degree
determined by the permittee to be economically practicable; and the proposed method of treatment,
storage or disposal is that practicable method currently available to the permittee which minimizes
the present and future threat to human health and the environment.

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

   (11) For an offsite treatment facility, a copy of the notice, and the certification and demonstration,
if applicable required by the generator or the owner or operator under Section 268.7 or Section
268.8;

   (12) For an onsite treatment facility, the information contained in the notice (except the manifest
number), and the certification and demonstration if applicable, required by the generator or the
owner or operator under Section 268.7 or Section 268.8;
(13) For an offsite land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Section 268.7 and Section 268.8, whichever is applicable; and

(14) For an onsite land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under Section 268.7, except for the manifest number, and the certification and demonstration if applicable, required under Section 268.8, whichever is applicable.

(15) For an offsite storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under Section 268.7 or Section 268.8; and

(16) For an onsite storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under Section 268.7 or Section 268.8.

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

(18) Monitoring, testing or analytical data where required by 264.347 must be maintained in the operating record for five years.

(19) Certifications as required by 264.196(f) must be maintained in the operating record until closure of the facility.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 23, 1990; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.74. Availability, retention, and disposition of records.

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

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

(c) A copy of records of waste disposal locations and quantities under Section 264.73(b)(2) must be submitted to the Department and local land authority upon closure of the facility.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.75. Quarterly report.

(a) Each owner or operator of a hazardous waste facility shall, no later than thirty (30) days after the end of each calendar quarter, submit a written report to the Department including (revised 12/92)

(1) The types and quantities of hazardous waste generated giving the EPA hazardous waste number (from R.61-79.261 Subparts C or D) and the DOT hazardous class;

(2) The types and quantities of hazardous waste received at the facility during the reporting period;

(3) The types and quantities of hazardous wastes treated, stored, disposed of, and otherwise handled during the reporting period; (amended 11/90)[subsets moved 12/93]

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

(5) The calendar quarter covered by the report;

(6) For offsite facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;
(7) A description and the quantity of each hazardous waste the facility received during the year. For offsite facilities, this information must be listed by EPA identification number of each generator; and

(8) The most recent closure cost estimate under Section 264.142, and, for disposal facilities, the most recent post-closure cost estimate under Section 264.144; and

(9) Certification from any out-of-state generator who shipped waste to the facility during the reporting period that he has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined to be economically practicable and that the proposed method of handling the waste is that practicable method currently available which minimizes the present and future threat to human health and the environment;

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

(11) Certification of information signed by the owner or operator of the facility or his authorized representative. (moved 11/90)

(b) Each owner or operator shall submit the information required by paragraph (a) on a form designated by the Department and according to the instructions included with such form.

(c) Each owner or operator shall retain a copy of the report required in paragraphs (a) and (b) for a period of three (3) years.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.76. Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by 263.20(e) of this chapter, and if the waste is not excluded from the manifest requirement by 261.5 of this chapter, then the owner or operator must prepare and submit a letter to the Agency within 15 days after receiving the waste. The unmanifested waste report must contain the following information:

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

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

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

(6) The certification signed by the owner or operator of the facility or his authorized representative; and,

(7) A brief explanation of why the waste was unmanifested, if known.

(b) [Reserved]

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 12, Issue No. 11, eff November 25, 1988; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1995; State Register Volume 31, Issue No. 2, eff February 23, 2007.

264.77. Additional reports.

In addition to submitting the reports described in 264.75 and 264.76, each owner or operator of an applicable hazardous waste facility must submit the groundwater reports required under 264.97(i) and furnish additional reports concerning their hazardous waste activities including the following: (amended 11/90)

(a) Releases, fires, and explosions as specified in Section 264.56(j).

(b) Facility closures specified in Section 264.115; and

(c) As otherwise required by subparts F, K through N, AA, BB, and CC of R.61–79.264 (revised 12/92).
(d) With the fourth quarter report, generators who treat, store, or dispose of hazardous waste onsite, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated (moved 12/93 from 264.75);

(e) For generators who treat, store, or dispose of hazardous waste onsite, a description of the changes in the volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 25, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998.

A check payable to the Department for the amount of the following fees:

(A) A fee of thirty-four dollars a ton of hazardous wastes generated and disposed of in this State by landﬁlling or other means of land disposal.

(B) A fee of thirteen dollars and seventy cents a ton of wastes generated and disposed of in this State by landﬁlling or other means of land disposal.

(C) A fee of one dollar per ton of hazardous wastes in excess of ﬁfty tons remaining in storage at the end of the reporting period.

(D) For all hazardous wastes generated outside of the State and received at a facility during the quarter each owner/operator of a hazardous waste land disposal facility shall remit to the department an amount equal to the per ton fee imposed on out-of-state waste by the state from which the hazardous waste originated but in any event no less than thirty-four dollars a ton.

(E) A fee of ten dollars a ton on the incineration of hazardous waste in this State whether the waste was generated within or outside of this State.

(F) Fees imposed by this subsection must be collected by the facility at which it is incinerated and remitted to the State Treasurer to be credited to the general fund of the State. For purposes of this subsection, “incineration” includes hazardous waste incinerators, boilers, and industrial furnaces.

HISTORY: Added by State Register Volume 17, Issue No. 12, eff December 24, 1993.

SUBPART F  
Groundwater Protection—Releases From Solid Waste Management Units

264.90. Applicability.
(a)(1) Except as provided in paragraph (b) of this section, the regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous waste. The owner or operator must satisfy the requirements identified in paragraph (a)(2) of this section for all wastes (or constituents thereof) contained in solid waste management units at the facility, regardless of the time at which waste was placed in such units.

(2) All solid waste management units must comply with the requirements in Section 264.101. A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a “regulated unit”) must comply with the requirements of Sections 264.91-264.100 in lieu of Section 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of Section 264.101 apply to regulated units.

(b) The owner or operator’s regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this section if:

(1) The owner or operator is exempted under Section 264.1; or

(2) He operates a unit which the Department finds:

(i) Is an engineered structure,

(ii) Does not receive or contain liquid waste or waste containing free liquids,

(iii) Is designed and operated to exclude liquid, precipitation, and other run-on and run-off,

(iv) Has both inner and outer layers of containment enclosing the waste,
(v) Has a leak detection system built into each containment layer,

(vi) The owner or operator will provide continuing operation and maintenance of these leak
detection systems during the active life of the unit and the closure and post-closure care periods,

(vii) To a reasonable degree of certainty, will not allow hazardous constituents to migrate
beyond the outer containment layer prior to the end of the post-closure care period.

(3) The Department finds, pursuant to 264.280(d), that the treatment zone of a land treatment
unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above
background levels of those constituents by an amount that is statistically significant, and if an
unsaturated zone monitoring program meeting the requirements of 264.278 has not shown a
statistically significant increase in hazardous constituents below the treatment zone during the
operating life of the unit. An exemption under this paragraph can only relieve an owner or operator
of responsibility to meet the requirements of this section during the postclosure care period; or

(4) The Department finds that there is no potential for migration of liquid from a regulated unit
to the uppermost aquifer during the active life of the regulated unit (including the closure period)
and the post-closure care period specified under Section 264.117. This demonstration must be
certified by a qualified geologist or geo-technical engineer. In order to provide an adequate margin
of safety in the prediction of potential migration of liquid, the owner or operator must base any
predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a pile in compliance with Section 264.250(c).

(c) The regulations under this subpart apply during the active life of the regulated unit (including
the closure period). After closure of the regulated unit, the regulations in this subpart:

(1) Do not apply if all waste, waste residues, contaminated containment system components, and
contaminated subsoils are removed or decontaminated at closure;

(2) Apply during the post-closure care period under Section 264.117 if the owner or operator is
conducting a detection monitoring program under Section 264.98; or,

(3) Apply during the compliance period under Section 264.96 if the owner or operator is
conducting a compliance monitoring program under Section 264.99 or a corrective action program
under Section 264.100.

(4) [Reserved]

(d) Regulations in this subpart may apply to miscellaneous units when necessary to comply with
Subparts 264.601 through 264.603.

(e) [Reserved]

(f) The Department may replace all or part of the requirements of 264.91 through 264.100 applying
to a regulated unit with alternative requirements for groundwater monitoring and corrective action for
releases to groundwater set out in the permit (as defined in 270.1(c)(7)) where the Department
determines that: (8/00)

(1) The regulated unit is situated among solid waste management units (or areas of concern), a
release has occurred, and both the regulated unit and one or more solid waste management unit(s)
(or areas of concern) are likely to have contributed to the release; and

(2) It is not necessary to apply the groundwater monitoring and corrective action requirements of
264.91 through 264.100 because alternative requirements will protect human health and the
environment.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 12,
Issue No. 10, eff October 28, 1988; State Register Volume 14, Issue No. 11, eff November 23, 1990; State
Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 24, Issue No. 8, eff August
25, 2000; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002.

264.91. Required programs.

(a) Owners and operators subject to this subpart must conduct a monitoring and response program
as follows:

1. ...
(1) Whenever hazardous constituents under Section 264.93 from a regulated unit are detected at the compliance point under Section 264.95, the owner or operator must institute a compliance monitoring program under Section 264.99; detected is defined as statistically significant in evidence of contamination as described in Section 264.98(f);

(2) Whenever the groundwater protection standard under Section 264.92 is exceeded, the owner or operator must institute a corrective action program under Section 264.100; exceeded is defined as statistically significant evidence of increased contamination as described in Section 264.99(d);

(3) Whenever hazardous constituents under Section 264.93 from a regulated unit exceed concentration limits under Section 264.94 in groundwater between the compliance point under Section 264.95 and the downgradient facility property boundary, the owner or operator must institute a corrective action program under Section 264.100; or,

(4) In all other cases, the owner or operator must institute a detection monitoring program under Section 264.98.

(b) The owner or operator shall specify in the permit application the specific elements of the monitoring and response program. The owner or operator shall include one or more of the programs identified in paragraph (a) of this section in the permit application as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to institute a particular program, the owner or operator shall consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.


The owner or operator must comply with the conditions specified in the facility permit that are designed to ensure that hazardous constituents under 264.93 detected in the groundwater from a regulated unit do not exceed the concentration limits under 264.94 in the uppermost aquifer underlying the waste management area beyond the point of compliance under 264.95 during the compliance period under 264.96. The Department will establish this groundwater protection standard in the facility permit when hazardous constituents have been detected in the groundwater. (amended 11/90)


264.93. Hazardous constituents.

(a) The owner or operator shall specify in permit application the hazardous constituents to which the groundwater protection standard of Section 264.92 applies. Hazardous constituents are constituents identified in Appendix VIII of R.61-79.261 that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from the waste contained in a regulated unit, unless the Department has granted exclusion of a constituent or constituents under paragraph (b) of this section.

(b) The Department will consider exclusion of an Appendix VIII constituent from the list of hazardous constituents specified in the permit application if the owner or operator can demonstrate to the Department that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In making such demonstration, the owner or operator shall consider the following:

(1) Potential adverse effects on groundwater quality, considering:

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of groundwater and the direction of groundwater flow;

(iv) The proximity and withdrawal rates of groundwater users;
(v) The current and future uses of groundwater in the area;
(vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
(vii) The potential for health risks caused by human exposure to waste constituents;
(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
(ix) The persistence and permanence of the potential adverse effects; and,
(2) Potential adverse effects on hydraulically-connected surface water quality, considering:
(i) The volume and physical and chemical characteristics of the waste in the regulated unit;
(ii) The hydrogeological characteristics of the facility and surrounding land;
(iii) The quantity and quality of groundwater, and the direction of groundwater flow;
(iv) The patterns of rainfall in the region;
(v) The proximity of the regulated unit to surface waters;
(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
(viii) The potential for health risks caused by human exposure to waste constituents;
(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and,
(x) The persistence and permanence of the potential adverse effects.
(c) In making any determination under paragraph (b) of this section about the use of groundwater in the area around the facility, the Department will consider any identification of underground sources of drinking water and exempted aquifers made under Section 48-1-50 of the Code of Laws.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.94. Concentration Limits.
(a) The owner or operator shall specify in his permit application concentration limits in the groundwater for hazardous constituents established under Section 264.93. The concentration of a hazardous constituent:
(1) Must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or,
(2) For any of the constituents listed in Table 1 below, must not exceed the respective value given in that Table if the background level of the constituent is below the value given in Table 1 below; or,
(3) Must not exceed an alternate limit established by the Department under paragraph (b) of this section.
(b) The Department will consider establishing an alternate concentration limit for a hazardous constituent if the owner or operator can demonstrate to the Department that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making such demonstration the owner or operator shall consider the following factors:
(1) Potential adverse effects on groundwater quality, considering:

<table>
<thead>
<tr>
<th>264.94 Table 1—Maximum Concentration of Constituents for Groundwater Protection</th>
<th>Maximum Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constituent</td>
<td>1</td>
</tr>
<tr>
<td>Arsenic</td>
<td>0.05</td>
</tr>
<tr>
<td>Barium</td>
<td>1.0</td>
</tr>
<tr>
<td>Cadmium</td>
<td>0.01</td>
</tr>
<tr>
<td>Chromium</td>
<td>0.05</td>
</tr>
</tbody>
</table>

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.
<table>
<thead>
<tr>
<th>Constituent</th>
<th>Maximum Concentration 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead</td>
<td>0.05</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.002</td>
</tr>
<tr>
<td>Selenium</td>
<td>0.01</td>
</tr>
<tr>
<td>Silver</td>
<td>0.05</td>
</tr>
<tr>
<td>Endrin (1,2,3,4,10,10–hexachloro–1, 7–epoxy–1,4,4a,5,6,7,8,9a–octahydro–1, 4–endo, endo–5, 8–dimethano naphthalene)</td>
<td>0.0002</td>
</tr>
<tr>
<td>Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)</td>
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</tr>
<tr>
<td>Methoxychlor (1,1,1–Trichloro–2,2 bis p–methoxyphenylethane)</td>
<td></td>
</tr>
<tr>
<td>Toxaphene (C_{10}H_{10}Cl_{16}, Technical chlorinated camphene, 67–69 percent chlorine)</td>
<td>0.005</td>
</tr>
<tr>
<td>2, 4–D (2,4–Dichlorophenoxyacetic acid)</td>
<td>0.1</td>
</tr>
<tr>
<td>2,4,5–TP Silvex (2,4,5–Trichlorophenoxy–propionic acid)</td>
<td>0.01</td>
</tr>
</tbody>
</table>

1 Milligrams per liter.

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of groundwater and the direction of groundwater flow;

(iv) The proximity and withdrawal rates of groundwater users;

(v) The current and future uses of groundwater in the area;

(vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects; and,

(2) Potential adverse effects on hydraulically-connected surface-water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of groundwater, and the direction of groundwater flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and,

(x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under paragraph (b) of this section about the use of groundwater in the area around the facility the Department will consider any identification of underground sources of drinking water and exempted aquifers made under Section 48-1-50 of the Code of Laws.

264.95. Point of compliance.

(a) The owner or operator shall specify in his permit application the point of compliance at which the groundwater protection standard of Section 264.92 applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(2) If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.96. Compliance period.

(a) The owner or operator shall specify in his permit application the compliance period during which the groundwater protection standard of Section 264.92 applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting, and the closure period).

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of Section 264.99.

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in paragraph (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of Section 264.92 has not been exceeded for period of three consecutive years.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.97. General groundwater monitoring requirements.

The owner or operator must comply with the following requirements for any groundwater monitoring program developed to satisfy 264.98, 264.99, or 264.100:

(a) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(1) Represent the quality of background ground water that has not been affected by leakage from a regulated unit;

(i) A determination of background ground-water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(A) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

(B) Sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells; and

(ii) [Blank]

(2) Represent the quality of groundwater passing the point of compliance; and

(3) Allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

(b) If a facility contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(c) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between
the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater. All monitoring wells will have a locking cap or other security devices to prevent damage and/or vandalism. Each well will be labeled with an identification plate constructed of durable material affixed to the casing or surface pad where it is readily visible. The plate will provide monitoring well identification number, date of construction, total well depth, static water level, and driller certification number. More sophisticated monitoring well construction may be required if deemed necessary by the Department (amended 11/90; 12/92).

(d) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program must include procedures and techniques for:

(1) Sample collection;
(2) Sample preservation and shipment;
(3) Analytical procedures; and,
(4) Chain of custody control.

(e) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(f) The groundwater monitoring program must include a determination of the groundwater surface elevation each time groundwater is sampled.

(g) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit application will be collected from background wells and wells at the compliance point(s). The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which shall be specified in the unit permit upon approval by the Department. This sampling procedure shall be:

(1) A sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer’s effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants, or
(2) an alternate sampling procedure proposed by the owner or operator and approved by the Department.

(h) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent which, upon approval by the Department, will be specified in the unit permit. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (pql's) are used in any of the following statistical procedures to comply with Section 264.97(i)(5), the pql must be proposed by the owner or operator and approved by the Department. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in paragraph (i) of this section.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well’s mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well’s median and the background median levels for each constituent.
(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method submitted by the owner or operator and approved by the Department.

(i) Any statistical method chosen under Section 264.97(h) for specification in the unit permit shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the Department if he or she finds it to be protective of human health and the environment.

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the Department if it finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit (pql) approved by the Department under Section 264.97(h) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(j) Groundwater monitoring data collected in accordance with paragraph (g) of this section including actual levels of constituents must be maintained in the facility operating record. The owner or operator will specify in the permit application the frequency (quarterly, semiannually, or annually) by which groundwater monitoring data will be collected at each monitoring well. (amended 11/90) [Note: 264.98(d) requires specification of statistical evaluation frequency); 270.30(4) states the Department will specify the intervals monitoring data is reported]

(k) Report to the Department no later than thirty (30) days after the end of the quarter, semiannual or annual period specified, the groundwater data and determinations made pursuant to the following paragraphs:

(1) Paragraphs (e) and (f) of Section 264.98, Detection Monitoring Program; and

(2) Paragraphs (d), (e) and (g) of Section 264.99, Compliance Monitoring Program; and
Paragraph (d) of Section 264.100, Correction Action Program.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 19, Issue No. 6, eff June 23, 1995.

264.98. Detection monitoring program.

An owner or operator required to establish a detection monitoring program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The owner or operator shall specify the parameters or constituents to be monitored in the facility permit application, after considering the following factors:

(1) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(2) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(3) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(4) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(b) The owner or operator must install a groundwater monitoring system at the compliance point as specified under Section 264.95. The groundwater monitoring system must comply with paragraphs 264.97(a)(2), (b) and (c).

(c) The owner or operator must conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to paragraph (a) of this section in accordance with Section 264.97(g). The owner or operator must maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under Section 264.97(h).

(d) The Department will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any chemical parameter or hazardous constituent specified in the permit conditions under paragraph (a) of this section in accordance with 264.97(g).

(e) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the permit pursuant to paragraph (a) of this section at a frequency specified under paragraph (d) of this section.

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under Section 264.97(h). These method(s) must compare data collected at the compliance point(s) to the background groundwater quality data.

(2) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well as the compliance point within a reasonable period of time after completion of sampling. The permit application will specify what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(g) If the owner or operator determines pursuant to paragraph (f) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he or she must:
(1) Notify the Department of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(2) Immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of Appendix IX are present, and if so, in what concentration. However, the Department, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list and other representative/related waste constituents.

(3) For any Appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site specific schedule approved by the Department and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial Appendix IX analysis will form the basis for compliance monitoring.

(4) Within 90 days, submit to the Department a permit application modification to establish a compliance monitoring program meeting the requirements of Section 264.99. The application must include the following information:
   
   (i) An identification of the concentration of any Appendix IX constituent detected in the groundwater at each monitoring well at the compliance point;
   
   (ii) Any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of Section 264.99;
   
   (iii) Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of Section 264.99;
   
   (iv) For each hazardous constituent detected at the compliance point, a proposed concentration limit under Section 264.94(a)(1) or (2), or a notice of intent to seek an alternate concentration limit under Section 264.94(b); and

(5) Within 180 days, submit to the Department:
   
   (i) All data necessary to justify an alternate concentration limit sought under Section 264.94(b); and
   
   (ii) An engineering feasibility plan for a corrective action program necessary to meet the requirement of Section 264.100, unless:

   (A) All hazardous constituents identified under paragraph (g)(2) of this section are listed in Table 1 of 264.94 and their concentrations do not exceed the respective values given in that Table; or

   (B) The owner or operator has sought an alternate concentration limit under Section 264.94(b) for every hazardous constituent identified under paragraph (g)(2) of this section.

(6) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (g)(4) of this section; however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (g)(4) of this section unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must: (amended 11/90)

   (i) Notify the Department in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;
Within 90 days, submit a report to the Department which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

Within 90 days, submit to the Department an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and

Continue to monitor in accordance with the detection monitoring program established under this section.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he or she must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program. (moved 11/90)

(i) [Removed 12/93]

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.99. Compliance monitoring program.

An owner or operator required to establish a compliance monitoring program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under 264.92. The Department will specify the groundwater protection standard in the facility permit, including: (amended 11/90)

(1) A list of hazardous constituents identified under Section 264.93;

(2) Concentration limits under Section 264.94 for each of those hazardous constituents;

(3) The compliance point under Section 264.95; and

(4) The compliance period under Section 264.96.

(b) The owner or operator must install a groundwater monitoring system at the compliance point as specified under Section 264.95. The groundwater monitoring system must comply with Section 264.97(a), (b), and (c).

(c) The Department will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with 264.97 (g) and (h). (amended 11/90):

(1) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with Section 264.97(g).

(2) The owner or operator must record groundwater analytical data as measured and in form necessary for the determination of statistical significance under Section 264.97(h) for the compliance period of the facility.

(d) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to paragraph (a) of this section, at a frequency specified under paragraph (f) under this section.

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under Section 264.97(h). The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with Section 264.94.

(2) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The permit application will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(e) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.
(f) The Department will specify the frequencies for collecting samples and conducting statistical
tests to determine statistically significant evidence of increased contamination in accordance with
264.97(g).

(g) Annually, the owner or operator must determine whether additional hazardous constituents
from Appendix IX, which could possibly be present but are not on the detection monitoring list in
the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant
to procedures in 264.98(l). To accomplish this, the owner or operator must consult with the
Department to determine on a case by-case basis: which sample collection event during the year will
involve enhanced sampling; the number of monitoring wells at the compliance point to undergo
enhanced sampling; the number of samples to be collected from each of these monitoring wells;
and, the specific constituents from Appendix IX for which these samples must be analyzed. If the
enhanced sampling event indicates that Appendix IX constituents are present in the groundwater
that are not already identified in the permit as monitoring constituents, the owner or operator may
resample within one month or at an alternative site-specific schedule approved by the Department,
and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner
or operator must report the concentration of these additional constituents to the Department within
seven days after the completion of the second analysis and add them to the monitoring list. If the
owner or operator chooses not to resample, then he or she must report the concentrations of these
additional constituents to the Department within seven days after completion of the initial analysis,
and add them to the monitoring list.

(h) If the owner or operator determines pursuant to the paragraph (d) of this section that any
concentration limits under Section 264.94 are being exceeded at any monitoring well at the point of
compliance he or she must:

(1) Notify the Department of this finding in writing within seven days. The notification must
indicate what concentration limits have been exceeded.

(2) Submit to the Department an application for a permit modification to establish a corrective
action program meeting the requirements of 264.100 within 180 days, or within 90 days if an
engineering feasibility study has been previously submitted to the Department under 264.98(g)(5).
The application must at a minimum include the following information:

(i) A detailed description of corrective actions that will achieve compliance with the ground-
water protection standard specified in the permit under paragraph (a) of this section; and

(ii) A plan for a groundwater monitoring program that will demonstrate the effectiveness of
the corrective action. Such a groundwater monitoring program may be based on a compliance
monitoring program developed to meet the requirements of this section.

(i) If the owner or operator determines, pursuant to paragraph (d) of this section, that the
groundwater concentration limits under this section are being exceeded at any monitoring well at
the point of compliance, he or she may demonstrate that a source other than a regulated unit caused
the contamination or that the detection is an artifact caused by an error in sampling, analysis, or
statistical evaluation or natural variation in the groundwater. In making a demonstration under this
paragraph, the owner or operator must:

(1) Notify the Department in writing within seven days that he intends to make a demonstration
under this paragraph;

(2) Within 90 days, submit a report to the Department which demonstrates that a source other
than a regulated unit caused the standard to be exceeded or that the apparent noncompliance
with the standards resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Department an application for a permit modification to make
any appropriate changes to the compliance monitoring program at the facility; and

(4) Continue to monitor in accord with the compliance monitoring program established under
this section.

(j) If the owner or operator determines that the compliance monitoring program no longer
satisfies the requirements of this section, he must, within 90 days, submit an application for a permit
modification to make any appropriate changes to the program.
264.100. Corrective action program.

An owner or operator required to establish a corrective action program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under 264.92. The RCRA-type permit application will specify the groundwater protection standard, including:

1. A list of the hazardous constituents identified under Section 264.93;
2. Concentration limits under Section 264.94 for each of those hazardous constituents;
3. The compliance point under Section 264.95; and
4. The compliance period under 264.96.

(b) The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The owner or operator will specify the specific measures that will be taken in the permit application.

(c) The owner or operator must begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The Department will specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and such a requirement will operate in lieu of 264.99(i)(2).

(d) In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under Section 264.99 and must be as effective as that program in determining compliance with the groundwater protection standard under Section 264.92 and in determining the success of a corrective action program under paragraph (e) of this section, where appropriate.

(e) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under Section 264.93 that exceed concentration limits under Section 264.94 in groundwater:

1. Between the compliance point under Section 264.95 and the downgradient property boundary; and
2. Beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Department that, despite the owner’s or operator’s best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved all responsibility to clean up a release that has migrated beyond the facility boundary where offsite access is denied. Onsite measures to address such releases will be determined on a case-by-case basis.

3. Corrective action measures under this paragraph must be initiated and completed within a reasonable period of time considering the extent of contamination.

4. Corrective action measures under this paragraph may be terminated once the concentration of hazardous constituents under Section 264.93 is reduced to levels below their respective concentration limits under Section 264.94.

(f) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate, based on data from the groundwater monitoring program under paragraph (d) of
this section, that the groundwater protection standard of Section 264.92 has not been exceeded for a period of three consecutive years.

(g) The owner or operator must report in writing to the Department on the effectiveness of the corrective action program. The owner or operator must submit these reports annually.

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.101. Corrective action for solid waste management units.

(a) The owner or operator of a facility seeking a permit for the treatment, storage or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) Corrective action will be specified in the permit application in accordance with this section and subpart S of this part. The permit application will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action. (amended 11/90)

(c) The owner or operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where offsite access is denied. Onsite measure to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided.

(d) This section does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing or disposing of hazardous wastes that are not remediation wastes.

(e) All monitoring wells to be installed pursuant to 264.101 must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater. More sophisticated monitoring well construction may be required if deemed necessary by the Department. All monitoring wells will have a locking cap or other security devices to prevent damage and/or vandalism. Each well will be labeled with an identification plate constructed of a durable material affixed to the casing or surface pad where it is readily visible. The plate will provide monitoring well identification number, date of construction, total well depth, static water level, and driller certification number. [Note: See for guidance EPA's RCRA Ground-Water Monitoring Technical Enforcement Guidance Document, TEGD]. (6/95)

(f) If not otherwise proposed as part of a plan submitted for approval by the Department, the general design, construction, and location of monitoring wells installed for the purpose of investigating groundwater contamination from solid waste management units will be submitted to the Department for approval prior to installation. (6/95)

HISTORY: Added by State Register Volume 10, Issue No. 1, eff January 24, 1986; amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 24, Issue No. 8, eff August 25, 2000.
264.110. Applicability.

Except as 264.1 provides otherwise:

(a) Sections 264.111 through 264.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 264.116 through 264.120 (which concern postclosure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Waste piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in Section 264.228 and Section 264.258.

(3) Tank systems that are required under 264.197 to meet the requirements for landfills; and

(4) Containment buildings that are required under 264.1102 to meet the requirement for landfills.

(c) The Department may replace all or part of the requirements of this subpart (and the unit-specific standards referenced in 264.111(c) applying to a regulated unit), where the Department determines that:

(1) The regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and

(2) It is not necessary to apply the closure requirements of this subpart (and those referenced herein) because the alternative requirements will protect human health and the environment and will satisfy the closure performance standard of 264.111(a) and (b).

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000.


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

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Complies with the closure requirements of this part, including, but not limited to, the requirements of 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601 through 264.603, and 264.1102. (revised 12/92)

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.112. Closure plan; amendment of plan.

(a) Written plan.

(1) The owner or operator of a hazardous waste management facility must have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by 264.228(c)(1)(i) and 264.258(c)(1)(i) to have contingent closure plans. The plan must be submitted with the permit application, in accordance with R.61-79.270.14(b)(13), and approved by the Department as part of the permit issuance procedures under R.61-79.124. In accordance with
R.61-79.270.32, the approved closure plan will become a condition of any RCRA-type permit.

(2) The Department’s approval of the plan must ensure that the approved closure plan is consistent with Sections 264.111 through 264.115 and the applicable requirements of subpart F of this part, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601, and 264.1102. Until final closure is completed and certified in accordance with 264.115, a copy of the approved plan and all approved revisions must be furnished to the Department upon request, including requests by mail. (amended 11/90)

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

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with Section 264.111;

(2) A description of how final closure of the facility will be conducted in accordance with section 264.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever onsite over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of the onsite hazardous waste management units to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard; and

(5) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.)

(7) For facilities that use trust funds to establish financial assurance under Sections 264.143 or 264.145 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(8) For facilities where the Department has applied alternative requirements at a regulated unit under 264.90(f), and/or 264.110(c), the alternative requirements applying to the regulated unit.

(c) Amendment of plan. The owner or operator must submit a written notification of or request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with applicable procedures in R.61-79.124 and R.61-79.270. The written request must include a copy of the amended closure plan for review and approval by the Department. (amended 11/90)

(1) The owner or operator may submit a written request to the Department for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(2) The owner or operator must submit a written request for a permit modification to authorize a change in the approved closure plan whenever:

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

(ii) There is a change in the expected year of closure, if applicable, or
(iii) In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

(iv) the owner or operator requests the Department to apply alternative requirements to a regulated unit under 264.90(f), and/or 264.110(c).

(3) The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than 30 days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under 264.228(c)(1)(i) or 264.228(c)(1)(ii), must submit an amended closure plan to the Department no later than 60 days from the date that the owner or operator or Department determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of 264.310, or no later than 30 days from that date if the determination is made during partial or final closure. The Department will approve, disapprove, or modify this amended plan in accordance with the procedures in R.61–79.124 and R.61–79.270. In accordance with R.61–79.270.32, the approved closure plan will become a condition of permit issued under these regulations.

(4) The Department may request modifications to the plan under the conditions described in Section 264.112(c)(2). The owner or operator must submit the modified plan within 60 days of the Department’s request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the Department will be approved in accordance with the procedures in R.61-79.124 and R.61-79.270.

(d) Notification of partial closure and final closure.

(1) The owner or operator must notify the Department in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the Department in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed. The owner or operator must notify the Department in writing at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace, whichever is earlier.

(2) The date when he “expects to begin closure” must be either:

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

(ii) For units meeting the requirements of Section 264.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Department that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Department may approve an extension to this one-year limit.

(3) If the facility’s permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order S.C. 44-56-130 and 140 or under section 3008 of RCRA, to cease receiving hazardous
wastes or to close, then the requirements of this paragraph do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in 264.113.

(e) Removal of wastes and decontamination or dismantling of equipment. Nothing in this Section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.


264.113. Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of onsite, all hazardous wastes in accordance with the approved closure plan. The Department may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the RCRA-type permit and demonstrates that: (amended 11/90)

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

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

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

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

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

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility. The Department may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that: (amended 11/90)

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

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

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

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

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

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows:
(1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90 day period in paragraph (a) of this section; and

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

(d) The Department may allow an owner or operator to receive only nonhazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if: (amended 11/90)

(1) The owner or operator requests a permit modification in compliance with all applicable requirements in parts 270 and 124 of this title and in the permit modification request demonstrates that:

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

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

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

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

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

(2) The request to modify the permit includes an amended waste analysis plan, groundwater monitoring and response program, human exposure assessment required under RCRA section 3019 and the SC Pollution Control Act 48-1-50, and closure and postclosure plans, and updated cost estimates and demonstrations of financial assurance for closure and postclosure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the nonhazardous wastes, and changes in closure activities, including the expected year of closure if applicable under 264.112(b)(7), as a result of the receipt of nonhazardous wastes following the final receipt of hazardous wastes; and

(3) The request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The request to modify the permit and the demonstrations referred to in paragraphs (d)(1) and (d)(2) of this section are submitted to the Department no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit, or no later than 90 days after the effective date of this rule in the state in which the unit is located, whichever is later.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o)(2) or (3) or 3005(j)(2), (3), (4) or (13) and the SC Pollution Control Act 48–1–50 must: (11/90; 12/92; 12/93)

(1) Submit with the request to modify the permit:

   (i) A contingent corrective measures plan, unless a corrective action plan has already been submitted under Section 264.99; and

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

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

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

(4) If a release that is a statistically significant increase (or a decrease in the case of pH) over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility’s groundwater protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in subpart F of this part, the owner or operator of the unit:

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

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

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

(5) During the period of corrective action, the owner or operator shall provide annual reports to the Department describing the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of nonhazardous wastes on the effectiveness of the corrective action.

(6) The Department may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in paragraph (e)(4) of this section, or fails to make substantial progress in implementing corrective action and achieving the facility’s groundwater protection standard or background levels if the facility has not yet established a groundwater protection standard.

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

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

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

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

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

(v) The final determinations made by the Department under paragraphs (e)(7)(iii) and (iv) of this section are not subject to administrative appeal.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 25, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24; State Register Volume 25, Issue No. 10, eff October 26, 2001; State Register Volume 52, Issue No. 6, eff June 27, 2008.

264.114. Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of or decontaminated unless otherwise specified in Sections 264.197, 264.228,
By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of R.61-79.262.

**HISTORY:** Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990.

### 264.115. Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Department by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer Documentation supporting the Professional Engineer’s certification must be furnished to the Department upon request until he releases the owner or operator from the financial assurance requirements for closure under 264.143(i).

**HISTORY:** Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 32, Issue No. 6, eff June 27, 2008.

### 264.116. Survey plat.

No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner’s or operator’s obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable R.61-79.264 Subpart G regulations.

**HISTORY:** Added by State Register Volume 11, Issue No. 11, eff November 27, 1987.

### 264.117. Postclosure care and use of property.

(a)(1) Post-closure care for each hazardous waste management unit subject to the requirements of Sections 264.117 through 264.120 must begin after completion of closure of the unit and continue for 30 years after that date and must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of R.61-79.264 Subparts F, K, L, M, N and X; and

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

(2) Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the postclosure period for a particular unit, the Department may, in accordance with the permit modification procedures in R.61-79.124 and R.61-79.270.

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

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

(b) The Department may require, at partial and final closure, continuation of any of the security requirements of Section 264.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or
(2) Access by the public or domestic livestock may pose a hazard to human health.

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

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in Section 264.118.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992.

264.118. Postclosure plan; amendment of plan.

(a) Written Plan. The owner or operator of a hazardous waste disposal unit must have a written postclosure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by 264.228(c)(1)(ii) and 264.258(c)(1)(ii) to have contingent postclosure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent postclosure plans under 264.228(c)(1)(ii) and 264.258(c)(1)(ii)must submit a postclosure plan to the Department within 90 days from the date that the owner or operator or the Department determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of 264.117 through 264.120. The plan must be submitted with the permit application in accordance with R.61-79.270.14(b)(13) and approved by the Department as part of the permit issuance procedures under R.61-79.124. In accordance with R.61-79.270.32, the approved postclosure plan will become a condition of any RCRA permit issued.

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

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with R.61-79.264 Subparts F, K, L, M, N and X during the post-closure care period; and

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

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of R.61-79.264 Subparts F, K, L, M, N and X; and

(ii) The function of the monitoring equipment in accordance with the requirements of R.61-79.264 Subparts F, K, L, M, N and X; and

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

(4) For facilities where the Department has applied alternative requirements at a regulated unit under 264.90(f), and/or 264.110(c), the alternative requirements that apply to the regulated unit.

(c) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the Department upon request, including request by mail. After final closure has been certified, the person or office specified in Section 264.118(b)(3) must keep the approved post-closure plan during the remainder of the post-closure period.

(d) Amendment of plan. The owner or operator must submit a written notification of or a request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements in Parts 124 and 270. The written notification or request must include a copy of the amended post-closure plan for review or approval by the Department.

(1) The owner or operator may submit a written notification or request to the Department for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.
(2) The owner or operator must submit a written notification of or a request for a permit modification to authorize a change in the approved post-closure plan whenever:
   (i) Changes in operating plans or facility design affect the approved post-closure plan, or
   (ii) There is a change in the expected year of final closure, if applicable, or
   (iii) Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan.
   (iv) The owner or operator requests the Department to apply alternative requirements to a regulated unit under 264.90(f), and/or 264.110(c).

(3) The owner or operator must submit a written request for a permit modification at least 60 days prior to the proposed changes in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent post-closure plan under 264.228(c)(1)(ii) and 264.258(c)(1)(ii) must submit a post-closure plan to the Department no later than 90 days after the date that the owner or operator or the Department determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of section 264.310. The Department will approve, disapprove or modify this plan in accordance with the procedures in R.61-79.124 and R.61-79.270. In accordance with R.61-79.270.32, the approved post-closure plan will become a permit condition.

(4) The Department may request modifications to the plan under the conditions described in R.61-79.264 Section 264.118(d)(2). The owner or operator must submit the modified plan no later than 60 days after the Department's request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the Department will be approved, disapproved, or modified in accordance with the procedures in R.61-79.124 and R.61-79.270.


264.119. Postclosure notices.

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

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:
   (1) Record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:
      (i) The land has been used to manage hazardous wastes; and
      (ii) Its use is restricted under R.61-79.264 and R.61-79.265 Subpart G; and
      (iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Sections 264.116 and 264.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Department; and
   (2) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (b)(1) of this Section, including a copy of the document in which the notation has been placed, to the Department.
   (c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, he must request a modification to the post-closure
permit in accordance with the applicable requirements in R.61-79.124 and R.61-79.270. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 264.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of these Regulations. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Department approve either:

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

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

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992.

264.120. Certification of completion of post–closure care.

No later than 60 days after completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator must submit to the Department, by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification must be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer’s certification must be furnished to the Department upon request until it releases the owner or operator from the financial assurance requirements for postclosure care under 264.145(i).

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 32, Issue No. 6, eff June 27, 2008.

SUBPART H
Financial Requirements

264.140. Applicability.

(a) The requirements of Sections 264.142, 264.143, 264.147 through 264.151 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or in Section 264.1.

(b) The requirements of 264.144 and 264.145 apply only to owners and operators of:

(1) Disposal facilities;

(2) Piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in 264.228 and 264.258;

(3) Tank systems that are required under 264.197 to meet the requirements for landfills; and (revised 12/92)

(4) Containment buildings that are required under 264.1102 to meet the requirements for landfills.

(c) [Reserved]

(d) The requirements of 264.152, 264.153, and 264.154 apply to the owners and operators of offsite treatment, storage and disposal facilities.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 19, Issue No. 6, eff June 25, 1995; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2003.

264.141. Definitions of terms as used in this subpart.

(a) “Closure plan” means the plan for closure prepared in accordance with the requirements of Subpart G, Section 264.112.

(b) “Current closure cost estimate” means the most recent of the estimates prepared in accordance with Sections 264.142 (a), (b), and (c).
(c) “Current post-closure cost estimate” means the most recent of the estimates prepared in accordance with Section 264.144 (a), (b) and (c).

(d) “Parent corporation” means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a “subsidiary” of the parent corporation.

(e) “Post-closure plan” means the plan for post-closure care prepared in accordance with the requirements of Subpart G, Sections 264.117 through 264.120.

(f) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

“Assets” means all existing and all probable future economic benefits obtained or controlled by a particular entity.

“Current assets” means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

“Current liabilities” means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

“Current plugging and abandonment cost estimate” means the most recent of the estimates prepared in accordance with SC Safe Drinking Water Act 44-55-10 et seq. and Federal 40 CFR 144.62(a), (b) and (c). (amended 6/89, 12/92)

“Independently audited” refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

“Liabilities” means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

“Net working capital” means current assets minus current liabilities.

“Net worth” means total assets minus total liabilities and is equivalent to owner’s equity.

“Tangible net worth” means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements the terms “bodily injury” and “property damage” shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

“Accidental occurrence” means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

“Legal defense costs” means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

“Nonsudden accidental occurrence” means an occurrence which takes place over time and involves continuous or repeated exposure.

“Sudden accidental occurrence” means an occurrence which is not continuous or repeated in nature.

(h) “Substantial business relationship” means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A “substantial business relationship” must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business
relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the Department.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 12, Issue No. 10, eff October 28, 1988; State Register Volume 12, Issue No. 11, eff November 25, 1988; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992.

264.142. Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 264.111 through 264.115 and applicable closure requirements in 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601 through 264.603, and 264.1102. (amended 11/90, 12/92)

(1) The estimate must equal the cost of final closure at the point in the facility’s active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan [see 264.112(b)].

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in 264.141(d)). The owner or operator may use costs for onsite disposal if he can demonstrate that onsite disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under Section 264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under Section 264.113(d), that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section 264.143. For owners and operators using the financial test or corporate guarantee the closure cost estimate must be updated for inflation within 30 days after the close of the firm’s fiscal year and before submission of updated information to the Department as specified in Section 264.143(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its “Survey of Current Business,” as specified in paragraphs (b)(1) and (b)(2) of this Section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after the Department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in Section 264.142(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with paragraph 264.142(a) and (c) and, when this estimate has been adjusted in accordance with paragraph 264.142(b), the latest adjusted closure cost estimate.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

An owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in paragraphs (a) through (l) of this section.

(a) Standby trust fund. [revised 5/93]

(1) An owner or operator may satisfy the requirements of this section by establishing a standby trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement must be identical to the wording specified in 264.151(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment [for example, see 264.151 (a)(2)]. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

(3) [Reserved]

(4) [Reserved]

(5) [Reserved]

(6) Whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee’s most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current closure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (a)(7) or (8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the Department may withhold reimbursements of such amounts as it deems prudent until it determines, in accordance with 264.143(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

(11) The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or,
(ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.143(i).

(b) Surety bond guaranteeing payment into a closure trust fund.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in 264.151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in Section 264.143(a), except that:

   (i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and,

   (ii) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

      (A) Payments into the trust fund as specified in Section 264.143(a);

      (B) Updating of Schedule A of the trust agreement (see Section 264.151(a)) to show current closure cost estimates;

      (C) Annual valuations as required by the trust agreement; and,

      (D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

   (i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or,

   (ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. District Court or other court of competent jurisdiction; or,

   (iii) Provide alternate financial assurance as specified in this section, and obtain the Department’s written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in Section 264.143(g).

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.
(9) The owner or operator may cancel the bond if the Department has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(c) Surety bond guaranteeing performance of closure.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in 264.151(c). (revised 12/92)

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust must meet the requirements specified in Section 264.143(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and,
(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:
   (A) Payments into the trust fund as specified in Section 264.143(a);
   (B) Updating of Schedule A of the trust agreement (see Section 264.151(a)) to show current closure cost estimates;
   (C) Annual valuations as required by the trust agreement; and,
   (D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or,
(ii) Provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.
(9) The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or,

(ii) The Department releases the owner or operator from the requirements of this section accordance with Section 264.143(i).

(10) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the Department releases the owner or operator from the requirements of this section in accordance with Section 264.143(i).

(d) Closure letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Department. An owner or operator of a new facility must submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit must be identical to the wording specified in 264.151(d) of this regulation. (revised 12/92)

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in Section 264.143(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and,

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Section 264.143(a);

(B) Updating of Schedule A of the trust agreement (see Section 264.151 (a)) to show current closure cost estimates;

(C) Annual valuations as required by the trust agreement; and,

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

(5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(6) The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in Section 264.143(g).

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate
decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(8) Following a final administrative determination pursuant to S.C. 44-56-130 and -140 or section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Department may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(10) The Department will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or,

(ii) The Department releases the owner or operator from the requirements of this section in accordance with Section 264.143(i).

(e) Closure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Department. An owner or operator of a new facility must submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance must be identical to the wording specified in 264.151(e). (revised 12/92)

(3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in Section 264.143(g). The term “face amount” means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer’s future liability will be lowered by the amount of the payments.

(4) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department will instruct the insurer to make reimbursements in such amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, it may withhold reimbursements of such amounts as it deems prudent until it determines, in accordance with Section 264.143(i), that the owner or operator is no longer required to maintain financial assurance for
final closure of the facility. If the Department does not instruct the insurer to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in paragraph (e)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or,
(ii) The permit is terminated or revoked or a new permit is denied; or,
(iii) Closure is ordered by the Department or a State court or other court of competent jurisdiction; or,
(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or,
(v) The premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(10) The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or,
(ii) The Department releases the owner or operator from the requirements of this section in accordance with Section 264.143(i) below.

(f) Financial test and corporate guarantee for closure.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1)(i) or (f)(1)(ii) of this section:

(i) The owner or operator must have:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimate and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and,

(D) Assets located in the United States amounting to at least nine percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and,

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least nine percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase “current closure and post-closure cost estimates” as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner’s or operator’s chief financial officer [Section 264.151(f)]. The phrase “current plugging and abandonment cost estimates” as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner’s or operator’s chief financial officer.

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Department:

(i) A letter signed by the owner’s or operator’s chief financial officer and worded as specified in 264.151(f); (revised 12/92) and,

(ii) A copy of the independent certified public accountant’s report on examination of the owner’s or operator’s financial statements for the latest completed fiscal year; and,

(iii) A special report from the owner’s or operator’s independent certified public accountant to the owner or operator stating that:

(A) He has compared the dates which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and,

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility must submit the items specified in paragraph (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the
owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner
or operator must provide alternate financial assurance as specified in this section within 30 days
after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion
expressed by the independent certified public accountant in his report on examination of the
owner’s or operator’s financial statements (see paragraph (f)(3)(ii) of this section). An adverse
opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate
other qualifications on an individual basis. The owner or operator must provide alternate financial
assurance as specified in this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in paragraph
(f)(3) of this section when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section;
or,

(ii) The Department releases the owner or operator from the requirements of this section in
accordance with Section 264.143(i).

(10) An owner or operator may meet the requirements of this section by obtaining a written
guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or
operator, a firm whose parent corporation is also the parent corporation of the owner or operator,
or a firm with a “substantial business relationship” with the owner or operator. The guarantor
must meet the requirements for owners or operators in paragraphs (f)(1) through (8) of this
section and must comply with the terms of the corporate guarantee. The wording of the
corporate guarantee must be identical to the wording specified in 264.151(h). The certified copy
of the guarantee must accompany the items sent to the Department as specified in paragraph (f)(3)
of this section. One of these items must be the letter from the guarantor’s chief financial officer.
If the guarantor’s parent corporation is also the parent corporation of the owner or operator, the
letter must describe the value received in consideration of the guarantee. If the guarantor is a
firm with a “substantial business relationship” with the owner or operator, this letter must describe
this “substantial business relationship” and the value received in consideration of the guarantee.
The terms of the corporate guarantee must provide that: (revised 12/93)

(i) If the owner or operator fails to perform final closure of a facility covered by the corporate
guarantee in accordance with the closure plan and other permit requirements whenever
required to do so, the guarantor will do so or establish a trust fund as specified in Section
264.143(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of
cancellation by certified mail to the owner or operator and to the Department. Cancellation may
not occur, however, during the 120 days beginning on the date of receipt of the notice of
cancellation by both the owner or operator and the Department, as evidenced by the return
receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in this
section and obtain the written approval of such alternate assurance from the Department within
90 days after receipt by both the owner or operator and the Department of a notice of
cancellation of the corporate guarantee from the guarantor, the guarantor will provide such
alternative financial assurance in the name of the owner or operator. Use of multiple financial
mechanisms. An owner or operator may satisfy the requirements of this section by establishing
more than one financial mechanism per facility. These mechanisms are limited to surety bonds
guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must
be as specified in paragraphs (a), (b), (c), (d) and (e), respectively, of this section, except that it is
the combination of mechanisms, rather than the single mechanism, which must provide financial
assurance for an amount at least equal to the current closure cost estimate. A single standby trust
fund may be established for two or more mechanisms. The Department may use any or all of
the mechanisms to provide for closure of the facility.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of
this section by establishing more than one financial mechanism per facility. These mechanisms are
limited to surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The
mechanisms must be as specified in paragraphs (a), (b), (d) and (e), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for closure of the facility. (revised 12/92, 5/93)

(b) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanisms must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 12, Issue No. 10, eff October 28, 1988; State Register Volume 12, Issue No. 11, eff November 25, 1988; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1995; State Register Volume 17, Issue No. 12, eff December 24, 1995; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.144. Cost estimate for postclosure care.

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under 264.228 and 264.258 to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Sections 264.117 through 264.120, 264.228, 264.258, 264.280 and 264.310 and 264.603.

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the operator. (See definition of parent corporation in Section 264.141(d)).

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Section 264.117.

(b) During the active life of the facility and during the postclosure period of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 264.145. For owners or operators using the financial test or corporate guarantee, the postclosure cost estimate must be updated for inflation within 30 days after the close of the firm’s fiscal year and before the submission of updated information to the Department as specified in 264.145(b)(5). The adjustment may be made by recalculating the postclosure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business as specified in 264.145(b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.
(2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within 30 days after the Department has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in Section 264.144(b).

(d)(1) The owner or operator must keep the following at the facility during the active life of the facility: the latest post closure cost estimate prepared in accordance with section 264.144(a) and (c) and, when this estimate has been adjusted in accordance with Section 264.144(b), the latest adjusted post closure estimate.

(2) During the post closure period of the facility, the owner or operator must maintain the information specified in (d)(1) and provide it to the Department upon request.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 12, Issue No. 10, effective October 28, 1988; State Register Volume 12, Issue No. 11, eff November 25, 1988; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1993.


The owner or operator of a hazardous waste management unit subject to the requirements of 264.144 must establish financial assurance for postclosure care in accordance with the approved postclosure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. He must choose from the following options:

(a) Standby trust fund (replaced 5/93).

(1) An owner or operator may satisfy the requirements of this section by establishing a standby trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement must be identical to the wording specified in 264.151(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment [for example, see 264.151(a)(2)]. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current postclosure cost estimate covered by the agreement.

(3) [Reserved]

(4) [Reserved]

(5) [Reserved]

(6) Whenever the current postclosure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current postclosure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate covered by the trust fund.
(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (a)(7) or (8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(10) During the period of postclosure care, the Department may approve a release of funds if the owner or operator demonstrates to the Department that the value of the trust fund exceeds the remaining cost of postclosure care.

(11) An owner or operator or any other person authorized to conduct postclosure care may request reimbursements for postclosure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure care expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

(12) The Department will agree to termination of the trust when:
   (i) An owner or operator substitutes alternate financial assurance as specified in this section; or
   (ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.145(i).

(b) Surety bond guaranteeing payment into a postclosure trust fund.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and licensed to do business in South Carolina.

(2) The wording of the surety bond must be identical to the wording specified in 264.151(b).

(revised 12/92)

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in Section 264.145(a), except that:
   (i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and,
   (ii) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulation:
       (A) Payments into the trust fund as specified in Section 264.145(a);
       (B) Updating of Schedule A of the trust agreement (see Section 264.151(a)) to show current post-closure cost estimates;
       (C) Annual valuations as required by the trust agreement; and
       (D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:
   (i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or
   (ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by the State court or other court of competent jurisdiction; or
(iii) Provide alternate financial assurance as specified in this section, and obtain the Department’s written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in Section 264.145(g).

(7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Department has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(c) Surety bond guaranteeing performance of postclosure care. (amended 11/90)

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in 264.151(c). (amended 11/90)

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in Section 264.145(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and,

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Section 264.145(a);

(B) Updating of Schedule A of the trust agreement (see Section 264.151(a)) to show current post-closure cost estimates;

(C) Annual valuations as required by the trust agreement; and,

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or,

(ii) Provide alternate financial assurance as specified in this section, and obtain the Department’s written approval of the assurance provided, within 90 days of receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.
(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate.

(7) Whenever the current postclosure cost estimate increases to an amount greater than the penal sum during the active life of the facility, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section. Whenever the current postclosure cost estimate decreases during the active life of the facility, the penal sum may be reduced to the amount of the current postclosure cost estimate following written approval by the Department.

(8) During the period of post-closure care, the Department may approve a decrease in the penal sum if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure care.

(9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(10) The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or,

(ii) The Department releases the owner or operator from the requirements of this section in accordance with Section 264.145(i).

(11) The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the Department releases the owner or operator from the requirements of this section in accordance with Section 264.145(i).

(d) Postclosure letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Department. An owner or operator of a new facility must submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit must be identical to the wording specified in 264.151(d).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in Section 264.145(a) above, except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and,

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Section 264.145(a) above;
(B) Updating of Schedule A of the trust agreement (see Section 264.151(a) below) to show current post-closure cost estimates;
(C) Annual valuations as required by the trust agreement; and,
(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

(5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(6) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in Section 264.145(g) below.

(7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

(8) During the period of post-closure care, the Department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure care.

(9) Following a final administrative determination pursuant to SCHWMA 44-56-140 and section 3008 of RCRA that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, the Department may draw on the letter of credit.

(10) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(11) The Department will return the letter of credit to the issuing institution for termination when:
(i) An owner or operator substitutes alternate financial assurance as specified in this section; or,
(ii) The Department releases the owner or operator from the requirements of this section in accordance with Section 264.145(i) below.

e) Postclosure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Department. An owner or operator of a new facility must submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of
hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance must be identical to the wording specified in 264.151(e). (revised 12/92)

(3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in Section 264.145(g). The term “face amount” means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer’s future liability will be lowered by the amount of the payments.

(4) The post closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy must also guarantee that once post-closure care begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

(5) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements it will provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in paragraph (e)(11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or,

(ii) The permit is terminated or revoked or a new permit is denied; or,

(iii) Closure is ordered by the Department or a State court or other court of competent jurisdiction; or,

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or,

(v) The premium due is paid.

(9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the
Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(11) The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or,

(ii) The Department releases the owner or operator from the requirements of this section in accordance with Section 264.145(i).

(f) Financial test and corporate guarantee for postclosure care.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1)(i) or (f)(1)(ii) of this section:

(i) The owner or operator must have:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and,

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimate and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and,

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of the AAA, AA, A, or BBB as issued by Standard and Poor’s or Aaa, Aa, A or Baa as issued by Moody’s; and,

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and,

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase “current closure and post-closure cost estimates” as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner’s or operator’s chief financial officer [Section 264.151(f)]. The phrase “current plugging and abandonment cost estimates” as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner’s or operator’s chief financial officer.

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Department:

(i) A letter signed by the owner’s or operator’s chief financial officer and worded as specified in 264.151(f); (revised 12/92) and

(ii) A copy of the independent certified public accountant’s report on examination of the owner’s or operator’s financial statements for the latest completed fiscal year; and,
(iii) A special report from the owner’s or operator’s independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and,

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility must submit the items specified in paragraph (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for disposal.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner’s or operator’s financial statements (see paragraph (f)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) During the period of post-closure care, the Department may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Department that the amount of the cost estimate exceeds the remaining cost of post-closure care.

(10) The owner or operator is no longer required to submit the items specified in paragraph (f)(3) of this section when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or,

(ii) The Department releases the owner or operator from the requirements of this section in accordance with Section 264.145(i).

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in 264.151(h). A certified copy of the guarantee must accompany the items sent to the Department as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantors chief financial officer. If the guarantors parent corporation is also the parent corporation of the owner or operator, the letter must
describe the value received in consideration of the guarantee. If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received in consideration of the guarantee. The terms of the guarantee must provide that: (revised 12/93)

(i) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in Section 264.145(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (b), (d), and (e), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current postclosure cost estimate. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for postclosure care of the facility. (revised 5/93)

(h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. 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 and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the department may direct only the amount of funds designed for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the postclosure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Department will notify the owner or operator that he is no longer required to maintain financial assurance for postclosure of that unit, unless the Department has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that postclosure care has not been in accordance with the approved postclosure plan.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 12, Issue No. 10, eff October 28, 1988; State Register Volume 12, Issue No. 11, eff November 23, 1988; State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1993; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.146. Use of a mechanism for financial assurance of both closure and post–closure care.

An owner or operator may satisfy the requirements for financial assurance for both closure and postclosure care for one or more facilities by using a surety bond, letter of credit, insurance, financial
test, or corporate guarantee that meets the specifications for the mechanism in both 264.143 and 264.145. 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 and maintained for financial assurance of closure and of postclosure care.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.147. Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section: (amended 11/90)

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

   (i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. The owner or operator must provide a signed duplicate original of the insurance policy, application, and any agreements which may affect the policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. (amended 6/89)

   (ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

   (2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section. (amended 11/90)

   (3) An owner or operator may meet the requirements for this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

   (4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

   (5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

   (6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as “primary” coverage and shall specify other assurance as “excess” coverage.

   (7) An owner or operator shall notify the Department in writing within 30 days whenever:
(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section. (amended 11/90)

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit that is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraphs (b)(1), (2), (3), (4), (5), or (6), of this section: (amended 11/90, 12/92)

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

   (i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in Section 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in Section 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

   (ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (l) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not
consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amount required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as “primary” coverage and shall specify other assurance as “excess” coverage.

(7) An owner or operator shall notify the Department in writing within 30 days whenever:

(i) A claim results in the reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section;

or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section. (amended 11/90)

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by paragraphs (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance must be submitted to the Department as part of the application under R.61-79.270.14 for a facility that does not have a permit, or pursuant to the procedures for permit modification under R.61-79.124.5 for a facility that has a permit under these regulations. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Department’s assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than that required by paragraphs (a) or (b) of this section. Any request for a variance for a permitted facility will be treated as a request for a permit modification under R.61-79.270.41(a)(5) and R.61-79.124.5.

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by paragraph (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under paragraph (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with paragraph (b) of this section. An owner or operator must furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level of financial responsibility for a facility that has a permit will be treated as a permit modification under R.61-79.270.41(a)(5) and R.61-79.124.5.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for liability coverage.
(1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (f)(1)(ii) below:

(i) The owner or operator must have:
   (A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and,
   (B) Tangible net worth of at least $10 million; and,
   (C) Assets in the United States amounting to either: (1) at least 90 percent of his total assets; or, (2) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:
   (A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor’s, or Aaa, Aa, A, or Baa as issued by Moody’s; and,
   (B) Tangible net worth of at least $10 million; and,
   (C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and,
   (D) Assets in the United States amounting to either:
      [1] at least 90 percent of his total assets; or,
      [2] at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase “amount of liability coverage” as used in paragraph (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of this section.

(3) To demonstrate that he meets this test, the owner or operator must submit the following three items to the Department:

   (i) A letter signed by the owner’s or operator’s chief financial officer and worded as specified in Section 264.151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by Sections 264.143(f), 264.145(f), 265.143(e), and 265.145(e), and liability coverage, he must submit the letter specified in Section 264.151(g) to cover both forms of financial responsibility; a separate letter as specified in Section 264.151(f) is not required.
   
   (ii) A copy of the independent certified public accountant’s report on examination of the owner’s or operator’s financial statements for the latest completed fiscal year.
   
   (iii) A special report from the owner’s or operator’s independent certified public accountant to the owner or operator stating that:
      (A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and,
      (B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility must submit the items specified in paragraph (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Department within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.
(7) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this section within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

(1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as “guarantee.” The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (6) of this section. The wording of the guarantee must be identical to the wording specified in Section 264.151(h)(2) of this part. A certified copy of the guarantee must accompany the items sent to the Department as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor’s chief financial officer. If the guarantor’s parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgement based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of (A) the State in which the guarantor is incorporated, and (B) each State in which a facility covered by the guarantee is located have submitted a written statement to the Department that a guarantee executed as described in this section and Section 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if (A) the non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business, and (B) the Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to the Department that a guarantee executed as described in this section and Section 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter or credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the Department.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit must be identical to the wording specified in Section 264.151(k) of this part.

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust
fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in 264.151(n).

(i) Surety bond for liability coverage. (amended 11/90)

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this paragraph and submitting a copy of the bond to the Department.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in Section 264.151(l) of this part.

(4) A surety bond may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of the State in which the surety is incorporated, and each State in which a facility covered by the surety bond is located have submitted a written statement to the Department that a surety bond executed as described in this section and 264.151(1) of this part is legally valid and enforceable obligation in that State.

(j) Trust fund for liability coverage. (amended 11/90)

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Department.

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this paragraph, “the full amount of the liability coverage to be provided” means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by the other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in Section 264.151(m) of this part.

(k) Notwithstanding any other provision of this part, an owner or operator using liability insurance to satisfy the requirements of this section may use, until October 16, 1982, a Hazardous Waste Facility Liability Endorsement or Certificate of Liability Insurance that does not certify that the insurer is licensed to transact the business of insurance, or eligible as an excess or surplus lines insurer, in one or more States.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 15, Issue No. 6, eff June 25, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.148. Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate
guarantee as specified in Sections 264.143(f) and 264.145(f) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (264.151(h)).

(b) An owner or operator who fulfills the requirements of Sections 264.143, 264.145, or 264.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.


264.149. Hazardous waste contingency fund.

The payment of fees required under § 44-56-160, -170, and -510 et seq. and under section 262.45, and section 264.78 and 265.78 will be deposited in the Hazardous Waste Contingency Fund to ensure the availability of funds for contingencies rising from permitted hazardous waste landfills and to defray the costs of governmental response actions at uncontrolled hazardous waste sites. Of the fees collected pursuant to § 44-56-170(C), (D), and (E), credited to the contingency fund pursuant to section 44-56-175, thirteen percent must be held separate and distinct within the fund in a permitted site fund for the purpose of response actions arising from the operation of the permitted land disposal facilities in this State. Of the fees collected pursuant to Section 44-56-510 and credited to the contingency fund pursuant to Section 44-56-175, twenty-six percent must be credited to the fund for permitted sites.

HISTORY: Amended by State Register Volume 12, Issue No. 10, eff October 28, 1988; State Register Volume 12, Issue No. 11, eff November 25, 1988; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.151. Wording of the instruments.

(a)(1) A standby trust fund, as specified in 264.143(a) or 264.145(a) or 265.143(a) or 265.145(a), must be worded as noted in 264.151 Appendix A(1) except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (amended 11/90, 5/93)

(2) Certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 264.143(a) and 264.145(a) or 265.143(a). This document must be worded as noted in 264.151 Appendix A(2) except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (amended 11/90)

(b) A surety bond guaranteeing payment into a trust fund, as specified in 264.143(b) or 264.145(b) or 265.143(b) or 265.145(b) must be worded as noted in 264.151 Appendix B follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (amended 11/90)

(c) A surety bond guaranteeing performance of closure and/or postclosure care, as specified in 264.143(c) or 264.145(c), must be worded as noted in 264.151 Appendix C, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (amended 11/90)

(d) A letter of credit, as specified in 264.143(d) or 264.145(d) or 265.143(c) or 265.145(c) must be worded as noted in 264.151 Appendix D, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (amended 11/90)

(e) A certificate of insurance, as specified in 264.143(e) or 264.145(e) or 265.143(d) or 265.145(d) must be worded as noted in 264.151 Appendix E, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (amended 11/90)

(f) A letter from the chief financial officer, as specified in 264.143(f) or 264.145(f) or 265.143(e) or 265.145(e) must be worded as noted in 264.151 Appendix F, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (amended 11/90)

(g) A letter from the chief financial officer, as specified in 264.147(f) or 265.147(f), must be worded as noted in 264.151 Appendix G, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (revised 12/93)
A corporate guarantee, as specified in 264.143(f) or 264.145(f) or 265.143(e) or 265.145(e) must be worded as indicated in Appendix H 1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) A guarantee, as specified in 264.147(g) or 265.147(g) must be worded as noted in Appendix H 2, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(i) A hazardous waste facility liability endorsement as required in 264.147 or 265.147 must be worded as noted in Appendix I, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(j) A certificate of liability insurance as required in 264.147 or 265.147 must be worded as noted in Appendix J, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(k) A letter of credit, as specified in 264.147(i) or 265.147(i), must be worded as noted in 264.151 Appendix K, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (amended 11/90)

(l) A surety bond, as specified in 264.147(h) or 265.147(h) of this chapter, must be worded as noted in 264.151 Appendix L, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(m)(1) A trust agreement, as specified in 264.147(j) or 265.147(j) of this chapter, must be worded as noted in 264.151 Appendix M(1), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) 264.151 Appendix M(2) contains an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 264.147(j) or 265.147(j) of this chapter.

(n)(1) A standby trust agreement, as specified in 264.147(h) or 265.147(h) of this chapter, must be worded as noted in 264.151 Appendix N(1), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) 264.151 Appendix N(2) contains an example of the certification of acknowledgment which must accompany the trust agreement for a standby trust fund as specified in section 264.147(h) or 265.147(h) of this chapter.

TRUST AGREEMENT, the “Agreement,” entered into as of _________ [date] by and between [name of the owner or operator], a _________ [name of State], _________ [insert “corporation,” “partnership,” “association,” or “proprietorship”], the “Grantor,” and _________ [name of corporate trustee], [insert “incorporated in the State of _________” or “a national bank”], the “Trustee.”

WHEREAS, the South Carolina Department of Health and Environmental Control, hereafter referred to as the “Department”, an agency of the state of South Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility.

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,
WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term “Grantor” means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Closure and Post–Closure Care. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for closure and post-closure expenditures in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee’s acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date
on which it assumes administration of the trust in a writing sent to the Grantor, the Department, and
the present Trustee by certified mail 10 days before such change becomes effective. Any expenses
incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as
provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the
Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such
other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully
protected in acting without inquiry in accordance with the Grantor’s orders, requests, and instructions.
All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by
the Department, and the Trustee shall act and shall be fully protected in acting in accordance with
such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of
written notice to the contrary, that no event constituting a change or a termination of the authority of
any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee
shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor
and/or the Department, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Department, by
certified mail within 10 days following the expiration of the 30-day period after the anniversary of the
establishment of the Trust, if no payment is received from the Grantor during that period. After the
pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in
writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the
Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this
Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until
terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the
Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all
remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any
nature in connection with any act or omission, made in good faith, in the administration of this Trust,
or in carrying out any directions by the Grantor or the Department issued in accordance with this
Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust
Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason
of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in
the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced
according to the laws of the State of South Carolina.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural
and words in the plural include the singular. The descriptive headings for each Section of this
Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective
officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first
above written. The parties below certify that the wording of this Agreement is identical to the wording
specified in R.61–79.264.151(a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]

Attest: ____________________________________________
[Title]
[Seal]

[Signature of Trustee]

Attest: ____________________________________________
[Title]
[Seal]
Certificate of Acknowledgement (must accompany the trust agreement):

State of South Carolina

County of _________

On this ________ [date], before me personally came ________ [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at ________ [address], that she/he is ________ [title] of ________ [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed his/her name thereto by like order.

(Signature of Notary Public) _________

Surety Bond: Guaranteeing Payment Into a Trust Fund for Closure and/or Postclosure Care

Financial Guarantee Bond

Date bond executed: ________

Effective date: ________

Principal: ________ [Legal name and business address of owner or operator]

Type of organization: ________ [insert “individual”, “joint venture”, “partnership”, or “corporation”]

State of incorporation: ________

Surety(ies): ________ [name(s) and business address(es)]

EPA Identification Number, name, address and closure and/or postclosure amount(s) for each facility guaranteed by this bond [indicate closure and postclosure amounts separately]: ________

Total penal sum of bond: $_______

Surety’s bond number: ________

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the South Carolina Department of Health and Environmental Control (hereinafter called the “Department”), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum “jointly and severally” only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under South Carolina Hazardous Waste Management Regulation to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and postclosure care, as a condition of the permit or interim status, and
Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the Department or an EPA Regional Administrator or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Subpart H of R.61–79.264 or R.61–79.265, as applicable, and obtain the Department’s written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has been found in violation of the postclosure requirements of R.61–79.264 for a facility for which this bond guarantees performance of postclosure care, the Surety(ies) shall either perform postclosure care in accordance with the postclosure plan and other permit requirements or place the postclosure amount guaranteed for the facility into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance as specified in Subpart H of R.61–79.264 and obtain written approval of such assurance from the Department during the 90 days following receipt by both the Principal and the Department of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) 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 obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Department.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or postclosure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in R.61–79.264 Section 264.151(b) as such regulations were constituted on the date this bond was executed.

Principal
Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the South Carolina Department of Health and Environmental Control hereinafter called the "Department" in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.
Whereas said Principal is required, under the S.C. Hazardous Waste Management Regulations and the Resource Conservation and Recovery Act as amended (RCRA) to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and postclosure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And, if the Principal shall faithfully perform postclosure care of each facility for which this bond guarantees postclosure care, in accordance with the postclosure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as specified in Subpart H of R.61–79.264 and obtain the Department’s written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) 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 obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Department.

[The following paragraph is an optional rider that may be included but is not required.]
Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or postclosure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in R. 61-79.264.151(c) as such regulation was constituted on the date this bond was executed.

Principal
[Signature(s) ]
[Name(s) ]
[Title(s) ]
[Corporate Seal]

Corporate Surety(ies)
[Name and address]
State of Incorporation:
Liability Limit:
[Signature(s) ]
[Name(s) and title(s) ]
[Corporate seal:]

For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.

Bond premium: $264.151

APPENDIX D
(12/93; 12/94; 5/96)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Letter of Credit Covering Cost of Closure and/or Postclosure Care
Irrevocable Standby Letter of Credit

Chief
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _________ in your favor, at the request and for the account of _________ [owner’s or operator’s name and address] up to the aggregate amount of _________ U.S. dollars _________, available upon presentation of:

(1) your sight draft, bearing reference to this letter of credit No. _________, and
(2) your signed statement reading as follows: “I certify that the amount of the draft is payable pursuant to regulations issued under authority of the South Carolina Department of Health and Environmental Control.”

This letter of credit is effective as of _________ [date] and shall expire on _________ [date at least 1 year later] but such expiration date shall be automatically extended for a period of _________, [at least
1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner’s or operator’s name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner’s or operator’s name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner’s or operator’s name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in R.61–79.264.151(d) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert “the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce,” or “the Uniform Commercial Code”].

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Insurance Covering Cost of Closure and/or Postclosure Care

Certificate of Insurance for Closure or Postclosure Care

Name and Address of Insurer (herein called the “Insurer”): [Name and Address]

Name and Address of Insured (herein called the “Insured”): [Name and Address]

Facilities Covered:

EPA ID# [List for each facility: NAME ADDRESS]

AMOUNT OF INSURANCE FOR CLOSURE AND/OR THE AMOUNT FOR POSTCLOSURE CARE [Face Amount: [Policy Number: [Effective Date: ]]

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert “closure” or “closure and postclosure care” or “postclosure care”] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of the Department including R.61–79.264.143(e), 264.145(e), 265.143(d), and 265.145(d), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

The insurer agrees to furnish to the Department a duplicate original of the policy listed above, including all endorsements thereon. In addition, the Insurer shall provide a copy of the insurance policy, application, and any agreements which may affect the policy.

I hereby certify that the wording of this certificate is identical to the wording specified in R.61–79.264.151(e) as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]
Financial Test for Closure and/or Postclosure Care

Letter from Chief Financial Officer

Chief
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

Dear Sir: I am the chief financial officer of [name and address of firm]. This letter is in support of this firm’s use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in Subpart H of R. 61–79 Parts 264 and 265 by the South Carolina Department of Health and Environmental Control. (amended 6/89)

[Fill out the following four paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write “None” in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or postclosure cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care].

1. This firm is the owner or operator of the following facilities which are located in the state of South Carolina and for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in Subpart H of R. 61–79.264 or R. 61–79.265. The current closure and/or postclosure cost estimates covered by the test are shown for each facility: [fill in details]. (amended 6/89)

2. This firm guarantees, through the guarantee specified in Subpart H of R. 61–79.264 or R. 61–79.265, the closure or postclosure care of the following facilities which are located in the state of South Carolina and which are owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility: [fill in details]. (amended 6/89) The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee [insert details]; or (3) engaged in the following substantial business relationship with the owner or operator [insert details], and receiving the following value in consideration of this guarantee [insert details]]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In states outside of South Carolina, where the United States Environmental Protection Agency (EPA) or some designated authority is not administering the financial requirements of Subpart H of part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in R. 61–79 Subpart H Parts 264 and 265. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility: [fill in details]. (amended 6/89)

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated to the Department through the financial test or any other financial assurance mechanism specified in Subpart H of R. 61–79.264 and R. 61–79.265 or equivalent or substantially equivalent State mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility: [fill in details].

This firm [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.
The fiscal year of this firm ends on [month/day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of 264.143 or 264.145, or of paragraph (e)(1)(i) of 265.143 or 265.145 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of 264.143 or 264.145, or of paragraph (e)(1)(ii) of 265.143 or 265.145 are used.]:

**ALTERNATIVE I**

1. Sum of current closure and postclosure cost estimates [total of all cost estimates shown in the four paragraphs above] . . . . $  
* 2. Total liabilities [If any portion of the closure or postclosure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] $  
* 3. Tangible net worth $  
* 4. Net worth $  
* 5. Current assets $  
* 6. Current liabilities $  
7. Net working capital [line 5 minus line 6] $  
* 8. The sum of net income plus depreciation, depletion, and amortization $  
* 9. Total assets in U.S. (required only if less than 90% of firm’s assets are located in the U.S.) $  

10. Is line 3 at least $10 million? Yes  No  
11. Is line 3 at least 6 times line 1?  
12. Is line 7 at least 6 times line 1?  
* 13. Are at least 90% of firm’s assets located in the U.S.?  
   If not, complete line 14.  
14. Is line 9 at least 6 times line 1?  
15. Is line 2 divided by line 4 less than 2.0?  
16. Is line 8 divided by line 2 greater than 0.1?  
17. Is line 5 divided by line 6 greater than 1.5?  

**ALTERNATIVE II**

1. Sum of current closure and postclosure cost estimates [total of all cost estimates shown in the four paragraphs above] $  
2. Current bond rating of most recent issuance of this firm and name of rating service  
3. Date of issuance of bond  
4. Date of maturity of bond  
* 5. Tangible net worth [if any portion of the closure and postclosure cost estimates is included in “total liabilities” on your firm’s financial statements, you may add the amount of that portion to this line] $  
* 6. Total assets in U.S. (required only if less than 90% of firm’s assets are located in the U.S.) $  

7. Is line 5 at least $10 million? Yes  No  
8. Is line 5 at least 6 times line 1?  
* 9. Are at least 90% of firm’s assets located in the U.S.?  
   If not, complete line 10.  
10. Is line 6 at least 6 times line 1?
Financial Test for Liability Coverage
Letter from Chief Financial Officer
Chief
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

Dear Sir: I am the chief financial officer of [firm’s name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert “and closure and/or postclosure care” if applicable] as specified in Subpart H of Parts 264 and 265.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write “None” in the space indicated. For each facility, include its EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert “sudden” or “nonsudden” or “both sudden and nonsudden”] accidental occurrences is being demonstrated through the financial test specified in Subpart H of Parts 264 and 265:

The firm identified above guarantees, through the guarantee specified in Subpart H of Parts 264 and 265, liability coverage for [insert “sudden” or “nonsudden” or “both sudden and nonsudden”] accidental occurrences at the following facilities owned or operated by the following:

The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ________; or (3) engaged in the following substantial business relationship with the owner or operator ________, and receiving the following value in consideration of this guarantee ________.] [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and postclosure care, fill in the following four paragraphs regarding facilities and associated closure and postclosure cost estimates. If there are no facilities that belong in a particular paragraph, write “None” in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or postclosure cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or postclosure care or liability coverage is demonstrated through the financial test specified in Subpart H of Parts 264 and 265. The current closure and/or postclosure cost estimate covered by the test are shown for each facility: ________
2. The firm identified above guarantees, through the guarantee specified in Subpart H of Parts 264 and 265, the closure and postclosure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or postclosure care so guaranteed are shown for each facility: __________.

3. In states outside of South Carolina, where the United States Environmental Protection Agency or some designated authority is not administering the financial responsibility requirements of subpart H of parts 264 and 265, this firm is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in R.61–79 Subpart H Parts 264 and 265. The current closure or postclosure estimates covered by such a test or guarantee are shown for each facility: __________. (amended 6/89)

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated to the Department through the financial test or any other financial assurance mechanisms specified in Subpart H of Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility: __________.

   This firm [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

   The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm’s independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

   [Fill in part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of Section 264.147 or Section 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of Section 264.147 or Section 265.147 are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated. $__________.
2. Current assets. $__________.
3. Current liabilities. $__________.
4. Net working capital (line 2 minus line 3). $__________.
5. Tangible net worth. $__________.
6. If less than 90% or assets are located in the U.S., given total U.S. assets. $__________.
   Yes No
7. Is line 5 at least $10 million?
8. Is line 4 at least 6 times line 1?
9. Is line 5 at least 6 times line 1?
10. Are at least 90% of assets located in the U.S.? If not, complete line 11.
11. Is line 6 at least 6 times line 1?

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated. $__________.
2. Current bond rating of most recent issuance and name of rating service.
3. Date of issuance of bond.
4. Date of maturity of bond.
5. Tangible net worth. $
6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.). $

Yes  No

7. Is line 5 at least $10 million?
8. Is line 5 at least 6 times line 1?
9. Are at least 90% of assets located in the U.S.? If not, complete line 10.
10. Is line 6 at least 6 times line 1?

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or postclosure care.]

Part B. Closure or Postclosure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of Section 264.143 or Section 264.145 and (f)(1)(i) of Section 264.147 are used or if the criteria of paragraphs (e)(1)(i) of Section 265.143 or Section 265.145 and (f)(1)(i) of Section 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of Section 264.143 or Section 264.145 and (f)(1)(ii) of Section 264.147 are used or if the criteria of paragraphs (e)(1)(ii) of Section 265.143 or Section 265.145 and (f)(1)(ii) of Section 265.147 are used.]

Alternative I

1. Sum of current closure and postclosure cost estimates (total of all cost estimates listed above). $
2. Amount of annual aggregate liability coverage to be demonstrated. $
3. Sum of lines 1 and 2. $
4. Total liabilities (if any portion of your closure or postclosure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6). $
5. Tangible net worth. $
7. Current assets. $
9. Net working capital (line 7 minus line 8). $
10. The sum of net income plus depreciation, depletion, and amortization. $
11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.). $

Yes  No

12. Is line 5 at least $10 million?
13. Is line 5 at least 6 times line 3?
14. Is line 9 at least 6 times line 3?
15. Are at least 90% of assets located in the U.S.? If not, complete line 16.
16. Is line 11 at least 6 times line 3?
17. Is line 4 divided by line 6 less than 2.0?
18. Is line 10 divided by line 4 greater than 0.1?
19. Is line 7 divided by line 8 greater than 1.5?

Alternative II

1. Sum of current closure and postclosure cost estimates (total of all cost estimates listed above). $
2. Amount of annual aggregate liability coverage to be demonstrated. $


3. Sum of lines 1 and 2. $
4. Current bond rating of most recent issuance and name of rating service.
5. Date of issuance of bond.
6. Date of maturity of bond.
7. Tangible net worth (if any portion of the closure or postclosure cost estimates is included in “total liabilities” on your financial statements you may add that portion to this line). $
8. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.). $
9. Is line 7 at least $10 million?
10. Is line 7 at least 6 times line 3?
11. Are at least 90% of assets located in the U.S.? If not, complete line 12.
12. Is line 8 at least 6 times line 3?

I hereby certify that the wording of this letter is identical to the wording specified in 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

264.151  APPENDIX H (12/93; 5/96)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

H—(1): Corporate Guarantee

Corporate Guarantee for Closure or Postclosure Care

Guarantor made this ________ (date) by [name of guaranteeing entity], a business corporation organized under the laws of the State of South Carolina, herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: “our subsidiary”; “a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary”; or “an entity with which guarantor has a substantial business relationship, as defined in R.61–79 [either 264.141(h) or 265.141(h) ]” to the Department

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in R.61–79,264 Section 264.143(f), 264.145(f), 265.143(e), and 265.145(e).
2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, postclosure care, or both.]
3. “Closure plans” and “postclosure plans” as used below refer to the plans maintained as required by Subpart G of R.61–79,264 and R.61–79,265 for the closure and postclosure care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees to the Department that in the event that [owner or operator] fails to perform [insert “closure,” “postclosure care” or “closure and
postclosure care’’ of the above facility(ies) in accordance with the closure or postclosure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Subpart H of R.61–79.264 and R.61–79.265, as applicable, in the name of [owner or operator] in the amount of the current closure or postclosure cost estimates as specified in Subpart H of R.61–79.264 and R.61–79.265.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Department and to EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in Subpart H of R.61–79.264 and R.61–79.265, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding. (amended 6/89)

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or postclosure care, he shall establish alternate financial assurance as specified in Subpart H of R. 61–79.264 or R. 61–79.265, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or postclosure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or postclosure, or any other modification or alteration of an obligation of the owner or operator pursuant to R. 61–79.264 or R. 61–79.265.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of Subpart H of R. 61–79.264 and R. 61–79.265 for the above listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Subpart H of R. 61–79.264 or R. 61–79.265, as applicable, and obtain written approval of such assurance from the Department within 90 days after a notice of cancellation by the guarantor is received by the Department from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or postclosure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in R. 61–79.264.151(h) as such regulations were constituted on the date first above written.

Effective date: [date]

[Name of guarantor] [Authorized signature for guarantor]
[Name of person signing] [Title of person signing]
[Signature of witness or notary]

H—(2) Guarantee for Liability Coverage—(revised 12/93)

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of South Carolina, herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: “our subsidiary;” “a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;” or “an entity with which guarantor has a substantial business
relationship, as defined in R. 61–79 [either 264.141(h) or 265.141(h)]”, to any and all third parties
who have sustained or may sustain bodily injury or property damage caused by [sudden and/or
nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting
requirements for guarantors as specified in R.61–79.264.147(g) and R.61–79.265.147(g).

2. [Owner or operator] owns or operates the following hazardous waste management
facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and
address; and if guarantor is incorporated outside the United States list the name and address of the
guarantor’s registered agent in each State]. This corporate guarantee satisfies RCRA third-party
liability requirements for [insert “sudden” or “nonsudden” or “both sudden and nonsudden”]
accidental occurrences in above-named owner or operator facilities for coverage in the amount of
[insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all
third parties who have sustained or may sustain bodily injury or property damage caused by [sudden
and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this
guarantee that in the event that [owner or operator] fails to satisfy a judgement or award based on a
determination of liability for bodily injury or property damage to third parties caused by [sudden
and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or
fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such
injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up
to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay
damages by reason of the assumption of liability in a contract or agreement. This exclusion does not
apply to liability for damages that [insert owner or operator] would be obligated to pay in the
absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers compensation, disability benefits,
or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment
by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising
from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity;
and

(B) To any obligation to share damages with or repay another person who must pay damages
because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or
entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the
property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors
or subcontractors working directly or indirectly on behalf of [insert owner or operator] are
performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the
guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail,
notice to the Department and to [owner or operator] that he intends to provide alternate liability coverage as specified in R.61–79.264.147 and 265.147 as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S.Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in R.61–79.264.147 or 265.147 in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by R.61–79.264.147 and 265.147, provided that such modification shall become effective only if the Department does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of R.61–79.264.147 and R.61–79.265.147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approve alternate liability coverage complying with R.61–79.264.147 and/or R.61–79.265.147.

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal’s] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ]

[Signatures]
Principal
(Notary) Date

[Signatures]
Claimant(s)
(Notary) Date
(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal’s facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert primary or excess] coverage.

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61–79.264(h)(2) as such regulations were constituted on the date shown immediately below.

Effective date: __________
[Name of guarantor] __________
[Authorized signature for guarantor] __________
[Name of person signing] __________
[Title of person signing] __________
[Signature of witness or notary] __________

264.151 APPENDIX I (12/93; 5/96)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Liability Requirements; Endorsements

Hazardous Waste Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured’s obligation to demonstrate financial responsibility under 264.147 or 265.147. The coverage applies at [list EPA Identification Number, name, and address for each facility] for ________ [insert “sudden accidental occurrences,” “nonsudden accidental occurrences,” or “sudden and nonsudden accidental occurrences;” if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are ________ [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

   (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

   (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 264.147(f) or 265.147(f).

   (c) Whenever requested by the department, the Insurer agrees to furnish to the department a signed duplicate original of the policy and all endorsements.

   (d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the department.
(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Department.

Attached to and forming part of policy No. ________ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this ________ day of ________, 19__. The effective date of said policy is ________ day of ________, 19__.

I hereby certify that the wording of this endorsement is identical to the wording specified in 264.151(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representatives of Insurer] ________
[Type name] ________
[Title], Authorized Representatives of [name of Insurer] ________
[Address of Representative] ________

264.151  APPENDIX J

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Liability Requirements; Certificate

(1) Hazardous Waste Facility Certificate of Liability Insurance

1. [Name of Insurer], ________ (the “Insurer”), of ________, [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to ________, [name of insured], (the “insured”), of ________, [address of insured] in connection with insured’s obligation to demonstrate financial responsibility under R.61–79.264.147 or 265.147. The coverage applies at ________ [list EPA Identification Number, name, and address for each facility] for ________ [insert “sudden accidental occurrences,” “nonsudden accidental occurrences,” or “sudden and nonsudden accidental occurrences;” if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are ________ [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s liability], exclusive of legal defense costs. The coverage is provided under policy number ________, issued on ________, [date]. The effective date of said policy is ________, [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

   (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

   (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in R.61–79.264.147(f) and 265.147(f).

   (c) Whenever requested by the department, the Insurer agrees to furnish to the department a signed duplicate original of the policy and all endorsements.

   (d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste manage-
ment facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the department.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Department.

I hereby certify that the wording of this instrument is identical to the wording specified in 264.151(j) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer] __________
[Type name] __________
[Title], Authorized Representative of [name of Insurer] __________
[Address of Representative] __________

264.151 APPENDIX K (12/93; 12/94; 5/96)
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Irrevocable Standby Letter of Credit

Chief
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _________ in the favor of [“any and all third-party liability claimants” or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator’s name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_________ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_________, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_________ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $_________, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _________, and [insert the following language if the letter of credit is being used without a standby trust fund:] (1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal’s] hazardous waste treatment, storage, or disposal facility should be paid in the amount of _________. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.
(b) Any obligation of [insert principal] under a workers’ compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]
Grantor _________

[Signatures]
Claimant(s) _________

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor’s facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Department, and [owner’s or operator’s name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: “In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert “primary” or “excess” coverage].”]

We certify that the wording of this letter of credit is identical to the wording specified in 264.151(k) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]
264.151 APPENDIX L

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Payment Bond
Surety Bond No. [Insert number] _________

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies) ], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility guaranteed by this bond:

Sudden accidental occurrences     Nonsudden accidental occurrences

Penal Sum Per Occurrence. [insert amount] [insert amount]
Annual Aggregate                [insert amount] [insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:
(2) Rules and regulations of the Department of Health and Environmental Control, particularly R.61–79.264.147 or “265.147” [if applicable].

Conditions:
(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:
   (a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.
   (b) Any obligation of [insert principal] under a workers’ compensation, disability benefits, or unemployment compensation law or similar law.
   (c) Bodily injury to:
      (1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or
      (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:
         (A) Whether [insert principal] may be liable as an employer or in any other capacity; and
         (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];
(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;
(3) Property loaned to [insert principal];
(4) Personal property in the care, custody or control of [insert principal];
(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal’s] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature]
Principal __________
[Notary] Date _________
[Signature(s)] _________
Claimant(s) _________
[Notary] Date _________

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal’s facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert “primary” or “excess”] coverage.

(6) The liability of the Surety(ies) 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. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Department forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Department, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Department.
(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 264.151(1), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s) ]
[Name(s) ]
[Title(s) ]
[Corporate Seal]

CORPORATE SURETY(IES)

[Name and address] 
State of incorporation:  
Liability Limit:  
[Signature(s) ]
[Name(s) and title(s) ]
[Corporate seal]  
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]  
Bond premium:  

264.151  APPENDIX M—(1) (12/93;  5/96)  
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
BUREAU OF LAND AND WASTE MANAGEMENT  

Trust Agreement  

Trust Agreement, the Agreement, entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert corporation, partnership, association, or proprietorship], the Grantor and [name of corporate trustee], [insert, incorporated in the State of __________ or a national bank], the trustee.

Whereas, the Department, an agency of the State of South Carolina Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the Fund, for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of [up to $1 million] per occurrence and [up to $2 million] annual aggregate for sudden accidental occurrences and [up to $3 million] per occurrence and [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert primary or excess] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.
Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantors] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantors facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2. (a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:
(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public
or private sale. No person dealing with the Trustee shall be bound to see to the application of the
purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and convey-
ance and any and all other instruments that may be necessary or appropriate to carry out the powers
herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and
to hold any security in bearer form or in book entry, or to combine certificates representing such
securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to
deposit or arrange for the deposit of such securities in a qualified central depository even though,
when so deposited, such securities may be merged and held in bulk in the name of the nominee of
such depository with other securities deposited therein by another person, or to deposit or arrange
for the deposit of any securities issued by the United States Government, or any agency or
instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall
at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates
issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated
with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in
respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund.
All other expenses incurred by the Trustee in connection with the administration of this Trust,
including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent
not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall
be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversa-
ry date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional
Administrator a statement confirming the value of the Trust. Any securities in the Fund shall be
valued at market value as of no more than 60 days prior to the anniversary date of establishment of the
Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement
has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by
the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect
to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may
be counsel to the Grantor with respect to any question arising as to the construction of this Agreement
or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by
law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for
its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee,
but such resignation or replacement shall not be effective until the Grantor has appointed a successor
trustee and this successor accepts the appointment. The successor trustee shall have the same powers
and duties as those conferred upon the Trustee hereunder. Upon the successor trustees acceptance of
the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and
properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the
event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for
the appointment of a successor trustee or for instructions. The successor trustee shall specify the date
on which it assumes administration of the trust in a writing sent to the Grantor, the Department, and
the present Trustee by certified mail 10 days before such change becomes effective. Any expenses
incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as
provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the
Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such
other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully
protected in acting without inquiry in accordance with the Grantors' orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by a representative of the Department, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Department.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Department will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of South Carolina.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 264.151(m) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]

[Signature of Trustee]
Attest:

[Title]

[Seal]

264.151 APPENDIX M—(2)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Certification of Acknowledgement

State of  

County of  

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

264.151 APPENDIX N—(1)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Standby Trust Agreement

Trust Agreement, the “Agreement,” entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert “corporation,” “partnership,” “association,” or “proprietorship”], the “Grantor,” and [name of corporate trustee], [insert, “incorporated in the State of  ,” or “a national bank”], the “trustee.”

Whereas the South Carolina Department of Health and Environmental Control, “the Department”, an agency of the State of South Carolina Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the “Fund,” for the benefit of any and all third parties injured or damaged by [sudden
and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this
guarantee, in the amounts of __________ [up to $1 million] per occurrence and __________ [up to $2 million] annual aggregate for sudden accidental occurrences and __________ [up to $3 million] per occurrence and __________ [up to $6 million] annual aggregate for nonsudden occurrences, except
that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by
reason of the assumption of liability in a contract or agreement. This exclusion does not apply to
liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or
agreement.

(b) Any obligation of [insert Grantor] under a workers compensation, disability benefits, or
unemployment compensation law or any similar law.

(c) Bodily injury to:
   (1) An employee or [insert Grantor] arising from, and in the course of, employment by [insert
Grantor]; or
   (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising
from, and in the course of employment by [insert Grantor].

This exclusion applies:
   (A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and
   (B) To any obligation to share damages with or repay another person who must pay damages
because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or
entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:
   (1) Any property owned, rented, or occupied by [insert Grantor];
   (2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage
arises out of any part of those premises;
   (3) Property loaned to [insert Grantor];
   (4) Personal property in the care, custody or control of [insert Grantor];
   (5) That particular part of real property on which [insert Grantor] or any contractors or
subcontractors working directly or indirectly on behalf of [insert Grantor] are performing
operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be
considered [insert “primary” or “excess”] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the
Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as
the Fund, together with all earnings and profits thereon, less any payments or distributions made by
the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as
hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility
for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to
discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party
liability claim by drawing on the letter of credit described in Schedule B and by making payments from
the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be
paid. The certification must be worded as follows, except that instructions in brackets are to be
replaced with the relevant information and the brackets deleted:

Certification of Valid Claim
The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantors] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ]

[Signature] 
Grantor 

[Signatures] 
Claimant(s) 

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantors facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of 264.151(k) and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to
deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustees acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantors orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Department will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.
Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonable incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of South Carolina.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 264.151(n) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]

[Signature of Trustee]
Attest:
[Title]
[Seal]

264.151 APPENDIX N—(2) (12/93; 5/96)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Certification of Acknowledgment

State of __________
County of __________

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 12, Issue No. 10, eff October 28, 1988; State Register Volume 12, Issue No. 11, eff November 25, 1988; State Register Volume 14, Issue No. 11, eff November 25, 1990; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1995; State Register Volume 17, Issue No. 12, eff December 24, 1995; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 28, Issue No. 6, eff June 25, 2004.
SUBPART I
Use and Management of Containers

264.170. Applicability.

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as 264.1 provides otherwise.

[Comment: Under 261.7 and 261.33(c), if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the container is empty as defined in 261.7. In that event, management of the container is exempt from the requirements of this subpart.]


264.171. Condition of containers.

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


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

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

(c) Each container containing hazardous waste shall be permanently and legibly marked with the following or equivalent statement: “Hazardous Waste - federal law prohibits improper disposal.”

(d) Each container shall be appropriately labeled with EPA hazardous waste number.

[Comment: Reuse of containers in transportation is governed by U.S. Department of Transportation regulations including those set forth in 49 CFR 173.28.]

HISTORY: Amended by State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 5, Part 2, eff May 28, 1993; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

264.174. At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track and/or South Carolina Environmental Excellence Program member facilities, that may conduct inspections at least once each month, upon approval by the Department. To apply for reduced inspection frequencies, the Performance Track and/or South Carolina Environmental Excellence Program member facility must follow the procedures identified in 264.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

[Comment: See 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.]

HISTORY: Amended by State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 36, Issue No. 3, eff March 23, 2012.

264.175. Containment.

(a) Container storage areas must have a containment system that is designed and operated in accordance with paragraph (b) of this section, except as otherwise provided by paragraph (c) of this section.

(b) A containment system must be designed and operated as follows: (amended 11/90)

(1) A base must underlay the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;
(2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

(4) Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in paragraph (b)(3) of this section to contain any run-on which might enter the system; and,

(5) Spilled or leaked waste and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

[Comment: If the collected material is a hazardous waste under 261, it must be managed as a hazardous waste in accordance with all applicable requirements of parts 262 through 266. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of section 402 of the Clean Water Act, as amended.] (revised 12/92)

(c) Storage areas that store containers holding only wastes that do not contain free liquids need not have a containment system defined by paragraph (b) of this section, except as provided by paragraph (d) of this Section or provided that:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or,

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) Storage areas that store containers holding the wastes listed below that do not contain free liquids must have a containment system defined by paragraph (b) of this section:

(1) F020, F021, F022, F023, F026, and F027.

(2) [Reserved]

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.176. Special requirements for ignitable or reactive waste.

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

[Comment: See 264.17(a) for additional requirements.]


264.177. Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials (see Appendix V for example), must not be placed in the same container, unless Subpart B, Section 264.17(b) above is complied with.

(b) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material.

[Comment: As required by 264.13, the waste analysis plan must include analyses needed to comply with 264.177. Also, 264.17(c) requires wastes analyses, trial tests or other documentation to assure compliance with 264.17(b). As required by 264.73, the owner or operator must place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.]

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

[Comment: The purpose of this section is to prevent fires, explosions, gaseous emission, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the mixing of incompatible wastes or materials if containers break or leak.]

264.178. Closure.

At closure, all hazardous waste and hazardous waste residues must be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

[Comment: At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with 261.3(d) of this chapter that the solid waste removed from the containment system is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of parts 262 through 266 of this chapter].


264.179. Air emission standards.

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


SUBPART J
Tank Systems

264.190. Applicability.

The requirements of this subpart apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in paragraphs (a), (b), and (c) of this section or in 264.1 (revised 12/92).

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in 264.193. To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test must be used: EPA Method 9095 (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods” EPA Publication SW-846, as incorporated by reference in R.61-79.260.11. (amended 11/90)

(b) Tank systems including sumps, as defined in R.61-79.260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Section 264.193(a).

(c) Tanks, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in 260.10 and regulated under part 264 subpart W, must meet the requirements of this subpart.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.191. Assessment of existing tank system’s integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of 264.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with R.61–79.270.11(d), that attests to the tank system’s integrity by January 12, 1988.

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

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

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

(3) Existing corrosion protection measures;
(4) Documented age of the tank system, if available (otherwise, an estimate of the age); and
(5) Results of a leak test, internal inspection, or other tank integrity examination such that:
   (i) For non-enterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and
   (ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer in accordance with R.61–79.270.11(d), that addresses cracks, leaks, corrosion, and erosion.

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

   (c) Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

   (d) If, as a result of the assessment conducted in accordance with paragraph (a), a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of Section 264.196.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.192. Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain and submit to the Department at time of submittal of Part B information, a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with R.61–79.270.11(d) attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Department to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

   (1) Design standard(s) according to which tank(s) and/or the ancillary equipment are constructed;
   (2) Hazardous characteristics of the waste(s) to be handled;
   (3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:
      (i) Factors affecting the potential for corrosion, including but not limited to:
         (A) Soil moisture content;
         (B) Soil pH;
         (C) Soil sulfides level;
         (D) Soil resistivity;
         (E) Structure to soil potential;
         (F) Influence of nearby underground metal structures (e.g., piping);
         (G) Existence of stray electric current;
         (H) Existing corrosion-protection measures (e.g., coating, cathodic protection), and
      (ii) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:
(A) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.;
(B) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and
(C) Electrical isolation devices such as insulating joints, flanges, etc. (amended 11/90)

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

(4) For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(5) Design considerations to ensure that

(i) Tank foundations will maintain the load of a full tank;
(ii) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standard of 264.18(a); and
(iii) Tank systems will withstand the effects of frost heave.

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

(1) Weld breaks;
(2) Punctures;
(3) Scraps of protective coatings;
(4) Cracks;
(5) Corrosion;
(6) Other structural damage or inadequate construction/installation. All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

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

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

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

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

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

(g) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of paragraphs (b) through (f) of this section, that attest that the tank system was properly designed and installed and that repairs, pursuant to paragraphs (b) and (d) of this section, were performed. These written statements must also include the certification statement as required in R.61-79.270.11(d).

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 25, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 32, Issue No. 6, eff June 27, 2008.


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

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

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

(b) Secondary containment systems must be:

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

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

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

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

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradient above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the owner or operator can demonstrate to the Department that existing detection technologies or site conditions will not allow detection of a release within 24 hours; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the Department that removal of the released waste or accumulated precipitation cannot be accomplished with 24 hours.

[Note: If the collected material is a hazardous waste under R.61-79.261, it is subject to management as a hazardous waste in accordance with all applicable requirements of R.61-79.262 through R.61-79.266.

If the collected material is discharged through a point source to waters of the State, it is subject to the requirements of SC Pollution Control Act and sections 301, 304, and 402 of the Clean Water Act,
as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the SC Pollution Control Act and the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the SC Pollution Control Act and the reporting requirements of 40 CFR part 302.]

(i) [Removed 12/92]
(ii) [Removed 12/92]
(iii) [Removed 12/92]

(d) Secondary containment for tanks must include one or more of the following devices:

   (1) A liner (external to the tank);
   (2) A vault;
   (3) A double-walled tank; or
   (4) An equivalent device as approved by the Department.

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

   (1) External liner systems must be:

      (i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;
      (ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.
      (iii) Free of cracks or gaps; and
      (iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

   (2) Vault systems must be:

      (i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;
      (ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;
      (iii) Constructed with chemical resistant water stops in place at all joints (if any);
      (iv) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;
      (v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

         (A) Meets the definition of ignitable waste under R.61-79.261.21; or
         (B) Meets the definition of reactive waste under R.61-79.261.21, and may form an ignitable or explosive vapor; and
      (vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

   (3) Double-walled tanks must be:

      (i) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;
      (ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and
      (iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time, if the owner or operator can demonstrate to
the Department and the Department concludes, that the existing detection technology or site conditions would not allow detection of a release within 24 hours.

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

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

1. Above-ground piping (exclusive of flanges joints, valves, and other connections) that are visually inspected for leaks on a daily basis;
2. Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;
3. Sealless or magnetic coupling pumps, and sealless valves that are visually inspected for leaks on a daily basis; and
4. Pressurized above-ground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

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

1. In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the Department will consider:
   i. The nature and quantity of the wastes;
   ii. The proposed alternate design and operation;
   iii. The hydrogeologic setting of the facility, including the thickness of soils present between the tank system and groundwater; and
   iv. All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

2. In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the Department will consider:
   i. The potential adverse effects on groundwater, surface water, and land quality taking into account:
      A. The physical and chemical characteristics of the waste in the tank system, including its potential for migration,
      B. The hydrogeologic characteristics of the facility and surrounding land,
      C. The potential for health risks caused by human exposure to waste constituents,
      D. The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents, and
      E. The persistence and permanence of the potential adverse effects;
   ii. The potential adverse effects of a release on groundwater quality, taking into account:
      A. The quantity and quality of groundwater and the direction of groundwater flow,
      B. The proximity and withdrawal rates of groundwater users,
      C. The current and future uses of groundwater in the area, and
      D. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
(iii) The potential adverse effects of a release on surface water quality, taking into account:

(A) The quantity and quality of groundwater and the direction of groundwater flow,
(B) The patterns of rainfall in the region,
(C) The proximity of the tank system to surface waters,
(D) The current and future uses of surface waters in the area and any water quality standards established for those surface waters, and
(E) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality; and

(iv) The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(A) The patterns of rainfall in the region, and
(B) The current and future uses of the surrounding land.

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

(i) Comply with the requirements of Section 264.196 below except paragraph (d), and
(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(B) Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

(iii) If contaminated soil cannot be removed or decontaminated in accordance with paragraph (g)(3)(ii) of this section, comply with the requirement of Section 264.197(b).

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

(i) Comply with the requirements of Section 264.196(a), (b), (c), and (d); and

(ii) Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator must comply with the requirements of Section 264.197(b); and

(iii) If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of paragraphs (a) through (f) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in Section 264.192 if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

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

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

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

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

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

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

(4) If a variance is granted under this paragraph, the Department will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

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

(1) For non-enterable underground tanks, a leak test that meets the requirements of Section 264.191(b)(5) or other tank integrity method, as approved or required by the Department must be conducted at least annually.

(2) For other than non-enterable underground tanks, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or develop a schedule and procedure for an assessment of the overall condition of the tank system by a qualified Professional Engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

(3) For ancillary equipment, a leak test or other integrity assessment as approved by the Department must be conducted at least annually.

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

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

(5) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in paragraphs (i)(1) through (i)(3) of this section, the owner or operator must comply with the requirements of Section 264.196.

HISTORY: Added by State Register Volume 11, Issue No. 11, eff November 27, 1987; amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.194. General operating requirements.

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

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

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

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

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The owner or operator must comply with the requirements of Section 264.196 below if a leak or spill occurs in the tank system.

264.195. Inspections.

(a) The owner or operator must develop and follow a schedule and procedure for inspecting overfill controls.

(b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

[Note: Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Department within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.]

(c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day:

(1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

(2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility’s operating record. This documentation must include a description of the established workplace practices at the facility.

(e) [Removed by State Register Volume No. 36, Issue No. 3, eff March 23, 2012]

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

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

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

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

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

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


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

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

(a) Cessation of Use; prevent flow or addition of wastes. The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.
(b) Removal of waste from tank system or secondary containment system.
   (1) If the release was from the tank system, the owner/operator must, within 24 hours after
detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest
practicable time, remove as much of the waste as is necessary to prevent further release of
hazardous waste to the environment and to allow inspection and repair of the tank system to be
performed.
   (2) If the material released was to a secondary containment system all released materials must
be removed within 24 hours or in as timely a manner as is possible to prevent harm to human
health and the environment.
(c) Containment of visible releases to the environment. The owner/operator must immediately
conduct a visual inspection of the release and, based upon that inspection:
   (1) Prevent further migration of the leak or spill to soils or surface water; and
   (2) Remove and properly dispose of, any visible contamination of the soil or surface water.
(d) Notifications, reports.
   (1) Any release to the environment, except as provided in paragraph (d)(2) of this section, must
be reported to the Department within 24 hours of its detection. If the release has been reported
pursuant to 40 CFR 302, that report will satisfy this requirement.
   (2) A leak or spill of hazardous waste that is exempted from the requirements of this paragraph
if it is:
      (i) Less than or equal to a quantity of one (1) pound and
      (ii) Immediately contained and cleaned-up.
   (3) Within 30 days of detection of a release to the environment, a report containing the
following information must be submitted to the Department:
      (i) Likely route of migration of the release;
      (ii) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);
      (iii) Results of any monitoring or sampling conducted in connection with the release (if
available). If sampling or monitoring data relating to the release are not available within 30 days,
these data must be submitted to the Department as soon as they become available.
      (iv) Proximity to downgradient drinking water, surface water, and populated areas; and
      (v) Description of response actions taken or planned.
(e) Provision of secondary containment, repair, or closure.
   (1) Unless the owner/operator satisfies the requirements of paragraphs (e)(2) through (4) of this
section, the tank system must be closed in accordance with Section 264.197.
   (2) If the cause of the release was a spill that has not damaged the integrity of the system, the
owner/operator may return the system to service as soon as the released waste is removed and
repairs, if necessary, are made.
   (3) If the cause of the release was a leak from the primary tank system into the secondary
containment system, the system must be repaired prior to returning the tank system to service.
   (4) If the source of the release was a leak to the environment from a component of a tank
system without secondary containment, the owner/operator must provide the component of the
system from which the leak occurred with secondary containment that satisfies the requirements of
Section 264.193 before it can be returned to service, unless the source of the leak is an above-
ground portion of a tank system that can be inspected visually. If the source is an above-ground
component that can be inspected visually, the component must be repaired and may be returned
to service without secondary containment as long as the requirements of paragraph (i) of this
section are satisfied. If a component is replaced to comply with the requirements of this
subparagraph, that component must satisfy the requirements for new tank systems or components
in Sections 264.192 and 264.193. Additionally, if a leak has occurred in any portion of a tank
system component that is not readily accessible for visual inspection (e.g., the bottom of an
inground or onground tank), the entire component must be provided with secondary containment
in accordance with Section 264.193 prior to being returned to use.

(a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless R.61-79.261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in Subparts G and H of this Regulation.

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (a) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (Subpart N Section 264.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in Subparts G and H of this Regulation.

(c) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of Section 264.193(b) through (f) and has not been granted a variance from the secondary containment requirements in accordance with Section 264.193(g), then:

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

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

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

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

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

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.198. Special requirements for ignitable or reactive wastes.

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

(1) The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:
(i) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under R.61-79.261.21 or 261.23, and
(ii) Section 264.17(b) is complied with; or
(2) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or
(3) The tank system is used solely for emergencies.

(b) The owner or operator of a facility where ignitable or reactive waste is stored or treated in a tank must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association’s “Flammable and Combustible Liquids Code.” (1977 or 1981—incorporated by reference, see 260.11).

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 25, 1990.

264.199. Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank system, unless 264.17(b) is complied with.

(b) Hazardous waste must not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless 264.17(b) is complied with.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 25, 1990.

264.200. Air emission standards.

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


SUBPART K
Surface Impoundments

264.220. Applicability.

The regulations in this subpart apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste except as Subpart A Section 264.1 provides otherwise.

264.221. Design and operating requirements.

(a) Any surface impoundment that is not covered by paragraph (c) of this section or R.61-79.265.221 must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with Section 264.228(a)(1). For impoundments that will be closed in accordance with Section 264.228(a)(2), the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and,

(3) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.
The owner or operator will be exempted from the requirements of paragraph (a) of this section if the Department finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see Subpart F Section 264.93) into the groundwater or surface water at any future time. In making such demonstration, the owner or operator shall consider:

(1) The nature and quantity of the wastes;
(2) The proposed alternate design and operation;
(3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and,
(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992 and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system between such liners. “Construction commences” is as defined in 260.10 of this chapter under “existing facility”.

(1)(i) The liner system must include:

(A) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec.

(ii) The liners must comply with paragraphs (a) (1), (2), and (3) of this section.

(2) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of $1 \times 10^{-4}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-4}$ m$^2$/sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump(s). The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.
(3) The owner or operator shall collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.

(4) The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

d) The Department may approve alternative design or operating practices to those specified in paragraph (c) of this section if the owner or operator demonstrates to the Department that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal system specified in paragraph (c) of this section; and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

e) The double liner requirement set forth in paragraph (c) of this section may be waived by the Department for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the TCLP toxicity characteristics in R.61-79.261.24; and

(2)(i) (A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph, the term “liner” means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of paragraph (c) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action;

(B) The monofill is located more than one-quarter mile from an “underground source of drinking water”, and

(C) The monofill is in permits under R.61-79 S.C. 44-56-60 or RCRA section 3005(c), or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

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

(1) The existing unit was constructed in compliance with the design standards of sections 3004 (o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

g) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; runon; malfunctions of level controllers, alarms, and other equipment; and human error.

(h) A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes an outside protective cover to minimize erosion by wind and water. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(i) The owner or operator shall specify in the permit application all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.
(j) A surface impoundment shall be designed and constructed such that the bottom of any liner system or natural in-place barrier is at least five (5) feet above the seasonal high water table unless it can be demonstrated to the Department that adequate protection of the groundwater can be maintained at a lesser distance.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1994.

264.222. Action leakage rate.

(a) The Department shall approve an action leakage rate for surface impoundment units subject to 264.221 (c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under 264.226(d) to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and if the unit is closed in accordance with section 264.228(b), monthly during the post-closure care period when monthly monitoring is required under section 264.226(d).

HISTORY: Added by State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.223. Response actions.

(a) The owner or operator of surface impoundment units subject to section 264.221 (c) or (d) must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

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

(1) Notify the Department in writing of the exceedance within 7 days of the determination;

(2) Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in paragraphs (b) (3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b) (3), (4), and (5) of this section, the owner or operator must:

(1)(i) Assess the source of liquids and amounts of liquids by source,
(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

HISTORY: Added by State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.226. Monitoring and inspection.

(a) During construction and installation, liners [except in the case of existing portions of surface impoundments exempt from Section 264.221(a)] and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

1. Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and,

2. Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a surface impoundment is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

1. Deterioration, malfunctions, or improper operation of overtopping control systems;

2. Sudden drops in the level of the impoundment’s contents; and

3. Severe erosion or other signs of deterioration in dikes or other containment devices.

(c) Prior to the issuance of a permit, and after any extended period of time (at least six months) during which the impoundment was not in service, the owner or operator must obtain a certification from a registered engineer that the impoundment’s dike, including that portion of any dike which provides freeboard, has structural integrity. The certification must establish, in particular, that the dike:

1. Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the impoundment; and

2. Will not fail due to scouring or piping, without dependence on any liner system included in the surface impoundment construction.

(d)(1) An owner or operator required to have a leak detection system under 264.221 (c) or (d) must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

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

(3) “Pump operating level” is a liquid level proposed by the owner or operator and approved by the Department based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.227. Emergency repairs; contingency plans.

(a) A surface impoundment must be removed from service in accordance with paragraph (b) of this section when:
(1) The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or
(2) The dike leaks.

(b) When a surface impoundment must be removed from service as required by paragraph (a) of this section, the owner or operator must:
(1) Immediately shut off the flow or stop the addition of wastes into the impoundment;
(2) Immediately contain any surface leakage which has occurred or is occurring;
(3) Immediately stop the leak;
(4) Take any other necessary steps to stop or prevent catastrophic failure;
(5) If a leak cannot be stopped by any other means, empty the impoundment; and,
(6) Notify the Department of the problem in writing within seven days after detecting the problem.

(c) As part of the contingency plan required in R.61-79.264 Subpart D, the owner or operator must specify a procedure for complying with the requirements of paragraph (b) of this section.

(d) No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:
(1) If the impoundment was removed from service as the result of actual or imminent dike failure, the dike's structural integrity must be recertified in accordance with Section 264.226(c).
(2) If the impoundment was removed from service as the result of a sudden drop in the liquid level, then:
   (i) For any existing portion of the impoundment, a liner must be installed in compliance with 264.221(a); and
   (ii) For any other portion of the impoundment, the repaired liner system must be certified by a registered engineer as meeting the design specifications specified in the permit application.

(e) A surface impoundment that has been removed from service in accordance with the requirements of this section and that is not being repaired must be closed in accordance with the provisions of Section 264.228.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.228. Closure and post-closure care.

(a) At closure, the owner or operator must:
(1) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless R.61-79.261.3(d) applies; or,
(2)(i) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;
   (ii) Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and,
   (iii) Cover the surface impoundment with a final cover designed and constructed to: (amended 6/89)
       (A) Provide long-term minimization of the migration of liquids through the closed impoundment;
       (B) Function with minimum maintenance;
       (C) Promote drainage and minimize erosion or abrasion of the final cover;
       (D) Accommodate settling and subsidence so that the cover's integrity is maintained; and
       (E) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.
(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with all postclosure requirements contained in 264.117 through .120 including maintenance and monitoring throughout the postclosure care period (specified in the permit under 264.117). The owner or operator must:

1. Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;
2. Maintain and monitor the leak detection system in accordance with 264.221(c)(2)(iv) and (3) and 264.226(d), and comply with all other applicable leak detection system requirements of this part;
3. Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of subpart F of this part; and
4. Prevent runon and runoff from eroding or otherwise damaging the final cover.

(c)(1) If an owner or operator plans to close a surface impoundment in accordance with paragraph (a)(1) of this section, and the impoundment does not comply with the liner requirements of Section 264.221(a) and is not exempt from them in accordance with Section 264.221(b), then:

(i) The closure plan for the impoundment under Subpart G Section 264.112 must include both a plan for complying with paragraph (a)(1) of this section, and a contingent plan for complying with paragraph (a)(2) of this section in case not all contaminated subsoils can be practically removed at closure; and,
(ii) The owner or operator must prepare a contingent post-closure plan under Subpart G Section 264.118 for complying with paragraph (b) of this section in case not all contaminated subsoils can be practically removed at closure.

(2) The cost estimates calculated under Subpart H Sections 264.142 and 264.144 for closure and post-closure care of an impoundment subject to this paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a)(1) of this section.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 12, Issue No. 10, eff October 28, 1988; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.229. Special requirements for ignitable or reactive waste.
Ignitable or reactive waste must not be placed in a surface impoundment.

264.230. Special requirements for incompatible wastes.
Incompatible wastes, or incompatible wastes and materials, (See Appendix V of this regulation for examples) must not be placed in the same surface impoundment, unless Section 264.17(b) is complied with.
HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.231. Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.
(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 must not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this regulation. The factors to be considered are:

1. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
2. The attenuative properties of underlying and surrounding soils or other materials;
3. The mobilizing properties of other materials co-disposed with these wastes; and
4. The effectiveness of additional treatment, design, or monitoring techniques.
(b) The Department may determine that additional design, operating and monitoring requirements are necessary for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026,
and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

HISTORY: Added by State Register Volume 10, Issue No. 1, eff January 24, 1986; amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990.

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


SUBPART L
Waste Piles

264.250. Applicability.
(a) The regulations in this subpart apply to owners and operators of facilities that store or treat hazardous waste in piles, except as Subpart A Section 264.1 above provides otherwise.
(b) The regulations in this subpart do not apply to owners or operators of waste piles that are closed with wastes left in place. Such waste piles are subject to regulation under Subpart N of this regulation (Landfills).
(c) The owner or operator of any waste pile that is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated is not subject to regulation under Section 264.251 below or under Subpart F of this regulation (Landfills), provided that:
   (1) Liquids or materials containing free liquids are not placed in the pile;
   (2) The pile is protected from surface water run-on by the structure or in some other manner;
   (3) The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting; and
   (4) The pile will not generate leachate through decomposition or other reactions.

264.251. Design and operating requirements.
(a) A waste pile (except for an existing portion of a waste pile) must have:
   (1) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility. The liner must be:
      (i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;
      (ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and
      (iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and
   (2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. This system shall be designed and operated to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must be:
      (i) Constructed of materials that are:
         (A) Chemically resistant to the waste managed in the pile and the leachate expected to be generated; and,
(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and, (ii) Designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) The owner or operator will be exempted from the requirements of paragraph (a) of this section if the Department finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see Subpart F Section 264.93) into the groundwater or surface water at any future time. In making such demonstration, the owner or operator shall consider:

(1) The nature and quantity of the wastes;
(2) The proposed alternate design and operation;
(3) The hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and,
(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

c) The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.

(1)(i) The liner system must include:
   (A) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and
   (B) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec.

(ii) The liners must comply with paragraphs (a)(1)(i), (ii), and (iii) of this section.

(2) The leachate collection and removal system immediately above the top liner must be designed, constructed, operated, and maintained to collect and remove leachate from the waste pile during the active life and post-closure care period. The Department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must comply with paragraphs (c)(3)(iii) and (iv) of this section.

(3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;
(ii) Constructed of granular drainage materials with a hydraulic conductivity of $1 \times 10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-5}$ m²/sec or more;
(iii) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the waste pile;
(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump(s). The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Department may approve alternative design or operating practices to those specified in paragraph (c) of this section if the owner or operator demonstrates to the Department that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in paragraph (c) of this section; and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) Paragraph (c) of this section does not apply to monofills that are granted a waiver by the Department in accordance with 264.221(e).

(f) The owner or operator of any replacement waste pile unit is exempt from paragraph (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator must design, construct, operate, and maintain a runon control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm.

(h) The owner or operator must design, construct, operate, and maintain a runoff management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(i) Collection and holding facilities (e.g., tanks or basins) associated with runon and runoff control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system. (revised 12/92)

(j) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the pile to control wind dispersal.

(k) The owner or operator shall specify in the permit application all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.252. Action leakage rate.

(a) The Department shall approve an action leakage rate for waste pile units subject to 264.251(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of
the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly flow rate from the monitoring data obtained under section 264.254(c) to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period.

HISTORY: Added by State Register Volume 17, Issue No. 12, eff December 24, 1993.


(a) The owner or operator of waste pile units subject to 264.251(c) or (d) must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

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

1. Notify the Department in writing of the exceedance within 7 days of the determination;
2. Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;
3. Determine to the extent practicable the location, size, and cause of any leak;
4. Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;
5. Determine any other short-term and long-term actions to be taken to mitigate or stop any leaks; and
6. Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in paragraphs (b) (3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b) (3), (4), and (5) of this section, the owner or operator must:

1. Assess the source of liquids and amounts of liquids by source,
2. Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and
3. Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

1. Document why such assessments are not needed.

HISTORY: Added by State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.254. Monitoring and inspection.

(a) During construction or installation, liners [except in the case of existing portions of piles exempt from Section 264.251(a)] and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

1. Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and,
2. Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.
(b) While a waste pile is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

1. Deterioration, malfunctions, or improper operation of runon and runoff control systems;
2. Proper functioning of wind dispersal control systems, where present; and
3. The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(c) An owner or operator required to have a leak detection system under section 264.251(c) must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.256. Special requirements for ignitable or reactive wastes.

Ignitable or reactive waste must not be placed in a waste pile.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.257. Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (See Appendix V of this regulation for examples) must not be placed in the same pile, unless Subpart B Section 264.17(b) is complied with.

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

(c) Hazardous waste must not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with Section 264.17(b).

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.


(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless R.61-79.261.3(d) applies.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (Section 264.310).

(c)(1) The owner or operator of a waste pile that does not comply with the liner requirements of Section 264.251(a)(1) and is not exempt from them in accordance with Sections 264.250(c) or 264.251(b), must:

(i) Include in the closure plan for the pile under Section 264.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and,
(ii) Prepare a contingent post-closure plan under Section 264.118 for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under Sections 264.142 and 264.144 for closure and post-closure care of a pile subject to this paragraph must include the cost of complying with the contingent
closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.259. Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 must not be placed in waste piles that are not enclosed [as defined in Section 264.250(c)] unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Regulation. The factors to be considered are:

1. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
2. The attenuative properties of underlying and surrounding soils or other materials;
3. The mobilizing properties of other materials co-disposed with these wastes; and
4. The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Department may determine that additional design, operating, and monitoring requirements are necessary for piles managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.


SUBPART M
Land Treatment

264.270. Applicability.

The regulations in this subpart apply to owners and operators of facilities that treat or dispose of hazardous waste in land treatment units, except as Subpart A Section 264.1 above provides otherwise.

264.271. Treatment program.

(a) An owner or operator subject to this subpart must establish a land treatment program that is designed to ensure that hazardous constituents placed in or on the treatment zone are degraded, transformed, or immobilized within the treatment zone. The owner or operator shall specify in the permit application the elements of the treatment program, including:

1. The wastes that are capable of being treated at the unit based on a demonstration under Section 264.272;
2. Design measures and operating practices necessary to maximize the success of degradation, transformation, and immobilization processes in the treatment zone in accordance with Section 264.273(a); and,
3. Unsaturated zone monitoring provisions meeting the requirements of Section 264.278.

(b) The owner or operator shall specify in the permit application the hazardous constituents that must be degraded, transformed, or immobilized under this subpart. Hazardous constituents are constituents identified in Appendix VIII of R.61-79.261 that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(c) The owner or operator will specify in his permit application the vertical and horizontal dimensions of the treatment zone. The treatment zone is the portion of the unsaturated zone below and including the land surface in which the owner or operator intends to maintain the conditions necessary for effective degradation, transformation, or immobilization of hazardous constituents. The maximum depth of the treatment zone must be:

1. No more than 1.5 meters (5 feet) from the initial soil surface; and,
More than 1.5 meters (5 feet) above the seasonal high water table.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.272. Treatment demonstration.

(a) For each waste that will be applied to the treatment zone, the owner or operator must demonstrate, prior to application of the waste, that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone.

(b) In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data, or, in the case of existing units, operating data. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration required under paragraph (a) of this section, he must obtain a treatment or disposal permit under R.61-79.270.63. The owner or operator shall specify in his application for this permit the testing, analytical, design, and operating requirements (including the duration of the tests and analyses, and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and clean-up activities) necessary to meet the requirements in paragraph (c) of this section.

(c) Any field test or laboratory analysis conducted in order to make a demonstration under paragraph (a) of this section must:

(1) Accurately simulate the characteristics and operating conditions for the proposed land treatment unit including:

(i) The characteristics of the waste (including the presence of Appendix VIII of R.61-79.261 constituents);
(ii) The climate in the area;
(iii) The topography of the surrounding area;
(iv) The characteristics of the soil in the treatment zone (including depth); and,
(v) The operating practices to be used at the unit.

(2) Be likely to show that hazardous constituents in the waste to be tested will be completely degraded, transformed, or immobilized in the treatment zone of the proposed land treatment unit; and,

(3) Be conducted in a manner that protected human health and the environment considering:

(i) The characteristics of the waste to be tested;
(ii) The operating and monitoring measures taken during the course of the test;
(iii) The duration of the test;
(iv) The volume of waste used in the test;
(v) In the case of field tests, the potential for migration of hazardous constituents to groundwater or surface water.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.273. Design and operating requirements.

The owner or operator shall specify in the permit application how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with this section.

(a) The owner or operator must design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents in the treatment zone. The owner or operator must design, construct, operate, and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration under Section 264.272. At a minimum, the owner or operator shall specify the following in the permit application:

(1) The rate and method of waste application to the treatment zone;
(2) Measures to control soil pH;
(3) Measures to enhance microbial or chemical reactions (e.g., fertilization, tilling); and,
(4) Measures to control the moisture content of the treatment zone.
(b) The owner or operator must design, construct, operate, and maintain the treatment zone to minimize run-off of hazardous constituents during the active life of the land treatment unit.

(c) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 25-year storm.

(d) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(e) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

(f) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

(g) The owner or operator must inspect the unit weekly and after storms to detect evidence of:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

(2) Improper functioning of wind dispersal control measures.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.276. Food-chain crops.

The Department may allow the growth of food-chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this section. The owner or operator shall specify in his permit application the specific food-chain crops which he intends to grow and necessary documentation of the following:

(a)(1) The owner or operator must demonstrate that there is no substantial risk to human health caused by the growth of such crops in or on the treatment zone by demonstrating, prior to the planting of such crops, that hazardous constituents other than cadmium:

(i) Will not be transferred to the food or feed portions of the crop by plant uptake or direct contact, and will not otherwise be ingested by food-chain animals (e.g., by grazing); or,

(ii) Will not occur in greater concentrations in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region.

(2) The owner or operator must make the demonstration required under this paragraph prior to the planting of crops at the facility for all constituents identified in Appendix VIII of R.61-79.261 of these Regulations that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(3) In making a demonstration under this paragraph, the owner or operator may use field tests, greenhouse studies, available data, or, in the case of existing units, operating data, and must:

(i) Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics (e.g., pH, caution exchange capacity), specific wastes, application rates, application methods, and crops to be grown; and,

(ii) Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures.

(4) If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this paragraph, he must obtain a permit for conducting such activities.

(b) The owner or operator must comply with the following conditions if cadmium is contained in wastes applied to the treatment zone:

(1)(i) The pH of the waste and soil mixture must be 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;
(ii) The annual application of cadmium from waste must not exceed 0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food-chain crops, the annual cadmium application rate must not exceed:

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Annual Cd application rate (kilograms per hectare)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Present to June 30, 1984</td>
<td>2.0</td>
</tr>
<tr>
<td>July 1, 1984 to Dec. 31, 1986</td>
<td>1.25</td>
</tr>
<tr>
<td>Beginning Jan. 1, 1987</td>
<td>0.5</td>
</tr>
</tbody>
</table>

(iii) The cumulative application of cadmium from waste must not exceed 5 kg/ha if the waste and soil mixture has a pH of less than 6.5; and,

(iv) If the waste and soil mixture has a pH of 6.5 or greater or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste must not exceed: 5 kg/ha if soil cation exchange capacity (CEC) is less than 5 meq/100g; 10 kg/ha if soil CEC is 5-15 meq/100g; and 20 kg/ha if soil CEC is greater than 15 meq/100g; or,

(2)(i) Animal feed must be the only food-chain crop produced;

(ii) The pH of the waste and soil mixture must be 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level must be maintained whenever food-chain crops are grown;

(iii) There must be an operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The operating plan must describe the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses; and,

(iv) Future property owners must be notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food-chain crops must not be grown except in compliance with paragraph (b)(2) of this section.

264.278. Unsaturated zone monitoring. 

An owner or operator subject to this subpart must establish an unsaturated zone monitoring program to discharge the following responsibilities:

(a) The owner or operator must monitor the soil and soil-pore liquid to determine whether hazardous constituents migrate out of the treatment zone.

(1) The owner or operator shall monitor for those hazardous constituents specified under Section 264.271(b).

(2) The Department may require monitoring for principal hazardous constituents (PHCs) in lieu of the constituents specified in Section 264.271(b). PHCs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The Department will establish PHCs if it finds, based on waste analyses, treatment demonstrations, or other data, that effective degradation, transformation, or immobilization of the PHCs will assure treatment of at least equivalent levels for the other hazardous constituents in the wastes.

(b) The owner or operator must install an unsaturated zone monitoring system that includes soil monitoring using soil cores and soil-pore liquid monitoring using devices such as lysimeters. The unsaturated zone monitoring system must consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that:

(1) Represent the quality of background soil-pore liquid quality and the chemical make-up of soil that has not been affected by leakage from the treatment zone; and,

(2) Indicate the quality of soil-pore liquid and the chemical make-up of the soil below the treatment zone.
(c) The owner or operator must establish a background value for each hazardous constituent to be monitored under paragraph (a) of this section. The permit will specify the background values for each constituent or specify the procedures to be used to calculate the background values.

(1) Background soil values may be based on a one-time sampling at a background plot having characteristics similar to those of the treatment zone.

(2) Background soil-pore liquid values must be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment zone.

(3) The owner or operator must express all background values in a form necessary for the determination of statistically significant increases under paragraph (f) of this section.

(4) In taking samples used in the determination of all background values, the owner or operator must use an unsaturated zone monitoring system that complies with paragraph (b)(1) of this section.

(d) The owner or operator must conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. The owner or operator shall specify in the permit application the frequency and timing of soil and soil-pore liquid monitoring after considering the frequency, timing, and rate of waste application, and the soil permeability. The owner or operator must express the results of soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under paragraph (f) of this section.

(e) The owner or operator must use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical make-up of the soil below the treatment zone. At a minimum, the owner or operator must implement procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and,

(4) Chain of custody control.

(f) The owner or operator must determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under paragraph (a) of this section below the treatment zone each time he conducts soil monitoring and soil-pore liquid monitoring under paragraph (d) of this section.

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent, as determined under paragraph (d) of this section, to the background value for that constituent according to the statistical procedure specified under this paragraph.

(2) The owner or operator must determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The owner or operator shall specify that time period in the permit application after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of soil and soil-pore liquid samples.

(3) The owner or operator must determine whether there is a statistically significant increase below the treatment zone using a statistical procedure that is approved by the Department and that provides reasonable confidence that migration from the treatment zone will be identified. The owner or operator shall specify in the permit application a statistical procedure that:

(i) Is appropriate for the distribution of the data used to establish background values; and,

(ii) Provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone.

(g) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, he must:

(1) Notify the Department of this finding in writing within seven days. The notification must indicate what constituents have shown statistically significant increases.
(2) Within 90 days, submit to the Department an application for a permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

(3) Discontinue all land treatment in the contaminated area as determined in (f) above until corrective measures can be taken.

(b) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, he may demonstrate that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (g)(2) of this section, he is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (g)(2) of this section unless the demonstration made under this paragraph successfully shows that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Department in writing within seven days of determining a statistically significant increase below the treatment zone that he intends to make a determination under this paragraph;

(2) Within 90 days, submit a report to the Department demonstrating that a source other than the regulated units caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Department an application for a permit modification to make any appropriate changes to the unsaturated zone monitoring program at the facility; and

(4) Continue to monitor in accordance with the unsaturated zone monitoring program established under this section.


264.279. Recordkeeping.
The owner or operator must include hazardous waste application dates and rates in the operating record required under Section 264.73.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.280. Closure and postclosure care.

(a) During the closure period the owner or operator must:

(1) Continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under Section 264.273(a), except to the extent such measures are inconsistent with paragraph (a)(8) of this section.

(2) Continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under Section 264.273(b);

(3) Maintain the run-on control system required under Section 264.273(c);

(4) Maintain the run-off management system required under Section 264.273(d);

(5) Control wind dispersal of hazardous waste if required under Section 264.273(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under Section 264.276;

(7) Continue unsaturated zone monitoring in compliance with Section 264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and,

(8) Establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover must be capable of maintaining growth without extensive maintenance.
(b) For the purpose of complying with 264.115, when closure is completed the owner or operator may submit to the Department certification by an independent, qualified soil scientist, in lieu of a qualified Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the post-closure care period the owner or operator must:

(1) Continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that such measures are consistent with other post-closure care activities;

(2) Maintain a vegetative cover over closed portions of the facility;

(3) Maintain the run-on control system required under Section 264.273(c);

(4) Maintain the run-off management system required under Section 264.273(d);

(5) Control wind dispersal of hazardous waste if required under Section 264.273(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under Section 264.276; and,

(7) Continue unsaturated zone monitoring in compliance with Section 264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

(d) The owner or operator is not subject to regulation under paragraphs (a)(8) and (c) of this section if the Department finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in paragraph (d)(3) of this section. The owner or operator may submit such a demonstration to the Department at any time during the closure or postclosure care periods. For the purposes of this paragraph:

(1) The owner or operator must establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under Section 264.271(b).

(i) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those to the treatment zone.

(ii) The owner or operator must express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under paragraph (d)(3) of this section.

(2) In taking samples used in the determination of background and treatment zone values, the owner or operator must take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively.

(3) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator must use a statistical procedure that:

(i) Is appropriate for the distribution of the data used to establish background values; and,

(ii) Provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(e) The owner or operator is not subject to regulation under Subpart F of this regulation if the Department finds that the owner or operator satisfies paragraph (d) of this section and if unsaturated zone monitoring under Section 264.278 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 32, Issue No. 6, eff June 27, 2008.
264.281. Special requirements for ignitable or reactive waste.  
Ignitable or reactive wastes must not be treated or disposed in land treatment units.

264.282. Special requirements for incompatible wastes.  
The owner or operator must not place incompatible wastes, or incompatible wastes and materials (See Appendix V of this regulation for examples), in or on the same treatment zone, unless Section 264.17(b) is complied with.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.283. Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.  
(a) Hazardous Wastes F020, F021, F022, F023, F026 and F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this regulation. The factors to be considered are:

1. The volume, physical, and chemical characteristics of the wastes including their potential to migrate through soil or to volatilize or escape into the atmosphere;
2. The attenuative properties of underlying and surrounding soils or other materials;
3. The mobilizing properties of other materials co-disposed with these wastes; and
4. The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Department may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.


SUBPART N   
Landfills

264.300. Applicability.  
The regulations in this subpart apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as Subpart A Section 264.1 provides otherwise.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.301. Design and operating requirements.  
(a) Any landfill that is not covered by paragraph (c) of this section or Section 265.301 (a) of this regulation must have a liner system for all portions of the landfill (except for existing portions of such landfill). The liner system must have:

1. A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at anytime during the active life (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner must be:

   i. Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and
(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The Department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(ii) Designed and operated to function without clogging through the scheduled closure of the landfill.

(b) The owner or operator will be exempted from the requirements of paragraph (a) of this section if the Department finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see Section 264.93) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the Department will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners. “Construction commences” is as defined in 260.10 of this chapter under “existing facility”.

(1)(i) The liner system must include:

(A) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec.

(ii) The liners must comply with paragraphs (a)(1) (i), (ii), and (iii) of this section.

(2) The leachate collection and removal system immediately above the top liner must be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post-closure care period. The Department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must comply with paragraphs (c)(3) (iii) and (iv) of this section.

(3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely
to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of $1 \times 10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-5}$ m$^2$/sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the landfill;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump(s). The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) Department may approve alternative design or operating practices to those specified in paragraph (c) of this section if the owner or operator demonstrates to the Department that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal systems specified in paragraph (c) of this section; and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) The double liner requirement set forth in paragraph (c) of this section may be waived by the Department for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristics in R.61-79.261.24 with EPA hazardous waste numbers D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking;

(B) The monofill is located more than one-quarter mile from an “underground source of drinking water” as defined in Department regulation 61-68; and

(C) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with permits under R.61-79.270, S.C. 44-56-60, or RCRA 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement landfill unit is exempt from paragraph (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(1)(A)(i) and (e)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.
(g) The owner or operator must design, construct, operate, and maintain a runon control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(h) The owner or operator must design, construct, operate, and maintain a runoff management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(i) Collection and holding facilities (e.g., tanks or basins) associated with runon and runoff control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system. These surface waters will be considered as hazardous unless upon analysis the material is determined not to be hazardous and may be discharged in accordance with a NPDES permit. (amended 11/90)

(j) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill to control wind dispersal.

(k) The owner or operator will specify in the permit application all design and operating practices that are necessary to ensure that the requirements of this section are satisfied and include an estimate with justifying documentation of how long the facility shall be expected to meet the designed minimum technology requirements after closure.

(l) The owner or operator of a landfill which is not exempt from the requirements of R.61-79.264 Subpart F pursuant to R.61-79.264.90(b) shall maintain at least ten feet of naturally occurring material with an average permeability of no more than 1E-06 centimeter per second directly beneath and in contact with the bottom of the constructed liner system as required under R.61-79.264.301(a) and (c).

264.302. Action leakage rate.

(a) The Department shall approve an action leakage rate for landfill units subject to 264.301(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under 264.303(c) to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under section 264.303(c).

264.303. Monitoring and inspection.

(a) During construction or installation, liners (except in the case of existing portions of landfills exempt from Section 264.301 (a)) and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(1) Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.
While a landfill is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

1. Deterioration, malfunctions, or improper operation of run-on and run-off control systems;
2. Proper functioning of wind dispersal control systems, where present; and
3. The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(c) (1) An owner or operator required to have a leak detection system under § 264.301(c) or (d) must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

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

(3) “Pump operating level” is a liquid level proposed by the owner or operator and approved by the Department based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.304. Response actions.

(a) The owner or operator of landfill units subject to 264.301(c) or (d) must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

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

1. Notify the Department in writing of the exceedance within 7 days of the determination;
2. Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;
3. Determine to the extent practicable the location, size, and cause of any leak;
4. Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;
5. Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and
6. Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in paragraphs (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b)(3), (4), and (5) of this section, the owner or operator must:

(i) Assess the source of liquids and amounts of liquids by source,
(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and
(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

HISTORY: Added by State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.309. Surveying and recordkeeping.

The owner or operator of a landfill must maintain the following items in the operating record required under Subpart E Section 264.73:

(a) On a map, the exact location and, dimensions, including depth, of each cell with respect to permanently surveyed benchmarks; and

(b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

(c) The date and volume or quantity of leachate which was withdrawn from the cells.

HISTORY: Amended by State Register Volume 15, Issue No. 6, eff June 23, 1989; State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.310. Closure and postclosure care.

(a) At final closure of the landfill or upon closure of any cell, (revised 12/92) the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover’s integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator must comply with all postclosure requirements contained in 264.117 through 264.120, including maintenance and monitoring throughout the postclosure care period (specified in the permit under 264.117). The owner or operator must:

(1) Maintain the integrity and effectiveness of the final cover including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Continue to operate the leachate collection and removal system until leachate is no longer detected;

(3) Maintain and monitor the leak detection system in accordance with section 264.301(c)(3)(iv) and (4) and 264.303(c), and comply with all applicable leak detection system requirements of this part;

(4) Maintain and monitor the groundwater monitoring system and comply with all applicable requirements of subpart F of this part;

(5) Prevent runon and runoff from eroding or otherwise damaging the final cover; and

(6) Protect and maintain surveyed benchmarks used in complying with 264.309.

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 12, Issue No. 10, eff October 28, 1988; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.312. Special requirements for ignitable or reactive waste.

Except as provided in Section 264.316, ignitable or reactive waste must not be placed in a landfill.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.

264.313. Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V of this part for examples) must not be placed in the same landfill cell, unless Section 264.17(b) is complied with.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990.
264.314. Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(b) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in R.61-79.260.11.

(c) Containers holding free liquids must not be placed in a landfill unless:

(1) All free-standing liquid:
   (i) has been removed by decanting, or other methods;
   (ii) has been mixed with absorbent or solidified so that free-standing liquid is no longer observed; or
   (iii) has been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in Section 264.316 below and is disposed of in accordance with Section 264.316 below.

(d) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in paragraph (d)(1) of this section; materials that pass one of the tests in paragraph (d)(2) of this section; or materials that are determined by the Department and EPA to be nonbiodegradable through the part 260 petition process.

(1) Nonbiodegradable sorbents.

   (i) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller’s earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal (activated carbon); or

   (ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polycrylate, polynorbornene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

   (iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents.

   (i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

   (ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22–76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

   (iii) The sorbent material is determined to be non-biodegradable under OECD test 301B: [CO₂ Evolution (Modified Sturm Test)].

(e) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Department, or the Department determines, that:

(1) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and
264.315. Special requirements for containers.

Unless they are very small, such as an ampule, containers must be either:

(a) At least 90 percent full when placed or buried in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before placement or burial in the landfill.

HISTORY: Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

264.316. Disposal of small containers of hazardous waste in overpacked drums (lab packs).

Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

(a) Hazardous waste must be packaged in non-leaking inside containers. The inside containers must be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the contained waste. Inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations (49 CFR Parts 173, 178, and 179), if those regulations specify a particular inside container for the waste.

(b) The inside containers must be overpacked in an open head DOT specification metal shipping container (49 CFR parts 178 and 179) of no more than 416-liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with 264.314(d), to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after it has been packed with inside containers and sorbent material.

(c) The sorbent material used must not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with 264.17(b).

(d) Incompatible wastes, as defined in R.61-79.260.10, must not be placed in the same outside container.

(e) Reactive wastes, other than cyanide-or sulfide-bearing waste as defined in R.61-79.261.23(a)(5), must be treated or rendered non-reactive prior to packaging in accordance with paragraphs (a) through (d) of this section. Cyanide-and sulfide-bearing reactive waste may be packed in accordance with paragraphs (a) through (d) of this section without first being treated or rendered non-reactive.

(f) Such disposal is in compliance with the requirements of 268. Persons who incinerate lab packs according to the requirements in 268.42(c)(1) may use fiber drums in place of metal outer containers. Such fiber drums must meet the DOT specifications in 49 CFR 173.12 and be overpacked according to the requirements in paragraph (b) of this section.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 36, Issue No. 9, eff September 28, 2012.

264.317. Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 must not be placed in a landfill unless the owner or operator operates the landfill in accord with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this regulation. The factors to be considered are:
The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring requirements.

(b) The Department may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.


SUBPART O
Incinerators


(a) The regulations of this subpart apply to owners and operators of facilities that incinerate hazardous waste (as defined in 260.10), except as 264.1 provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

(1) Owners or operators of hazardous waste incinerators (as defined in R.61-79.260.10); and

(2) Owners or operators who burn hazardous waste in boilers or in industrial furnaces in order to destroy them, or who burn hazardous waste in boilers or in industrial furnaces for any recycling purpose and elect to be regulated under this regulation.

(b) Integration of the MACT standards. (9/01)

(1) Except as provided by paragraphs (b)(2) through (b)(4) of this section, the standards of this part do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, Subpart EEE, by conducting a comprehensive performance test and submitting to the Department a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) documenting compliance with the requirements of part 63, subpart EEE.

(2) If the waste analysis shows that the waste contains none of the hazardous constituents listed in R.61-79.261, Appendix VIII, which would reasonably be expected to be in the waste.

(3) The particulate matter standard of 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard under 40 CFR 63.1206(b)(14) and 63.1219(e).

(4) The following requirements remain in effect for startup, shutdown, and malfunction events if you elect to comply with 270.235(a)(1)(i) to minimize emissions of toxic compounds from these events:

(i) 264.345(a) requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

(ii) 264.345(c) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

(c) After consideration of the waste analysis included with Part B of the permit application, the Department, upon demonstration by the owner or operator, must exempt the applicant from all requirements of this Subpart except 264.341 (Waste Analysis) and 264.351 (Closure),

(1) If the Department finds that the waste to be burned is:

(i) Listed as a hazardous waste in part 261, Subpart D, solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or
(ii) Listed as a hazardous waste in part 261, Subpart D, solely because it is reactive (Hazard Code R) for characteristics other than those listed in 261.23(a)(4) and (5), and will not be burned when other hazardous wastes are present in the combustion zone; or

(iii) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under part 261, Subpart C; or

(iv) A hazardous waste solely because it possesses any of the reactivity characteristics described by 261.23(a)(1), (2), (3), (6), (7), and (8), and will not be burned when other hazardous wastes are present in the combustion zone; and

(2) If the waste analysis shows that the waste contains none of the hazardous constituents listed in part 261, Appendix VIII, which would reasonably be expected to be in the waste.

(d) The owner or operator of an incinerator may conduct trial burns subject only to the requirements of R.61-79.270.62 (Short Term and Incinerator Permits).

(e) The owner or operator of an incinerator may conduct trial burns subject only to the requirements of Section 270.62 (hazardous waste incinerator permits).

HISTORY: Amended by State Register Volume 10, Issue No. 1, eff January 24, 1986; State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2005; State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 39, Issue No. 6, Doc. No. 4541, eff June 26, 2015.

264.341. Waste analysis.

(a) As a portion of the trial burn plan required by R.61-79.270.62, or with Part B of the permit application, the owner or operator must have included an analysis of the waste feed sufficient to provide all information required by R.61-79.270.19 or 270.62(b). Owners or operators of new hazardous waste incinerators must provide the information required by 270.62(c) or 270.19, 270.62 to the greatest extent possible.

(b) Throughout normal operation the owner or operator must conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in his permit application (under 264.345(b)).

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.342. Principal organic hazardous constituents (POHCs).

(a) Principal organic hazardous constituents (POHCs) in the waste feed must be treated to the extent required by the performance standard of Section 264.343.

(b)(1) One or more POHCs will be specified in the owner’s or operator’s facility’s permit application, from among those constituents listed in R.61-79.261, appendix VIII, for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with Part B of the facility’s permit application. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHC’s. Constituents are more likely to be designated as POHC’s if they are present in large quantities or concentrations in the waste. (amended 11/90)

(2) Trial POHC’s will be designated for performance of trial burns in accordance with the procedure specified in R.61-79.270.62 for obtaining trial burn permits.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.343. Performance standards.

An incinerator burning hazardous waste must be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under 264.345, it will meet the following performance standards: (amended 11/90)
(a)(1) Except as provided in paragraph (a)(2), an incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated (under Section 264.342) in its permit application for each waste feed. DRE is determined for each POHC from the following equation:

\[
DRE = \left(1 - \frac{W_{out}}{W_{in}}\right) \times 100\\%
\]

where:

\( W_{in} \) = mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator,

and

\( W_{out} \) = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated (under 264.342) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in 264.343(a)(1).

(b) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour (4 pounds per hour) of hydrogen chloride (HCl) must control HCl emissions such that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or 1% of the HCl in the stack gas prior to entering any pollution control equipment.

(c) An incinerator burning hazardous waste must not emit particulate matter in excess of 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) when corrected for the amount of oxygen in the stack gas according to the formula:

\[
P_c = P_m \times \frac{14}{21 - Y}
\]

Where \( P_c \) is the corrected concentration of particulate matter, \( P_m \) is the measured concentration of particulate matter, and \( Y \) is the measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas presented in 40 CFR part 60, appendix A (Method 3), of this chapter. This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these an appropriate correction procedure, to be specified in the facility permit application.

(d) For purposes of permit enforcement, compliance with the operating requirements specified in the permit application (under § 264.345) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under R.61-79.270.41.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.344. Hazardous waste incinerator permits.

(a) The owner or operator of a hazardous waste incinerator may burn only wastes specified in his permit application and only under operating conditions specified in his permit application for those wastes under 264.345, except:

(1) In approved trial burns under R.61-79.270.62; or

(2) Under exemptions created by 264.340.
(b) Other hazardous wastes may be burned only after operating conditions have been specified in a new permit or a permit modification as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with Part B of a permit application under R.61-79.270.19.

(c) The permit application for a new hazardous waste incinerator must establish appropriate conditions for each of the applicable requirements of this subpart, including but not limited to allowable waste feeds and operating conditions necessary to meet the requirements of § 264.345, sufficient to comply with the following standards:

1. For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in paragraph (c)(2) of this Section, not to exceed a duration of 720 hours operating time for treatment of hazardous waste, the operating requirements must be those most likely to ensure compliance with the performance standards of Section 264.343, based on the Department’s engineering judgement. The Department may extend the duration of this period once for up to 720 additional hours when good cause for the extension is demonstrated by the applicant.

2. For the duration of the trial burn, the operating requirements must be sufficient to demonstrate compliance with the performance standards of Section 264.343 and must be in accordance with the approved trial burn plan;

3. For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Department, the operating requirements must be those most likely to ensure compliance with the performance standards of 264.343, based on the Department's engineering judgement. (amended 11/90)

4. For the remaining duration of the permit, the operating requirements must be those demonstrated, in a trial burn or by alternative data specified in R.61-79.270.19(c) is sufficient to ensure compliance with the performance standards of Section 264.343.

HISTORY: Amended by State Register Volume 11, Issue No. 11, eff November 27, 1987; State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.345. Operating requirements.
(a) An incinerator must be operated in accordance with operating requirements specified in its permit application and as specified on a case-by-case basis as those demonstrated (in a trial burn or in alternative data as specified in 264.344(b) and included with Part B of a facility’s permit application) to be sufficient to comply with the performance standards of 264.343. (amended 11/90)

(b) Each set of operating requirements shall specify the composition of the waste feed (including acceptable variations in the physical or chemical properties of the waste feed which will not affect compliance with the performance requirements of Section 264.343) to which the operating requirements apply. For each such waste feed, the permit application shall specify acceptable operating limits including the following conditions:

1. Carbon monoxide (CO) level in the stack exhaust gas;
2. Waste feed rate;
3. Combustion temperature;
4. An appropriate indicator of combustion gas velocity;
5. Allowable variations in incinerator system design or operating procedures; and,
6. Such other operating requirements as are necessary to ensure that the performance standards of Section 264.343 are met.

(c) During start-up and shut-down of an incinerator, hazardous waste (except wastes exempted in accordance with Section 264.340) must not be fed into the incinerator unless the incinerator is operating within the conditions of operation (temperature, air feed rate, etc.) specified in the permit application.

(d) Fugitive emissions from the combustion zone must be controlled by:

1. Keeping the combustion zone totally sealed against fugitive emissions; or,
(2) Maintaining a combustion zone pressure lower than atmospheric pressure; or,
(3) An alternate means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(e) An incinerator must be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under paragraph (a) of this Section.

(f) An incinerator must cease operation when changes in waste feed, incinerator design, or operating conditions exceed limits designated in its permit application.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.347. Monitoring and inspections.

(a) The owner or operator must conduct, as a minimum, the following monitoring while incinerating hazardous waste:

(1) Combustion temperature, waste feed rate, and the indicator of combustion gas velocity specified in the facility permit under these regulations must be monitored on a continuous basis.

(2) CO must be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

(3) Upon request by the Department, sampling and analysis of the waste and exhaust emissions must be conducted to verify that the operating requirements established in his permit application achieve the performance standards of Section 264.343.

(b) The incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be subjected to thorough visual inspection, at least daily, for leaks, spills, fugitive emissions, and signs of tampering.

(c) The emergency waste feed cutoff system and associated alarms must be tested at least weekly to verify operability, unless the applicant demonstrates to the Department that weekly inspections will unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum, operational testing must be conducted at least monthly.

(d) This monitoring and inspection data must be recorded and the records must be placed in the operating record required by 264.73 of this regulation and maintained in the operating record for five years.

HISTORY: Amended by State Register Volume 14, Issue No. 11, eff November 23, 1990; State Register Volume 16, Issue No. 12, eff December 25, 1992; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.351. Closure.

At closure the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the incinerator site.

Comment: At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with 261.3(d) of this chapter, that the residue removed from the incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with applicable requirements of parts 262 through 266.


SUBPART S
Special Provisions for Cleanup

264.550. Applicability of Corrective Action Management Unit (CAMU) Regulations.

(a) Except as provided in paragraph (b) of this section, CAMUs are subject to the requirements of 264.552.

(b) CAMUs that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the Agency on or before November 20, 2000, are subject to the
requirements in 264.551 for grandfathered CAMUs; CAMU waste, activities, and design will not be subject to the standards in 264.552, so long as the waste, activities, and design remain within the general scope of the CAMU as approved.


264.551. Grandfathered Corrective Action Management Units (CAMUs).

(a) To implement remedies under 264.101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to 264.101, the owner or operator may designate an area at the facility as a corrective action management unit under the requirements of this section. Corrective action management unit means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. This request is subject to approval by the Department. One or more CAMUs may be designated at a facility. (8/00)

   (1) Placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

   (2) Consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The owner or operator may request to designate a regulated unit (as defined in § 264.90(a)(2)) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

   (i) The regulated unit is closed or closing, meaning it has begun the closure process under § 264.113 or § 265.113; and

   (ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(2) The subpart F, G, and H requirements and the unit-specific requirements of part 264 or 265 that applied to that regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The owner or operator shall designate a CAMU in accordance with the following:

   (1) The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

   (2) Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

   (3) The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility;

   (4) Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

   (5) The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

   (6) The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

   (7) The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Department to designate a CAMU in accordance with the criteria in § 264.552.

(e) The Department shall specify, in the permit, requirements for CAMUs to include the following: The owner or operator shall specify in the permit application the following information for each CAMU:

   (1) The areal configuration of the CAMU.
(2) Requirements for remediation waste management to include the specification of applicable design, operation and closure requirements.

(3) Requirements for ground water monitoring that are sufficient to:
   (i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and
   (ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU.

(4) Closure and post-closure requirements.
   (i) Closure of corrective action management units shall:
      (A) Minimize the need for further maintenance; and
      (B) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.
   (ii) Requirements for closure of CAMU’s shall include the following, as appropriate and as deemed necessary by the Department for a given CAMU:
      (A) Requirements for excavation, removal, treatment or containment of wastes;
      (B) For areas in which wastes will remain after closure of the CAMU, requirements for capping of such areas; and
      (C) Requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the CAMU.
   (iii) In establishing specific closure requirements for CAMU’s under § 264.552(e), the owner or operator shall consider the following factors:
      (A) CAMU characteristics;
      (B) Volume of wastes which remain in place after closure;
      (C) Potential for releases from the CAMU;
      (D) Physical and chemical characteristics of the waste;
      (E) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and
      (F) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.
   (iv) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) The owner or operator shall document the rationale for designating CAMU’s and the Department shall make such documentation available to the public.

(g) Incorporation of a CAMU into an existing permit must be approved by the Department according to the procedures for Department-initiated permit modifications under § 270.41 of this chapter, or according to the permit modification procedures of § 270.42 of this chapter.

(h) The designation of a CAMU does not change the Department’s existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.


264.552. Corrective Action Management Units (CAMU).

(a) To implement remedies under 264.101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to 264.101, the Department may designate an area at the facility as

...
a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) CAMU-eligible waste means:

(i) All solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As-generated wastes (either hazardous or non-hazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.

(ii) Wastes that would otherwise meet the description in paragraph (a)(1)(i) are not “CAMU-Eligible Wastes” where:

(A) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers or non-land-based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or

(B) The Department exercises the discretion in paragraph (a)(2) to prohibit the wastes from management in a CAMU.

(iii) Notwithstanding paragraph (a)(1)(i), where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU.

(2) The Department may prohibit, where appropriate, the placement of waste in a CAMU where the Department has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of part 268, or applicable unit design requirements, or applicable unit design requirements of part 265, or that non-compliance with other applicable requirements likely contributed to the release of the waste.

(3) Prohibition against placing liquids in CAMUs.

(i) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(ii) The requirements in 264.314(c) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste.

(iii) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to 264.314(e).

(iv) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with 264.314(b). Sorbents used to treat free liquids in CAMUs must meet the requirements of 264.314(d).

(4) Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(5) Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Department may designate a regulated unit (as defined in 264.90(a)(2)) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under 264.113 or 265.113; and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(2) The Subpart F, G, and H requirements and the unit-specific requirements 264 or part 265 that applied to the regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.
(c) The Department shall designate a CAMU that will be used for storage and/or treatment only in accordance with paragraph (f). The Department shall designate all other CAMUs in accordance with the following:

1. The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;
2. Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;
3. The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility;
4. Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;
5. The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;
6. The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and
7. The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Department to designate a CAMU in accordance with the criteria in this section. This must include, unless not reasonably available, information on:

1. The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);
2. Whether the waste was listed or identified as hazardous at the time of disposal and/or release; and
3. Whether the disposal and/or release of the waste occurred before or after the land disposal requirements of part 268 were in effect for the waste listing or characteristic.

(e) The Department shall specify, in the permit, requirements for CAMUs to include the following:

1. The areal configuration of the CAMU.
2. Except as provided in paragraph (g), requirements for CAMU-eligible waste management to include the specification of applicable design, operation, treatment and closure requirements.
3. Minimum design requirements. CAMUs, except as provided in paragraph (f), into which wastes are placed must be designed in accordance with the following:
   (i) Unless the Department approves alternate requirements under (e)(3)(ii), CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes, composite liner means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1 x 10^-7 cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component;
   (ii) Alternate requirements. The Department may approve alternate requirements if:
   (A) The Department finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in (e)(3)(i); or
   (B) The CAMU is to be established in an area with existing significant levels of contamination, and the Department finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.
(4) Minimum treatment requirements: Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with (f), CAMU-eligible wastes that, absent this section, would be subject to the treatment requirements of part 268, and that the Department determines contain principal hazardous constituents must be treated to the standards specified in (e)(4)(iii) of this section.

(i) Principal hazardous constituents are those constituents that the Department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(A) In general, the Department will designate as principal hazardous constituents:

(1) Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above \(10^{-3}\); and

(2) Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

(B) The Department will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site; when making such a designation, the Department may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

(C) The Department may also designate other constituents as principal hazardous constituents that the Department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(ii) In determining which constituents are “principal hazardous constituents,” the Department must consider all constituents which, absent this section, would be subject to the treatment requirements in part 268.

(iii) Waste that the Department determines contains principal hazardous constituents must meet treatment standards determined in accordance with (e)(4)(iv) or (e)(4)(v).

(iv) Treatment standards for wastes placed in CAMUs.

(A) For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by (e)(4)(iv)(C).

(B) For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by (e)(4)(iv)(C) of this section.

(C) When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in 268.48 Table UTS.

(D) For waste exhibiting the hazardous characteristic of ignitability, corrosivity or reactivity, the waste must also be treated to eliminate these characteristics.

(E) For debris, the debris must be treated in accordance with 268.45, or by methods or to levels established under (e)(4)(iv)(A) through (D) or (e)(4)(v), whichever the Department determines is appropriate.

(F) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Department may specify a leaching test other than the TCLP (SW846 Method 1311, 260.11 (c)(5)(v) to measure treatment effectiveness, provided the Department determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

(v) Adjusted standards. The Department may adjust the treatment level or method in (e)(4)(iv) to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method must be protective of human health and the environment:

(A) The technical impracticability of treatment to the levels or by the methods in (e)(4)(iv);
(B) The levels or methods in (e)(4)(iv) would result in concentrations of principal hazardous constituents (PHCs) that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law);

(C) The views of the affected local community on the treatment levels or methods in (e)(4)(iv) as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

(D) The short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in (e)(4)(iv);

(E) The long-term protection offered by the engineering design of the CAMU and related engineering controls:

(1) Where the treatment standards in (e)(4)(iv) are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

(2) Where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at 264.301(c) and (d); or

(3) Where, after review of appropriate treatment technologies, the Department determines that cost-effective treatment is not reasonably available, and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at 264.301(c) and (d); or

(4) Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

(5) Where, after review of appropriate treatment technologies, the Department determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in (e)(3)(i) and (ii), or the CAMU provides substantially equivalent or greater protection.

(vi) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

(vii) For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the Department may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

(5) Except as provided in (f), requirements for ground water monitoring and corrective action that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

(iii) Require notification to the Department and corrective action as necessary to protect human health and the environment for releases to ground water from the CAMU.

(iii) Except as provided in (d), closure and post-closure requirements:

(i) Closure of corrective action management units shall:

(A) Minimize the need for further maintenance; and

(B) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.
(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Department for a given CAMU:

(A) Requirements for excavation, removal, treatment or containment of wastes; and
(B) Requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under (e), the Department shall consider the following factors:

(A) CAMU characteristics;
(B) Volume of wastes which remain in place after closure;
(C) Potential for releases from the CAMU;
(D) Physical and chemical characteristics of the waste;
(E) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and
(F) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Cap requirements:

(A) At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in (e)(6)(iv)(B):

1. Provide long-term minimization of migration of liquids through the closed unit;
2. Function with minimum maintenance;
3. Promote drainage and minimize erosion or abrasion of the cover;
4. Accommodate settling and subsidence so that the cover's integrity is maintained; and
5. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsols present.

(B) The Department may determine that modifications to (e)(6)(iv)(A) are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation).

(v) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs must be designated in accordance with all of the requirements, except as follows.

(1) CAMUs that are used for storage and/or treatment only and that operate in accordance with the time limits established in the staging pile regulations at 264.554(d)(1)(iii), (h), and (i) are subject to the requirements for staging piles at 264.554(d)(1)(i) and (ii), 264.554(d)(2), 264.554(e) and (f), and 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at (c) and (e)(3) through (6).

(2) CAMUs that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at 264.554(d)(1)(iii), (h), and (i):

(i) Must operate in accordance with a time limit, established by the Department, that is no longer than necessary to achieve a timely remedy selected for the waste, and

(ii) Are subject to the requirements for staging piles at 264.554(d)(1)(i) and (ii), 264.554(d)(2), 264.554(e) and (f), and 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at (c) and (e)(4) and (6).

(g) CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at
(e)(3)(i), caps at (e)(6)(iv), ground water monitoring requirements at (e)(5) or, for treatment and/or storage-only CAMUs, the design standards at (f).

(h) The Department shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under (e)(4)(v) of this section to the treatment standards in (e)(4)(iv).

(i) Notwithstanding any other provision, the Department may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a CAMU into an existing permit must be approved by the Department according to the procedures for Department-initiated permit modifications under 270.41, or according to the permit modification procedures of 270.42.

(k) The designation of a CAMU does not change the Department’s existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

HISTORY: Amended by State Register Volume 36, Issue No. 9, eff September 28, 2012.

264.553. Temporary Units (TU).

(a) For temporary tanks and container storage areas used for treatment or storage of hazardous remediation wastes, during remedial activities required under 264.101 or RCRA section 3008(h), or at a permitted facility that is not subject to 264.101 the owner or operator may request approval by the Department to designate a unit at the facility as a temporary unit. A temporary unit must be located within the contiguous property under the control of the owner operator where the wastes to be managed in the temporary unit originated. For temporary units, the Department may replace the design, operating, or closure standard applicable to these units under this part 264 or part 265 with alternative requirements which protect human health and the environment.

(b) Any temporary unit to which alternative requirements are applied in accordance with paragraph (a) of this section shall be:

(1) Located within the facility boundary; and
(2) Used only for treatment or storage of remediation wastes.

(c) In establishing standards to be applied to a temporary unit, the Department shall consider the following factors:

(1) Length of time such unit will be in operation;
(2) Type of unit;
(3) Volumes of wastes to be managed;
(4) Physical and chemical characteristics of the wastes to be managed in the unit;
(5) Potential for releases from the unit;
(6) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases; and
(7) Potential for exposure of humans and environmental receptors if releases were to occur from the unit.

(d) The owner or operator shall specify in the permit application or order the length of time a temporary unit will be allowed to operate, to be no longer than a period of one year. The shall also specify the design, operating, and closure requirements for the unit.

(e) The Department may extend the operational period of a temporary unit once for no longer than a period of one year beyond that originally specified in the permit or order, if the Department determines that:

(1) Continued operation of the unit will not pose a threat to human health and the environment; and
(2) Continued operation of the unit is necessary to ensure timely and efficient implementation of remedial actions at the facility.

(f) Incorporation of a temporary unit or a time extension for a temporary unit into an existing permit shall be:
(1) Approved in accordance with the procedures for Department-initiated permit modifications under § 270.41; or

(2) Requested by the owner/operator as a Class 3 modification according to the procedures under 270.42.

(g) The owner or operator shall document the rationale for designating a temporary unit and for granting time extensions for temporary units and the Department shall make such documentation available to the public.


264.554. Staging piles.

This section is written in a special format to make it easier to understand the regulatory requirements. Like other regulations, this establishes enforceable legal requirements. For this “I” and “you” refer to the owner/operator.

(a) What is a staging pile? A staging pile is an accumulation of solid, non-flowing remediation waste (as defined in 260.10 of this chapter) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the Department according to the requirements in this section.

(1) For the purposes of this section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

(b) When may I use a staging pile? You may use a staging pile to store hazardous remediation waste (or remediation waste otherwise subject to land disposal restrictions) only if you follow the standards and design criteria the Department has designated for that staging pile. The Department must designate the staging pile in a permit or, at an interim status facility, in a closure plan or order (consistent with 270.72(a)(5) and (b)(5) of this chapter). The Department must establish conditions in the permit, closure plan, or order that comply with paragraphs (d) through (k) of this section.

(c) What information must I provide to get a staging pile designated? When seeking a staging pile designation, you must provide:

(1) Sufficient and accurate information to enable the Department to impose standards and design criteria for your staging pile according to paragraphs (d) through (k) of this section;

(2) Certification by a qualified professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Department determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

(3) Any additional information the Department determines is necessary to protect human health and the environment.

(d) What performance criteria must a staging pile satisfy? The Department must establish the standards and design criteria for the staging pile in the permit, closure plan, or order.

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

(i) The staging pile must facilitate a reliable, effective and protective remedy;

(ii) The staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (for example, through the use of liners, covers, run-off/run-on controls, as appropriate); and

(iii) The staging pile must not operate for more than two years, except when the Department grants an operating term extension under paragraph (i) of this section (entitled “May I receive an operating extension for a staging pile?”). You must measure the two-year limit, or other operating term specified by the Department in the permit, closure plan, or order, from the first
time you place remediation waste into a staging pile. You must maintain a record of the date when you first placed remediation waste into the staging pile for the life of the permit, closure plan, or order, or for three years, whichever is longer.

(2) In setting the standards and design criteria, the Department must consider the following factors:

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

(e) May a staging pile receive ignitable or reactive remediation waste? You must not place ignitable or reactive remediation waste in a staging pile unless:

(1) You have treated, rendered or mixed the remediation waste before you placed it in the staging pile so that:
   (i) The remediation waste no longer meets the definition of ignitable or reactive under 261.21 or 261.23 of this chapter; and
   (ii) You have complied with 264.17(b); or
(2) You manage the remediation waste to protect it from exposure to any material or condition that may cause it to ignite or react.

(f) How do I handle incompatible remediation wastes in a staging pile? The term “incompatible waste” is defined in 260.10 of this chapter. You must comply with the following requirements for incompatible wastes in staging piles:

(1) You must not place incompatible remediation wastes in the same staging pile unless you have complied with 264.17(b);
(2) If remediation waste in a staging pile is incompatible with any waste or material stored nearby in containers, other piles, open tanks or land disposal units (for example, surface impoundments), you must separate the incompatible materials, or protect them from one another by using a dike, berm, wall or other device; and
(3) You must not pile remediation waste on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to comply with 264.17(b).

(g) Are staging piles subject to Land Disposal Restrictions (LDR) and Minimum Technological Requirements (MTR)? No. Placing hazardous remediation wastes into a staging pile does not constitute land disposal of hazardous wastes or create a unit that is subject to the minimum technological requirements of RCRA 3004(o).

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

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

(1) The Department may grant one operating term extension of up to 180 days beyond the operating term limit contained in the permit, closure plan, or order (see paragraph (1) of this section for modification procedures). To justify to the Department the need for an extension, you must provide sufficient and accurate information to enable the Department to determine that continued operation of the staging pile.
   (i) Will not pose a threat to human health and the environment; and
   (ii) Is necessary to ensure timely and efficient implementation of remedial actions at the facility.
(2) The Department may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary, to ensure protection of human health and the environment.

(j) What is the closure requirement for a staging pile located in a previously contaminated area?
(1) Within 180 days after the operating term of the staging pile expires, you must close a staging pile located in a previously contaminated area of the site by removing or decontaminating all:

   (i) Remediation waste;
   (ii) Contaminated containment system components; and
   (iii) Structures and equipment contaminated with waste and leachate.

(2) You must also decontaminate contaminated subsoils in a manner and according to a schedule that the Department determines will protect human health and the environment.

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

(k) What is the closure requirement for a staging pile located in an uncontaminated area?
(1) Within 180 days after the operating term of the staging pile expires, you must close a staging pile located in an uncontaminated area of the site according to 264.258(a) and 264.111; or according to 265.258(a) and 265.111 of this chapter.

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

(l) How may my existing permit (for example, RAP), closure plan, or order be modified to allow me to use a staging pile?
(1) To modify a permit, other than a RAP, to incorporate a staging pile or staging pile operating term extension, either:

   (i) The Department must approve the modification under the procedures for Department-initiated permit modifications in 270.41 of this chapter; or
   (ii) You must request a Class 2 modification under 270.42 of this chapter.

(2) To modify a RAP to incorporate a staging pile or staging pile operating term extension, you must comply with the RAP modification requirements under 270.170 and

(3) To modify a closure plan to incorporate a staging pile or staging pile operating term extension, you must follow the applicable requirements under 264.112(c) or 265.112(c) of this chapter.

(4) To modify an order to incorporate a staging pile or staging pile operating term extension, you must follow the terms of the order and the applicable provisions of 270.72(a)(5) or (b)(5) of this chapter.

(m) Is information about the staging pile available to the public? The Department must document the rationale for designating a staging pile or staging pile operating term extension and make this documentation available to the public.


(a) The Department with regulatory oversight at the location where the cleanup is taking place may approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of RCRA part 268, if the conditions in (a)(1) through (3) are met:

(1) The waste meets the definition of CAMU-eligible waste in 264.552(a)(1) and (2).

(2) The Department with regulatory oversight at the location where the cleanup is taking place identifies principal hazardous constitutes in such waste, in accordance with 264.552(e)(4)(i) and (ii), and requires that such principal hazardous constitute are treated to any of the following standards specified for CAMU-eligible wastes:

   (i) The treatment standards under 264.552(e)(4)(iv); or
(ii) Treatment standards adjusted in accordance with 264.552(e)(4)(v)(A), (C), (D) or (E)(1); or

(iii) Treatment standards adjusted in accordance with 264.552(e)(4)(v)(E)(2), where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

(3) The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in Subpart N, and be authorized to accept CAMU-eligible wastes; for the purposes of this requirement, “permit” does not include interim status.

(b) The person seeking approval shall provide sufficient information to enable the Department with regulatory oversight at the location where the cleanup is taking place to approve placement of CAMU-eligible waste in accordance with (a). Information required by 264.552(d)(1) through (3) for CAMU applications must be provided, unless not reasonably available.

(c) The Department with regulatory oversight at the location where the cleanup is taking place shall provide public notice and a reasonable opportunity for public comment before approving CAMU eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at 264.552(h). The approval must be specific to a single remediation.

(d) Applicable hazardous waste management requirements in this part, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this section, for CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding 270.4(a), a landfill may not receive hazardous CAMU-eligible waste under this section unless its permit specifically authorizes receipt of such waste.

(e) For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with (d) until the following additional conditions have been met:

   (1) The landfill owner/operator notifies the Department responsible for oversight of the landfill and persons on the facility mailing list, maintained in accordance with 124.10(c)(1)(ix), of his or her intent to receive CAMU-eligible waste in accordance with this section; the notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

   (2) Persons on the facility mailing list may provide comments, including objections to the receipt of the CAMU-eligible waste, to the Department within 15 days of notification.

   (3) The Department may object to the placement of the CAMU-eligible waste in the landfill within 30 days of notification; the Department may extend the review period an additional 30 days because of public concerns or insufficient information.

   (4) CAMU-eligible wastes may not be placed in the landfill until the Department has notified the facility owner/operator that he or she does not object to its placement.

   (5) If the Department objects to the placement or does not notify the facility owner/operator that he or she has chosen not to object, the facility may not receive the waste, notwithstanding 270.4(a), until the objection has been resolved, or the owner/operator obtains a permit modification in accordance with the procedures of 270.42 specifically authorizing receipt of the waste.

   (6) As part of the permit issuance or permit modification process of (d), the Department may modify, reduce, or eliminate the notification requirements of this as they apply to specific categories of CAMU-eligible waste, based on minimal risk.

   (f) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this section must comply with the requirements of 268.7(a)(4); off-site facilities treating CAMU-eligible wastes to comply with this section must comply with the requirements of 268.7(b)(4), except that the certification must be with respect to the treatment requirements of (a)(2) of this section.

   (g) For the purposes of this section only, the “design of the CAMU” in 264.552(e)(4)(v)(E) means design of the permitted Subtitle C landfill.

264.570. Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water runoff to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads. The requirement at § 264.573(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992 except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither runoff nor runon is generated is not subject to regulation under 264.573(e) or 264.573(f), as appropriate.

(c) The requirements of this subpart are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(1) The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. At a minimum, the contingency plan must describe how the owner or operator will do the following:

(i) Clean up the drippage;
(ii) Document the cleanup of the drippage;
(iii) Retain the documents regarding cleanup for three years; and
(iv) Manage the contaminated media in a manner consistent with State and Federal regulations.

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992; amended by State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.571. Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in 264.570, the owner or operator must evaluate the drip pad and determine whether it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of 264.573(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of 264.573 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of 264.573, except the standards for liners and leak detection systems, specified in 264.573(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of 264.573(b) and submit the plan to the Department no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of 264.573. The plan must be reviewed and certified by a qualified Professional Engineer.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Department the as-built drawings for the drip pad together with a certification by a qualified Professional Engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of 264.573 (m) of this subpart or close the drip pad in accordance with 264.573.

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992. Amended by State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 18, Issue No. 12, eff December 23, 1994; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 32, Issue No. 6, eff June 27, 2008.
264.572. Design and installation of new drip pads.
Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with one of the following:

(a) all of the requirements of §§ 264.573 (except 264.573(a)(4)), 264.574 and 264.575 of this subpart, or

(b) all of the requirements of §§ 264.573 (except § 264.573(b)), 264.574 and 264.575 of this subpart.

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992; amended by State Register Volume 17, Issue No. 12, eff December 24, 1993.

264.573. Design and operating requirements.

(a) Drip pads must

(1) Be constructed of nonearthen materials, excluding wood and nonstructurally supported asphalt;

(2) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) Have a curb or berm around the perimeter;

(4)(i) Have a hydraulic conductivity of less than or equal to 1x10^{-7} centimeters per second, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1x10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with 264.572(b) instead of 264.572(a). (revised 12/93; 12/94)

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this Section.

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

[Note: The Department will generally consider applicable standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) or the American Society of Testing and Materials (ASTM) in judging the structural integrity requirement of this paragraph.]

(b) If an owner/operator elects to comply with 264.572(b) instead of 264.572(a), the drip pad must have:

(1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);
(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad;

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad; and

(iii) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(3) A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

Note: See 264.573(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent runoff.

(e) Unless protected by a structure, as described in 264.570(b), the owner or operator must design, construct, operate and maintain a runon control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any runoff that might enter the system.

(f) Unless protected by a structure or cover as described in 264.570(b), the owner or operator must design, construct, operate and maintain a runoff management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from qualified Professional Engineer certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log. The owner/operator must determine if the residues are hazardous as per R.69-79.262.11 and, if so, must manage them under parts 261-268, 270, and section 3010 of RCRA.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and nonpressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.
(L) Collection and holding units associated with runon and runoff control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

   1. Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator must:

      i. Enter a record of the discovery in the facility operating log;

      ii. Immediately remove the portion of the drip pad affected by the condition from service;

      iii. Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs;

      iv. Within 24 hours after discovery of the condition, notify the Department of the condition and, within 10 working days, provide written notice to the Department with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

   2. The Department will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and cleanup are complete and notify the owner or operator of the determination and the underlying rationale in writing.

   3. Upon completing all repairs and cleanup, the owner or operator must notify the Department in writing and provide a certification signed by an independent, qualified registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (m)(1)(iv) of this section.

(n) Should a permit under these regulations be necessary, the Department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

   o) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992. Amended by State Register Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 18, Issue No. 12, eff December 23, 1994; State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 25, Issue No. 10, eff October 26, 2001; State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.574. Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements in 264.573 by a qualified Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

   1. Deterioration, malfunctions or improper operation of runon and runoff control systems;

   2. The presence of leakage in and proper functioning of leak detection system.

   3. Deterioration or cracking of the drip pad surface.

   [Note: See 264.573(m) for remedial action required if deterioration or leakage is detected.]

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.
(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform postclosure care in accordance with closure and postclosure care requirements that apply to landfills (264.310). For permitted units, the requirement to have a permit continues throughout the postclosure period. In addition, for the purpose of closure, postclosure, and financial responsibility, such a drip pad is then considered to be landfill, and the owner or operator must meet all of the requirements for landfills specified in subparts G and H of this part.
(c)(1) The owner or operator of an existing drip pad, as defined in 264.570 of this subpart, that does not comply with the liner requirements of 264.573(b)(1) must:
   (i) Include in the closure plan for the drip pad under 264.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and
   (ii) Prepare a contingent postclosure plan under 264.118 of this part for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.
(2) The cost estimates calculated under 264.112 and 264.144 of this part for closure and postclosure care of a drip pad subject to this paragraph must include the cost of complying with the contingent closure plan and the contingent postclosure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

SUBPART X
Miscellaneous Units

264.600. Applicability.
The requirements in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units, except as Section 264.1 provide otherwise.
HISTORY: Added by State Register Volume 14, Issue No. 11, eff November 23, 1990.

A miscellaneous unit must be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. Applications for miscellaneous units are to contain such terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements and requirements for responses to releases of hazardous waste or hazardous constituents from the unit. Permit terms and provisions shall include those requirements of subparts I through O and subparts AA through CC of this Part, and Part 270 that are appropriate for the miscellaneous unit being permitted. Protection of human health and the environment includes, but is not limited to: (revised 5/96)
(a) Prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents in the groundwater or subsurface environment, considering:
   (1) The volume and physical and chemical characteristics of the waste in the unit, including its potential for migration through soil, liners, or other containing structures;
   (2) The hydrologic and geologic characteristics of the unit and the surrounding area;
   (3) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater;
   (4) The quantity and direction of groundwater flow;
(5) The proximity to and withdrawal rates of current and potential groundwater users;
(6) The patterns of land use in the region;
(7) The potential for deposition or migration of waste constituents into subsurface physical
structures, and into the root zone of food-chain crops and other vegetation;
(8) The potential for health risks caused by human exposure to waste constituents; and
(9) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical
structures caused by exposure to waste constituents;
(b) Prevention of any releases that may have adverse effects on human health or the environment
due to migration of waste constituents in surface water, or wetlands or on the soil surface
considering:
(1) The volume and physical and chemical characteristics of the waste in the unit;
(2) The effectiveness and reliability of containing, confining, and collecting systems and struc-
tures in preventing migration;
(3) The hydrologic characteristics of the unit and the surrounding area, including the topogra-
phy of the land around the unit;
(4) The patterns of precipitation in the region;
(5) The quantity, quality, and direction of groundwater flow;
(6) The proximity of the unit to surface waters;
(7) The current and potential uses of nearby surface waters and any water quality standards
established for those surface waters;
(8) The existing quality of surface waters and surface soils, including other sources of contami-
nation and their cumulative impact on surface waters and surface soils;
(9) The patterns of land use in the region;
(10) The potential for health risks caused by human exposure to waste constituents; and
(11) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical
structures caused by exposure to waste constituents.
(c) Prevention of any release that may have adverse effects on human health or the environment
due to migration of waste constituents in the air, considering:
(1) The volume and physical and chemical characteristics of the waste in the unit, including its
potential for the emission and dispersal of gases, aerosols and particulates;
(2) The effectiveness and reliability of systems and structures to reduce or prevent emissions of
hazardous constituents to the air;
(3) The operating characteristics of the unit;
(4) The atmospheric, meteorologic, and topographic characteristics of the unit and the sur-
rounding area;
(5) The existing quality of the air, including other sources of contamination and their cumula-
tive impact on the air;
(6) The potential for health risks caused by human exposure to waste constituents; and
(7) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical
structures caused by exposure to waste constituents.

HISTORY: Added by State Register Volume 14, Issue No. 11, eff November 23, 1990; amended by State Register
Volume 17, Issue No. 12, eff December 24, 1993; State Register Volume 20, Issue No. 5, eff May 24, 1996;

264.602. Monitoring, analysis, inspection, response, reporting, and corrective action.

Monitoring, testing, analytical data, inspections, response, and reporting procedures and frequencies
must ensure compliance with 264.601, 264.15, 264.33, 264.75, 264.76, 264.77, and 264.101 as well as
meet any additional requirements needed to protect human health and the environment as specified in the permit under these regulations.

**HISTORY:** Added by State Register Volume 14, Issue No. 11, eff November 23, 1990; amended by State Register Volume 16, Issue No. 12, eff December 25, 1992.

### 264.603. Post-closure care.

A miscellaneous unit that is a disposal unit must be maintained in a manner that complies with Section 264.601 during the post-closure care period. In addition, if a treatment or storage unit has contaminated soils or groundwater that cannot be completely removed or decontaminated during closure, then that unit must also meet the requirements of Section 264.601 during post-closure care. The post-closure plan under Section 264.118 must specify the procedures that will be used to satisfy this requirement.

**HISTORY:** Added by State Register Volume 14, Issue No. 11, eff November 23, 1990.

### SUBPART AA

#### Air Emission Standards for Process Vents

### 264.1030. Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in 264.1).

(b) Except for 264.1034, paragraphs (d) and (e), this subpart applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in one of the following:

1. A unit that is subject to the permitting requirements of 270, or
2. A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 270, or
3. A unit that is exempt from permitting under the provisions of 262.34(a) (i.e., a 90-day tank or container) and is not a recycling unit under the provisions of 261.6. (9/98)

(c) For the owner and operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 124.15 or reviewed in accordance with the requirements of 270.50(d). Until such date when the owner and operator receive a final permit incorporating the requirements of this subpart, the owner and operator are subject to the requirements of 265, subpart AA.

[NOTE: The requirements of 264.1032 through 264.1036 apply to process vents on hazardous waste recycling units previously exempt under 261.6(c)(1). Other exemptions under 261.4, and 264.1(g) are not affected by these requirements.]

(d) [Reserved]

(e) The requirements of this subpart do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this subpart are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.

**HISTORY:** Added by State Register Volume 16, Issue No. 12, eff December 25, 1992; Amended by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000.

### 264.1031. Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and parts 260–266.
Air stripping operation is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubblecap, sieve, or valvetype plate towers are among the process configurations used for contacting the air and a liquid.

Bottoms receiver means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

Closed-vent system means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

Condenser means a heat transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

Connector means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

Continuous recorder means a data recording device recording an instantaneous data value at least once every 15 minutes.

Control device means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (e.g., a primary condenser on a solvent recovery unit) is not a control device.

Control device shutdown means the cessation of operation of a control device for any purpose.

Distillate receiver means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

Distillation operation means an operation, either batch or continuous, separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by this subpart.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flow indicator means a device that indicates whether gas flow is present in a vent stream.

First attempt at repair means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

Fractionation operation means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

Hazardous waste management unit shutdown means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than 24 hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

Hot well means a container for collecting condensate as in a steam condenser serving a vacuumjet or steamjet ejector.

In gas/vapor service means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.
In heavy liquid service means that the piece of equipment is not in gas/vapor service or in light liquid service.

In light liquid service means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

In situ sampling systems means nonextractive samplers or inline samplers.

In vacuum service means that equipment is operating at an internal pressure that is at least 5 Kpa below ambient pressure.

Malfunction means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

Process heater means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

Process vent means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation, fractionation, thin film evaporation, solvent extraction, or air or steam stripping operations.

Repaired means that equipment is adjusted, or otherwise altered, to eliminate a leak.

Sampling connection system means an assembly of equipment within a process or waste management unit used during periods of representative operation to take samples of the process or waste fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Separator tank means a device used for separation of two immiscible liquids.

Solvent extraction operation means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two being mutually insoluble) to preferentially dissolve and transfer one or more components into the solvent.

Startup means the setting in operation of a hazardous waste management unit or control device for any purpose.

Steam stripping operation means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

Surge control tank means a large sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

Thin film evaporation operation means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

Vapor incinerator means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

Vented means discharged through an opening, typically an openended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-
related means such as evaporation produced by heating and not caused by tank loading and unloading (working losses) or by natural means such as diurnal temperature changes.


(a) The owner or operator of a facility with process vents associated with distillation, fractionation, thinfilm evaporation, solvent extraction, or air or steam stripping operations managing hazardous wastes with organic concentrations of at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of paragraph (a) of this section the closed-vent system and control device must meet the requirements of 264.1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of 264.1034(c).

(d) When an owner or operator and the Department do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in 264.1034(c) shall be used to resolve the disagreement.


(a)(1) Owners or operators of closed-vent systems and control devices used to comply with provisions of this part shall comply with the provisions of this section.

(2)(i) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(ii) Any unit that begins operation after December 21, 1990, and is subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(iii) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment’s effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.
(iv) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997, due to an action other than those described in paragraph (a)(2)(iii) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

(b) A control device involving vapor recovery (e.g., a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of 264.1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (e)(1) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be designed for and operated with a flame present at all times, as determined by the methods specified in paragraph (f)(2)(iii) of this section.

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (e) of this section.

(e)(1) Reference Method 22 in 40 C part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:
where:

- \( H_T \) = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 °C;
- \( K \) = Constant, \( 1.74 \times 10^7 \) (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 °C;
- \( C_i \) = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 C part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82 (incorporated by reference as specified in 260.11); and
- \( H_{i} \) = Net heat of combustion of sample component i, kcal/9 mol at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83 (incorporated by reference as specified in 260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 C part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, \( V_{\text{MAX}} \), for a flare complying with paragraph (d)(4)(iii) of this section shall be determined by the following equation:

\[
\log_{10} (V_{\text{MAX}}) = \frac{H_T + 28.8}{31.7}
\]

where:
- 28.8 = Constant,
- 31.7 = Constant,
- \( H_T \) = The net heating value as determined in paragraph (e)(2) of this section.

(5) The maximum allowed velocity in m/s, \( V_{\text{MAX}} \), for an air-assisted flare shall be determined by the following equation:

\[
V_{\text{MAX}} = 8.706 + 0.7084 (H_T)
\]

where:
- 8.706 = Constant,
- 0.7084 = Constant,
- \( H_T \) = The net heating value as determined in paragraph (e)(2) of this section.

(f) The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the
nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

(2) Install, calibrate, maintain, and operate according to the manufacturer’s specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of $\pm 1 \%$ of the temperature being monitored in $^\circ C$ or $\pm 0.5 \, ^\circ C$, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of $\pm 1 \%$ of the temperature being monitored in $^\circ C$ or $\pm 0.5 \, ^\circ C$, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of $\pm 1 \%$ of the temperature being monitored in $^\circ C$ or $\pm 0.5 \, ^\circ C$, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of $\pm 1 \%$ of the temperature being monitored in degrees Celsius ($^\circ C$) or $\pm 0.5 \, ^\circ C$, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

(vii) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed bed carbon adsorber, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by paragraphs (f)(1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) An owner or operator using a carbon adsorption system such as a fixed bed carbon adsorber that regenerates the carbon bed directly onsite in the control device will replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of 264.1055(b)(4)(iii)(F).

(h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at
an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of 264.1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of 264.1035(b)(4)(iii)(G).

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device’s design specifications.

(j) An owner or operator of an affected facility seeking to comply with the provisions of this part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in 264.1034(b) of this subpart, and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(l) The owner or operator shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with paragraph (k)(1) of this section shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to this section. The owner or operator shall monitor the closed-vent system components and connections using the procedures specified in 264.1034(b) of this subpart to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in paragraph (l)(1)(i) of this section, the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in 264.1034(b) of this subpart to demonstrate that the component operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (l)(1)(ii)(A) of this section shall be monitored annually and at other times as requested by the Department, except as provided for in paragraph (o) of this section, using the procedures specified in 264.1034(b) of this subpart to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in 264.1035 of this subpart.

(2) Each closed-vent system that is used to comply with paragraph (k)(2) of this section shall be inspected and monitored in accordance with the following requirements:
(i) The closed-vent system shall be visually inspected by the owner or operator to check for
defects that could result in air pollutant emissions. Defects include, but are not limited to, visible
cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The owner or operator shall perform an initial inspection of the closed-vent system on or
before the date that the system becomes subject to this section. Thereafter, the owner or operator
shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect
in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in
accordance with the requirements specified in 264.1035 of this subpart.

(3) The owner or operator shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater
than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15
calendar days after the emission is detected, except as provided for in paragraph (l)(3)(iii) of this
section.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is
detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the
repair is technically infeasible without a process unit shutdown, or if the owner or operator
determines that emissions resulting from immediate repair would be greater than the fugitive
emissions likely to result from delay of repair. Repair of such equipment shall be completed by the
end of the next process unit shutdown.

(iv) The owner or operator shall maintain a record of the defect repair in accordance with the
requirements specified in 264.1035 of this subpart.

(m) Closed-vent systems and control devices used to comply with provisions of this subpart shall be
operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall
document that all carbon that is a hazardous waste and that is removed from the control device is
managed in one of the following manners, regardless of the average volatile organic concentration of
the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

   (i) The owner or operator of the unit has been issued a final permit under part 270 which
       implements the requirements of subpart X of this part; or

   (ii) The unit is equipped with and operating air emission controls in accordance with the
       applicable requirements of subparts AA and CC of either this part or of part 265; or

   (iii) The unit is equipped with and operating air emission controls in accordance with a national
       emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

   (i) Has been issued a final permit under part 270 which implements the requirements of
       subpart O of this part; or

   (ii) Has designed and operates the incinerator in accordance with the interim status require-
       ments of part 265, subpart O.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

   (i) Has been issued a final permit under part 270 which implements the requirements of part
       266, subpart H; or

   (ii) Has designed and operates the boiler or industrial furnace in accordance with the interim
       status requirements of part 266, subpart H.

(o) Any components of a closed-vent system that are designated, as described in 264.1035(c)(9) of
this subpart, as unsafe to monitor are exempt from the requirements of paragraph (l)(1)(ii)(B) of this
section if:
(1) The owner or operator of the closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (l)(1)(ii)(B) of this section; and

(2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in paragraph (l)(1)(ii)(B) of this section as frequently as practicable during safe-to-monitor times.


264.1034. Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in 264.1033 (1) of this subpart, the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 C part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or nhexane and air at a concentration of approximately, but less than, 10,000 ppm methane or nhexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with 264.1032(a) and with the total organic compound concentration limit of 264.1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 C part 60 for velocity and volumetric flow rate.

(ii) Method 18 in 40 C part 60 for organic content.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a timeweighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

\[ E_H = \frac{\sum_{i=1}^{n} CMW_i}{Q_{SD}} \cdot [0.0418] \cdot [10^{-9}] \]

where:

\( E_H \) = Total organic mass flow rate, kg/h;

\( Q_{SD} \) = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;
n = Number of organic compounds in the vent gas;

\[ C_i = \text{Organic concentration in ppm, dry basis, of compound } i \text{ in the vent gas, as determined by Method 18;} \]

\[ MW_i = \text{Molecular weight of organic compound } i \text{ in the vent gas, kg/kgmol;} \]

\[ 0.0416 = \text{Conversion factor for molar volume, kgmol/m}^3 \text{ (@ 293 K and 760 mm Hg);} \]

\[ 106 = \text{Conversion from ppm, ppm}^1. \]

(v) The annual total organic emission rate shall be determined by the following equation:

\[ E_A = (E_H)H \]

where:

\[ E_A = \text{Total organic mass emission rate, kg/y;} \]

\[ E_H = \text{Total organic mass flow rate for the process vent, kg/h;} \]

\[ H = \text{Total annual hours of operations for the affected unit, h.} \]

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (\( E_H \) as determined in paragraph (c)(1)(iv) of this section) and by summing the annual total organic mass emission rates (\( E_A \) as determined in paragraph (c)(1)(v) of this section) for all affected process vents at the facility.

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in paragraph (c)(1) of this section.

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the timeweighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator’s control, compliance may, upon the Department’s approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thinfilm evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the owner or operator must make an initial determination that the timeweighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the waste using the following procedures:

(i) The owner or operator must take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

(ii) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thinfilm evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8260 of SW–846 (incorporated by reference under 260.11).
The arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.

Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of this subpart or by the date when the waste is first managed in a waste management unit, whichever is later, and

(2) For continuously generated waste, annually, or

(3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) When an owner or operator and the Department do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8260 of SW-846 (incorporated by reference under 260.11) may be used to resolve the dispute.

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992; Amended by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999.

264.1035. Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For facilities that comply with the provisions of 264.1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be in the facility operating record by the effective date that the facility becomes subject to the provisions of this subpart.

(2) Up-to-date documentation of compliance with the process vent standards in 264.1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the
purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan must include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:
   (A) Manufacturer’s name and model number of control device.
   (B) Type of control device.
   (C) Dimensions of the control device.
   (D) Capacity.
   (E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with 264.1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records, including the dates, of each compliance test required by 264.1033(k).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of APTI Course 415: Control of Gaseous Emissions (incorporated by reference as specified in 260.11) or other engineering texts acceptable to the Department that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(G) of this section may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

   (A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

   (B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

   (C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

   (D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in 264.1033(d).
For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

For a carbon adsorption system such as a fixed bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of 264.1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of 264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

If performance tests are used to demonstrate compliance, all test results.

c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this part shall be recorded and kept up-to-date in the facility operating record. The information shall include:

1. Description and date of each modification that is made to the closed-vent system or control device design.

2. Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with 264.1033 (f)(1) and (f)(2).

3. Monitoring, operating, and inspection information required by paragraphs (f) through (k) of 264.1033.

4. Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

i. For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760°C, period when the combustion temperature is below 760°C.

ii. For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, period when the combustion zone temperature is more than 28°C below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

iii. For a catalytic vapor incinerator, period when:
(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 °C below the average temperature of the inlet vent stream established as a requirement of paragraph (b)(4)(iii)(B) of this section, or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of paragraph (b)(4)(iii)(B) of this section.

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 °C below the design average flame zone temperature established as a requirement of paragraph (b)(4)(iii)(C) of this section, or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of paragraph (b)(4)(iii)(C) of this section.

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with 264.1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(vii) For a condenser that complies with 264.1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 °C above the design average exhaust vent stream temperature established as a requirement of paragraph (b)(4)(iii)(E) of this section; or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 °C above the design average coolant fluid temperature at the condenser outlet established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(viii) For a carbon adsorption system such as a fixed bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with 264.1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(ix) For a carbon adsorption system such as a fixed bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with 264.1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(5) Explanation for each period recorded under paragraph (4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For a carbon adsorption system operated subject to requirements specified in 264.1033(g) or 264.1033(h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For a carbon adsorption system operated subject to requirements specified in 264.1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to 264.1033(o) of this subpart shall record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of 264.1033(o) of this subpart, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.
(10) When each leak is detected as specified in 264.1033(1) of this subpart, the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) “Repair delayed” and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (c)(10) of this section shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Department will specify the appropriate recordkeeping requirements.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in 264.1032 including supporting documentation as required by 264.1034(d)(2) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.


264.1036. Reporting requirements.

(a) A semiannual report shall be submitted by owners and operators subject to the requirements of this subpart to the Department by dates specified by the Department. The report shall include the following information:

(1) The EPA identification number, name, and address of the facility.

(2) For each month during the semiannual reporting period, dates when the control device exceeded or operated outside of the design specifications as defined in 264.1035(c)(4) and as indicated by the control device monitoring required by 264.1033(f) and such exceedances were not corrected within 24 hours, or that a flare operated with visible emissions as defined in 264.1033(d) and as determined by Method 22 monitoring, the duration and cause of each exceedance or visible emissions, and any corrective measures taken.

(b) If, during the semiannual reporting period, the control device does not exceed or operate outside of the design specifications as defined in 264.1035(c)(4) for more than 24 hours or a flare does not operate with visible emissions as defined in 264.1033(d), a report to the Department is not required.


SUBPART BB
Air Emission Standards for Equipment Leaks

264.1050. Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in 264.1).
Except as provided in 264.1064(k), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following: (9/98)

1. A unit that is subject to the permitting requirements of part 270, or
2. A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 262.34(a) (i.e., a hazardous waste recycling unit that is not a “90-day” tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of part 270, or
3. A unit that is exempt from permitting under the provisions of 262.34(a) (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 261.6.

For the owner or operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 124.15 or reviewed in accordance with the requirements of 270.50(d). Until such date when the owner or operator receives a final permit incorporating the requirements of this subpart, the owner or operator is subject to the requirements of part 265, subpart BB.

Each piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

Equipment that is in vacuum service is excluded from the requirements of 264.1052 to 264.1060 if it is identified as required in 264.1064(g)(5).

[Note: The requirements of 264.1052 through 264.1065 apply to equipment associated with hazardous waste recycling units previously exempt under 261.6(c)(1). Other exemptions under 261.4, 262.34, and 264.1(g) are not affected by these requirements.]

Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of 264.1052 through 264.1060 if it is identified, as required in 264.1064(g)(6) of this subpart. (9/98)

(g) [Reserved]

(h) Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at 40 CFR part 63, subpart III, are not subject to the requirements of this subpart.

[Note: The requirements of 264.1052 through 264.1065 apply to equipment associated with hazardous waste recycling units previously exempt under 261.6(c)(1). Other exemptions under 261.4, and 264.1(g) are not affected by these requirements.]

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992; Amended by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999; State Register Volume 24, Issue No. 8, eff August 25, 2000; State Register Volume 30, Issue No. 6, eff June 23, 2006.

264.1051. Definitions.

As used in this subpart, all terms shall have the meaning given them in 264.1031, the Act, and parts 260 through 266.


(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in 264.1063(b), except as provided in paragraphs (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.
(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in 264.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a) of this section, provided the following requirements are met:

(1) Each dual mechanical seal system must be:

   (i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or
   (ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of 264.1060, or
   (iii) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in paragraph (d)(3) of this section must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii) of this section, a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in 264.1059.

(iii) A first attempt at repair (e.g., relapping the seal) shall be made no later than 5 calendar days after each leak is detected.

(e) Any pump that is designated, as described in 264.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a), (c) and (d) of this section if the pump meets the following requirements:

(1) Must have no externally actuated shaft penetrating the pump housing.

(2) Must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in 264.1063(c).

(3) Must be tested for compliance with paragraph (e)(2) of this section initially upon designation, annually, and at other times as requested by the Department.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of 264.1060, it is exempt from the requirements of paragraphs (a) through (e) of this section.


264.1053 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:
(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § 264.1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.

(c) The barrier fluid must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in paragraph (d) of this section shall be checked daily or shall be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in 264.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of 264.1060, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in 264.1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in 264.1063(c).

(2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times as requested by the Department.

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992; amended by State Register Volume 17, Issue No. 12, eff December 24, 1993.


(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in 264.1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in 264.1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in 264.1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in 264.1060 is exempt from the requirements of paragraphs (a) and (b) of this section.


(a) Each sampling connection system shall be equipped with a closed purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall meet one of the following requirements:

1. Return the purged process fluid directly to the process line;
2. Collect and recycle the purged process fluid; or
3. Be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of 264.1084 through 264.1086 of this subpart or a control device that complies with the requirements of 264.1060 of this subpart.

(c) In situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992; Amended by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998.

264.1056. Standards: Openended valves or lines.

(a)(1) Each openended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the openended valve or line.

(b) Each openended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.


264.1057. Standards: Valves in gas/vapor service or in light liquid service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in 264.1063(b) and shall comply with paragraphs (b) through (e) of this section, except as provided in paragraphs (f), (g), and (h) of this section, and 264.1061 and 264.1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months.

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in 264.1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

1. Tightening of bonnet bolts.
2. Replacement of bonnet bolts.
3. Tightening of packing gland nuts.
4. Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in 264.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) of this section if the valve:
(1) Has no external actuating mechanism in contact with the hazardous waste stream.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in 264.1063(c).

(3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times as requested by the Department.

(g) Any valve that is designated, as described in 264.1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section.

(2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in 264.1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.


264.1058. Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within 5 days by the method specified in 264.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in 264.1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under 264.1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping requirements of 264.1064 of this subpart.

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992; Amended by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998.


(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.
When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with 264.1060.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous waste management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown will not be allowed unless the next hazardous waste management unit shutdown occurs sooner than 6 months after the first hazardous waste management unit shutdown.


(a) Owners and operators of closed-vent systems and control devices subject to this subpart shall comply with the provisions of 264.1033 of this part.

(b)(1) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(2) Any unit that begins operation after December 21, 1990, and is subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(3) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment’s effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award or contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(4) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997, due to an action other than those described in paragraph (b)(3) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).


264.1061. Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.

(a) An owner or operator subject to the requirements of 264.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:
(1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Department.

(2) If a valve leak is detected, it shall be repaired in accordance with 264.1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in 264.1057 within the hazardous waste management unit shall be monitored within 1 week by the methods specified in 264.1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in 264.1057 for which leaks are detected by the total number of valves subject to the requirements in 264.1057 within the hazardous waste management unit.


(a) An owner or operator subject to the requirements of 264.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

(b)(1) An owner or operator shall comply with the requirements for valves, as described in 264.1057, except as described in paragraphs (b)(2) and (b)(3) of this section.

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., monitor for leaks once every six months) for the valves subject to the requirements in 264.1057 of this subpart.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in 264.1057 of this subpart.

(4) If the percentage of valves leaking is greater than 2 percent, the owner or operator shall monitor monthly in compliance with the requirements in 264.1057, but may again elect to use this section after meeting the requirements of 264.1057(c)(1).


264.1063. Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in 264.1052-264.1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or nhexane and air at a concentration of approximately, but less than, 10,000 ppm methane or nhexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.
(c) When equipment is tested for compliance with no detectable emissions, as required in 264.1052(e), 264.1053(i), 264.1054, and 264.1057(f), the test shall comply with the following requirements:

1. The requirements of paragraphs (b)(1) through (4) of this section shall apply.
2. The background level shall be determined as set forth in Reference Method 21.
3. The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.
4. The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) In accordance with the waste analysis plan required by 264.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with an organic concentration that equals or exceeds 10 percent by weight using the following:

1. Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85 (incorporated by reference under 260.11);
2. Method 9060 or 8260 of SW–846 (incorporated by reference under 260.11); or
3. Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been determined by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with an organic concentration at least 10 percent by weight, the determination can be revised only after following the procedures in paragraph (d)(1) or (d)(2) of this section.

(f) When an owner or operator and the Department do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in paragraph (d)(1) or (d)(2) of this section can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86 (incorporated by reference under 260.11).

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of 264.1034(c)(1) through (c)(4).

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992; Amended by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998.

264.1064. Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

1. For each piece of equipment to which subpart BB of part 264 applies:
2. Equipment identification number and hazardous waste management unit identification.
(ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(iii) Type of equipment (e.g., a pump or pipeline valve).

(iv) Percent by weight total organics in the hazardous waste stream at the equipment.

(v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(vi) Method of compliance with the standard (e.g., monthly leak detection and repair or equipped with dual mechanical seals).

(2) For facilities that comply with the provisions of 264.1033(a)(2), an implementation schedule as specified in 264.1033(a)(2).

(3) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in 264.1035(b)(3).

(4) Documentation of compliance with 264.1060, including the detailed design documentation or performance test results specified in 264.1035(b)(4).

(c) When each leak is detected as specified in 264.1052, 264.1053, 264.1057, and 264.1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with 264.1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in 264.1057(c) and no leak has been detected during those 2 months.

(d) When each leak is detected as specified in 264.1052, 264.1053, 264.1057, and 264.1058, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with 264.1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) Above 10,000 if the maximum instrument reading measured by the methods specified in 264.1063(b) after each repair attempt is equal to or greater than 10,000 ppm.

(6) Repair delayed and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with 264.1059(c).

(8) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of 264.1060 shall be recorded and kept up to date in the facility operating record as specified in 264.1035(c). Design documentation is specified in 264.1035 (c)(1) and (c)(2) and monitoring, operating, and inspection information in 264.1035(c)(3)(c)(8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Department will specify the appropriate recordkeeping requirements.
(g) The following information pertaining to all equipment subject to the requirements in 264.1052 through 264.1060 shall be recorded in a log that is kept in the facility operating record:

1. A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.

2.(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of 264.1052(e), 264.1053(i), and 264.1057(f).

   (ii) The designation of this equipment as subject to the requirements of 264.1052(e), 264.1053(i), or 264.1057(f) shall be signed by the owner or operator.

3. A list of equipment identification numbers for pressure relief devices required to comply with 264.1054(a).

4.(i) The dates of each compliance test required in 264.1052(e), 264.1053(i), 264.1054, and 264.1057(f).

   (ii) The background level measured during each compliance test.

   (iii) The maximum instrument reading measured at the equipment during each compliance test.

5. A list of identification numbers for equipment in vacuum service.

6. Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year. (9/98)

(h) The following information pertaining to all valves subject to the requirements of 264.1057(g) and (h) shall be recorded in a log that is kept in the facility operating record:

1. A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

2. A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in the facility operating record for valves complying with 264.1062:

   1. A schedule of monitoring.

   2. The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept in the facility operating record:

1. Criteria required in 264.1052(d)(5)(ii) and 264.1053(e)(2) and an explanation of the design criteria.

2. Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the applicability section of this subpart and other specific subparts:

1. An analysis determining the design capacity of the hazardous waste management unit.

2. A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in 264.1052 through 264.1060 and an analysis determining whether these hazardous wastes are heavy liquids.

3. An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in 264.1052 through 264.1060. The record shall include supporting documentation as required by 264.1063(d)(3) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action (e.g., changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in 264.1052 through 264.1060, then a new determination is required.
Records of the equipment leak information required by paragraph (d) of this section and the operating information required by paragraph (e) of this section need be kept only 3 years.

(m) The owner or operator of a facility with equipment that is subject to this subpart and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to 264.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

HISTORY: Added by State Register Volume 16, Issue No. 12, eff December 25, 1992; Amended by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998; State Register Volume 23, Issue No. 11, eff November 26, 1999.

264.1065. Reporting requirements.

(a) A semiannual report shall be submitted by owners and operators subject to the requirements of this subpart to the Department by dates specified by the Department. The report shall include the following information:

(1) The EPA identification number, name, and address of the facility.

(2) For each month during the semiannual reporting period:

(i) The equipment identification number of each valve for which a leak was not repaired as required in 264.1057(d).

(ii) The equipment identification number of each pump for which a leak was not repaired as required in 264.1052(c) and (d)(6).

(iii) The equipment identification number of each compressor for which a leak was not repaired as required in 264.1053(g).

(3) Dates of hazardous waste management unit shutdowns that occurred within the semiannual reporting period.

(4) For each month during the semiannual reporting period, dates when the control device installed as required by 264.1052, 264.1053, 264.1054, or 264.1055 exceeded or operated outside of the design specifications as defined in 264.1064(e) and as indicated by the control device monitoring required by 264.1060 and was not corrected within 24 hours, the duration and cause of each exceedance, and any corrective measures taken.

(b) If, during the semiannual reporting period, leaks from valves, pumps, and compressors are repaired as required in 264.1057(d), 264.1052(c) and (d)(6), and 264.1053(g), respectively, and the control device does not exceed or operate outside of the design specifications as defined in 264.1064(e) for more than 24 hours, a report to the Department is not required.


SUBPART CC

Air Emission Standards for Tanks, Surface Impoundments, and Containers (9/98)

264.1080. Applicability.

(a) The requirements of this subpart apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subpart I, J, or K of this part except as 264.1 and paragraph (b) of this section provide otherwise.

(b) The requirements of this subpart do not apply to the following waste management units at the facility:

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

(2) A container that has a design capacity less than or equal to 0.1 m³.

(3) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.
(4) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities.

(6) A waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act.

(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. For the purpose of complying with this paragraph, a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of 264.1084(i), except as provided in 264.1082(c)(5).

(8) A tank that has a process vent as defined in 264.1031.

(c) For the owner and operator of a facility subject to this subpart who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 124.15 of this chapter or reviewed in accordance with the requirements of 270.50(d) of this chapter. Until such date when the permit is reissued in accordance with the requirements of 124.15 or reviewed in accordance with the requirements of 270.50(d), the owner and operator are subject to the requirements of part 265, subpart CC.

(d) The requirements of this subpart, except for the recordkeeping requirements specified in 264.1089(i) of this subpart, are administratively stayed for a tank or a container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations when the owner or operator of the unit meets all of the following conditions:

   (1) The owner or operator identifies that the tank or container receives hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one or more of these organic peroxides could potentially undergo self-accelerating thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purpose of meeting the conditions of this paragraph, “organic peroxide” means an organic compound that contains the bivalent-O–O-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

   (2) The owner or operator prepares documentation, in accordance with the requirements of 264.1089(i) of this subpart, explaining why an undue safety hazard would be created if air emission controls specified in 264.1084 through 264.1087 of this subpart are installed and operated on the tanks and containers used at the facility to manage the hazardous waste generated by the organic peroxide manufacturing process or processes meeting the conditions of paragraph (d)(1) of this section.

   (3) The owner or operator notifies the Department in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of paragraph (d)(1) of this section are managed at the facility in tanks or containers meeting the conditions of paragraph (d)(2) of this section. The notification shall state the name and address of the facility, and be signed and dated by an authorized representative of the facility owner or operator.

(e) [Reserved]

264.1081. Definitions.

As used in this subpart, all terms shall have the meaning given to them in 265.1081, the Act, and parts 260 through 266 of this chapter.

HISTORY: Added by State Register Volume 22, Issue No. 9, eff September 25, 1998.


(a) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this subpart.

(b) The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in 264.1084 through 264.1087 of this subpart, as applicable to the hazardous waste management unit, except as provided for in paragraph (c) of this section.

(c) A tank, surface impoundment, or container is exempt from standards specified in 264.1084 through 264.1087 of this subpart, as applicable, provided that the waste management unit is one of the following:

1. A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in 264.1083(a) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

2. A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

   i. A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_t) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in 264.1083(b) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

   ii. A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in 264.1083(b) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

   iii. A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in 264.1083(b) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

   iv. A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

      A. The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_bio) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined using the procedures specified in 264.1083(b) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

      B. The total actual organic mass biodegradation rate (MR_bio) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in 264.1083(b) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.
(A) From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is managed continuously in waste management units which use air emission controls in accordance with the standards specified in 264.1084 through 264.1087 of this subpart, as applicable to the waste management unit.

(B) From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the atmosphere. The EPA considers a drain system that meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems to be a closed system.

(C) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual waste stream at the point of waste origination shall be determined using the procedures specified in 264.1083(a) of this subpart. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in 264.1083(b) of this subpart.

(vi) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination shall be determined using the procedures specified in 264.1083(b) and 264.1083(a) of this subpart, respectively.

(vii) A hazardous waste incinerator for which the owner or operator has either:

(A) Been issued a final permit under part 270 which implements the requirements of subpart O of this part; or

(B) Has designed and operates the incinerator in accordance with the interim status requirements of part 265, subpart O.

(viii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under part 270 which implements the requirements of part 266, subpart H, or

(B) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of part 266, subpart H.

(ix) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of paragraphs (c)(2)(i) through (c)(2)(vi) of this section, the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A, or a value of 25 ppmw, whichever is less.

(B) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry’s law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8 x 10^4 atmospheres/gram-mole/m^3] at 25 degrees Celsius.

(3) A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of paragraph (c)(2)(iv) of this section.

(4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit either:

(i) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in part 268—Land Disposal Restrictions under Table “Treatment Standards for Hazardous Waste” in 268.40; or
(ii) The organic hazardous constituents in the waste have been treated by the treatment technology established by the EPA for the waste in 268.42(a), or have been removed or destroyed by an equivalent method of treatment approved by EPA pursuant to 268.42(b).

(5) A tank used for bulk feed of hazardous waste to a waste incinerator and all of the following conditions are met:

   (i) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

   (ii) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996 and

   (iii) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” annually.

(d) The Department may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

   (1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of 264.1083(a) of this subpart. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of 264.1083(b) of this subpart.

   (2) In performing a waste determination pursuant to paragraph (d)(1) of this section, the sample preparation and analysis shall be conducted as follows:

      (i) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in paragraph (d)(2)(ii) of this section.

      (ii) If the Department determines that the method used by the owner or operator was not appropriate for the hazardous waste managed in the tank, surface impoundment, or container, then the Department may choose an appropriate method.

   (3) In a case when the owner or operator is requested to perform the waste determination, the Department may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

   (4) In a case when the results of the waste determination performed or requested by the Department do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of paragraph (d)(1) of this section shall be used to establish compliance with the requirements of this subpart.

   (5) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Department may elect to establish compliance with this subpart by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

      (i) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of 264.1083(a) of this subpart.

      (ii) Results of the waste determination performed or requested by the Department showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to
or greater than 500 ppmw shall constitute noncompliance with this subpart except in a case as provided for in paragraph (d)(5)(iii) of this section.

(iii) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than 1 hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of 264.1083(a) and 264.1089 of this subpart shall be considered by the Department together with the results of the waste determination performed or requested by the Department in establishing compliance with this subpart.


264.1083. Waste determination procedures.

(a) Waste determination procedure to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of 264.1082(c)(1) of this subpart from using air emission controls in accordance with standards specified in 264.1084 through 264.1087 of this subpart, as applicable to the waste management unit.

(ii) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in 264.1082 of this subpart.

(2) For a waste determination that is required by paragraph (a)(1) of this section, the average VO concentration of a hazardous waste at the point of waste origination shall be determined in accordance with the procedures specified in 265.1084(a)(2) through (a)(4).

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determinations for each treated hazardous waste placed in waste management units exempted under the provisions of 264.1082(c)(2)(i) through (c)(2)(vi) of this subpart from using air emission controls in accordance with standards specified in 264.1084 through 264.1087 of this subpart, as applicable to the waste management unit.

(ii) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in 264.1082(c)(2) of this subpart are not achieved.

(2) The waste determination for a treated hazardous waste shall be performed in accordance with the procedures specified in 265.1084 (b)(2) through (b)(9), as applicable to the treated hazardous waste.

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.
(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with standards specified in 264.1084(c) of this subpart.

(2) The maximum organic vapor pressure of the hazardous waste may be determined in accordance with the procedures specified in 265.1084(c)(2) through (c)(4).

(d) The procedure for determining no detectable organic emissions for the purpose of complying with this subpart shall be conducted in accordance with the procedures specified in 265.1084(d).


(a) The provisions of this section apply to the control of air pollutant emissions from tanks for which 264.1082(b) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous waste that meets all of the conditions specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the owner or operator shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in paragraph (c) of this section or the Tank Level 2 controls specified in paragraph (d) of this section.

(i) The hazardous waste in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank’s design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m³, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m³ but less than 151 m³, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 m³, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with paragraph (b)(1)(i) of this section.

(iii) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in 265.1081.

(2) For a tank that manages hazardous waste that does not meet all of the conditions specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the owner or operator shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section. Examples of tanks required to use Tank Level 2 controls include: A tank used for a waste stabilization process; and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank’s design capacity category as specified in paragraph (b)(1)(i) of this section.

(c) Owners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in paragraphs (c)(1) through (c)(4) of this section:

(1) The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in 264.1083(c) of this subpart. Thereafter, the owner or operator shall perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in paragraph (b)(1)(i) of this section, as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:
(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous waste is managed in the tank, except as provided for in paragraphs (c)(2)(iii)(B) (1) and (2) of this section.

(1) During periods when it is necessary to provide access to the tank for performing the activities of paragraph (c)(2)(iii)(B)(2) of this section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(2) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal
pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in paragraph (f) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in 264.1089(b) of this subpart.

(d) Owners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(4) A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(e) The owner or operator who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in 265.1081; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

...
(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer’s recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous waste surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The owner or operator shall inspect the internal floating roof components as follows except as provided in paragraph (e)(3)(ii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in paragraph (e)(3)(ii) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years.

(iv) Prior to each inspection required by paragraph (e)(3)(ii) or (e)(3)(iii) of this section, the owner or operator shall notify the Department in advance of each inspection to provide the Department with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Department of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Department at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (e)(3)(iv)(B) of this section.

(B) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Department as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written
explanation for why the inspection is unplanned. Alternatively, written notification, including
the explanation for the unplanned inspection, may be sent so that it is received by the
Department at least 7 calendar days before refilling the tank.

(v) In the event that a defect is detected, the owner or operator shall repair the defect in
accordance with the requirements of paragraph (k) of this section.

(vi) The owner or operator shall maintain a record of the inspection in accordance with the
requirements specified in 264.1089(b) of this subpart.

(4) Safety devices, as defined in 265.1081, may be installed and operated as necessary on any tank
complying with the requirements of paragraph (e) of this section.

(f) The owner or operator who controls air pollutant emissions from a tank using an external
floating roof shall meet the requirements specified in paragraphs (f)(1) through (f)(3) of this section.

1. The owner or operator shall design the external floating roof in accordance with the following
requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the
floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between
the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the
upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in
265.1081. The total area of the gaps between the tank wall and the primary seal shall not exceed
212 square centimeters (cm²) per meter of tank diameter, and the width of any portion of these
gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal,
the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and
the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space
between the floating roof and the wall of the tank. The total area of the gaps between the tank
wall and the secondary seal shall not exceed 21.2 square centimeters (cm²) per meter of tank
diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each
opening in a noncontact external floating roof shall provide a projection below the liquid
surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each
opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be
bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a
slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover
or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which
closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or
refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each
opening in the roof shall be secured and maintained in a closed position at all times except when
the closure device must be open for access.
(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer’s recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

   (A) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

   (B) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

   (C) If a tank ceases to hold hazardous waste for a period of 1 year or more, subsequent introduction of hazardous waste into the tank shall be considered an initial operation for the purposes of paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) of this section.

   (D) The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

      (1) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

      (2) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

      (3) For a seal gap measured under paragraph (f)(3) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

      (4) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

   (E) In the event that the seal gap measurements do not conform to the specifications in paragraph (f)(1)(ii) of this section, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

   (F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in 264.1089(b) of this subpart.

(ii) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:
(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in 264.1089(b) of this subpart.

(iii) Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this section, the owner or operator shall notify the Department in advance of each inspection to provide the Department with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Department of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under paragraph (f)(3)(i) of this section, written notification shall be prepared and sent by the owner or operator so that it is received by the Department at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Department at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (f)(3)(iii)(C) of this section.

(C) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Department as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Department at least 7 calendar days before refilling the tank.

(4) Safety devices, as defined in 265.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (f) of this section.

(g) The owner or operator who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in paragraphs (g)(1) through (g)(3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be
considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of 264.1087 of this subpart.

(2) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in 264.1087 of this subpart.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in 264.1089(b) of this subpart.

(h) The owner or operator who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in 264.1083(d) of this subpart.

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either of the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in 265.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of 264.1087 of this subpart.
(i) The owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (i)(4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in 264.1087 of this subpart.

(3) Safety devices, as defined in 265.1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of paragraphs (i)(1) and (i)(2) of this section.

(4) The owner or operator shall inspect and monitor the closed-vent system and control device as specified in 264.1087 of this subpart.

(j) The owner or operator shall transfer hazardous waste to a tank subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in paragraph (j)(2) of this section, to the tank from another tank subject to this section or from a surface impoundment subject to 264.1085 of this subpart shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (j)(1) of this section do not apply when transferring a hazardous waste to the tank under any of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in 264.1082(c)(1) of this subpart at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in 264.1082(c)(2) of this subpart.

(iii) The hazardous waste meets the requirements of 264.1082(c)(4) of this subpart.

(k) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(4), (e)(3), (f)(3), or (g)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (k)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an “unsafe to inspect and monitor cover” and comply with all of the following requirements:
(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of this subpart, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.


(a) The provisions of this section apply to the control of air pollutant emissions from surface impoundments for which 264.1082(b) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from the surface impoundment by installing and operating either of the following:

(1) A floating membrane cover in accordance with the provisions specified in paragraph (c) of this section; or

(2) A cover that is vented through a closed-vent system to a control device in accordance with the provisions specified in paragraph (d) of this section.

(c) The owner or operator who controls air pollutant emissions from a surface impoundment using a floating membrane cover shall meet the requirements specified in paragraphs (c)(1) through (c)(3) of this section.

(1) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(i) The floating membrane cover shall be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid.

(ii) The cover shall be fabricated from a synthetic membrane material that is either:

(A) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm); or

(B) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in paragraph (c)(1)(ii)(A) of this section and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(iii) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(iv) Except as provided for in paragraph (c)(1)(v) of this section, each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(v) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(vi) The closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface...
impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating
practices used for the surface impoundment on which the floating membrane cover is installed.

(2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover
shall float on the liquid and each closure device shall be secured in the closed position except as
follows:

(i) Opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection,
maintenance, or other activities needed for normal operations. Examples of such activities
include those times when a worker needs to open a port to sample the liquid in the surface
impoundment, or when a worker needs to open a hatch to maintain or repair equipment.
Following completion of the activity, the owner or operator shall promptly replace the cover and
secure the closure device in the closed position, as applicable.

(B) To remove accumulated sludge or other residues from the bottom of surface impound-
ment.

(ii) Opening of a safety device, as defined in 265.1081, is allowed at any time conditions require
doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect the floating membrane cover in accordance with the
following procedures:

(i) The floating membrane cover and its closure devices shall be visually inspected by the owner
or operator to check for defects that could result in air pollutant emissions. Defects include, but
are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface
of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or
gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure
devices.

(ii) The owner or operator shall perform an initial inspection of the floating membrane cover
and its closure devices on or before the date that the surface impoundment becomes subject to this
section. Thereafter, the owner or operator shall perform the inspections at least once every year
except for the special conditions provided for in paragraph (g) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in
accordance with the requirements of paragraph (f) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the
requirements specified in 264.1089(c) of this subpart.

(d) The owner or operator who controls air pollutant emissions from a surface impoundment using
a cover vented to a control device shall meet the requirements specified in paragraphs (d)(1) through
(d)(3) of this section.

(1) The surface impoundment shall be covered by a cover and vented directly through a closed-
vent system to a control device in accordance with the following requirements:

(i) The cover and its closure devices shall be designed to form a continuous barrier over the
entire surface area of the liquid in the surface impoundment.

(ii) Each opening in the cover not vented to the control device shall be equipped with a closure
device. If the pressure in the vapor headspace underneath the cover is less than atmospheric
pressure when the control device is operating, the closure devices shall be designed to operate
such that when the closure device is secured in the closed position there are no visible cracks,
holes, gaps, or other open spaces in the closure device or between the perimeter of the cover
opening and the closure device. If the pressure in the vapor headspace underneath the cover is
equal to or greater than atmospheric pressure when the control device is operating, the closure
device shall be designed to operate with no detectable organic emissions using the procedure
specified in 264.1083(d) of this subpart.

(iii) The cover and its closure devices shall be made of suitable materials that will minimize
exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the
integrity of the cover and closure devices throughout their intended service life. Factors to be
considered when selecting the materials of construction and designing the cover and closure
devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its
vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of 264.1087 of this subpart.

(2) Whenever a hazardous waste is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

(B) To remove accumulated sludge or other residues from the bottom of the surface impoundment.

(ii) Opening of a safety device, as defined in 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The surface impoundment cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in 264.1087 of this subpart.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (g) of this section.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (f) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in 264.1089(c) of this subpart.

(e) The owner or operator shall transfer hazardous waste to a surface impoundment subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in paragraph (e)(2) of this section, to the surface impoundment from another surface impoundment subject to this section or from a tank subject to 264.1084 of this subpart shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (e)(1) of this section do not apply when transferring a hazardous waste to the surface impoundment under either of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in 264.1082(c)(1) of this subpart at the point of waste origination.
The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in 264.1082(c)(2) of this subpart.

The hazardous waste meets the requirements of 264.1082(c)(4) of this subpart.

The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(3) or (d)(3) of this section as follows:

1. The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (f)(2) of this section.

2. Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the surface impoundment stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an “unsafe to inspect and monitor cover” and comply with all of the following requirements:

1. Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

2. Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable section of this subpart as frequently as practicable during those times when a worker can safely access the cover.


264.1086. Standards: Containers.

(a) The provisions of this section apply to the control of air pollutant emissions from containers for which 264.1082(b) of this subpart references the use of this section for such air emission control.

(b) General requirements.

1. The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in paragraph (b)(2) of this section apply to the container.

(i) For a container having a design capacity greater than 0.1 m$^3$ and less than or equal to 0.46 m$^3$, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(ii) For a container having a design capacity greater than 0.46 m$^3$ that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(iii) For a container having a design capacity greater than 0.46 m$^3$ that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in paragraph (d) of this section.

2. When a container having a design capacity greater than 0.1 m$^3$ is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in paragraph (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

1. A container using Container Level 1 controls is one of the following:
(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a “portable tank” or bulk cargo container equipped with a screw-type cap).

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (c)(1)(iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in 261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.
(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepted possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to part 262 (Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m³ or greater, which do not meet applicable DOT regulations as specified in paragraph (f) of this section, are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container that operates with no detectable organic emissions as defined in 265.1081 and determined in accordance with the procedure specified in paragraph (g) of this section.

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in paragraph (h) of this section.
(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in 261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal
operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to part 262 (EPA Forms 8700–22 and 8700-22A), as required under subpart E of this part, at 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph (e)(2)(ii) of this section.

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of 264.1087 of this subpart.
(3) Safety devices, as defined in 265.1081, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of this subpart shall inspect and monitor the closed-vent systems and control devices as specified in 264.1087 of this subpart.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this subpart shall prepare and maintain the records specified in 264.1089(d) of this subpart.

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Department considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with paragraph (c)(1)(i) or (d)(1)(i) of this section, containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packaging or 49 CFR part 179—Specifications for Tank Cars.


(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) To determine compliance with the no detectable organic emissions requirement of paragraph (d)(1)(ii) of this section, the procedure specified in 264.1083(d) of this subpart shall be used.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with paragraph (d)(1)(iii) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ±2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.


264.1087. Standards: Closed-vent systems and control devices.

(a) This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this subpart.

(b) The closed-vent system shall meet the following requirements:
(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in paragraph (c) of this section.

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in 264.1033(k) of this part.

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph (b)(3)(i) of this section or a seal or locking device as specified in paragraph (b)(3)(ii) of this section. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with paragraph (b)(3) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this paragraph, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with paragraph (b)(3) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in 264.1033(l).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of 264.1033(c) of this part; or

(iii) A flare designed and operated in accordance with the requirements of 264.1033(d) of this part.

(2) The owner or operator who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section for control devices do not apply during a control device system malfunction.

(iv) The owner or operator shall demonstrate compliance with the requirements of paragraph (c)(2)(i) of this section (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, as applicable, shall not exceed 240 hours per year) by recording the information specified in 264.1089(c)(1)(v) of this subpart.

(v) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.
(vi) The owner or operator shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The owner or operator using a carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of 264.1033(g) or 264.1033(h) of this part.

(ii) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of 264.1033(n), regardless of the average volatile organic concentration of the carbon.

(4) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the requirements of 264.1033(j) of this part.

(5) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (c)(1) of this section as follows:

(i) An owner or operator shall demonstrate using either a performance test as specified in paragraph (c)(5)(iii) of this section or a design analysis as specified in paragraph (c)(5)(iv) of this section the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(D) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under part 270 and has designed and operates the unit in accordance with the requirements of part 266, subpart H; or

(E) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with the interim status requirements of part 266, subpart H.

(ii) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in 264.1033(e).

(iii) For a performance test conducted to meet the requirements of paragraph (c)(5)(i) of this section, the owner or operator shall use the test methods and procedures specified in 264.1034(c)(1) through (c)(4).

(iv) For a design analysis conducted to meet the requirements of paragraph (c)(5)(i) of this section, the design analysis shall meet the requirements specified in 264.1035(b)(4)(iii).

(v) The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of paragraph (c)(1) of this section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the owner or operator and the Department do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (c)(5)(iii) of this section. The Department may choose to have an authorized representative observe the performance test.

(7) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in 264.1033(f)(2) and 264.1033(1).
readings from each monitoring device required by 264.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.


### 264.1088. Inspection and monitoring requirements.

(a) The owner or operator shall inspect and monitor air emission control equipment used to comply with this subpart in accordance with the applicable requirements specified in 264.1084 through 264.1087 of this subpart.

(b) The owner or operator shall develop and implement a written plan and schedule to perform the inspections and monitoring required by paragraph (a) of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under 264.15.

**HISTORY:** Added by State Register Volume 22, Issue No. 9, Part 2, eff September 25, 1998.

### 264.1089. Recordkeeping requirements.

(a) Each owner or operator of a facility subject to requirements of this subpart shall record and maintain the information specified in paragraphs (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraphs (i) and (j) of this section, records required by this section shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraphs (i) and (j) of this section shall be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in 264.1080(d) or 264.1080(b)(7) of this subpart, respectively.

(b) The owner or operator of a tank using air emission controls in accordance with the requirements of 264.1084 of this subpart shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of 264.1084 of this subpart, the owner or operator shall record:

   (i) A tank identification number (or other unique identification description as selected by the owner or operator).

   (ii) A record for each inspection required by 264.1084 of this subpart that includes the following information:

      (A) Date inspection was conducted.

      (B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of 264.1084 of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by paragraph (b)(1) of this section, the owner or operator shall record the following information, as applicable to the tank:

   (i) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in 264.1084(c) of this subpart shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of 264.1084(c) of this subpart. The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

   (ii) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in 264.1084(e) of this subpart shall prepare and maintain documentation describing the floating roof design.
(iii) Owners and operators using an external floating roof to comply with the Tank Level 2 control requirements specified in 264.1084(f) of this subpart shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by 264.1084(f)(3) of this subpart describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in 264.1084(f)(1) of this subpart, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in 264.1084(i) of this subpart shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741 appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of 264.1085 of this subpart shall prepare and maintain records for the surface impoundment that include the following information:

(1) A surface impoundment identification number (or other unique identification description as selected by the owner or operator).

(2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in 264.1085(c) of this subpart.

(3) A record for each inspection required by 264.1085 of this subpart that includes the following information:

(i) Date inspection was conducted.

(ii) For each defect detected during the inspection the following information: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of 264.1085(f) of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(4) For a surface impoundment equipped with a cover and vented through a closed-vent system to a control device, the owner or operator shall prepare and maintain the records specified in paragraph (e) of this section.

d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of 264.1086 of this subpart shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, Appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

e) The owner or operator using a closed-vent system and control device in accordance with the requirements of 264.1087 of this subpart shall prepare and maintain records that include the following information:
Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in paragraph (e)(1)(ii) of this section or by performance tests as specified in paragraph (e)(1)(iii) of this section when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in 264.1035(b)(4). The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with 264.1035(b)(4) and certification by the owner or operator that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in 264.1035(b)(3) and all test results.

(iv) Information as required by 264.1035(c)(1) and 264.1035(c)(2), as applicable.

(v) An owner or operator shall record, on a semiannual basis, the information specified in paragraphs (e)(1)(v)(A) and (e)(1)(v)(B) of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of 264.1087(c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6–month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6–month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of 264.1087 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable, due to planned routine maintenance.

(vi) An owner or operator shall record the information specified in paragraphs (e)(1)(vi)(A) through (e)(1)(vi)(C) of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of 264.1087 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with 264.1087(c)(3)(ii) of this subpart.

The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of 264.1082(c) of this subpart shall prepare and maintain the following records, as applicable:

(1) For tanks, surface impoundments, and containers exempted under the hazardous waste organic concentration conditions specified in 264.1082(c)(1) or 264.1082(c)(2)(i) through (c)(2)(vi) of this subpart, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of 264.1083 of this subpart.

(2) For tanks, surface impoundments, or containers exempted under the provisions of 264.1082(c)(2)(vii) or 264.1082(c)(2)(viii) of this subpart, the owner or operator shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.
An owner or operator designating a cover as “unsafe to inspect and monitor” pursuant to 264.1084(l) or 264.1085(g) of this subpart shall record in a log that is kept in the facility operating record the following information: The identification numbers for waste management units with covers that are designated as “unsafe to inspect and monitor,” the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

The owner or operator of a facility that is subject to this subpart and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of this subpart by documentation either pursuant to this subpart, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

For each tank or container not using air emission controls specified in 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in 264.1080(d) of this subpart, the owner or operator shall record and maintain the following information:

1. A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in 264.1080(d)(1).

2. A description of how the hazardous waste containing the organic peroxide compounds identified in paragraph (i)(1) of this section are managed at the facility in tanks and containers. This description shall include:
   i. For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: A facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.
   ii. For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: A facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

3. An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in paragraph (i)(1) of this section in the tanks and containers as described in paragraph (ii)(2) of this section would create an undue safety hazard if the air emission controls, as required under 264.1084 through 264.1087 of this subpart, are installed and operated on these waste management units. This explanation shall include the following information:
   i. For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.
   ii. For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

For each hazardous waste management unit not using air emission controls specified in 264.1084 through 264.1087 of this subpart in accordance with the requirements of 264.1080 (b)(7) of this subpart, the owner and operator shall record and maintain the following information:
(1) Certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under part 60, part 61, or part 63.

(2) Identification of the specific requirements codified under 40 CFR part 60, part 61, or part 63 with which the waste management unit is in compliance.


264.1090. Reporting requirements.

(a) Each owner or operator managing hazardous waste in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of 264.1082(c) of this subpart shall report to the Department each occurrence when hazardous waste is placed in the waste management unit in noncompliance with the conditions specified in 264.1082 (c)(1) or (c)(2) of this subpart, as applicable. Examples of such occurrences include placing in the waste management unit a hazardous waste having an average VO concentration equal to or greater than 500 ppmw at the point of waste origination; or placing in the waste management unit a treated hazardous waste of which the organic content has been reduced by an organic destruction or removal process that fails to achieve the applicable conditions specified in 264.1082 (c)(2)(i) through (c)(2)(vi) of this subpart. The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(b) Each owner or operator using air emission controls on a tank in accordance with the requirements 264.1084(c) of this subpart shall report to the Department each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in 264.1084(b) of this subpart. The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(c) Each owner or operator using a control device in accordance with the requirements of 264.1087 of this subpart shall submit a semiannual written report to the Department excepted as provided for in paragraph (d) of this section. The report shall describe each occurrence during the previous 6-month period when either:

(1) A control device is operated continuously for 24 hours or longer in noncompliance with the applicable operating values defined in 264.1035(c)(4); or

(2) A flare is operated with visible emissions for 5 minutes or longer in a two-hour period, as defined in 264.1033(d).

The written report shall include the EPA identification number, facility name and address, and an explanation why the control device could not be returned to compliance within 24 hours, and actions taken to correct the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(d) A report to the Department in accordance with the requirements of paragraph (c) of this section is not required for a 6-month period during which all control devices subject to this subpart are operated by the owner or operator such that:

(1) During no period of 24 hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in 264.1035(c)(4); and

(2) No flare was operated with visible emissions for 5 minutes or longer in a two-hour period, as defined in 264.1033(d).

264.1100. Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under 264.1101. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

(a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(b) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel, wastes, and handling equipment within the unit;

(c) If the unit is used to manage liquids, has:

(1) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(2) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(3) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time, unless the unit has been granted a variance from the secondary containment system requirements under 264.1101(b)(4);

(d) Has controls sufficient to prevent fugitive dust emissions to meet the no visible emission standard in 264.1101(c)(1)(iv); and

(e) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

HISTORY: Added by State Register Volume 17, Issue No. 12, eff December 24, 1993. Amended by State Register Volume 32, Issue No. 6, eff June 27, 2008.

264.1101. Design and operating standards.

(a) All containment buildings must comply with the following design standards:

(1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

(2) The floor and containment walls of the unit, including the secondary containment system if required under paragraph (b) of this section, must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. The Department will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this paragraph. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:
(i) They provide an effective barrier against fugitive dust emissions under paragraph (c)(1)(iv); and

(ii) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(3) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(4) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g., a geomembrane covered by a concrete wear surface).

(2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building:

(i) The primary barrier must be sloped to drain liquids to the associated collection system; and

(ii) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of 1 percent or more; and

(B) Constructed of a granular drainage material with a hydraulic conductivity of $1 \times 10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-5}$ m$^2$/sec or more.

(ii) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of 264.193(e)(1). In addition, the containment building must meet the requirements of 264.193(b) and 264.193(c) (1) and (2) to be considered an acceptable secondary containment system for a tank.)

(4) For existing units other than 90-day generator units, the Department may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this subpart. In making this demonstration, the owner or operator must:

(i) Provide written notice to the Department of their request by February 18, 1993. This notification must describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

(ii) Respond to any comments from the Department on these plans within 30 days; and

(iii) Fulfill the terms of the revised plans, if such plans are approved by the Department.
(c) Owners or operators of all containment buildings must:

1. Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:
   
   i. Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;
   
   ii. Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;
   
   iii. Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and
   
   iv. Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A, Method 22-Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices (see 40 CFR part 60 subpart 292 for guidance). This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

2. Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

3. Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator must repair the condition promptly, in accordance with the following procedures.

   i. Upon detection of a condition that has led to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator must:
      
      A. Enter a record of the discovery in the facility operating record;
      
      B. Immediately remove the portion of the containment building affected by the condition from service;
      
      C. Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and
      
      D. Within 7 days after the discovery of the condition, notify the Department of the condition, and within 14 working days, provide a written notice to the Department with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

   ii. The Department will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

   iii. Upon completing all repairs and cleanup the owner or operator must notify the Department in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (c)(3)(i)(D) of this section.

4. Inspect and record in the facility’s operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For a containment building that contains both areas with and without secondary containment, the owner or operator must:

1. Design and operate each area in accordance with the requirements enumerated in paragraphs (a) through (c) of this section;
(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) Maintain in the facility’s operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of this subpart the Department may waive requirements for secondary containment for a permitted containment building where the owner operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.


(a) At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in subparts G and H of this part.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 264.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in subparts G and H of this part.

HISTORY: Added by State Register Volume 17, Issue No.12, eff December 24, 1993.

SUBPART EE
Hazardous Waste Munitions and Explosives Storage

264.1200. Applicability.

The requirements of this subpart apply to owners or operators who store munitions and explosive hazardous wastes, except as 264.1 provides otherwise. (NOTE: Depending on explosive hazards, hazardous waste munitions and explosives may also be managed in other types of storage units, including containment buildings (part 264, subpart DD), tanks (part 264, subpart J), or containers (part 264, subpart I); See 266.205 for storage of waste military munitions).


264.1201. Design and operating standards.

(a) Hazardous waste munitions and explosives storage units must be designed and operated with containment systems, controls, and monitoring, that:

(1) Minimize the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off, to the soil, ground water, surface water, and atmosphere;

(2) Provide a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

(3) For wastes stored outdoors, provide that the waste and containers will not be in standing precipitation;

(4) For liquid wastes, provide a secondary containment system that assures that any released liquids are contained and promptly detected and removed from the waste area, or vapor detection system that assures that any released liquids or vapors are promptly detected and an appropriate
response taken (e.g., additional containment, such as overpacking, or removal from the waste area); and

(5) Provide monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

(b) Hazardous waste munitions and explosives stored under this subpart may be stored in one of the following:

(1) Earth-covered magazines. Earth-covered magazines must be:
   (i) Constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;
   (ii) Designed and constructed:
      (A) To be of sufficient strength and thickness to support the weight of any explosives or munitions stored and any equipment used in the unit;
      (B) To provide working space for personnel and equipment in the unit; and
      (C) To withstand movement activities that occur in the unit; and
   (iii) Located and designed, with walls and earthen covers that direct an explosion in the unit in a safe direction, so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(2) Above-ground magazines. Above-ground magazines must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(3) Outdoor or open storage areas. Outdoor or open storage areas must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(c) Hazardous waste munitions and explosives must be stored in accordance with a Standard Operating Procedure specifying procedures to ensure safety, security, and environmental protection. If these procedures serve the same purpose as the security and inspection requirements of 264.14, the preparedness and prevention procedures of 264, subpart C, and the contingency plan and emergency procedures requirements of 264, subpart D, then these procedures will be used to fulfill those requirements.

(d) Hazardous waste munitions and explosives must be packaged to ensure safety in handling and storage.

(e) Hazardous waste munitions and explosives must be inventoried at least annually.

(f) Hazardous waste munitions and explosives and their storage units must be inspected and monitored as necessary to ensure explosives safety and to ensure that there is no migration of contaminants out of the unit.


264.1202. Closure and post-closure care.

(a) At closure of a magazine or unit which stored hazardous waste under this subpart, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for magazines or units must meet all of the requirements specified in subparts G and H of this part, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions or explosives magazine or storage unit.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he or she must close the facility and perform post-
closure care in accordance with the closure and post-closure requirements that apply to landfills (264.310).


APPENDICIES

APPENDIX I. RECORDKEEPING INSTRUCTIONS

The recordkeeping provisions of § 264.73 specify that an owner or operator must keep a written operating record at his facility. This appendix provides additional instructions for keeping portions of the operating record. See § 264.73(b) for additional recordkeeping requirements.

The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility in the following manner: Records of each hazardous waste received, treated, stored, or disposed of at the facility which include the following:

1. A description by its common name and the EPA Hazardous Waste Number(s) from Part 261 of this Chapter which apply to the waste. The waste description also must include the waste’s physical form, i.e., liquid, sludge, solid, or contained gas. If the waste is not listed in Part 261, Subpart D, of this Chapter, the description also must include the process that produced it (for example, solid filter cake from production of— —, EPA Hazardous Waste Number W051).

Each hazardous waste listed in Part 261, Subpart D, of this Chapter, and each hazardous waste characteristic defined in Part 261, Subpart C, of this Chapter, has a four-digit EPA Hazardous Waste Number assigned to it. This number must be used for recordkeeping and reporting purposes. Where a hazardous waste contains more than one listed hazardous waste, or where more than one hazardous waste characteristic applies to the waste, the waste description must include all applicable EPA Hazardous Waste Numbers.

2. The estimated or manifest-reported weight, or volume and density, where applicable, in one of the units of measure specified in Table 1;

3. The methods (by handling code/s as specified in Table 2) and date(s) of treatment, storage, or disposal.

Table 1

<table>
<thead>
<tr>
<th>Units of Measure</th>
<th>Code</th>
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<tbody>
<tr>
<td>Gallons</td>
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<td>Gallons per Day</td>
<td>U</td>
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<tr>
<td>Hectare-meter</td>
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<tr>
<td>Btu’s per Hour</td>
<td>I</td>
</tr>
</tbody>
</table>

1 Single digit symbols are used here for data processing purposes.

Table 2—Handling Codes for Treatment, Storage, and Disposal Methods

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store or dispose of each quantity of hazardous waste received.

1. Storage
S01 Container (barrel, drum, etc.)
S02 Tank
S03 Waste Pile
S04 Surface impoundment
S05 Drip Pad
S06 Containment Building (Storage)
S99 Other Storage (Specify)

2. Treatment

(a) Thermal Treatment—
   T06 Liquid injection incinerator
   T07 Rotary kiln incinerator
   T08 Fluidized bed incinerator
   T09 Multiple hearth incinerator
   T10 Infrared furnace incinerator
   T11 Molten salt destructor
   T12 Pyrolysis
   T13 Wet Air oxidation
   T14 Calcination
   T15 Microwave discharge
   T18 Other (specify)

(b) Chemical Treatment—
   T19 Absorption mound
   T20 Absorption field
   T21 Chemical fixation
   T22 Chemical Oxidation
   T23 Chemical precipitation
   T24 Chemical reduction
   T25 Chlorination
   T26 Chlorinolysis
   T27 Cyanide destruction
   T28 Degradation
   T29 Detoxification
   T30 Ion exchange
   T31 Neutralization
   T32 Ozonation
   T33 Photolysis
   T34 Other (specify)

(c) Physical Treatment—
   (1) Separation of components:
      T35 Centrifugation
      T36 Clarification
      T37 Coagulation
      T38 Decanting
      T39 Encapsulation
(2) Removal of Specific Components:
  T48 Absorption-molecular sieve
  T49 Activated carbon
  T50 Blending
  T51 Catalysis
  T52 Crystallization
  T53 Dialysis
  T54 Distillation
  T55 Electrodialysis
  T56 Electrolysis
  T57 Evaporation
  T58 High gradient magnetic separation
  T59 Leaching
  T60 Liquid Ion exchange
  T61 Liquid-liquid extraction
  T62 Reverse osmosis
  T63 Solvent recovery
  T64 Stripping
  T65 Sand filter
  T66 Other (specify)

(d) Biological Treatment
  T67 Activated sludge
  T68 Aerobic lagoon
  T69 Aerobic tank
  T70 Anaerobic tank
  T71 Composting
  T72 Septic Tank
  T73 Spray irrigation
  T74 Thickening filter
  T75 Trickling filter
  T76 Waste stabilization pond
  T77 Other (specify)
  T78 [Reserved]
  T79 [Reserved]

(e) Boilers and Industrial Furnaces
  T80 Boiler
T81 Cement Kiln
T82 Lime Kiln
T83 Aggregate Kiln
T84 Phosphate Kiln
T85 Coke Oven
T86 Blast Furnace
T87 Smelting, Melting, or Refining Furnace
T88 Titanium Dioxide Chloride Process Oxidation Reactor
T89 Methane Reforming Furnace
T90 Pulping Liquor Recovery Furnace
T91 Combustion Device Used in the Recovery of Sulfur Values from Spent Sulfuric Acid
T92 Halogen Acid Furnaces
T93 Other Industrial Furnaces Listed in 260.10 (specify)
(l) Other Treatment
   T94 Containment Building (Treatment)

3. Disposal
   D79 Underground Injection
   D80 Landfill
   D81 Land Treatment
   D82 Ocean Disposal
   D83 Surface Impoundment (to be closed as a landfill)
   D99 Other Disposal (specify)

4. Miscellaneous (Subpart X)
   X01 Open Burning/Open Detonation
   X02 Mechanical Processing
   X03 Thermal Unit
   X04 Geologic Repository
   X99 Other Subpart X (specify)

HISTORY: Amended by State Register Volume 18, Issue No. 12, eff December 23, 1994.

APPENDIX IV. COCHRAN'S APPROXIMATION TO THE BEHRENS–FISHER STUDENTS' T-TEST

Using all the available background data (n readings), calculate the background mean (X_B) and background variance (s_B^2). For the single monitoring well under investigation (n_M readings), calculate the monitoring mean (X_M) and monitoring variance (s_M^2).

For any set of data (X_1, X_2, ..., X_n) the mean is calculated by:

\[ \bar{X} = \frac{X_1 + X_2 + \ldots + X_n}{n} \]

and the variance is calculated by:
where “n” denotes the number of observations in the set of data.

The t-test uses these data summary measures to calculate a t-statistic ($t^*$) and a comparison t-statistic ($t_C$). The $t^*$ value is compared to the $t_C$ value and a conclusion reached as to whether there has been a statistically significant change in any indicator parameter.

The t-statistic for all parameters except pH and similar monitoring parameters is:

$$t^* = \frac{X_m - X_B}{\sqrt{\frac{s_b^2}{n_b} + \frac{s_m^2}{n_m}}}$$

If the value of this t-statistic is negative then there is no significant difference between the monitoring data and background data. It should be noted that significantly small negative values may be indicative of a failure of the assumption made for test validity or errors have been made in collecting the background data.

The t-statistic ($t_C$), against which $t^*$ will be compared, necessitates finding $t$ (this is supposed to be an inferior roman B, but this entire section has been deleted in the supp, so I put this here instead) and $t_m$ from standard (one-tailed) tables where, $t_b = t$-tables with $(n_b - 1)$ degrees of freedom, at the 0.05 level of significance and $t_m = t$-tables with $(n_m - 1)$ degrees of freedom, at the 0.05 level of significance.

Finally, the special weightings $W_B$ and $W_m$ are defined as:

$$W_B = \frac{S_b^2}{n_b} \quad \text{and} \quad W_m = \frac{S_m^2}{n_m}$$

and so the comparison t-statistic is:

$$t^* = \frac{W_b t_b \times W_m t_m}{W_b + W_m}$$

The t-statistic ($t^*$) is now compared with the comparison t-statistic ($t_C$) using the following decision-rule:

If $t^*$ is equal to or larger than $t_C$ then conclude that there most likely has been a significant increase in this specific parameter.

If $t^*$ is less than $t_C$ then conclude that there most likely has not been a change in this specific parameter.

The t-statistic for testing pH and similar monitoring parameters is constructed in the same manner as previously described except the negative sign (if any) is discarded and the caveat concerning the negative value is ignored. The standard (two-tailed) tables are used in the construction $t_C$ for pH and similar monitoring parameters.

If $t^*$ is equal to or larger than $t_C$ then conclude that there most likely has been a significant increase (if the initial $t^*$ had been negative, this would imply a significant decrease). If $t^*$ is less than $t_C$ then conclude that there most likely has been no change.

Standard T-Tables 0.05 Level of Significance

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Adopted from Table III of “Statistical Tables for Biological, Agricultural, and Medical Research” (1947, R. A. Fisher and F. Yates).

APPENDIX V. EXAMPLES OF POTENTIALLY INCOMPATIBLE WASTE

Many hazardous wastes, when mixed with other waste or materials at a hazardous waste facility, can produce effects which are harmful to human health and the environment, such as (1) heat or pressure, (2) fire or explosion, (3) violent reaction, (4) toxic dusts, mists, fumes, or gases, or (5) flammable fumes or gases.

Below are examples of potentially incompatible wastes, waste components, and materials, along with the harmful consequences which result from mixing materials in one group with materials in another group. The list is intended as a guide to owners or operators of treatment, storage, and disposal facilities, and to enforcement and permit granting officials, to indicate the need for special precautions when managing these potentially incompatible waste materials or components.

This list is not intended to be exhaustive. An owner or operator must, as the regulations require, adequately analyze his wastes so that he can avoid creating uncontrolled substances or reactions of the type listed below, whether they are listed below or not.

It is possible for potentially incompatible wastes to be mixed in a way that precludes a reaction (e.g., adding acid to water rather than water to acid) or that neutralizes them (e.g., a strong acid mixed with a strong base), or that controls substances produced (e.g., by generating flammable gases in a closed tank equipped so that ignition cannot occur, and burning the gases in an incinerator).

In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted.

**Group 1-A**

- Acetylene sludge
- Alkaline caustic liquids
Alkaline cleaner
Alkaline corrosive liquids
Alkaline corrosive battery fluid
Caustic wastewater
Lime sludge and other corrosive alkalis
Lime wastewater
Lime and water
Spent caustic

Group 1-B

Acid sludge
Acid and water
Battery acid
Chemical cleaners
Electrolyte, acid
Etching acid liquid or solvent
Pickling liquor and other corrosive acids
Spent acid
Spent mixed acid
Spent sulfuric acid
Potential consequences: Heat generation; violent reaction.

Group 2-A

Aluminum
Beryllium
Calcium
Lithium
Magnesium
Potassium
Sodium
Zinc powder
Other reactive metals and metal hydrides

Group 2-B

Any waste in Group 1-A or 1-B
Potential consequences: Fire or explosion; generation of flammable hydrogen gas.

Group 3-A

Alcohols
Water

Group 3-B

Any concentrated waste in Groups 1-A or 1-B
Calcium
Lithium
Metal hydrides
Potassium
SO$_2$Cl$_2$, SOCl$_2$, PCl$_3$, CH$_3$SiCl$_3$

Other water-reactive waste
Potential consequences: Fire, explosion, or heat generation; generation of flammable or toxic gases.

**Group 4-A**

Alcohols
Aldehydes
Halogenated hydrocarbons
Nitrated hydrocarbons
Unsaturated hydrocarbons
Other reactive organic compounds and solvents

**Group 4-B**

Concentrated Group 1-A or 1-B wastes
Group 2-A wastes
Potential consequences: Fire, explosion, or violent reaction.

**Group 5-A**

Spent cyanide and sulfide solutions

**Group 5-B**

Group 1-B wastes
Potential consequences: Generation of toxic hydrogen cyanide or hydrogen sulfide gas.

**Group 6-A**

Chlorates
Chlorine
Chlorites
Chromic acid
Hypochlorites
Nitrites
Nitric acid, fuming
Perchlorates
Permanganates
Peroxides
Other strong oxidizers

**Group 6-B**

Acetic acid and other organic acids
Concentrated mineral acids
Group 2-A wastes
Group 4-A wastes
Other flammable and combustible wastes
Potential consequences: Fire, explosion, or violent reaction.


**HISTORY:** Amended by State Register Volume 24, Issue No. 8, eff August 25, 2000.
**APPENDIX VI. Political Jurisdictions in Which Compliance With § 264.18(A) Must be Demonstrated**

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**Chemical abstracts service index name**

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- 1,2-Benzenedicarboxylic acid, diocetyl ester
- Phenol, 2,2'-methylenebis(3,4,6-trichloro-
- 1-Propene, 1,2,3,3,3-hexachloro-
- 2-Hexanone
- Indene[1,2,3-cd]pyrene
- 1-Propandiol, 2-methyl-
- 1,4,5,5-Dimethanophenanthrene, 1,2,3,4,5,10-hexachloro-1,4,4a,5,5,5,5,5a,5a,6,6a-hexahydro-
- 1,3-Benzodioxole, 3-(1-propanyl)-
- 1,3-Benzodioxole, 3-(1-propanyl)-
- 1,3,4-Metheno-2H-cyclobuta-[d]pentadiene-2-one, 1,1a,3a,4,5,5a,5b,6-decachloroacta-
- Mercury
- Methacrylonitrile, 2-methyl-
- 1,2-Ethanediamine, N,N-dimethyl-N'2-proidinil- N'2-thienylmethyl-
- Benzene, 1,1'-((2,2,2-trichloroethy1)phosphoryl)bis(trans-
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<td>8270</td>
</tr>
<tr>
<td>1,1,1-Trichloroethane; Methyl chloroform</td>
<td>71–35–6</td>
<td>Ethane, 1,1,1-trichloro-</td>
<td>8240</td>
</tr>
<tr>
<td>1,1,2-Trichloroethane</td>
<td>79–00–5</td>
<td>Ethane, 1,1,2-trichloro-</td>
<td>8210</td>
</tr>
<tr>
<td>Trichloroethylene; Trichloroethene</td>
<td>79–01–6</td>
<td>Ethene, trichloro-</td>
<td>8210</td>
</tr>
<tr>
<td>Trichlorofluoromethane</td>
<td>75–69–9</td>
<td>Methane, trichlorofluoro-</td>
<td>8240</td>
</tr>
<tr>
<td>2,4,5-Trichlorophenol</td>
<td>95–95–4</td>
<td>Phenol, 2,4,5-trichloro-</td>
<td>8270</td>
</tr>
<tr>
<td>2,4,6-Trichlorophenol</td>
<td>88–06–2</td>
<td>Phenol, 2,4,6-trichloro-</td>
<td>8240</td>
</tr>
<tr>
<td>1,2,3-Trichloropropane</td>
<td>96–18–4</td>
<td>Propane, 1,2,3-trichloro-</td>
<td>8210</td>
</tr>
<tr>
<td>O,O,O-Triethyl phosphorothioate</td>
<td>126–68–1</td>
<td>Phosphorothioic acid, O,O,O-triethyl ester</td>
<td>8270</td>
</tr>
<tr>
<td>Vanadium (Total)</td>
<td>(Total)</td>
<td>Vanadium</td>
<td>6010</td>
</tr>
<tr>
<td>Vinyl acetate</td>
<td>108–05–4</td>
<td>Acetic acid, ethenyl ester</td>
<td>8240</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>75–01–4</td>
<td>Ethene, chloro-</td>
<td>8240</td>
</tr>
<tr>
<td>Xylene (total)</td>
<td>1350–20–7</td>
<td>Benzen, dimethyl-</td>
<td>8240</td>
</tr>
<tr>
<td>Zinc (Total)</td>
<td>(Total)</td>
<td>Zinc</td>
<td>6010</td>
</tr>
</tbody>
</table>
| 1 The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.
2 Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
3 Chemical Abstracts Service registry number. Where “Total” is entered, all species in the ground water that contain this element are included.
4 CAS index names are those used in the 9th Cumulative Index.
5 Suggested methods refer to analytical procedure numbers used in the EPA publication, SW–846, "Test Methods for Evaluating Solid Waste," Third Edition. Analytical details can be found in SW–846 and in documentation on file at the Agency. The packed column gas chromatography methods 8010, 8020, 8030, 8040, 8060, 8080, 8090, 8110, 8120, 8140, 8150, 8240, and 8250 were promulgated methods through Update IIB of SW–846 and, as of Update III, the Agency has replaced these methods with "capillary column GC methods," as the suggested methods.
6 Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.
12672–29–6), Aroclor–1254 (CAS RN 11097–69–1), and Aroclor–1260 (CAS RN 11096–82–5). The PQL shown is an average value for PCB congeners.

This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8–TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins. The PQL shown is an average value for PCDD congeners.

This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans. The PQL shown is an average value for PCDF congeners.

For nonessential matrices, consult with Department regarding methods before collection.