

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CHS. 260—266 AND 270]

Hazardous Waste Management

The Environmental Quality Board (Board) amends Chapters 260—266 and 270, pertaining to hazardous waste, to read as set forth in Annex A.

These amendments incorporate provisions established by the Environmental Protection Agency (EPA) in the Federal hazardous waste program under the Federal Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C.A. §§ 6901—6986) and clarify or amend other hazardous waste requirements.

These amendments were adopted by order of the Board at its meeting of October 15, 1996.

A. *Effective Date*

These amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons and Information*

For further information, contact Rick Shipman, Division of Hazardous Waste Management, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, 14th floor, 400 Market Street, P.O. Box 8471, Harrisburg, PA 17105-8471, (717) 787-6239, or Gail B. Phelps, Assistant Director, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 9th floor, 400 Market Street, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). These amendments are available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

The final rulemaking is being made under the authority of sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P.S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P.S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20). Under sections 105, 401—403 and 501 of the Solid Waste Management Act, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety and welfare, and the environment of this Commonwealth. Sections 105, 402 and 501 of The Clean Streams Law grant the Board the authority to adopt regulations that are necessary to protect the waters of this Commonwealth from pollution. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

D. *Background and Summary*

These regulatory amendments include a number of diverse changes that will facilitate hazardous waste management for industries of all sizes, licensed hazardous waste transporters, and owners and operators of hazard-

ous waste facilities in this Commonwealth. Generators, transporters and treatment, storage and disposal (TSD) facilities are relieved of a number of unnecessary regulatory burdens. This regulatory package also aligns the Department's hazardous waste program more closely to the Federal program by adopting several Federal subchapters, sections and definitions.

As examples, the Federal section listing exclusions from hazardous waste management has been fully adopted in text and will be updated automatically by reference. The Federal rebuttable presumption concerning mixtures of hazardous waste with waste oil has been added. Many more industries will be able to treat their hazardous waste onsite for reclamation, reuse or recycling, or to reduce the toxicity or volume prior to disposal without cumbersome permitting requirements. Industries are authorized to use the Federal "satellite accumulation" areas for management of hazardous wastes within the facility.

Generator and facility reporting requirements have been reduced dramatically—from quarterly to biennially—and most records need only be retained for 3 years instead of 20 years. Licensed transporters have been authorized to combine similar wastes during transportation, and in-transit storage times have been increased to the Federal limit of 10 days instead of 5 days. Small businesses that generate very small amounts of hazardous waste will be able to manage these wastes at lower cost and with fewer regulatory burdens, while still protecting the environment. Proposed amendments to Chapters 273 and 283 that would have authorized small amounts of hazardous waste to be disposed of at municipal waste facilities have been deleted in this final rulemaking.

The hazardous waste regulations of the Commonwealth were most recently amended with substantive changes at 23 Pa.B. 363 (January 16, 1993), referred to as PK-4. The basic framework for the Department's hazardous waste program was amended in that rulemaking through the definition of "waste" and related terms such as "coproduct." Several provisions in the PK-4 package relating to recycling facilities are more stringent than the corresponding Federal requirements. These provisions also differ in concept from the corresponding Federal hazardous waste regulations.

The Board specifically requested comments from the public on whether the Department's definition of "waste" and the regulations on recycling have helped or hindered recycling. Many comments were received and were reviewed carefully.

The Department is reviewing all of the environmental regulations under the Secretary's Regulatory Basics Initiative and Executive Order 1996-1.

The Department intends to address major revisions to the hazardous waste program through future rulemakings after consideration of public input and the recommendations of the Solid Waste Advisory Committee (Committee). The Department is also actively participating with other states in the development of several new EPA RCRA regulations that will address the definition of "waste," exclusions, exemptions and the regulation of recycling.

E. *Summary of Comments and Responses on the Proposed Rulemaking*

The proposed amendments were published at 25 Pa.B. 4917 (November 11, 1995). The 60-day comment period

was extended until January 17, 1996, due to inclement weather. The Department received comments from 185 interested citizens and regulated persons, which included many hundreds of separate comments. The Board appreciates the time and careful thought that the public and the regulated community put into participating in the comment process, and believes that the regulations have been improved as a result of their efforts. A copy of the Comment and Response Document prepared for this regulations may be obtained by contacting Rick Shipman, Division of Hazardous Waste, at the address given in Section B of this Preamble.

The changes contained within these final amendments were reviewed and approved by the Department's Advisory Committee on May 9 and again on September 13, 1996. This Preamble addresses the Committee's concerns with regard to waste oil under that heading.

Substantive changes to the proposed amendments which were made on final adoption are discussed in this section by general topic. Several stylistic or typographical corrections are not discussed. Amendments to the regulations which have not been changed from the proposed rulemaking are discussed in the Preamble published with the proposed regulations at 25 Pa.B. 4917.

Biennial Report

The Board proposed to amend existing §§ 262.41, 264.75 and 265.75 (relating to biennial report) to delete quarterly reporting requirements for generators and facilities and to substitute instead a biennial reporting requirement that is substantially the same as the EPA biennial report. The final-form regulations have been amended for clarification and are consistent with the intent of the proposed amendments.

Under the final amendments, generators and owners/operators of TSDs facilities will be required to submit reports concerning hazardous waste management at the facility biennially, rather than quarterly. The final amendments have been clarified to show that the report need only cover hazardous waste activities during the prior calendar year, not the prior two years. The content of the biennial report has been modified to match applicable Federal biennial reporting requirements, including Federal requirements for waste minimization and pollution prevention.

Small quantity generators, which generate between 100 and 1,000 kilograms of hazardous waste per month, and conditionally exempt small quantity generators, which generate less than 100 kilograms of hazardous waste per month, are not required to submit biennial reports under § 262.41(a).

Section § 266.91 (relating to reporting) has been deleted entirely in the final rulemaking. This section formerly required owners and operators of facilities that reclaim their wastes onsite to submit a quarterly report.

Combining of Similar Wastes by a Licensed Transporter

The proposed amendment to § 263.27 (relating to blending, mixing, treating or storing of hazardous waste by transporters) authorized combining or bulking of similar hazardous wastes by a licensed transporter. The definition of "in-transit storage" in § 260.2 (relating to definitions) is amended to conform with this change by deleting the requirement that the waste remain in its original container. Hazardous wastes that are bulked by a licensed transporter must be packaged, labeled, marked and placarded according to §§ 262.30 and 262.33 (relating to packing, labeling and marking; and accumulation).

Conditionally Exempt Small Quantity Generators (CESQGs)

The proposed amendments changed §§ 261.5 and 262.10(a) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators; and scope) to conform with the corresponding Federal sections which cover generators of less than 100 kg of hazardous waste per month. These CESQGs typically are small businesses such as automotive repair shops, printers, dry cleaners, retail paint stores, funeral homes or laboratories. Small businesses that generate less than 100 kilograms of hazardous waste per month have been subject to reduced storage, treatment, transportation requirements under the Federal RCRA program since 1986. This category of very small, partially exempt generators has never been recognized in Pennsylvania's regulations until this rulemaking.

Under the Federal program, these very small generators are authorized to store up to 1000 kilograms in excess of 90 days without a storage permit, treat their own waste without a permit and ship waste by common carrier without the use of a manifest. The CESQG hazardous waste remains categorically a hazardous waste, consistent with the generally applicable rules for waste determination. The generator and subsequent handlers are conditionally exempted from certain specified management rules, but the waste itself is still classified as hazardous waste if it meets the normal criteria. These portions of the Federal program have been retained in the final-form regulations.

The Federal program also allows disposal of CESQG hazardous wastes at facilities regulated by a state under the RCRA Subtitle D program, which, in this Commonwealth, includes municipal waste and residual waste facilities. The Board originally proposed to conform with the Federal program and authorize disposal at municipal waste facilities. The proposed amendments also included amendments to §§ 273.201 and 283.201 (relating to municipal waste landfills; and municipal waste processing facilities) to allow municipal waste facilities to accept CESQG hazardous waste. The Department's current municipal waste regulations prohibit acceptance of hazardous waste at municipal waste facilities.

Several commentators objected to allowing CESQG hazardous waste to be disposed of at municipal waste landfills. The General Assembly has recently enacted Legislation which prohibits disposal of hazardous waste at a municipal or residual waste landfill (act of September 12, 1996, P. L. _____, No. 190). This rulemaking conforms to the new Legislation by deleting the proposed authorization for disposal of CESQG hazardous waste at municipal or residual waste landfill facilities in this Commonwealth. Disposal of CESQG hazardous waste at landfills in other states is authorized if it is consistent with the laws of the receiving state. No municipal or residual waste facilities in this Commonwealth are authorized to accept hazardous waste.

Other changes to § 261.5(c) reflect more recent Federal amendments to 40 CFR 261.5(c), concerning the types of waste which CESQGs must count in determining the amount generated in a month.

Definitions

Two new definitions have been added to the final-form regulations. Both are copied from the Federal text in 40 CFR 260.10. An existing definition has also been clarified. The existing definition of "in-transit storage" was clarified to conform with the new amendment to § 263.27 (relating

to blending, mixing, treating or storing of hazardous waste by transporters) which allows licensed transporters to combine similar hazardous wastes during transportation.

The definition of "miscellaneous unit" has been added to clarify the new subchapter regulating miscellaneous units at §§ 264.600—264.603. The Federal definition of "Small Quantity Generator" has also been added to the final amendments. Under both the Federal and State programs, this category of generators includes those that generate no more than 1,000 kilograms of hazardous waste per month.

Empty Containers and Tanks

The proposed amendments to the existing provisions at § 261.33 (relating to waste commercial chemical products, off-specification species, containers, container residues and spill residues thereof) transferred the requirements for identifying and managing RCRA-empty containers to a new section at § 261.7 (relating to empty containers). Amended § 261.33 now identifies requirements for listed hazardous wastes that are EPA P and U listed wastes. These changes are consistent with the Federal program.

Three types of changes have been made on final to these sections. In the proposed § 261.7, the Board proposed to require that the small amounts of hazardous waste residues remaining in a RCRA-empty container be managed as hazardous waste if they meet the normal criteria. This provision has been retained, even though it is more stringent than the Federal program, for the reasons explained in the Preamble to the proposed amendments.

The proposed amendments also declared the person in control of the RCRA-empty tank or container to be the generator of the last residues removed when the tank is cleaned or completely emptied. On final, however, the Board has clarified that the person in control of the tank or container when the last residues are removed has the responsibility to ensure that these are managed in compliance with the solid waste management regulations, as applicable. The person in control of the tank or container is not declared to be the generator.

The owner or operator of the tank or container that is being emptied and removed is the generator of the wastes contained therein. The owner or operator is responsible to perform a waste determination under existing § 262.11 (relating to scope) when the waste is emptied from the tank or container so that it can be removed. Generator knowledge of the contents of the tank or container and of waste determinations for similar wastes can be used.

The person in control of the tank or container is responsible under the final-form regulations for ensuring that the remaining residues are managed in accordance with the solid waste management regulations. If the waste is a hazardous waste, the residue must be managed as a hazardous waste, including storage, treatment, packaging, shipment and disposal requirements. If the waste residue is not hazardous, it must be managed in accordance with the residual waste regulations.

The final changes made to these two sections are primarily editorial, and modify the proposed amendments to conform more closely to the Federal text.

Exclusions From Hazardous Waste

The Board has conformed Pennsylvania's exclusions from hazardous waste in § 261.4 with the Federal exclusions from hazardous waste in 40 CFR 261.4. The final-form regulations, like the proposed, will incorporate

newer Federal exclusions from hazardous waste by reference, effective on the date the Federal exclusion becomes effective.

On final, the text of several newer Federal exclusions has been added to the text of this section for clarity and inconsistent existing exclusions have been modified. An existing limited exclusion relating to scrap leather containing chromium in § 261.4(a)(16) has been replaced with the broader corresponding Federal exclusion in 40 CFR 261.4(b)(6). The household waste exclusion in § 261.4(a)(6) has been corrected to more closely match the Federal program.

New Storage Units

The proposed amendments included the Federal standards for drip pads, which are structures designed to convey drippage, precipitation and surface water run-on to collection systems. Commentators correctly pointed out that the proposed §§ 264.503(a)(1)(iii) and 265.503(a)(1)(iii) (relating to design and operating requirements) should have used the term "hydraulic conductivity" rather than the term "permeability." This correction has been made to the final amendments.

P and U Listed Wastes

The proposed amendments would have amended § 261.33 (relating to waste commercial chemical products, off-specification species, containers, container residues and spill residues thereof) to delete the EPA specification that a P or U listed waste be the sole active ingredient in a chemical formulation for the waste to be considered hazardous. The proposed amendments to § 261.33 would have been more stringent than the Federal text in 40 CFR 261.33. Commentators pointed out that the proposed deletion of the EPA limitation to sole active ingredients would be confusing, very burdensome and would cover a wide variety of unintended wastes that actually do not pose a significant risk.

The Board has decided to conform § 261.33 to the Federal program and add the requirement that P or U listed wastes is the sole active ingredients for a chemical waste formulation to be determined to be hazardous on this basis.

Permit-by-Rule (PBR)

Three PBR provisions for simplified management of hazardous wastes were proposed to be added or amended. Two have been retained on final. These two allow onsite storage prior to reclamation by PBR, in § 266.90 (relating to applicability and requirements), and allow generators to treat their own waste onsite in containers or tanks during the accumulation period, in § 265.435 (relating to generator treatment). The PBR relating to carbon regeneration facilities has been deleted from the final-form regulations.

The Board had proposed amendments to §§ 261.6 and 266.70 (relating to requirements for hazardous wastes that are recycled; and permit-by-rule) to allow facilities that regenerate carbon that has been used to filter out or treat hazardous waste to do so without a full TSD permit. Numerous commentators objected to this proposed relaxation of the permitting process standards. The Board has therefore deleted this proposal from the final version.

Commentators expressed a concern that a wide range of hazardous constituents may be adsorbed by spent activated carbon, and that a full thermal treatment facility permit was necessary to ensure adequate protection of human health and the environment. Commentators pointed out that not requiring full thermal treatment

permits for carbon regeneration units would be less stringent than the EPA's requirements under RCRA. These facilities are subject to requirements for thermal treatment units under the Federal program, 56 FR 7200—7240.

The EPA has defined carbon regeneration units as thermal treatment devices subject to the permit standards of 40 CFR Part 264, Subpart X (56 FR 7200—7201 and 7206). Providing the opportunity for carbon regeneration units to operate under permit-by-rule provisions in this Commonwealth would, therefore, be less stringent than requirements under Federal RCRA regulations. Since, with this rulemaking, the Board is also promulgating a Pennsylvania counterpart to the Federal Subpart X regulations in Chapter 264, Subchapter U (relating to miscellaneous units), carbon regeneration units in this Commonwealth will now be required to obtain a hazardous waste treatment permit under that subchapter.

Retention of Records

The proposed amendments reduced the record retention requirements from 20 years to 3 years. This reduction in required retention times has been retained on final, consistent with the Federal standards. Sections 264.71(d) and 265.71(d) (relating to use of manifest system) have also been modified on final for consistency with the Federal program. The 20-year record retention requirement for copies of manifests by facility owners and operators has been reduced to 3 years.

Source Reduction Strategy

Generators located in this Commonwealth are required to develop and submit a Source Reduction Strategy under existing regulations at § 262.80 (relating to source reduction strategy). A TSD facility shall submit a copy of this Source Reduction Strategy to the Department as part of an application to receive the generator's waste for storage, treatment or disposal. This requirement in § 264.12 (relating to general requirements for hazardous waste management approvals and analysis of a specific waste from a specific waste generator) has been modified to allow a TSD facility to submit other documentation that a generator customer located outside this Commonwealth has complied with Federal waste minimization requirements in lieu of compliance with § 262.80.

Transporter Licenses

Section 401(a) of the Solid Waste Management Act requires that hazardous waste transporters picking up hazardous waste generated in this Commonwealth or received by any TSD in this Commonwealth be licensed by the Department. Section 505(e) of the Solid Waste Management Act mandates that each hazardous waste transporter shall file a penal bond with the Department as a condition of obtaining a license. The bond shall be in an amount determined by the Department, but not less than \$10,000. The bond is conditioned upon compliance by the licensee with every requirement of the act, order of the Department or term or condition of the license. Forfeited collateral is used by the Department for payment of fines or civil penalties assessed by the Department for violations of law, or deposited into the Solid Waste Abatement Fund. Insurance to pay liability for spill cleanups is also required by State and Federal law.

In the rulemaking that became effective on January 16, 1993, (PK-4), parts of the then-existing transporter licensing regulations in § 263.13 (relating to licensing) were deleted inadvertently when the license application fees were amended. The Department is now reinserting most of the original text of § 263.13 to clarify the license

requirements. An unnecessary recitation of statutory authority was deleted, and the need for additional information was clarified as suggested by the Independent Regulatory Review Commission (IRRC). Hazardous waste bonding requirements continue to be found at § 263.32.

Coincidentally, the United States Department of Transportation (US DOT) issued a preemption determination at approximately that time, which held that state penal bond requirements for transporters are an obstacle to interstate commerce because the bond requirement conflicts with the goal of state uniformity in the Hazardous Materials Transportation Act (HMTA) (49 U.S.C.A. §§ 5101—5127), 58 FR 58848 (December 11, 1992). The Commonwealth has not enforced the transporter bond requirement since that time. Transporter licenses have still been required under the statutory provisions, in a manner consistent with the inadvertently deleted regulations.

The Commonwealth and the Commonwealth of Massachusetts filed an appeal of the US DOT administrative preemption of state bond requirements in Federal court. On August 27, 1996, the United States Court of Appeals for the District of Columbia Circuit issued an opinion overruling US DOT's preemption of the state bonding requirements as an impermissible reading of Federal statutory authority under HMTA. *Massachusetts v. United States Department of Transportation*, 93 F.3d 890 (D.C. Cir. 1996).

The Department intends to implement the mandatory bond requirement of the Solid Waste Management Act as soon as the US DOT releases its final policy on state bond requirements. This is expected in the near future. Until then, the Department does not intend to enforce the bond requirement. At the time the bond requirement is reimplemented, the Department will notify existing licensees and applicants of the bond requirement and provide a reasonable time period for coming into compliance.

Waste Oil

The Board proposed to amend §§ 261.3 and 266.40 (relating to definition of hazardous waste; and applicability) to provide for a rebuttable presumption that waste oil which exhibits halogenated compounds has been mixed with hazardous waste solvents and therefore should be managed as hazardous waste. The existing regulations required that any waste oil that contains more than 1,000 ppm of halogenated compounds was regulated as a hazardous waste. As discussed in the Preamble to the proposed amendments, some machine oil coolants or other lubricants are manufactured with this level of halogens. It was not the intent of the amendments to include these.

The Board proposed to conform these regulations to the Federal program by allowing this presumption to be rebutted where the halogenated compounds are demonstrated to be from sources that are not wastes, such as original ingredients in the product from which the waste oil was generated. The final-form regulations are consistent with the proposed amendments, except that the nature of the demonstration required is clarified.

The Federal waste oil (used oil) rebuttable presumption is discussed in the Federal preamble for the corresponding Federal section in 40 CFR 261.3, which was published at 50 FR 49178 (November 29, 1985). One approach to demonstrating that waste oil is not mixed with hazardous waste is to show that the waste oil does not contain significant levels of halogenated hazardous constituents. The EPA believes that oil containing less than on the

order of 100 ppm of any individual hazardous halogenated compound listed as a hazardous spent solvent (that is, EPA Hazardous Waste Numbers F001 and F002) should not be presumed to be mixed with spent solvent." See 50 FR 49178. Small quantities of halogenated compounds, such as no more than 100 ppm of any individual hazardous halogenated compound, are not considered significant levels.

The term "significant concentrations" of halogenated compounds has been added to the final amendments in § 261.3(a)(2)(iv). The Board has determined that it is not practicable to define this term numerically for all types of halogenated compounds that may be detected in waste oil. The rebuttable presumption under § 261.3 will be administered by the Department consistent with the discussion in the Federal preamble and EPA policy.

A final comment on waste oil management was received informally from IRRRC as this rulemaking was prepared for final-form. IRRRC suggested that § 261.5 (relating to conditionally exempt small quantity generators) be amended to allow recycling of waste oil mixed with CESQG waste at facilities that do not have hazardous waste management permits. The final-form regulations allow nonhazardous waste permitted facilities to store, process or treat CESQG hazardous waste with nonhazardous waste when that is authorized by the facility permit.

F. *Benefits and Costs*

Executive Order 1996-1 requires a cost/benefit analysis of the final regulations.

Benefits

Generators of hazardous waste and owners/operators of TSDs are required to submit biennial reports rather than quarterly reports concerning their hazardous waste management activities. The biennial report required by the amendments is identical to the one already required by the EPA. As a result, there will be a significant reduction in paperwork requirements and costs imposed on generators and owner/operators of TSDs.

Costs imposed on generators for the retention of records are reduced. The time generators and facilities must retain manifests, biennial reports and exception reports is reduced to 3 years instead of 20 years.

Costs associated with complying with the Module I requirements are reduced for TSDs receiving essentially the same hazardous waste from multiple generators. Owners/operators of TSDs are able to use a generic Module I report for multiple generators using essentially the same process to generate essentially the same hazardous waste. Thus, if the owner/operator submits a generic Module I application covering at least 6 generators, there will be a reduction in the application fee associated with submitting a Module I. No additional application fee applies to amending the generic Module I to include additional generators with a consistent hazardous waste.

Costs associated with the transportation of hazardous waste are reduced due to increased efficiencies in operation. First, transporters are able to use larger, more efficient containers because the proposal will allow transporters to combine containers of hazardous wastes with similar US DOT shipping codes into larger, more efficient containers at qualified in-transit storage facilities. Second, transporters will have greater flexibility in maximizing their loads because the in-transit storage period will be increased from 5 to 10 days.

There will be a reduction in the costs imposed on generators relating to the disposal of hazardous waste. The amendments allow generators of hazardous waste to treat their hazardous waste onsite pursuant to a PBR rather than a traditional permit. For generators able to take advantage of the PBR for treatment in tanks, containers or containment buildings, the costs associated with this treatment and possible disposal as a residual waste should be less than the costs associated with arranging for the offsite treatment or disposal of a hazardous waste.

Permitting costs imposed on generators of hazardous waste who reclaim their hazardous waste would be reduced. The amendments allow a generator to store waste for more than 90 days prior to onsite reclamation under a PBR rather than a traditional permit to authorize that storage.

The costs associated with the disposal of containers and tanks used for holding a hazardous waste will be reduced. The amendments allow any tank or container that was used to hold a hazardous waste being transported to a disposal or treatment site to be transported as a residual waste. The tank or container must be emptied and the residual managed in accordance with the Department's regulations.

Compliance Costs

In addition to the reduced costs discussed in this Preamble, there may be increased costs imposed on many small quantity generators of hazardous waste. The special exemptions in § 261.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) will be limited to individuals who generate no more than 100 kilograms of hazardous waste in a calendar month (CESQG). As a result, individuals who generate more than 100 but less than 1,000 kgs of hazardous waste in a calendar month (small quantity generators) will now be subject to all the applicable requirements of Chapters 262—265 and 270. This amendment to § 261.5 is necessary to conform with the Federal program at 40 CFR 261.5.

The Department has no data on which to base possible cost increases to these individuals. Many of the small quantity generators may be able to treat their waste on site under the final-form regulations, resulting in a net decrease in their operating costs. The regulations previously required that all hazardous waste be treated or disposed of at a permitted hazardous waste facility; therefore, costs for treatment or disposal will not increase as a result.

Compliance Assistance Plan

The Pennsylvania Chamber of Business and Industry and the Department will sponsor several public meetings in different areas of this Commonwealth to present and explain these new regulations. The Department will develop and provide written information as needed to facilitate the Chamber's efforts.

The Department will also provide individual assistance for regulated facilities through the regular visits of regional inspectors.

A special new program to assist small businesses in management of conditionally exempt small quantities of hazardous waste is designed to promote pollution prevention and proper waste management.

Paperwork Requirements

These final-form regulations require generators and owner and operators of TSDs to submit biennial reports

concerning their hazardous waste management activities. Biennial reporting is needed for two reasons. First, having a reporting requirement is necessary for the Department's regulations to match the corresponding Federal requirements. Second, the information contained in the biennial report enables the Department to assess the Commonwealth's need for hazardous waste management facilities. The same biennial reports are currently required by the EPA.

Generators conducting onsite accumulation in tanks or containment buildings are required to have procedures and records for ensuring that the waste is emptied from the tank or containment building at least every 90 days. This enables both the generator and the Department to ensure that the onsite accumulation time limits are being observed. The recordkeeping and certification requirements for containment buildings are mandated by the EPA.

Owners and operators of drip pads in interim status are subject to several paperwork requirements. These requirements include a report (certified by a professional engineer) as to the measures necessary to bring the drip pad up to standards, a plan for bringing the drip pad up to standards and the submission of the final drawings of the drip pad. These requirements are mandated by the Federal program.

There are two new paperwork requirements that will be applicable to owners and operators of TSDs. First, the owner or operator is required to certify annually in the operating record that it has taken all necessary steps to reduce the toxicity and volume of any hazardous waste generated during treatment, storage or disposal. Second, if a TSD receives an unmanifested shipment of hazardous waste, the owner or operator of that facility would be required to submit to the Department an unmanifested waste report (EPA form 8700-13B). Adoption of both of these paperwork requirements conforms with Federal requirements.

Pollution Prevention

Two Federal waste minimization requirements have been added to the Department's regulations in these amendments. Changes to the information required for biennial reports in §§ 262.41, 264.75 and 265.75 (relating to biennial reports) require the same information on waste minimization required for EPA biennial reports. The owner or operator of a permitted TSD is required under § 264.73 (relating to operating record) to certify annually in its operating record that to the extent economically practicable, it has a program in place for reducing the toxicity and volume of wastes generated and that treatment, storage and disposal methods selected minimize threats to human health and the environment.

In addition, amended § 265.435 (relating to generator treatment) will allow generators to treat their wastes by permit-by-rule to reduce the toxicity or volume immediately after generation during the 90-day accumulation period.

G. Sunset Review

These final-form regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the final-form regulations effectively fulfill the goals for which they were intended.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. §§ 745.5(a)), on October 24, 1995, the Department

submitted a copy of the proposed amendments to IRRC and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. IRRC informally expressed several objections or concerns with the final-form regulations. The Department voluntarily withdrew the rulemaking from consideration by IRRC on August 21, 1996, in order to address these concerns. No comments were received by either of the Standing Committees.

Typographical corrections have been made at §§ 264.193 and 265.193 (relating to secondary containment) as suggested by IRRC. These changes returned the regulations to the existing text. A clarifying change has been made to §§ 264.13 and 265.13 (relating to generic module 1 applications) allowing chemically and physically similar wastes from similar processes to qualify for the generic approval, as suggested by IRRC.

The amendments to the transporter license requirements in § 263.13 suggested by the Commission were made, as explained in Section E of this Preamble (under transporter licenses). A final amendment to § 261.5 suggested by IRRC was included to allow recycling of CESQG wastes within this Commonwealth at municipal and residual waste facilities. This suggested change to § 261.5 is discussed in Section E of this Preamble (under waste oil).

These final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committee on November 4, 1996. IRRC met on November 7, 1996, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Findings of the Board

The Board finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications to the amendments do not enlarge the purpose of the proposed amendments published at 25 Pa.B. 4917.

(4) These regulations are necessary and appropriate for the administration and enforcement of the authorizing acts identified in Section C of this Preamble and in the public interest.

J. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, 25 Pa. Code Chapters 260—266 and 270, are amended by:

(1) Amending §§ 260.2, 261.3—261.6, 261.33, 261.34, 262.10, 262.12, 262.34, 262.40, 262.41, 263.10, 263.11, 263.20, 263.27, 263.30, 263.32, 264.11, 264.13, 264.71, 264.73, 264.75, 264.190, 264.250, 264.341, 264.343, 265.1, 265.11, 265.13, 265.71, 265.75, 265.190, 265.197, 265.310, 265.433, 265.447, 266.24, 266.30, 266.35, 266.40, 266.41, 266.43, 266.90, 266.91, 266.104, 270.11, 270.13, 270.31, 270.33 and 270.41;

(2) By deleting § 266.91; and by

(3) Adding §§ 260.11, 261.7, 263.13, 264.12, 264.76, 264.82, 264.500—264.505, 264.520—264.522, 264.600—264.603, 265.12, 265.76, 265.82, 265.200, 265.201, 265.435, 265.500—265.505, 265.520—265.522 and 270.60 to read as set forth in Annex A with ellipses referring to the existing text of the regulations.

(Editor's Note: The proposal to amend §§ 264.193, 265.193, 266.70, 270.44, 273.201 and 283.201 included at 25 Pa.B. 4917, has been withdrawn by the Board. The amendment of §§ 264.71, 265.71, 266.104, 270.60 and the deletion of § 266.91 was not included in the proposal at 25 Pa.B. 4917.)

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.

(c) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(d) This order shall take effect immediately upon publication.

JAMES M. SEIF,
Chairperson

(Editor's Note: A proposal to amend §§ 261.5, 262.10 and 265.1, amended in this document, remains outstanding at 26 Pa.B. 3801 (August 3, 1996).

(For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5766 (November 23, 1996).)

Fiscal Note: Fiscal Note 7-287 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 260. DEFINITIONS AND REQUESTS FOR DETERMINATIONS

§ 260.2. Definitions.

The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Accumulated speculatively—A material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively 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% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% 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 (that is, 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 § 261.3(e) (relating to definition of hazardous

waste) 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 calculation. Materials are no longer in this category once they are removed from accumulation for recycling.

* * * * *

Containment building—A hazardous waste management unit used to store or treat hazardous waste under Chapter 264, Subchapter T and Chapter 265, Subchapter T (relating to containment buildings).

* * * * *

Coproduct—

(i) Material generated by a manufacturing or production process, or an expended material, of a physical character and chemical composition that is consistently equivalent to the physical character and chemical composition of an intentionally manufactured product or produced raw material, provided that the use of the material presents no greater threat of harm to human health or the environment than the use of the product.

(ii) The term only applies to one of the following:

(A) The material is to be transferred in good faith as a commodity in trade, for use in lieu of an intentionally manufactured product or produced raw material, without treatment that would not be required of the product or raw material. Sizing, shaping or sorting of the material will not be considered treatment for the purpose of this definition. The material shall actually be used on a regular basis.

(B) The material is to be used by the manufacturer or producer of the material in lieu of an intentionally manufactured product or produced raw material, without treatment that would not be required of the product or raw material. Sizing, shaping or sorting of the material will not be considered treatment for the purpose of this definition. The material shall actually be used on a regular basis.

* * * * *

Drip pad—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.

* * * * *

EPA manifest document number—The EPA 12 digit identification number assigned to the generator plus a unique five digit document number assigned to the manifest by the generator for recording and reporting purposes.

Elementary neutralization unit—A device which is used for neutralizing wastes which are hazardous wastes only because they exhibit the corrosivity characteristic defined in Chapter 261 (relating to criteria, identification and listing of hazardous waste) or are listed in Chapter 261 only for this reason; and which meets the definition of tank, container, transport vehicle or vessel.

* * * * *

Facility—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 operation units; for example, one or more landfills, surface impoundments or combinations of them.

Fact sheet—A document that sets forth the principal facts, and the significant factual, legal, methodological and policy questions considered in preparing a draft permit that the Department finds is subject of widespread public interest or raises major issues, or a draft permit that incorporates a variance or requires an explanation.

* * * * *

HWM unit—A contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area. The term includes a containment building, surface impoundment, waste pile, land treatment area, landfill cell, incinerator, tank and associated piping and underlying containment system, and 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.

* * * * *

Hazardous waste constituent—A chemical component of a waste or chemical compound which qualifies a waste as hazardous under Chapter 261, or which is listed as a hazardous waste or hazardous compound in Chapter 261.

Hazardous waste fuel—Hazardous wastes burned for energy recovery. The term includes fuel produced from hazardous waste by processing, blending or other treatment. A hazardous waste having less than 8,000 Btu/lb is not a fuel and may be burned only in a permitted hazardous waste incinerator.

* * * * *

Hazardous waste number—The number assigned by the Department to each hazardous waste listed and to each hazardous waste characteristic identified in Chapter 261.

Host municipality—A municipality, other than a county, where a qualifying facility is located, either in whole or in part, within its established corporate boundaries.

* * * * *

Identification number—The number either assigned by the EPA to each generator, transporter and treatment, storage or disposal facility or provisionally assigned by the Department.

* * * * *

In-transit storage—The storage of hazardous waste by the transporter at a transfer facility for no more than 10 days if the hazardous waste is manifested and remains in containers that conform to the requirements of §§ 262.30 and 262.33 (relating to packing, labeling and marking; and placarding).

* * * * *

Miscellaneous unit—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 (relating to underground injection control program: criteria and standards), containment building, corrective action management unit or unit eligible for research, development and demonstration permit under § 270.4 (relating to research, development and demonstration permits).

* * * * *

Permit-by-rule—A provision of this article whereby a facility or activity is deemed to have a hazardous waste

management permit if it meets the applicable requirements of § 265.432, § 265.433, § 265.435 or Chapter 266, Subchapters F, G, H or I.

* * * * *

Product—A commodity that is the sole or primary intended result of a manufacturing or production process. The term includes a commodity which is the sole or primary intended result of an intentional change in, or additional steps in, the manufacturing process. A manufacturer may operate more than one manufacturing process at a location. The term does not include materials that do not meet industry or manufacturing quality specifications or are otherwise off-specification, unless those materials are being returned to the producer, manufacturer or distributor for correction or replacement. Off-specification materials that are not products may be coproducts. Materials generated by a manufacturing process that do not meet the intended product specifications may be products if they meet the specifications for another product produced by the same industry.

* * * * *

Sludge—Solid, semisolid or liquid waste generated from a municipal, commercial or industrial waste treatment facility or wastewater treatment plant, water supply treatment plant or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

* * * * *

Small quantity generator—A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

* * * * *

Treatability study—

(i) A study in which a hazardous waste is subjected to a treatment process to determine one or more of the following:

* * * * *

(D) The efficiency of a treatment process for a specific waste.

* * * * *

Waste oil—Oil refined from crude oil or synthetically produced, used, and as a result of the use, contaminated by physical or chemical impurities.

* * * * *

§ 260.11. References.

The list of publications promulgated under RCRA at 40 CFR 260.11(a) (relating to references) is incorporated by reference. Additions, revisions or deletions to this list adopted by the EPA are incorporated into this article and are effective on the date established by the Federal regulations, unless otherwise established by this article.

CHAPTER 261. CRITERIA, IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 261.3. Definition of hazardous waste.

(a) Except as provided in subsection (h), a solid waste is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under § 261.4 (relating to exclusions).

(2) It meets one or more of the following criteria:

(i) It exhibits one or more of the characteristics of hazardous waste identified in Subchapter C (relating to characteristics of hazardous waste).

(ii) It is listed in Subchapter D (relating to lists of hazardous wastes) and has not been excluded from regulation as a listed hazardous waste under § 260.22 (relating to delisting procedures).

(iii) It is a mixture of a solid waste and a hazardous waste listed in Subchapter D and has not been excluded from regulation as a listed hazardous waste under § 260.22.

(iv) Waste oil which contains, in aggregate, greater than 1,000 ppm total halogens is presumed to be a hazardous waste with waste code PA01 because it has been mixed with halogenated hazardous waste listed under Subchapter D. Persons may rebut the presumption that the waste oil has been mixed with hazardous waste by demonstrating that the waste oil does not contain significant concentrations of halogenated hazardous constituents. The demonstration may be based upon an analytical method from the current edition of SW-846 to show that the waste oil does not contain halogenated hazardous constituents identified in § 261.34(e) (relating to appendices). This rebuttable presumption does not apply to:

(A) Metalworking oils/fluids containing chlorinated paraffins, if the waste oil is reclaimed onsite by the generator, or under a contractual agreement under which the recycler/rerefiner returns to the generator reclaimed metal working oil. The contract shall indicate:

(I) The type of waste oil and the frequency of shipments.

(II) That the vehicle used to transport the waste oil to the recycling/rerefining facility and to deliver recycled waste oil back to the generator is owned and operated by the waste oil recycler/rerefiner.

(III) That reclaimed metal working oil will be returned to the generator.

(B) Waste oils from refrigeration units contaminated with chlorofluorocarbons (CFCS) if the CFCS are destined for reclamation. The rebuttable presumption does apply to waste oils contaminated with CFCS that have been mixed with waste oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under § 261.4 becomes a hazardous waste when one or more of the following events occur:

(1) In the case of a solid waste listed in Subchapter D, when the waste first meets the listing description in Subchapter D.

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

(3) In the case of any other solid waste, including a waste mixture, when the solid waste first exhibits one or more of the characteristics identified in Subchapter C.

(c) Except as otherwise provided in this subsection, any waste generated from the treatment, storage, disposal or reclamation of a hazardous waste, including sludge, spill residue, ash, emission control dust or leachate, but not including precipitation runoff, is a hazardous waste. The following solid wastes are not hazardous wastes even though they are generated from the treatment, storage, disposal or reclamation of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous

waste: waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry with SIC Codes 331 and 332. If the sludge exhibits a hazardous characteristic, it remains a listed waste, with code K062.

(d) A hazardous waste remains a hazardous waste until:

(1) In the case of a waste, other than a listed hazardous waste or waste derived from a listed hazardous waste, it does not exhibit one or more of the characteristics of hazardous waste identified in Subchapter C, except that loss of the characteristic cannot be as a result of intentional dilution, except as permitted under a treatment permit issued by the Department.

(2) In the case of a waste which is a listed waste under Subchapter D, contains a waste listed under Subchapter D or is derived from a waste listed in Subchapter D, it has been excluded under § 260.22 and does not exhibit one or more of the characteristics of hazardous waste identified in Subchapter C.

(e) 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 nonwaste treatment manufacturing unit, is not subject to regulation under § 261.41, Chapters 262—265 or 270 until it exits the unit in which it was generated. This subsection does not apply if the unit is a surface impoundment or if the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, storage or transportation of product or raw materials.

(f) Materials within a totally enclosed treatment facility are not considered hazardous waste until they exit the enclosed units.

(g) When it is not immediately possible to determine if a material will be a hazardous waste, the material shall be managed as a hazardous waste until the determination is made and indicates it is not.

(h) Waste oil that is hazardous only because it exhibits any characteristic of hazardous waste under Subchapter C, which has not been mixed with a hazardous waste and which is destined to be recycled or reused in some other manner than burning for energy recovery is not subject to Chapters 260—266. This waste oil is regulated under residual waste regulations in Article IX (relating to residual waste management). Burning waste oil that exhibits any characteristic of hazardous waste is not subject to Chapters 260—265, unless otherwise specified in Chapter 266, Subchapters D and E.

§ 261.4 Exclusions.

(a) The following solid wastes are specifically excluded as hazardous wastes.

* * * * *

(6) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered—such as refuse-derived fuel—or reused.

(7) Solid wastes generated by any of the following and which are returned to the soils as fertilizer:

* * * * *

(16) Waste that meets the following conditions:

(i) Wastes which fail the test for the toxicity characteristic because chromium is present or are listed in 40 CFR Chapter 261, Subpart D (relating to lists of hazardous

wastes) 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.

(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.

(C) The waste is typically and frequently managed in nonoxidizing environments.

(ii) Specific wastes which meet the standard in subparagraph (i) (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:

(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.

(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_2 pigment using chromium-bearing ores by the chloride process.

* * * * *

(22) 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, if the refrigerant is reclaimed for further use.

(23) Used, nonterne plated oil filters that are not mixed with wastes listed in Subchapter D (relating to

lists of hazardous wastes) if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter antidrain back valve or the filter dome end and hot-draining.

(ii) Hot-draining and crushing.

(iii) Dismantling and hot-draining.

(iv) Other equivalent hot-draining methods that will remove used oil.

(24) EPA hazardous wastes nos. K060, K087, K141, K142, K143, K144, K145, K147 and K148, and wastes from the coke by-products processes that are hazardous only because they exhibit the toxicity characteristic (TC) specified in § 261.24 (relating to characteristics of toxicity) 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 refining processes, or mixed with coal tar.

(25) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose.

(26) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

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

(28) Used oil rerefining distillation bottoms that are used as feedstock to manufacture asphalt products.

(29) Recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process (SIC Code 2911) at or before a point (other than direct insertion into a coker) where contaminants are removed. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil may not be stored in a manner involving placement on the land, and may not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials (such as wastewater) generated from normal petroleum refining, exploration and production and transportation practices. Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include (among other things) oil-bearing hazardous waste listed in 40 CFR Part 261, Subpart D (for example, K048—K052, F037, F038). Oil recovered from these wastes may be considered recovered oil. Recovered oil also does not include used oil as defined in 40 CFR 279.1 (relating to definitions).

(30) 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 the tanks for more than 12 months without being reclaimed.

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

* * * * *

(c) The requirements for treatability study samples are as follows:

* * * * *

(2) The exemption in paragraph (1) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies if the following exist:

(i) The generator or sample collector uses (in treatability studies) no more than 1,000 kilograms of any nonacute hazardous waste or 1 kilogram of acute hazardous waste, 2,500 kilograms of soils, water or debris contaminated with acute hazardous waste for each process being evaluated for each generated waste stream.

(ii) The mass of each sample shipment does not exceed 10,000 kilograms of nonacute hazardous waste, 1 kilogram of acute hazardous waste, or 2,500 kilograms of soils, water or debris contaminated with acute hazardous waste.

* * * * *

(3) The Department may grant requests, on a case-by-case basis, for quantity limits in excess of those specified in paragraph (2)(i), for up to an additional 500 kilograms of nonacute hazardous waste, 1 kilogram of acute hazardous waste, and 2,500 kilograms of soils, water or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation 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 treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment. The additional quantities allowed are subject to paragraphs (1) and (2)(ii)—(iv). The generator or sample collector shall apply to the regional office where the sample is collected and provide in writing the following information:

* * * * *

(d) Samples undergoing treatability studies and the laboratory or testing facility conducting the treatability studies (to the extent the facilities are not otherwise subject to RCRA) are not subject to this chapter, Chapters 262—266 and 270, if the conditions of this subsection are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to this subsection. Where a group of MTUs are located at the same site, the limitations specified in this subsection apply to the entire group of MTUs collectively as if the group were one MTU.

* * * * *

(3) No more than a total of 250 kilograms of “as received” hazardous waste is subject to initiation of treatment in all treatability studies in a 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 at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kilograms, the total of which can include 2,500 kilograms of soils, water or debris contaminated with acute hazardous waste or 1 kilograms of acute hazardous waste.

* * * * *

(e) A modification, addition or deletion of an exclusion from being a hazardous waste under 40 CFR 261.4(b) (relating to exclusions) after January 11, 1997, is incorporated by reference and effective on the date established by the Federal regulations unless otherwise established in this title.

§ 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 the generator generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (f), (g) and (j), a conditionally exempt small quantity generator is not subject to regulation under Chapters 262—266 and Chapter 270, and the notification requirements of § 261.41 (relating to notification of hazardous waste activities), if the generator complies with the requirements of subsections (f), (g) and (j).

(c) When making the quantity determinations of this chapter and Chapter 262 (relating to generators of hazardous waste), the generator shall include all hazardous waste that it generates, except hazardous waste that:

(1) Is exempt from regulation under § 261.4 (relating to exclusions) or 40 CFR 261.6(a)(3), 261.7(a)(1) or 261.8 (relating to requirements for recyclable materials; residues in hazardous waste in empty containers; and PCB wastes regulated under Toxic Substance Control Act).

(2) Is managed immediately upon generation only in onsite elementary neutralization units, wastewater treatment units or totally enclosed treatment facilities as defined in § 260.2 (relating to definitions).

(3) Is recycled, without prior storage or accumulation, only in an onsite process subject to regulation under Chapter 266 (relating to special standards for the management of certain hazardous waste activities).

(4) Is used oil managed under the requirements of § 261.6 (relating to requirements for hazardous wastes that are recycled) and Chapter 266.

(5) Is spent lead-acid batteries managed under the requirements of Chapter 266, Subchapter G (relating to reclaimed spent lead-acid batteries).

(d) In determining the quantity of hazardous waste generated, a generator need not include one or more of the following:

(1) Hazardous waste when it is removed from onsite storage.

(2) Hazardous waste produced by onsite treatment, including reclamation, of hazardous waste generated onsite, if the hazardous waste that is treated was counted once.

(3) Spent materials that are generated, reclaimed and subsequently reused onsite, if spent materials have been counted once.

(e) All quantities of acute hazardous waste are subject to Chapters 262—266 and 270 if a generator generates acute hazardous waste in a calendar month in quantities greater than the following:

(1) A total of 1 kilogram of acute hazardous wastes listed in § 261.31, § 261.32 or § 261.33(4) (relating to list of hazardous waste from nonspecific sources; list of hazardous waste from specific sources; and waste commercial chemical products, off-specification species, containers, container residues and spill residues thereof).

(2) A total of 100 kilograms of any residue or contaminated soil, waste or other debris resulting from the cleanup of a spill, into or on any land or water, of acute hazardous wastes listed in § 261.31, § 261.32 or § 261.33(4).

(f) For acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those in subsection (e) to be excluded from this section, the generator shall comply with the following requirements:

(1) Section 262.11 (relating to hazardous wastes determination).

(2) The generator may accumulate acute hazardous waste onsite. If the generator accumulates at any time acute hazardous wastes in quantities greater than those in subsection (e), all of those accumulated wastes are subject to Chapters 262—266 and 270. The time period established in § 262.34(a) (relating to accumulation) for accumulation of wastes onsite begins when the accumulated wastes exceed the applicable exclusion limit.

(3) The conditionally exempt small quantity generator may either treat or dispose of acute hazardous waste generated onsite at an onsite facility or ensure delivery to an offsite treatment, storage or disposal facility, either of which, if located in the United States, is:

(i) Permitted under Chapter 270 (relating to permit program) if the facility is located within this Commonwealth.

(ii) In interim status under Chapter 265 (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities) and Chapter 270 if the facility is located within this Commonwealth.

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs).

(iv) Permitted, licensed or registered by another state to manage municipal or industrial solid waste, or, if a conditionally exempt small quantity generator's wastes are mixed with waste oil and the mixture is to be recycled or reused, it may be transported, stored or processed under Article VIII or Article IX (relating to municipal waste; and residual waste).

(v) A facility which meets one or more of the following conditions:

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

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

(g) For hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar

month to be excluded from full regulation under this section, the generator shall comply with the following requirements:

(1) Section 262.11

(2) The conditionally exempt small quantity generator may accumulate hazardous waste onsite. If the conditionally exempt small quantity generator accumulates at any time more than a total of 1,000 kilograms of hazardous wastes which were generated onsite, all of those accumulated wastes are subject to regulation under the special provisions of Chapter 262 (relating to generators of hazardous waste) applicable to generators of between 100 kilograms and 1,000 kilograms of hazardous waste in a calendar month as well as the requirements of Chapters 263—266 and 270. The time period established in § 262.34(e) (relating to accumulation) for accumulation of wastes onsite begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 kilograms.

(3) The conditionally exempt small quantity generator may either treat or dispose of hazardous waste generated onsite at an onsite facility or ensure delivery to an offsite treatment, storage or disposal facility, either of which, if located in the United States, is one or more of the following:

(i) Permitted under Chapter 270.

(ii) In interim status under Chapters 265 and 270.

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271.

(iv) Permitted, licensed or registered by another state to manage municipal or industrial solid waste, or, if a conditionally exempt small quantity generator's wastes are mixed with waste oil and the mixture is to be recycled or reused, it may be transported, stored or processed under Article VIII or Article IX.

(v) A facility which meets one or more of the following conditions:

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

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

(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 Subchapter C (relating to characteristics of hazardous waste).

(i) If a 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 waste oil, the mixture is subject to Chapter 266, Subchapter E (relating to waste oil burned for energy recovery), if it is destined to be burned for energy recovery. A material produced from such a mixture by processing, blending or other treatment is also so regulated if it is destined to be burned for energy recovery.

§ 261.6. Requirements for hazardous wastes that are recycled.

(a) *General.*

(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, storage, reclamation and treatment facilities of subsections (b) and (c), except for the hazardous wastes listed in paragraph (2).

(2) The following hazardous wastes are subject to Chapter 266 (relating to special standards for the management of certain hazardous waste activities).

(i) Hazardous waste recycled by being used in a manner constituting disposal as described in Chapter 266.

(ii) Hazardous waste burned for energy recovery that is not regulated under Chapter 264, Subchapter O or Chapter 265, Subchapter O (relating to incinerators).

(iii) Spent lead-acid batteries that are being reclaimed.

(iv) Waste oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under Chapter 264, Subchapter O or Chapter 265, Subchapter O.

(v) Hazardous wastes reclaimed on the site at which they were generated.

(3) The following hazardous waste recycling facilities are subject to Chapter 266, Subchapter F (relating to permit-by-rule):

(i) Battery manufacturing facilities reclaiming spent, lead-acid batteries.

(ii) Petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products.

(4) Except as provided in paragraph (5), facilities that manage hazardous wastes are eligible to apply for a determination of applicability for a permit-by-rule under Chapter 266, Subchapter I (relating to other hazardous waste recycling activities), if all of the hazardous waste consists of one or more of the following:

(i) Hazardous wastes listed at § 261.33 (relating to waste commercial chemical products, off-specification species, containers, container residues and spill residues thereof), characteristic sludges or characteristic by-products, that are being reclaimed at the facility.

(ii) Hazardous wastes that are speculatively accumulated at the facility.

(iii) Hazardous wastes used or reused at the facility as ingredients in an industrial process to make a product or coproduct, if the wastes are not being reclaimed.

(iv) Hazardous wastes used or reused at the facility as effective substitutes for commercial products or coproducts.

(5) Facilities managing the following materials are not eligible for a permit-by-rule under Chapter 266, Subchapter I:

(i) Hazardous wastes recycled by being used in a manner constituting disposal, or used to produce products or coproducts that are applied to the land.

(ii) Hazardous wastes burned for energy recovery, used to produce a fuel or contained in fuels.

(iii) Hazardous wastes identified by the EPA as inherently wastelike under 40 CFR 261.2(d)(1) (relating to definition of solid waste), including listed hazardous wastes F022, F023, F026 and F028.

(b) *Generators and transporters.* Generators and transporters of hazardous wastes that are recycled shall

comply with Chapters 262 and 263 (relating to generators of hazardous waste; and transporters of hazardous waste) and the notification requirements under § 261.41 (relating to notification of hazardous waste activities) except as provided in subsection (a).

(c) *Storage and treatment.*

(1) Owners or operators of facilities that store hazardous wastes before they are recycled are regulated under, required to obtain a permit and shall comply with Chapters 264, 265, 267, 269 and 270 and the notification requirement under § 261.41, except as provided in subsection (a).

(2) Owners or operators of facilities that reclaim or otherwise treat hazardous waste are regulated under, required to obtain a permit under and shall comply with Chapters 264, 265, 267, 269 and 270 and the notification requirements under § 261.41, except as provided in subsection (a).

§ 261.7. Empty containers.

(a) A container or an inner liner removed from a container, previously used to hold a hazardous waste, which has been emptied in accordance with the standards of this section, and which is being transported to a facility for processing (as defined in § 260.2 (relating to definitions)) or disposal shall be managed as a residual waste. For purposes of this section, a tank which is transported for processing or disposal, shall be considered a container.

(b) The person in control of the container or inner liner removed from a container, when any remaining residue which was present prior to processing or other cleaning is, either accidentally or intentionally, removed therefrom shall have the responsibility to ensure that the waste is managed in compliance with the act and the regulations thereunder.

(c) 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 § 261.31, § 261.32 or § 261.33(4) (relating to list of hazardous waste from nonspecific sources; list of hazardous waste from specific sources; and waste commercial chemical products, off-specification species, containers, container residues and spill residues thereof) is empty if the following apply:

(1) The wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container—for example, pouring, pumping and aspirating.

(2) No more than one of the following applies:

(i) Less than 2.5 centimeters (1 inch) of residue remain on the bottom of the container or inner liner.

(ii) 3% 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 110 gallons in size.

(iii) 0.3% by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

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

(e) A container or an inner liner removed from a container that has held an acute hazardous waste listed in § 261.31, § 261.32 or 261.33(4) is empty if one of the following apply:

(1) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate.

(2) 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.

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

Subchapter D. LISTS OF HAZARDOUS WASTES

§ 261.33. Waste commercial chemical products, off-specification species, containers, container residues and spill residues thereof.

(a) The following materials or items are hazardous wastes if they become wastes, including, when they are mixed with waste oil or other material or 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 used as, or as a component of, fuel, distributed for use as a fuel or burned as a fuel.

(1) A commercial chemical product, or manufacturing chemical intermediate having a generic name incorporated by reference in paragraph (4) or (5).

(2) An off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have a generic name incorporated by reference in paragraph (4) or (5).

(3) 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 incorporated by reference in paragraph (4) or (5), unless the container is empty as defined in § 261.7 (relating to empty containers).

(4) 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 (4) or (5) 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 a generic name incorporated by reference in paragraph (4) or (5).

(5) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products, or manufacturing chemical intermediates, referred to in paragraphs (1)–(4), are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in § 261.5(e) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators). The list of these wastes and their corresponding EPA Hazardous Waste Numbers in 40 CFR 261.33(e) (relating to discarded commercial chemical products, off-specification species, container residues, and spill residues thereof) is incorporated by reference. Additions, revisions to or deletions from the list in 40 CFR 261.33(e) are incorporated

into this article and are effective on the date established by Federal regulations, unless otherwise established in this title.

(6) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (1)–(4) are identified as toxic wastes (T), unless otherwise designated and are subject to the small quantity generator exclusion defined in § 261.5(a) and (g). The list of these wastes and their corresponding EPA Hazardous Waste Numbers in 40 CFR 261.33(f) is incorporated by reference. Additions, revisions to or deletions from the list in 40 CFR 261.33(f) are incorporated into this article and are effective on the date established by Federal regulations, unless otherwise established in this title.

(b) 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 the 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 (5) or (6). This waste will be listed in either § 261.31 or § 261.32 (relating to list of hazardous waste from nonspecific sources) or will be identified as a hazardous waste by the characteristics in Subchapter C (relating to characteristics of hazardous waste).

§ 261.34. Appendices.

(a) *Appendix I—Representative Sampling Methods.* The text of Appendix I promulgated under RCRA at 40 CFR Part 261 (relating to identification and listing of hazardous wastes) entitled *Representative Sampling Methods* is incorporated by reference. Revisions to the appendix adopted by the EPA are incorporated into this article and are effective on the date established by Federal regulations, unless otherwise established in this article.

(b) *Appendix II—Toxicity Characteristic Leaching Procedure.* The test in Appendix II promulgated under RCRA at 40 CFR Part 261 entitled *Toxicity Characteristic Leaching Procedure* is incorporated by reference. Revisions to the appendix adopted by the EPA are incorporated into this article and are effective on the date established by Federal regulations, unless otherwise established in this article.

(c) *Appendix III—Chemical Analysis Test Methods.* The text of Appendix III promulgated under RCRA at 40 CFR Part 261 entitled *Chemical Analysis Test Methods* is incorporated by reference. Revisions to the appendix adopted by the EPA are incorporated into this article and are effective on the date established by Federal regulations, unless otherwise established in this article.

(d) *Appendix VII—Basis for Listing Hazardous Waste.* The text of Appendix VII promulgated under RCRA at 40 CFR Part 261 entitled *Basis for Listing Hazardous Waste* is incorporated by reference. Revisions to the appendix adopted by the EPA are incorporated into this article and are effective on the date established by Federal regulations, unless otherwise established in this article.

(e) *Appendix VIII—Hazardous Constituents.* The text of Appendix VIII promulgated under RCRA at 40 CFR Part 261 entitled *Hazardous Constituents* is incorporated by reference. Revisions to the appendix adopted by the EPA

are incorporated into this article and are effective on the date established by Federal regulations, unless otherwise established in this article.

CHAPTER 262. GENERATORS OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 262.10. Scope.

(a) This chapter establishes standards for a generator of hazardous waste identified in Chapter 261 (relating to criteria, identification and listing of hazardous waste) who is located in this Commonwealth.

(b) A generator who treats, stores or disposes of hazardous waste at a permitted onsite facility or an onsite facility being treated as having been issued a permit shall comply with applicable requirements of Chapters 264 and 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities) and with the following in this chapter:

- (1) Section 262.11 (relating to hazardous waste determination).
- (2) Section 262.12 (relating to identification numbers).
- (3) Section 262.34 (relating to accumulation).
- (4) Section 262.40 (relating to recordkeeping).
- (5) Section 262.41(b) (relating to biennial report).
- (6) Section 262.43 (relating to additional reporting).
- (7) Section 262.45 (relating to hazardous waste disposal plan).
- (8) Section 262.46 (relating to hazardous waste discharges or spills).

(c) A farmer who generates waste pesticides which are hazardous wastes and who complies with the requirements of § 262.70 (relating to farmers), is not required to comply with Chapters 264 and 265 with respect to the pesticides.

(d) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage or disposal facility shall comply with the generator standards established in this chapter.

(e) A household hazardous waste collection contractor under section 1512 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 400.1512) is a generator of the hazardous wastes collected and shall comply with the requirements of this chapter.

(f) Used oil collection site operators who are not transporters, marketers or burners are not generators. Used oil collection contractors under section 1512 of the Municipal Waste Planning, Recycling and Waste Reduction Act who manage hazardous waste oils are generators.

§ 262.12. Identification numbers.

(a) A generator may not treat, store, dispose of, transport or offer for transport a shipment of hazardous waste without having received an identification number.

(b) A generator shall offer a shipment of hazardous waste only to a licensed transporter or hazardous waste management facility that has received an identification number.

Subchapter C. PRETRANSPORT REQUIREMENTS

§ 262.34. Accumulation.

(a) Except as provided in subsections (d)—(f), a generator may accumulate hazardous waste onsite for 90 days or less without a permit or without having interim status, if the following apply:

(1) The waste is placed as follows:

(i) In containers and the generator complies with Chapter 265, Subchapter I (relating to use and management of containers).

(ii) In tanks and the generator complies with Chapter 265, Subchapter J (relating to tanks) except for §§ 265.197(c) and 265.200 (relating to closure and postclosure care; and waste analysis and trial tests) and provides the following:

(A) A description of the procedures that will be followed to ensure that hazardous waste is stored in the tank for 90 days or less.

(B) Documentation of each waste removal including the quantity of waste removed from the tank and the date and time of removal is maintained at the facility.

(iii) On drip pads and the generator complies with Chapter 265, Subchapter S (relating to drip pads) and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that the wastes are removed from the drip pad and associated collection system at least once every 90 days.

(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.

(iv) In containment buildings and the generator complies with Chapter 265, Subchapter T (relating to containment buildings), and has obtained and placed in the facility's operating record certification by a qualified registered professional engineer that the building complies with the design standards specified in § 265.521 (relating to design and operating standards), prior to operation of the unit. The generator is exempt from the requirements in Chapter 265, Subchapters G and H (relating to closure and postclosure; and financial requirements), except for §§ 265.111 and 265.114 (relating to closure performance standard; and disposal or decontamination of equipment, structures and soils). The owner or operator shall maintain one of the following 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.

(B) Documentation that the unit is emptied at least once every 90 days.

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

(3) The waste is placed in containers which meet United States Department of Transportation packaging, marking and labeling requirements in § 262.30 (relating to packing, labeling and marking) when waste is accumulated in containers onsite.

(4) Each tank is labeled or marked clearly with the words, "Hazardous Waste" when waste is accumulated in tanks onsite.

(5) The generator complies with the requirements for owners or operators in Chapter 265, Subchapters C and D (relating to preparedness and prevention; and preparedness, prevention and contingency (PPC) plan and emergency procedures) and with § 265.16 (relating to personnel training).

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to Chapters 264 and 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities) and the permit requirements of Chapter 270 (relating to permit program) unless the generator has been granted an extension to the 90-day period. The extension may be granted by the Department if hazardous waste has to remain onsite for longer than 90 days due to unforeseen, temporary and uncontrollable circumstances. An extension of up to 30 days may be granted at the Department's discretion on a case-by-case basis.

(c) A generator may accumulate as much as 55 gallons of hazardous waste or 1 quart of acutely hazardous waste listed in § 261.33(4) (relating to waste commercial chemical products, off-specification species, containers, container residues and spill residues thereof) 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 subsection (a) if the generator meets the following conditions:

(1) Complies with §§ 265.171—265.173 (relating to condition of containers; compatibility of waste with containers; and management of containers).

(2) Marks the containers either with the words "hazardous waste" or with other words that identify the contents of the containers.

(d) A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.33(4) in excess of the amounts listed in subsection (c) at or near any point of generation shall, with respect to that amount of excess waste, comply within 3 days with subsection (a) or other applicable provisions of this chapter. During the 3-day period, the generator shall continue to comply with subsection (c). The generator shall mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(e) A generator who generates greater than 100 kilograms but less than 1,000 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 if the following conditions are met:

(1) The quantity of waste accumulated onsite never exceeds 6,000 kilograms.

(2) The generator complies with Chapter 265, Subchapter I, except § 265.176 (relating to special requirements for ignitable or reactive wastes).

(3) The generator complies with § 265.201 (relating to special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks).

(4) The generator complies with subsection (a)(2) and (3).

(5) The generator complies with § 265.16 (relating to personnel training) and Chapter 265, Subchapters C and D

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who transports that waste, or offers that waste for transportation, over a distance of 200 miles or more for offsite treatment, storage or disposal may accumulate hazardous waste onsite for 270 days or less without a permit or without having interim status provided that the generator complies with subsection (e).

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if the generator has to transport that waste, or offer that waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to Chapters 264 and 265 and the permit requirements of Chapter 270 unless an extension to the 180-day (or 270-day if applicable) period has been granted. The extension may be granted by the Department if hazardous waste has to remain onsite 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 Department's discretion, on a case-by-case basis.

Subchapter D. RECORDKEEPING AND REPORTING

§ 262.40. Recordkeeping.

(a) A generator shall retain a copy of each manifest signed in accordance with § 262.20 (relating to manifest), for 3 years or until the generator receives a signed copy from the designated facility which received the waste. This signed copy shall be retained at the building, property premises or place where hazardous waste is generated or at a location approved by the Department as a record for at least 3 years from the date on which the waste was accepted by the initial transporter.

(b) A generator shall retain a copy of each biennial report and exception report for at least 3 years from the due date of the report.

(c) A generator shall retain records of any test results, waste analyses or other determinations made in accordance with § 262.11 (relating to hazardous waste determination), for at least 20 years from the date the waste was last sent for onsite or offsite treatment, storage or disposal. The generator shall furnish these records to the Department upon request.

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

(e) A generator shall retain records of inspections conducted in accordance with § 262.34 and Chapter 265, Subchapters I and J (relating to accumulation; use and management of containers; and tanks) for at least 20 years from the date the inspections were conducted.

§ 262.41. Biennial report.

A generator other than a small quantity generator or a conditionally exempt small quantity generator shall submit biennial reports:

(1) To the Department on a form designated by the Department. The form shall contain as a minimum the following information:

- (i) The name, identification number, mailing address and the location of the generator.
- (ii) The name and telephone number of the generator's contact person.
- (iii) The calendar year covered by the report.
- (iv) For each hazardous waste generated, the description, hazardous waste number and quantity.
- (v) For each hazardous waste managed onsite, except for wastes temporarily accumulated under § 262.34 (relating to accumulation), the method of management.
- (vi) For each waste shipped offsite, the identification number of the designated facility and the method of management at the facility.
- (vii) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
- (viii) 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.
- (ix) Signature and dated certification of the generator's authorized representative.

(2) To the Department on or before the first day of March of each even numbered year and shall cover the previous calendar year.

CHAPTER 263. TRANSPORTERS OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 263.10. Scope.

(a) This chapter applies to a person or municipality who transports hazardous wastes which are generated, stored, treated or disposed of in this Commonwealth, except that transporters transporting hazardous waste through this Commonwealth, neither picking up or delivering hazardous waste in this Commonwealth, need only comply with the EPA transporter requirements in 40 CFR Part 263 (relating to transporters of hazardous waste).

(b) This chapter does not apply to onsite transportation of hazardous wastes by generators or onsite transportation by owners or operators of permitted hazardous waste management facilities.

(c) A transporter of hazardous wastes shall comply with the requirements of Chapter 262 (relating to generators of hazardous waste) if he transports hazardous wastes into this Commonwealth from a foreign country.

(d) A transporter of hazardous waste shall comply with the applicable Department of Transportation requirements for hazardous materials transporters.

§ 263.11. Identification number.

Except as otherwise provided in § 263.30 (relating to hazardous waste discharge or spills), a transporter may not transport hazardous waste without having received an identification number.

§ 263.13. Licensing.

(a) Except as otherwise provided in subsection (b) or § 263.30 (relating to hazardous waste discharge or spills), a person or municipality may not transport hazardous

waste within this Commonwealth without first obtaining a license from the Department.

(b) A person or municipality that has been transporting hazardous waste within this Commonwealth on the effective date of the amendments to Chapter 261 (relating to criteria, identification and listing of hazardous waste), made after January 11, 1997, who files a notification form as required by § 261.41 (relating to notification of hazardous waste activities), and submits a license application as required by this section within 90 days of an amendment to Chapter 261, made after January 11, 1997, shall be treated as having been issued a license until a final Department action on the application is made. The person or municipality may not continue to transport hazardous waste without obtaining a license from the Department.

(c) A person or municipality desiring to obtain a license to transport hazardous waste within this Commonwealth shall:

- (1) Comply with § 261.41.
- (2) File a hazardous waste transporter license application with the Department. The application shall be on a form provided by the Department and shall be completed as required by the instructions supplied with the form.
- (3) Deposit with the Department a collateral bond which is conditional upon compliance by the licensee with the act, the regulations promulgated thereunder, the terms and conditions of the license and a Department order issued to the licensee. The amount, duration, form, conditions and terms of the bond shall conform to § 263.32 (relating to bonding).
- (4) Supply the Department with the relevant additional information it may require.
- (d) Upon receiving the application and the information required in subsection (c), the Department will evaluate the application for a license and other relevant information and issue or deny the license. If a license is denied, the Department will advise the applicant of the reasons for denial in writing.

(e) A license granted or renewed under this chapter will be valid for 2 years unless the Department determines that circumstances justify issuing a license for a period of less than 2 years. The expiration date will be set forth on the license.

(f) A license to transport hazardous wastes is nontransferable and nonassignable and shall be used only by the licensee and employees of the licensee.

(g) The Department may revoke or suspend a license in whole or in part for one or more of the following reasons:

- (1) Violation of an applicable requirement of the act or a regulation promulgated under the act.
- (2) Aiding or abetting the violation of the act or a regulation promulgated under the act.
- (3) Misrepresentation of a fact either in the application for the license or renewal or in information required or requested by the Department.

(4) Failure to comply with the terms or conditions placed upon the license or renewal.

(5) Failure to comply with an order issued by the Department.

(6) Failure to maintain the required bond amount.

(h) The application for a license shall be accompanied by a check for \$500 payable to the "Commonwealth of Pennsylvania." The application for license renewal shall

be accompanied by a check for \$250 payable to the "Commonwealth of Pennsylvania."

(i) In addition to the fees required by subsection (h), the transporter shall also submit a fee of \$5 for each license card requested in excess of ten cards.

(j) The licensee shall notify the Department within 30 days of any change in the information contained in the license application.

Subchapter B. MANIFEST

§ 263.20. Manifest.

* * * * *

(b) Before transporting the hazardous waste, the initial and any subsequent transporter shall print or type his name, sign and date the manifest and, by his signature, acknowledge his acceptance of the hazardous waste from the generator or previous transporter. Before leaving the generator's property, the initial transporter shall return to the generator the appropriate number of signed copies of the manifest according to the instructions supplied with the manifest.

* * * * *

§ 263.27. Blending, mixing, treating or storing of hazardous waste by transporters.

(a) If a transporter blends or mixes hazardous waste of different United States Department of Transportation shipping descriptions, the transporter shall comply with Chapter 262 (relating to generators of hazardous waste).

(b) A transporter that stores hazardous waste in a manner other than in-transit storage or alters the composition of hazardous waste, shall comply with the applicable requirements of Chapters 264 and 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).

(c) A transporter may mix hazardous wastes of similar United States Department of Transportation shipping descriptions solely for the purpose of bulking the waste without complying with Chapters 264 and 265 if the following conditions are met:

(1) The mixing occurs at an in-transit storage facility that complies with § 263.30(g) (relating to hazardous waste discharge or spills).

(2) The wastes being mixed or bulked are compatible which shall be verified through chemical analysis of the wastes involved.

Subchapter C. OPERATING REQUIREMENTS

§ 263.30. Hazardous waste discharge or spills.

(a) In the event of a discharge or spill of hazardous waste during transportation, the transporter shall take appropriate immediate action to protect the health and safety of the public and the environment and shall immediately notify the Department by telephone at (717) 787-4343 and the National Response Center at (800) 424-8802 with the following information:

- (1) Name of the person reporting the spill.
- (2) Name, address and identification number of the transporter.
- (3) Phone number where the person reporting the spill can be reached.
- (4) Date, time and location of the spill.

(5) Mode of transportation and type of transport vehicle.

(6) Brief description of the incident.

(7) For each waste involved in the spill:

(i) The name and identification number of the generator of the waste.

(ii) Shipping name, hazard class and U. N. Number of the waste.

(iii) Estimated quantity of the waste spilled.

(8) Shipping name, hazard class and U. N. Number of any other material carried.

(b) In the event of a discharge or spill of hazardous waste during transportation, the transporter shall immediately notify the affected municipality of the occurrence and nature of the discharge or spill.

(c) If a discharge or spill of hazardous waste occurs during transportation, and a Departmental official acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect the health and safety of the public or the environment, that official may authorize in writing the removal of the waste by transporters who do not have identification numbers or licenses and without the preparation of a manifest.

(d) A transporter shall clean up any hazardous waste discharge or spill that occurs during transportation or take action that may be required or approved by the Department so that the discharge or spill no longer presents a hazard to the health and safety of the public or to the environment.

(e) Report in writing as required by 49 CFR 171.16 (relating to detailed hazardous materials incident reports), to the Chief, Information System Division, Transportation Programs Bureau, United States Department of Transportation, Washington, D.C., 20590, sending a copy of the report to the Department and a copy to the generator. A water—bulk shipment—transporter who has discharged hazardous waste shall give the same notice as required by 33 CFR 153.203 (relating to notice of discharge), for oil and hazardous substances, sending a copy of the report to the Department and a copy to the generator.

(f) A transporter of hazardous waste shall develop and implement a transporter contingency plan for effective action to minimize and abate discharges or spills of hazardous waste from an incident while transporting hazardous waste. The transporter shall develop the plan in accordance with the Department's guidelines for contingency plans and shall submit the plan to the Department as the Department prescribes for its written approval.

(g) A transporter utilizing in-transit storage of hazardous waste for not more than 10 days but greater than 3 days shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan and shall submit the plan to the Department for written approval.

(h) A transporter transferring hazardous waste from one vehicle to another at a transfer facility shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan and will be approved by the Department in writing.

Subchapter E. BONDING

§ 263.32. Bonding.

(a) A collateral bond means an indemnity agreement in a certain sum payable to the Department executed by the licensee and which is supported by the deposit with the Department of cash, negotiable bonds of the United States of America, the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority or any Commonwealth municipality, or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States.

(b) A new, revised or renewed license to transport hazardous waste may not be issued by the Department before the applicant for a license has filed a collateral bond payable to the Department on a form provided by the Department, and the bond has been approved by the Department.

(c) The amount of the bond shall be \$10,000 at a minimum and be in an amount sufficient to assure that the licensee faithfully performs the requirements of the act, the rules and regulations promulgated thereunder, the terms and conditions of the license and any Department order issued to the licensee.

(d) Liability under the bond shall continue at a minimum for the duration of the license, any renewal thereof and for a period of 1 year after expiration, termination, revocation or surrender of the license. The 1-year extended period of liability shall include, and shall be automatically extended for, additional time during which administrative or legal proceedings are pending involving a violation by the transporter of the act, rules and regulations promulgated thereunder, the terms or conditions of a license or a Department order.

(e) The Department may require additional bond amounts at any time if the methods of transporting wastes change, the kind of wastes transported change or the Department determines the additional bond amounts are necessary to guarantee compliance with the act, the rules and regulations, the terms and conditions of the license or any Department order.

(f) Collateral bonds shall be subject to the following conditions:

(1) The Department will obtain possession of and keep in custody all collateral deposited by the licensee until authorized for release as provided in this section.

(2) The Department will value collateral at their current market value.

(3) Collateral shall be in the name of the licensee, not in the name of third parties and shall be pledged and assigned to the Department free and clear of claims.

(g) Letters of credit shall be subject to the following conditions:

(1) The letter may only be issued by a bank organized or authorized to do business in the United States.

(2) Letters of credit shall be irrevocable. The Department may accept a letter of credit which is irrevocable for a term of 3 years if:

(i) The letter of credit is automatically renewable for additional terms, unless the bank gives at least 90 days prior written notice to the Department of its intent to terminate the credit at the end of the current term.

(ii) The Department has the right to draw upon the credit before the end of its term and convert it into a cash

collateral bond, if the licensee fails to replace the letter of credit with other acceptable collateral within 30 days of the bank's notice to terminate the credit.

(3) The letter of credit shall be payable to the Department in part or in full upon demand of the Department in the case of a forfeiture or the failure of the operator to replace the letter of credit as provided in this section.

(4) The Department will not accept letters of credit from a bank for a licensee in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(5) All letters of credit shall be subject to the *Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 290*, including amendments and successor publications.

(6) Letters of credit will provide that the bank will give prompt notice to the licensee and the Department of a notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business.

(7) Upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the licensee shall be deemed to be without collateral bond coverage in violation of § 263.13 (relating to licensing). The Department will issue a notice of violation against a licensee who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days.

(h) Bonds which are not declared forfeit in accordance with subsection (i) shall be released to the licensee 1 year after expiration, termination, revocation or surrender of the license.

(i) The Department will declare forfeit all the bonds if the Department finds that the licensee has violated any of the requirements of the act, the rules and regulations promulgated thereunder, terms and conditions of a license or a Department order issued to the licensee, and if the Department also finds that the licensee has failed to remedy promptly the violation.

(j) Remedies provided in law for violation of the act, the rules and regulations adopted thereunder or the conditions of the license, are expressly preserved. Nothing in this section may be construed as an exclusive penalty or remedy for the violations of law. An action taken under this chapter does not waive or impair another remedy or penalty provided in law.

CHAPTER 264. NEW AND EXISTING HAZARDOUS WASTE MANAGEMENT FACILITIES APPLYING FOR A PERMIT

Subchapter B. GENERAL FACILITY STANDARDS

§ 264.11. Identification numbers.

(a) A person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal without having received an identification number from the EPA and may not accept hazardous waste from a transporter who has not received an identification number from the EPA and a license from the Department, except as otherwise provided. This provision does not apply to acceptance of waste generated by a small quantity generator or by a conditionally exempt small quantity generator.

(b) An owner or operator of a hazardous waste management facility who has not received an identification number may obtain one by applying to the EPA.

§ 264.12. General requirements for hazardous waste management approvals and analysis of a specific waste from a specific waste generator.

(a) Except as provided in subsections (e) and (f), before an owner or operator treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the operator shall submit to the Department for approval, on a form provided by the Department, a report which the owner or operator shall retain for 20 years. The report shall include the following information:

- (1) A detailed chemical and physical analysis of the waste.
- (2) A description of the waste and the process generating the waste.
- (3) The name and address of the HWM facility.
- (4) A description of the HWM facility's treatment, storage and disposal methods.
- (5) Results of liner compatibility testing.
- (6) An assessment of the impact of the waste on the HWM facility.
- (7) A copy of the generator's source reduction strategy unless exempted under § 262.80(e) (relating to source reduction strategy). For generators located outside of this Commonwealth, a copy of documentation that the generator has complied with section 3005(h) of the Solid Waste Disposal Act (42 U.S.C.A. § 6925(h)).

(8) Other information which the Department may prescribe for the Department to determine whether the waste will be treated, stored or disposed of in accordance with this chapter. The chemical and physical analysis of the waste shall be repeated under one or more of the following circumstances:

- (i) When necessary to ensure that it is accurate and up-to-date.
- (ii) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste has changed.
- (iii) For offsite facilities or onsite facilities receiving waste from offsite sources, when the results of the inspection or analysis, or both, of each hazardous waste indicates that the waste received at the facility does not match the description of the waste on the accompanying manifest or shipping paper.

(b) The owner or operator of an offsite facility or an onsite facility receiving hazardous waste from offsite sources shall inspect and, if necessary, analyze each hazardous waste received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(c) The owner or operator shall develop and follow a written waste analysis plan which shall be submitted to the Department for approval at a time in the application process as the Department may prescribe. The plan shall be retained at the facility. At a minimum, the plan shall specify all of the following:

- (1) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of these parameters.
- (2) The test methods which will be used to test for these parameters.

(3) The sampling methods 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 § 261.34(a) (relating to appendices).
- (ii) An equivalent sampling method approved by the Department.

(4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date.

(5) For offsite facilities or onsite facilities receiving wastes from offsite sources, the waste analyses that the hazardous waste generators supply in accordance with the requirements of this section.

(6) When applicable, the testing procedures which will be used to meet the additional waste analysis requirements for the following HWM methods: tanks, surface impoundments, waste piles, land treatment, landfills, incineration, thermal treatment, and chemical, physical and biological treatment.

(7) For offsite facilities or onsite facilities receiving hazardous waste from offsite sources, the procedures which will be used to determine the identity of each hazardous waste managed at the facility and the sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

(8) If applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in § 264.17 (relating to general requirements for ignitable, reactive or incompatible wastes).

(d) The owner or operator of a facility utilizing a liner shall conduct an evaluation of the liner compatibility with the hazardous waste before accepting the waste for emplacement in a waste pile, surface impoundment or landfill unless the approval to accept the waste is granted in the facility's permit. The evaluation procedure shall meet the approval of the Department prior to its commencement. The evaluation of the liner shall consist of testing the liner in the presence of the waste for a minimum of 30 days or as otherwise approved by the Department. In lieu of actual testing, existing published or documented data on the hazardous waste or waste generated from similar processes proving the liner compatibility may be substituted if approved by the Department. The results of the evaluation of the liner compatibility shall be furnished to the Department for approval of the waste before acceptance by the facility.

(e) The Department may waive prior approval of the report specified in subsection (a) for wastes that are in containers that are only to be stored at the facility. The Department may waive prior approval of the report only if:

(1) The Department determines that such a waiver does not pose a potential threat to human health or the environment.

(2) The management of the wastes is allowed in the permit for the facility and properly addressed in the approved waste analysis plan for the facility.

(3) The report is submitted to the Department within 1 week of the arrival of the wastes at the facility and a copy of the report is maintained in the operating record onsite for 20 years.

(f) Prior Department approval of the report specified in subsection (a) is not required for offsite reclamation facilities that, under a contractual agreement, supply raw material to a generator and accept the expended material from the generator for storage prior to reclamation. In addition to the remaining requirements in subsection (a), the owner or operator shall retain at the facility the generator's certification that, at a minimum, states that a contractual agreement exists between the reclaimer and the generator in which the reclaimer supplies raw material to the generator who returns the expended material to the reclaimer after its intended use and that the material has been or will be used by the generator only in the manner specified in the contractual agreement. The reclaimer shall indicate the proposed location for storage of the waste in the certification. The reclaimer shall maintain one copy of the certification in the operating record onsite for 20 years. The certification shall be included in the waste analysis plan of the reclamation facility's storage permit.

(g) Permit modifications request under subsections (a), (c) and (d) shall be accompanied by a fee, as specified in § 265.447(b) and (c) (relating to payment of fees).

§ 264.13. Generic Module I applications.

(a) In lieu of the waste and generator specific report required by § 264.12 (relating to general requirements for hazardous waste management approvals and analysis of a specific waste from a specific waste generator), the Department may accept from the operator of a treatment, storage or disposal facility a Generic Module I application for similar wastes containing similar hazardous constituents from multiple generators. The Department will approve in writing any Generic Module I application before the operator of a treatment, storage or disposal facility may accept a waste identified in the application from a generator identified in the application. A Generic Module I application may be used only if:

- (1) The wastes have similar chemical and physical characteristics.
- (2) The processes which generate the wastes are similar.
- (3) The wastes have identical hazardous waste numbers, United States Department of Transportation shipping name, hazard class and UN/NA number.
- (4) All wastes included in a Module I application will be managed in the same manner at the facility.
- (5) The management of the wastes is allowed in the permit for the facility and is properly addressed in the approved waste analysis plan.

(b) An application for a Generic Module I shall include:

- (1) The information required by § 264.12(a). Generator specific information required by § 264.12(a) shall be included for each generator identified in the application.
- (2) Criteria for determining whether the wastes have similar physical and chemical characteristics and contain similar hazardous constituents.

(c) Additional generators may be added to an approved Generic Module I if the operator of the treatment, storage or disposal facility demonstrates that the waste from the new generator is consistent with the waste already approved in the Generic Module I. At least 15 days prior to accepting a waste from a new generator, the operator of the treatment, storage or disposal facility shall submit to the Department, in writing, the generator specific information required by § 264.12(a). The Department will

not add an additional generator to the Generic Module I if the Department finds that the operator of the treatment, storage or disposal facility has not demonstrated that the waste from the new generator is consistent with that approved under the Generic Module I.

(d) Generic Module I applications submitted under subsection (a) shall be accompanied by a fee as specified in § 265.447(c) (relating to payment of fees).

Subchapter E. MANIFEST SYSTEM AND DISCREPANCY REPORTING

§ 264.71. Use of manifest system.

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(d) The owner or operator of the facility shall retain the required copies of the manifest at the time of delivery, for at least 3 years from the date of delivery.

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§ 264.73. Operating record.

(a) The owner or operator of an onsite or offsite facility shall keep a written operating record at his facility.

(b) The following information shall be recorded, as it becomes available, and be maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received, and the methods and dates of its treatment, storage or disposal at the facility as required by Appendix A (relating to recordkeeping instructions). The quarterly report form may be used to record this information.

(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 shall be recorded on a map or diagram of each cell or disposal area. The maps or diagrams shall be drawn to scale and tied to permanently surveyed bench marks. For all facilities, this information shall include cross references to specific state manifest document numbers and EPA manifest document numbers, if the waste was accompanied by a manifest.

(3) Records and results of waste analyses and trial tests performed as specified in §§ 264.13, 264.17 and Subchapter O (relating to general requirements for hazardous waste management approvals and analysis; general requirements for ignitable, reactive or incompatible wastes; and incinerators).

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in § 264.56(j) (relating to emergency procedures).

(5) Records and results of inspections as required by § 264.15 (relating to general inspection and construction inspection requirements).

(6) Monitoring, testing or analytical data if required by Subchapters F and I—T.

(7) For offsite facilities or onsite facilities receiving wastes from offsite sources, notices to generators as specified in § 262.13 (relating to authorization).

(8) Closure cost estimates under § 267.19 (relating to cost estimate for closure and postclosure care) and for disposal facilities, all postclosure estimates under § 267.19.

(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 gener-

ated to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable methods currently available to the permittee which minimizes the present and future threat to human health and the environment.

§ 264.75. Biennial report.

(a) Facility owners or operators shall submit biennial reports to the Department on a form designated by the Department. The form shall contain as a minimum the following information:

(1) The name, identification number, mailing address and location of the facility.

(2) The name and telephone number of the facility's contact person.

(3) For each hazardous waste managed at the facility, the identification number of the producing generator, the description, hazardous waste number, quantity and method of treatment, storage or disposal. For imported shipments, in lieu of the identification number, the report shall give the name and address of the foreign generator.

(4) Signature and certification of the facility's owner or operator or authorized representative.

(5) The most recent closure cost estimate under § 267.19 (relating to cost estimate for closure and postclosure care), and for disposal facilities, the most recent postclosure cost estimate under § 267.19.

(6) The calendar years covered by the report.

(7) Additional information set forth by the Department on the form.

(b) Reports required by this section shall be submitted to the Department on or before the first day of March for each even numbered year and shall cover the previous calendar year.

(c) Reports required by this section shall be maintained for the life of the facility as a part of the operating record. The records shall be made available to the Department upon request.

§ 264.76. Unmanifested waste report.

If a facility accepts for treatment, storage or disposal hazardous waste from an offsite source without an accompanying manifest, or without an accompanying shipping paper as described in § 263.20(e)(2) (relating to manifest), and if the waste is not excluded from the manifest requirement by § 261.5 (relating to special requirements for hazardous waste generated by small quantity generators), the owner or operator shall prepare and submit a single copy of a report to the Department within 15 days after receiving the waste. The unmanifested waste report shall be submitted on EPA Form 8700-13B. The report shall be designed "unmanifested waste report" and include the following information:

(1) The identification number, name and address of the facility.

(2) The date the facility received the waste.

(3) The identification number, name and address of the generator and the transporter, if available.

(4) A description and the quantity of each unmanifested hazardous waste received by the facility.

(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 an authorized representative.

(7) A brief explanation of why the waste was unmanifested, if known.

§ 264.82. Administration fees.

(a) The owner or operator of a hazardous waste management facility shall annually pay an administration fee to the Department according to the following schedule:

(1) Land disposal facilities—\$2,500.

(2) Surface impoundments—\$2,500.

(3) Commercial treatment—\$2,000.

(4) Captive treatment—\$700.

(5) Storage—\$550.

(6) Incinerators—\$1,300.

(b) The administration fee shall be in the form of a check made payable to the "Commonwealth of Pennsylvania" and be paid on or before the first of March to cover the preceding year.

(c) If more than one permitted activity is located at a site, or more than one activity occurs, the fee shall be cumulative.

Subchapter J. TANKS

§ 264.190. Applicability.

(a) *Tank systems.* This subchapter applies to owners and operators of facilities that use tank systems to treat or store hazardous wastes, except as otherwise provided in § 264.1 (relating to scope).

(b) *General.* Tank systems that are used to store or treat hazardous waste which contain no free liquids and are situated inside a building with an impermeable floor—permeability may not exceed 1×10^{-7} cm/sec.—are exempted from § 264.193 (relating to secondary containment). To demonstrate the absence or presence of free liquids in the stored or treated waste, the waste shall pass the following tests:

(1) Method 9095 (Paint Filter Liquids Test) as described in the latest "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication No. SW-846 as amended).

(2) It shall have greater than 20% solids content by dry weight.

(3) It may not be flowable. Flowable refers to flow in the sense of pourable as a liquid.

(c) *Exemptions.* Tank systems, including sumps, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in § 264.193.

Subchapter L. WASTE PILES

§ 264.250. Applicability.

(a) This subchapter applies to an owner or operator of a facility that stores or treats hazardous waste in piles except under § 264.1 (relating to scope). A waste pile used as a disposal facility is a landfill and shall meet the requirements of Subchapter N (relating to landfills).

(b) A waste pile shall be designed to prevent discharge into the land, surface water or groundwater during the life of the pile.

(c) An owner or operator of a waste pile complying with paragraph (1) is not subject to the requirements of Subchapter F (relating to groundwater monitoring), the

requirements of §§ 264.251 and 264.252 (relating to design and operating requirements—general; and design and operating requirements—liner system). An owner or operator of a waste pile complying with paragraph (2) or (3) is not subject to the groundwater requirements of Subchapter F.

(1) The waste pile is inside or under a completely enclosed structure that provides protection from precipitation so that neither runoff nor leachate is generated.

(i) A liquid or material containing free liquids is not placed in the pile.

(ii) The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting.

(iii) The pile will not generate leachate through decomposition or other reactions.

(iv) The waste is underlain by an impermeable membrane of sufficient strength and thickness to prevent failure due to the stress of installation, puncture, cracking, tearing or other physical damage from equipment used to place the waste in or on the pile, or to remove the waste from the pile, or to clean the membrane. The membrane shall be compatible and nonreactive with the waste to be placed on it.

(v) The pile is protected from surface water run-on by the structure or in another manner.

(2) The waste pile is underlain by a liner system composed of two liners and conditions of § 264.252(a) are complied with.

(3) The waste in the pile is removed periodically and the liner is inspected for deterioration, cracks or other conditions that may result in leaks. The frequency of inspection shall be specified in the inspection schedule under § 264.15 (relating to general inspection and construction inspection requirements), and shall be based on the potential for the liner base to crack or otherwise deteriorate under the conditions of operation such as waste type, rainfall, loading rates, subsurface stability and conditions of § 264.252(a) are complied with.

Subchapter O. INCINERATORS

§ 264.341. Waste analysis.

(a) Before an owner or operator incinerates his own specific hazardous waste or a specific hazardous waste from a specific generator for the first time he shall submit to the Department an analysis of the waste including the following information either with the permit application or on a form specified by the Department. The following parameters of the waste feed shall be analyzed and quantified along with additional parameters as may be required by the Department in order to provide data as required by § 264.347 (relating to monitoring and inspection). Each analysis shall include sample data, sample methods, sample description and collection conditions, analysis data and laboratory name, address, contact and telephone number. All analyses submitted shall specify the analytical techniques utilized along with special preparation or deviation from accepted techniques:

- (1) General properties.
 - (i) Moisture (percent by weight).
 - (ii) Ash (percent by weight).
 - (iii) Heating value (Btu/lb.).
 - (iv) Density (lb./cubic foot at 70°F).
 - (v) Viscosity (Centipoise at 70°F).

(vi) PCB (ppm by weight).

(vii) Identification of hazardous organic constituents listed in § 261.34(e) (relating to appendices), which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in § 261.34(e) which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for the exclusion stated. The waste analysis shall rely on analytical techniques specified in *Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods* (SW-846) or other equivalent method, under § 260.21 (relating to requests for determination of equivalent testing or analytical methods).

(viii) Flash point (°F).

(ix) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in *Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods* (SW-846) or other equivalent method under § 260.21.

(2) Ultimate analysis.

- (i) Carbon (percent by weight).
- (ii) Hydrogen as H₂ (percent by weight).
- (iii) Oxygen as O₂ (percent by weight).
- (iv) Nitrogen as N₂ (percent by weight).
- (v) Water (percent by weight).
- (vi) Phosphorus (percent by weight).
- (vii) Bromine as Br₂ (percent by weight).
- (viii) Chlorine as Cl₂ (percent by weight).
- (ix) Fluorine as F₂ (percent by weight).
- (x) Arsenic (percent by weight).
- (xi) Beryllium (percent by weight).
- (xii) Lead (percent by weight).
- (xiii) Mercury (percent by weight).
- (xiv) Cadmium (percent by weight).
- (xv) Chromium as hexavalent chrome (percent by weight).
- (xvi) Sulfur (percent by weight).
- (xvii) Remainder as ash (percent by weight).

(b) Throughout normal operation, the owner or operator shall conduct sufficient waste analyses to verify that the waste feed to the incinerator is within the physical and chemical composition limits specified in the permit. The Department may require additional waste analyses if it determines that the analyses conducted by the owner or operator are insufficient to verify that the waste feed is within the limits specified in the permit.

§ 264.343. Performance standards.

An incinerator burning hazardous waste shall be designed, constructed and maintained so that, when operated under § 264.345(a) (relating to operating requirements), it will meet the following performance standards:

(1) An incinerator burning hazardous waste shall achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated in its permit or approval for each waste feed. DRE is determined for each POHC from the following equation:

$$\text{DRE} = \frac{(W_{\text{in}} - W_{\text{out}}) \times 100\%}{W_{\text{in}}}$$

Where

W_{in} = Mass feed rate of one POHC in the waste stream feeding the incinerator.

W_{out} = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour—4 pounds per hour—of hydrogen halide shall control hydrogen halide emissions so that the rate of emission is not greater than the larger of either 1.8 kilograms per hour or 1.0% of the hydrogen halide in the stack gas prior to entering any pollution control equipment.

(3) An incinerator burning hazardous waste may not emit particulate matter in excess of the most stringent of the following requirements:

(i) One hundred eighty milligrams per dry standard cubic meter—0.08 grains per dry standard cubic foot—corrected to 12% CO_2 when stack tested in accordance with Chapter 139 (relating to sampling and testing).

(ii) One hundred eighty 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:

$$P_c = P_m \frac{14}{21 - Y}$$

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, 40 CFR Part 60, Appendix A (Method 3) (relating to reference methods). This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment.

(iii) An alternate emission standards which the Department may require under § 141.1 (relating to imposing alternate standards) should particulate emissions of metals be inadequate to protect public health or ambient air quality standards as specified in Chapter 131 (relating to ambient air quality standards).

Subchapter S. DRIP PADS

Sec.

- 264.500. Applicability.
- 264.501. Assessment of existing drip pad integrity.
- 264.502. Design and installation of new drip pads.
- 264.503. Design and operating requirements.
- 264.504. Inspections.
- 264.505. Closure.

§ 264.500. Applicability.

(a) This subchapter applies to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation or surface water run-on to an associated collection system. Existing drip pads are those constructed before January 11, 1997.

(b) The owner or operator of a drip pad that is inside or under a structure that provides protection from precipitation so that neither runoff nor run-on is generated is not subject to § 264.503(e) or (f) (relating to design and operating requirements), as appropriate.

(c) This subchapter is not applicable to the management of infrequent and incidental drippage in storage yards if 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 the infrequent and incidental drippage. At a minimum, the contingency plan shall describe how the owner or operator will do the following:

- (1) Clean up the drippage.
- (2) Document the cleanup of the drippage.
- (3) Retain documents regarding cleanup for 3 years.
- (4) Manage the contaminated media in a manner consistent with all applicable State and Federal law.

§ 264.501. Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 264.500 (relating to applicability), the owner or operator shall evaluate the drip pad and determine that it meets the requirements of this subchapter. By April 11, 1997, the owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified registered professional engineer that attests to the results of the evaluation. The assessment shall be reviewed, updated and recertified annually until the upgrades, repairs or modifications necessary to achieve compliance with § 264.503 (relating to design and operating requirements) are complete. The evaluation shall document the extent to which the drip pad meets each of the design and operating standards of § 264.503.

(b) By April 11, 1997, owners or operators of existing drip pads shall submit to the Department a written plan describing changes that are needed to bring the drip pad into compliance with § 264.503. The plan shall include a schedule not to exceed 3 years, for completing the changes to the drip pad. A qualified registered professional engineer shall review and certify the plan. The plan shall be implemented as approved by the Department in writing.

(c) Upon completion of repairs and modifications, the owner or operator shall submit to the Department the drawings for the drip pad as it was built together with a certification by a qualified registered professional engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is leaking or unfit for use, the owner or operator shall comply with § 264.503(m) or close the drip pad in accordance with § 264.505 (relating to closure).

§ 264.502. Design and installation of new drip pads.

Owners and operators of new drip pads shall ensure that the pads are designed, installed and operated in accordance with one of the following:

- (1) The requirements of §§ 264.503 (except subsection (a)(4)), 264.504 and 264.505 (relating to design and operating requirements; inspections; and closure).
- (2) The requirements of §§ 264.503 (except subsection (b)), 264.504 and 264.505.

§ 264.503. Design and operating requirements.

(a) Drip pads shall be one of the following:

- (1) Constructed of nonearthern materials, excluding wood and nonstructurally supported asphalt, which shall:
 - (i) 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.
 - (ii) Have a curb or berm around the perimeter.

(iii) Have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second. For example, existing concrete drip pads shall be sealed, coated or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second so that the entire surface where drippage occurs or may run across is capable of containing the drippage and mixtures of drippage and precipitation, materials or other wastes while being routed to an associated collection system. This surface material shall be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material shall be chemically compatible with the preservatives that contact the drip pad. This paragraph applies only to existing drip pads and those drip pads for which the owner or operator elects to comply with this paragraph.

(iv) Be evaluated to document the extent to which the drip pad meets the design and operating standards of this paragraph. The owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified registered professional engineer that attest to the results of the evaluation. The assessment shall be reviewed, updated and recertified annually.

(v) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions and the stress of daily operations—for example, variable and moving loads such as vehicle traffic, movement of wood, and the like.

(2) Constructed using a synthetic liner, a leakage detection system and a leakage collection system which meets the following requirements:

(i) A synthetic liner shall be 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 shall be:

(A) 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.

(B) 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.

(C) 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.

(D) Installed to cover all surrounding earth that could come in contact with the waste or leakage.

(ii) A leakage detection system shall be installed immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system shall be:

(A) Constructed of materials that are:

(I) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated.

(II) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by equipment used at the drip pad.

(B) Designed and operated to function without clogging through the scheduled closure of the drip pad.

(C) 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.

(iii) A leakage collection system shall be installed immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad so that it can be removed from below the drip pad. The date, time and quantity of leakage collected in this system and removed shall be documented in the operating log.

(b) Drip pads and associated collection systems shall be maintained so that they remain free of cracks, gaps, corrosion or other deterioration that could cause hazardous waste to be released from the drip pad.

(c) The drip pad and associated collection system shall be designed and operated to convey, drain and collect liquid resulting from drippage or precipitation in order to prevent runoff.

(d) Unless the drip pad is protected by a structure, as described in § 264.500 (relating to applicability), the owner or operator shall design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain run-on that might enter the system.

(e) Unless the drip pad is protected by a structure or cover as described in § 264.500(b), the owner or operator shall 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.

(f) The drip pad shall be evaluated to determine that it meets the requirements of subsections (a)—(e) and the owner or operator shall obtain a statement from a qualified registered professional engineer certifying that the drip pad design meets the requirements of this section.

(g) Drippage and accumulated precipitation shall be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(h) The drip pad surface shall be cleaned thoroughly in a manner and frequency so 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 shall document the date and time of each cleaning and the cleaning procedures used in the facility's operating log.

(i) Drip pads shall 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.

(j) After being removed from the treatment vessel, treated wood from pressure and nonpressure processes shall be held on the drip pad until drippage has ceased. The owner or operator shall maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(k) Collection and holding units associated with run-on and runoff control systems shall be emptied or otherwise

managed as soon as possible after storms to maintain design capacity of the system.

(l) 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 shall be repaired within a reasonably prompt 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—for example, upon detection of leakage in the leak detection system—the owner or operator shall:

(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 shall be taken to repair the drip pad, 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 leakage, and the schedule for accomplishing this work.

(2) The Department will review the information submitted, make a determination regarding whether the pad has to be removed from service completely or partially until repairs and clean up are complete and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator shall notify the Department in writing and provide a certification signed by a qualified registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (1)(iv).

(m) If a permit is 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.

(n) The owner or operator shall maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This shall 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.

§ 264.504. Inspections.

(a) During construction or installation, liners and cover systems—for example, membranes, sheets or coatings—shall be inspected for uniformity, damage and imperfections—for example, holes, cracks, thin spots or foreign materials. Immediately after construction or installation, liners shall be inspected and certified as meeting the requirements of § 264.503 (relating to design and operating requirements) by a qualified, registered professional engineer. This certification shall be maintained at the facility as part of the facility operating record. After installation, liners and covers shall 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 shall be inspected weekly and after storms to detect evidence of one or more of the following:

(1) Deterioration, malfunctions or improper operation of run-on and runoff control systems.

(2) The presence of leakage in and proper functioning of the leak detection system.

(3) Deterioration or cracking of the drip pad surface.

§ 264.505. Closure.

(a) At closure, the owner or operator shall remove or decontaminate waste residues, contaminated containment system components—pad, liners, and the like—contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating residues and making reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures and equipment as required in subsection (a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator shall close the facility and perform postclosure care in accordance with closure and postclosure care requirements in § 264.310 (relating to closure and postclosure care). For permitted units, the requirement to have a permit continues throughout the postclosure period. For the purpose of closure, postclosure and financial responsibility, the drip pad is then considered to be landfill, and the owner or operator shall meet the requirements for landfills specified in Subchapters G and H (relating to closure and postclosure; and financial requirements).

(c) The owner or operator of an existing drip pad, as defined in § 264.500 (relating to applicability) that does not comply with the liner requirements of § 264.503(a)(2)(i) (relating to design and operating requirements) shall:

(1) Include in the closure plan for the drip pad under § 264.112 (relating to closure plan; amendment of plan) both a plan for complying with subsection (a) and a contingent plan for complying with subsection (b) in case not all contaminated subsoils can be practicably removed at closure.

(2) Prepare a contingent postclosure plan under § 264.118 (relating to postclosure plan; amendment of plan) for complying with subsection (b) in case not all contaminated subsoils can be practicably removed at closure.

(d) The cost estimates calculated under § 264.112 and § 264.114 (relating to disposal or decontamination of equipment, structures and soils) for closure and postclosure care of a drip pad shall 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 subsection (a).

Subchapter T. CONTAINMENT BUILDINGS

Sec.

264.520. Applicability.

264.521. Design and operating standards.

264.522. Closure and postclosure care.

§ 264.520. Applicability.

This subchapter applies to owners or operators who store or treat hazardous waste in units designed and operated under § 264.521 (relating to design and operating standards). The owner or operator is not subject to the definition of "land disposal" in section 3004(k) of RCRA (42 U.S.C.A. § 6924(k)) if the unit:

(1) 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 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 the equipment with containment walls.

(2) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel, wastes and handling equipment within the unit.

(3) Is used to manage liquids, and has:

(i) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier.

(ii) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier.

(iii) 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.

(4) Has controls sufficient to prevent fugitive dust emissions to meet the no visible emission standard in § 264.521(d)(1)(iv).

(5) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

§ 264.521. Design and operating standards.

(a) Containment buildings shall comply with the following design standards:

(1) The containment building shall be completely enclosed with a floor, walls and a roof to prevent exposure to the elements (such as 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 subsection (b), shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and 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 the equipment with containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure. Surfaces to be in contact with hazardous wastes shall 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 the following criteria:

(i) They provide an effective barrier against fugitive dust emissions under subsection (d)(1)(iv).

(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 may 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 shall 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 shall include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier; for example, 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 in which:

(i) The primary barrier shall be sloped to drain liquids to the associated collection system.

(ii) Liquids and waste shall 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% or more.

(B) Constructed of a granular drainage material with a permeability of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 centimeters) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} M²/sec or more.

(ii) If treatment is to be conducted in the building, the area in which the treatment will be conducted shall be designed to prevent the release of liquids, wet materials or liquid aerosols to other portions of the building.

(iii) The secondary containment system shall 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 equipment used in the containment building. Containment buildings can serve as secondary containment systems for tanks placed within the building under the following conditions:

(A) A containment building can serve as an external liner system for a tank, if it meets the requirements of § 264.193(d)(1) (relating to secondary containment).

(B) The containment building shall meet the requirements of § 264.193(b) and (c) to be considered an acceptable secondary containment system for a tank.

(c) For existing units other than 90-day generator units, the Department may delay the secondary containment requirement for up to 2 years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this subchapter. In making this demonstration, the owner or operator shall:

(1) Provide written notice to the Department by July 11, 1997. This notification shall 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.

(2) Respond to comments from the Department on these plans within 30 days.

(3) Fulfill the terms of the revised plans, if the plans are approved by the Department.

(d) Owners or operators of containment buildings shall:

(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 a 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 shall be designated to decontaminate equipment and rinsate shall be collected and properly managed.

(iv) Take measures to control fugitive dust emissions so that openings (doors, windows, vents, cracks and the like) exhibit no visible emissions—see §§ 123.1 and 123.2 (relating to prohibition of certain fugitive emissions; and fugitive particulate matter). In addition, associated particulate collection devices—for example, fabric filter, electrostatic precipitator—shall be operated and maintained with sound air pollution control practices. This state of no visible emissions shall 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 certification by a qualified registered professional engineer that the containment building design meets the requirements of subsections (a)—(c). For units placed into operation prior to January 11, 1997, this certification shall be placed in the facility's operating record—onsite files for generators who are not formally required to have operating records—no later than 60 days after the date of initial operation of the unit. After January 11, 1997, professional engineer certification will be required prior to operation of the unit.

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, 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 (for example, upon detection of leakage from the primary barrier) the owner or operator shall:

(A) Enter the discovery in the facility operating records.

(B) Immediately remove the portion of the containment building affected by the condition from service.

(C) Determine what steps have to be taken to repair the containment building, remove leakage from the secondary collection system and establish a schedule for accomplishing the cleanup and repairs.

(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 shall 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 repairs and cleanup the owner or operator shall 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 (3)(i)(D).

(4) Inspect and record in the facility's operating record, at least once every 7 days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(e) For containment buildings that contain areas both with and without secondary containment, the owner or operator shall:

(1) Design and operate each area in accordance with the requirements in subsections (a)—(d).

(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment.

(3) Maintain in the facility's operating record a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(f) Notwithstanding any other provision of this subchapter, the Department may waive requirements for secondary containment for a permitted containment building when the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and when containment of managed wastes and liquids can be assured without a secondary containment system.

§ 264.522. Closure and postclosure care.

(a) At closure of a containment building, the owner or operator shall remove or decontaminate waste residues, contaminated containment system components including liners, contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) (relating to definition of hazardous waste) applies. The closure plan, closure activities, cost estimate for closure and financial

responsibility for containment buildings shall meet the requirements specified in Subchapters G and H (relating to closure and postclosure; and financial requirements).

(b) If, after removing or decontaminating residues and making reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures and equipment as required in subsection (a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator shall close the facility and perform postclosure care in accordance with the closure and postclosure requirements that apply to landfills under § 264.310 (relating to closure and postclosure care). In addition, for the purposes of closure, postclosure and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet the requirements for landfills specified in Subchapters G and H.

Subchapter U. MISCELLANEOUS UNITS

- Sec. 264.600. Applicability.
- 264.601. Environmental performance standards.
- 264.602. Monitoring, analysis, inspection, response, reporting and corrective action.

§ 264.600. Applicability.

This subchapter applies to owners and operators of facilities that treat, store or dispose of hazardous waste in miscellaneous units, except as provided in § 264.1 (relating to scope).

§ 264.601. Environmental performance standards.

A miscellaneous unit shall be located, designed, constructed, operated, maintained and closed in a manner that will ensure protection of human health and the environment. Permits for miscellaneous units shall contain terms and provisions as necessary to protect human health and the environment, including, but not limited to, 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 the requirements of Subpart C, Article III; Subchapters I—O; and Chapter 270, that are appropriate for the miscellaneous unit being permitted. Protection of human health and the environment includes, but is not limited to:

- (1) Prevention of 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:
 - (i) 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.
 - (ii) The hydrologic and geologic characteristics of the unit and the surrounding area.
 - (iii) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater.
 - (iv) The quantity and direction of groundwater flow.
 - (v) The proximity to and withdrawal rates of current and potential groundwater users.
 - (vi) The patterns of land use in the region.
 - (vii) 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.

(viii) The potential for health risks caused by human exposure to waste constituents.

(ix) The potential for damage to domestic animals, wildlife, crops, vegetation and physical structures caused by exposure to waste constituents.

(2) Prevention of 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 the following:

- (i) The volume and physical and chemical characteristics of the waste in the unit.
- (ii) The effectiveness and reliability of containing, confining and collecting systems and structures in preventing migration.
- (iii) The hydrologic characteristics of the unit and the surrounding area, including the topography of the land around the unit.

(iv) The patterns of precipitation in the region.

(v) The quantity, quality and direction of groundwater flow.

(vi) The proximity of the unit to surface waters.

(vii) The current and potential uses of nearby surface waters and water quality standards established for those surface waters.

(viii) The existing quality of surface waters and surface soils, including other sources of contamination and their cumulative impact on surface waters and surface soils.

(ix) The patterns of land use in the region.

(x) The potential for health risks caused by human exposure to waste constituents.

(xi) The potential for damage to domestic animals, wildlife, crops, vegetation and physical structures caused by exposure to waste constituents.

(3) Prevention of a release that may have adverse effects on human health or the environment due to migration of waste constituents in the air, considering the following:

(i) 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.

(ii) The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air.

(iii) The operating characteristics of the unit.

(iv) The atmospheric, meteorologic and topographic characteristics of the unit and the surrounding area.

(v) The existing quality of the air, including other sources of contamination and their cumulative impact on the air.

(vi) The potential for health risks caused by human exposure to waste constituents.

(vii) The potential for damage to domestic animals, wildlife, crops, vegetation and physical structures caused by exposure to waste constituents.

§ 264.602. Monitoring, analysis, inspection, response, reporting and corrective action.

Monitoring, testing, analytical data, inspections, response and reporting procedures and frequencies shall ensure compliance with §§ 264.15, 264.33, 264.75, 264.77

and 264.601 as well as meet additional requirements needed to protect human health and the environment as specified in the permit.

§ 264.603. Postclosure care.

A miscellaneous unit that is a disposal unit shall be maintained in a manner that complies with § 264.601 (relating to environmental performance standards) during the postclosure care period. If a treatment or storage unit has contaminated soils or groundwater that cannot be completely removed or decontaminated during closure, that unit shall also meet the requirements of § 264.601 during postclosure care. The postclosure plan under § 264.118 (relating to postclosure plan; amendment of plan) shall specify the procedures that will be used to satisfy this requirement.

CHAPTER 265. INTERIM STATUS STANDARDS FOR HAZARDOUS WASTE MANAGEMENT FACILITIES AND PERMIT PROGRAM FOR NEW AND EXISTING HAZARDOUS WASTE MANAGEMENT FACILITIES

Subchapter A. GENERAL

§ 265.1. Scope.

(a) This chapter establishes minimum acceptable standards for management of hazardous waste as defined in Chapter 261 (relating to criteria, identification and listing of hazardous waste) during the period of interim status and until certification of final closure or, if the facility is subject to postclosure requirements, until postclosure responsibilities are fulfilled.

(b) This chapter applies to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status until either a permit is issued under this article or until applicable closure and postclosure responsibilities are fulfilled, unless otherwise specified in this chapter or in Chapter 261. This chapter also applies to an owner or operator of a facility in existence on November 19, 1980, who failed to provide timely notification as required by § 261.41 (relating to notification of hazardous waste activities) or failed to file a timely Part A of the permit application as required by this article.

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Subchapter B. GENERAL FACILITY STANDARDS

§ 265.11. Identification numbers.

(a) A person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal without having received an identification number from the EPA and may not accept hazardous waste from a transporter who has not received an identification number from the EPA and a license from the Department, except as otherwise provided. This subsection does not apply to acceptance of waste generated by a small quantity generator or by a conditionally exempt small quantity generator transporting its own waste.

(b) An owner or operator of a hazardous waste management facility who has not received an identification number may obtain one by applying to the EPA using the notification form.

(c) An identification number received as a result of notification to the the EPA under section 3010 of RCRA will be deemed to satisfy the requirements of this section when furnished to the Department upon request.

§ 265.12. General requirements for hazardous waste management approvals and analyses of specific waste from a specific generator.

(a) Except as provided in subsections (e) and (f), before an owner or operator treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the operator shall submit to the Department for approval, on a form provided by the Department, a Module I report which the owner or operator shall retain for 20 years. The Module I report shall include the following:

- (1) A detailed chemical and physical analysis of the waste.
- (2) A description of the waste and the process generating the waste.
- (3) The name and address of the HWM facility.
- (4) A description of the HWM facility's treatment, storage and disposal methods.
- (5) Results of liner compatibility testing.
- (6) An assessment of the impact of the waste on the HWM facility.
- (7) A copy of the generator's source reduction strategy unless exempted under § 262.80(e) (relating to source reduction strategy).

(8) Other information which the Department may prescribe for the Department to determine whether the waste will be treated, stored or disposed of in accordance with this chapter. The chemical and physical analysis of the waste shall be repeated under one or more of the following circumstances:

- (i) When necessary to ensure that it is accurate and up-to-date.
- (ii) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste has changed.
- (iii) When the results of the inspection or analysis, or both, of each hazardous waste for offsite facilities or onsite facilities receiving hazardous waste from offsite sources indicates that the waste received at the facility does not match the description of waste on the accompanying manifest or shipping paper.

(b) The owner or operator of an offsite facility or an onsite facility receiving hazardous waste from offsite sources shall inspect and, if necessary, analyze each hazardous waste at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(c) The owner or operator shall develop and follow a written waste analysis plan which shall be submitted to the Department for approval at the time in the application process the Department prescribes. The plan shall be retained at the facility. At a minimum, the plan shall specify:

- (1) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of these parameters.
- (2) The test methods which will be used to test for these parameters.
- (3) The sampling methods which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using one of the following:

(i) One of the sampling methods described in § 261.34(e) (relating to appendices).

(ii) An equivalent sampling method approved by the Department.

(4) The frequency with which the initial analysis of the waste will be received or repeated to ensure that the analysis is accurate and up-to-date.

(5) For offsite facilities or onsite facilities receiving hazardous waste from offsite sources, the waste analyses that the hazardous waste generators supply in accordance with the requirements of this section.

(6) When applicable, the testing procedures which will be used to meet the additional waste analysis requirements for the following HWM methods: tanks, surface impoundments, waste piles, land treatment, landfills, incineration, thermal treatment, and chemical, physical and biological treatment.

(7) For offsite facilities or onsite facilities receiving hazardous waste from offsite sources, the procedures which will be used to determine the identity of each hazardous waste managed at the facility and the sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

(d) The owner or operator of a facility utilizing a liner shall conduct an evaluation of the liner compatibility with the hazardous waste before accepting the waste for emplacement in a waste pile, surface impoundment or a landfill, unless the approval to accept the waste is granted in the permit. The evaluation procedure shall meet the approval of the Department prior to its commencement. The evaluation of the liner shall consist of testing the liner in the presence of the waste for a minimum of 30 days or as otherwise approved by the Department. In lieu of actual testing, existing published or documented data on the hazardous waste or waste generated from similar processes proving the liner compatibility may be substituted if approved by the Department. The results of evaluation of the liner compatibility shall be furnished to the Department for approval of the waste before acceptance by the facility.

(e) The Department may waive prior approval of the Module I report specified in subsection (a) for wastes that are in containers that are only to be stored at the facility. The Department may waive prior approval of the Module I report only if:

(1) The Department determines that a waiver does not pose a potential threat to human health or the environment.

(2) The management of these wastes is allowed in the permit for the facility and properly addressed in the approved analysis plan for the facility.

(3) The report is submitted to the Department within 1 week of the arrival of the wastes at the facility and a copy of the report is maintained in the operating record onsite for 20 years.

(f) Prior Department approval of the report specified in subsection (a) is not required for offsite reclamation facilities that, under a contractual agreement, supply raw material to a generator and accept the expended material from the generator for storage prior to reclamation. In addition to the remaining requirements in subsection (a), the owner or operator shall retain at the facility the generator's certification that, at a minimum, states that a contractual agreement exists between the reclaimer and

the generator in which the reclaimer supplies raw material to the generator who returns the expended material to the reclaimer after its intended use and that the material has been or will be used by the generator only in the manner specified in the contractual agreement. The reclaimer shall indicate the proposed location for storage of the waste in the certification. The reclaimer shall maintain one copy of the certifications in the operating record onsite for 20 years. The certification shall be included in the waste analysis plan of the reclamation facility's storage permit.

§ 265.13. Generic Module I applications.

(a) In lieu of the waste and generator specific report required by § 265.12 (relating to general requirements for hazardous waste management approvals and analyses of specific waste from a specific generator), the Department may accept from the operator of a treatment, storage or disposal facility a Generic Module I application for similar wastes containing similar hazardous constituents from multiple generators. The Department will approve in writing a Generic Module I application before the operator of a treatment, storage or disposal facility can accept a waste identified in the application from a generator identified in the application. A Generic Module I application may only be used if:

(1) The wastes have similar chemical and physical characteristics.

(2) The processes which generate the wastes are similar.

(3) The wastes have identical hazardous waste numbers, United States Department of Transportation shipping name, hazard class and UN/NA number.

(4) Wastes included in a Module I application will be managed in the same manner at the facility.

(5) The management of the wastes is allowed in the permit for the facility and is properly addressed in the approved waste analysis plan.

(b) An application for a Generic Module I shall include:

(1) The information required by § 265.12(a). Generator specific information required by § 265.12(a) shall be included for each generator identified in the application.

(2) Criteria for determining that the wastes have similar physical and chemical characteristics and contain similar hazardous constituents.

(c) Additional generators may be added to an approved Generic Module I where the operator of the treatment, storage or disposal facility demonstrates that the waste from the new generator is consistent with the waste already approved in the Generic Module I. At least 15 days prior to accepting a waste from a new generator, the operator of the treatment, storage or disposal facility shall submit to the Department, in writing, the generator specific information required by § 265.12(a). The Department will deny adding an additional generator to the Generic Module I if the Department finds that the operator of the treatment, storage or disposal facility has not demonstrated that the waste from the new generator is consistent with that approved under the Generic Module I.

(d) Generic Module I applications submitted under subsection (a) shall be accompanied by a fee as specified in § 265.447(c) (relating to payment of fees).

**Subchapter E. MANIFEST SYSTEM AND
DISCREPANCY REPORT**

§ 265.71. Use of the manifest system.

(a) A hazardous waste shipment received from an offsite source shall be accompanied by the Department's manifest, except as under subsection (c) or § 262.23(1) (relating to the use of the manifest).

(b) The owner or operator of the facility, or an authorized representative, shall do the following:

(1) Print or type his name, sign and date each copy of the manifest at the time the shipment is received to certify that the hazardous waste covered by the manifest was received.

(2) Note significant discrepancies in the manifest, as defined in § 265.72 (relating to manifest discrepancies), on each copy of the manifest.

(3) Immediately give the transporter copy 7 of the signed manifest.

(4) Detach copies 1, 2, 5 and 6 of the manifest.

(5) Within 7 days after the date of delivery, send copy 5 of the manifest to the generator.

(6) If the generator is located in this Commonwealth, retain copy 2 at the facility for the owner or operator's records under paragraph (5), and within 7 days after the date of delivery, send copy 1 of the manifest to the Department.

(7) If the generator is located outside of this Commonwealth, within 7 days after the date of delivery, send copy 1 of the manifest to the Department and copy 2 to the generator state.

(8) Retain at the facility copy 6 of the manifest for the owner or operator's records under subsection (d).

(c) If a facility receives, from a rail or water—bulk shipment—transporter, hazardous waste which is accompanied by a shipping paper containing the information required on the manifest, excluding EPA identification numbers, generator's certification and signatures, and optional State information, the owner or operator, or an authorized representative of the owner or operator, shall do the following:

(1) Sign and date each copy of the manifest or shipping paper at the time the shipment is received to certify that the hazardous waste covered by the manifest or shipping paper was received.

(2) Note significant discrepancies in the manifest or shipping paper—defined in § 265.72—on each copy of the manifest or shipping paper.

(3) Immediately give the rail or water—bulk shipment—transporter at least one copy of the manifest or shipping paper.

(4) Detach copies 1, 2, 5 and 6 of the manifest or shipping paper.

(5) Within 7 days after the date of delivery, send copy 5 of the manifest or shipping paper to the generator.

(6) If the generator is located within this Commonwealth, retain copy 2 for the owner or operator's records under subsection (d) and, within 7 days after the date of delivery, send copy 1 of the manifest or shipping paper to the Department.

(7) If the generator is located in this Commonwealth, retain copies 1 and 2 for the owner or operator's records under subsection (d).

(8) Retain at the facility a copy of each shipping paper or copy 6 of the manifest for the owner or operator's records under subsection (d).

(d) The owner or operator of the facility shall retain the required copies of the manifest and shipping paper—if signed in lieu of the manifest at the time of delivery—for at least 3 years from the date of the delivery.

(e) Copies of the manifest and shipping paper retained by the owner or operator under this section shall be furnished to the Department upon request.

(f) The owner or operator of a facility, or an authorized representative, who transports, or offers for transportation, hazardous waste for offsite treatment, storage or disposal shall comply with Chapter 262 (relating to generators of hazardous waste), and prepare a manifest in accordance with the instructions supplied with the manifest.

(g) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the Department in writing at least 4 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.

§ 265.75. Biennial report.

(a) Facility owners or operators shall submit biennial reports to the Department on a form designated by the Department. The form shall contain as a minimum the following information:

(1) The name, identification number, mailing address and the location of the facility.

(2) The name and telephone number of the facility's contact person.

(3) For each hazardous waste managed at the facility, the identification number of the producing generator, description, hazardous waste number, quantity and method of treatment, storage or disposal. For imported shipments, in lieu of the identification number, the report shall give the name and address of the foreign generator.

(4) The signature and certification of the facility's owner or operator or its authorized representative.

(5) Except for permit-by-rule facilities, the most recent closure cost estimate under Subchapter H and § 267.19 (relating to financial requirements; and cost estimate for closure and postclosure care) and for disposal facilities, the most recent postclosure cost estimate under Subchapter H and § 267.19.

(6) Monitoring data is required under §§ 265.93(c) and 265.94 (relating to preparation, evaluation and responses; and recordkeeping and reporting).

(7) The calendar year covered by the report.

(8) Additional information set forth by the Department on the form.

(b) Reports required by this section shall be submitted to the Department on or before the first day of March for each even numbered year and shall cover the previous calendar year.

(c) Reports required by this section shall be maintained for the life of the facility as a part of the operating record. The records shall be made available to the Department upon request.

§ 265.76. Unmanifested waste report.

If a facility accepts for treatment, storage or disposal hazardous waste from an offsite source without an accompanying manifest, or without an accompanying shipping paper as described in § 263.20(e)(2) (relating to manifest), and if the waste is not excluded from the manifest requirement by § 261.5 (relating to special requirements for hazardous waste generated by small quantity generators), the owner or operator shall prepare and submit a single copy of a report to the Department within 15 days after receiving the waste. The unmanifested waste report shall be submitted on EPA Form 8700-13B. The report shall be designed "unmanifested waste report" and include the following information:

- (1) The identification number, name and address of the facility.
- (2) The date the facility received the waste.
- (3) The identification number, name and address of the generator and the transporter, if available.
- (4) A description and the quantity of each unmanifested hazardous waste received by the facility.
- (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 an authorized representative.
- (7) A brief explanation of why the waste was unmanifested, if known.

§ 265.78. Administration fees.

(a) The owner or operator of a hazardous waste management facility shall annually pay an administration fee to the Department according to the following schedule:

- (1) Land disposal facilities—\$2,500.
- (2) Surface impoundments—\$2,500.
- (3) Commercial treatment—\$2,000.
- (4) Captive treatment—\$700.
- (5) Storage—\$550.
- (6) Incinerators—\$1,300.

(b) The administration fee shall be in the form of a check made payable to the "Commonwealth of Pennsylvania" and be paid on or before the first of March to cover the preceding year.

(c) If more than one permitted activity is located at a site, or more than one activity occurs, the fee shall be cumulative.

Subchapter J. TANKS**§ 265.190. Applicability.**

(a) *Tank systems.* This subchapter applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as otherwise provided in § 265.1 (relating to scope).

(b) *General.* Tank systems that are used to store or treat hazardous waste containing no free liquids and that are situated inside a building with an impermeable floor—permeability may not exceed 1×10^{-7} cm/sec—are exempted from § 265.193 (relating to containment and detection of releases). To demonstrate the absence or presence of free liquids in the stored or treated waste, the waste shall pass the following tests:

(1) Method 9095 (Paint Filter Liquids Test) as described in the latest "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." (EPA Publication No. SW-846, as amended).

(2) It shall have greater than 20% solids content by dry weight.

(3) It may not be flowable. Flowable refers to flow in the sense of pourable as a liquid.

(c) *Exemptions.* Tank systems, including sumps, that serve as part of a secondary containment system to collect or contain releases of hazardous waste are exempted from § 265.193.

§ 265.197. Closure and postclosure care.

(a) At closure of a tank system, the owner or operator shall remove or decontaminate waste residues, contaminated containment system components, liners, and the like, contaminated soils and structures and equipment contaminated with waste, and manage them as hazardous waste, unless § 261.3(d) (relating to definition of hazardous waste) is complied with. The closure plan, closure activities, cost estimates for closure and financial responsibility for tank systems shall meet the requirements specified in Subchapters G and H (relating to closure and postclosure; and financial requirements).

(b) If the owner or operator demonstrates and the Department concludes that not all contaminated soils can be practicably removed or decontaminated as required in subsection (a), the owner or operator shall close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to landfills. In addition, for the purposes of closure, postclosure and financial responsibility, such a tank system is then considered to be landfill, and the owner or operator shall meet the requirements for a landfill specified in Subchapters G and H and Chapter 264, Subchapter N (relating to landfills).

(c) If an owner or operator has a tank system which does not have secondary containment that meets § 265.193(b)—(f) (relating to containment and detection of releases) and which has not been granted a variance from the secondary containment requirements under § 265.193(g), the following apply:

(1) The closure plan for the tank system shall include both a plan for complying with subsection (a) and a contingent plan for complying with subsection (b).

(2) A contingent postclosure plan for complying with subsection (b) shall be prepared and submitted as part of the permit application.

(3) The cost estimates calculated for closure and postclosure care shall reflect the costs of complying with the contingent closure plan and the contingent postclosure plan, if these costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (a).

(4) Financial assurance shall be based on the cost estimates in paragraph (3).

(5) For the purposes of the contingent closure and postclosure plans, this type of tank system is considered to be a landfill, and the contingent plans shall meet the closure, postclosure and financial responsibility requirements for landfills under Subchapters G and H and Chapter 264, Subchapter N.

§ 265.200. Waste analysis and trial tests.

In addition to performing the waste analysis required by § 265.13 (relating to general requirements for hazardous waste management approvals and analyses), the owner or operator shall, whenever a tank system is to be used to treat chemically or to store a hazardous waste that is substantially different from waste previously treated or stored in that tank system; or treat chemically a hazardous waste with a substantially different process than any previously used in that tank system, do one of the following:

(1) Conduct waste analyses and trial treatment or storage tests—for example, bench-scale or pilot-plant scale tests.

(2) Obtain written, documented information on similar waste under similar operating conditions to show that the proposed treatment or storage will meet the requirements of § 265.194(a) (relating to general operating requirements).

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

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

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

(1) Treatment or storage of hazardous waste in tanks shall comply with § 265.17(b) (relating to general requirements for ignitable, reactive or incompatible wastes).

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

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

(4) Where hazardous waste is continuously fed into a tank, the tank shall be equipped with a means to stop this inflow—for example, waste feed cutoff system or bypass system to a stand-by tank.

(c) Generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks shall inspect, where present:

(1) Discharge control equipment—for example, waste feed cutoff systems, bypass systems and drainage systems—at least once each operating day, to ensure that it is in good working order.

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

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

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

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

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

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

(1) Ignitable or reactive waste may not be placed in a tank, unless one of the following occurs:

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

(A) The resulting waste, mixture or dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 (relating to characteristic of ignitability; and characteristic of reactivity).

(B) Section 265.17(b) is complied with.

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

(iii) The tank is used solely for emergencies.

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

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

(1) Incompatible wastes, or incompatible wastes and materials, may not be placed in the same tank, unless § 265.17(b) is complied with.

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

Subchapter N. LANDFILLS**§ 265.310. Closure and postclosure care.**

(a) The owner or operator shall consider at least the following factors in addressing the closure and postclosure care requirements of subsections (b) and (c).

(b) At final closure of the landfill or upon closure of a cell, the owner or operator shall 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.

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural soils present.

(c) After final closure, the owner or operator shall comply with postclosure requirements in Subchapter G (relating to closure and postclosure), including maintenance and monitoring, throughout the postclosure care period. The owner or operator shall also:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events.

(2) Maintain and monitor the groundwater monitoring system and comply with other applicable requirements of Subchapter F (relating to groundwater monitoring).

(3) Maintain and monitor the leachate collection, removal and treatment system, if there is one present in the landfill, to prevent excess accumulation of leachate in the system. The collected leachate is a hazardous waste, unless it is determined to be nonhazardous under § 261.3(d) (relating to definition of hazardous waste), and shall be managed as a hazardous waste in accordance with applicable requirements.

(4) Maintain and monitor the gas collection and control system, if there is one present in the landfill, to control the vertical and horizontal escape of gases.

(5) Prevent run-on and runoff from eroding or otherwise damaging the final cover.

(6) Protect and maintain surveyed benchmarks used in complying with § 265.309 (relating to surveying and recordkeeping).

(7) Restrict access to the landfill as appropriate for its postclosure use.

Subchapter R. HAZARDOUS WASTE MANAGEMENT PERMIT PROGRAM

§ 265.433. Neutralization treatment units.

The owner or operator of an elementary neutralization unit or a wastewater treatment unit shall be deemed to have an HWM permit if the following requirements are complied with:

(1) The facility is a captive facility and the only waste treated is generated onsite, or was a captive facility prior to September 4, 1982, and the only waste treated is generated onsite or on an interconnected adjacent site which was previously part of an integrated facility.

(2) The facility has an NPDES permit, if required, and complies with the conditions of that permit.

(3) Sections 264.11, 264.14, 264.15, 264.73, 264.75, 264.77, Chapter 264, Subchapters C and D; and Chapter 265, Subchapter Q, except for § 265.400 (relating to applicability), have been complied with.

§ 265.435. Generator treatment.

A generator that treats its own waste in containers, tanks or containment buildings shall be deemed to have an HWM permit if the following requirements are complied with:

(1) The facility is a captive facility and the only waste treated is generated on the site.

(2) The generator complies with notification requirements of § 261.41 (relating to notification of hazardous waste activities) and the applicable requirements of Chapter 264, Subchapters A—D, I, J and T.

(3) The generator complies with the applicable requirements of § 262.34 (relating to accumulation).

(4) The Department may require an owner or operator with a permit-by-rule to apply for and obtain an individual permit when the facility is not in compliance with paragraphs (1)—(3) or is engaged in an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

PERMIT APPLICATION REQUIREMENTS

§ 265.447. Payment of fees.

(a) Applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the "Commonwealth of Pennsylvania" according to the following schedule:

(1) Land disposal facilities—Commercial—\$125,000.

(2) Land disposal facility—Captive—\$71,400.

(3) Surface impoundments:

(i) Commercial—\$36,000.

(ii) Captive—\$14,000.

(4) Postclosure permits—\$25,000.

(5) Treatment facilities:

(i) Commercial—\$36,000.

(ii) Captive—\$14,000.

(6) Storage facilities:

(i) Commercial—\$36,000.

(ii) Captive—\$14,000.

(7) Incinerators:

(i) Commercial—\$93,000.

(ii) Captive—\$54,000.

(8) For applications for determination of applicability under § 266.100 (relating to applicability and requirements)—\$1,125.

(b) Where more than one permitted activity is located at a site, or more than one activity occurs, the fees shall be cumulative.

(c) Module I applications and permit modification applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the "Commonwealth of Pennsylvania" according to the following schedule:

(1) Module I and Generic Module I applications:

(i) Module I—\$300.

(ii) Generic Module I—\$1,500.

(2) Major permit modifications—50% of fees listed in subsection (a).

(3) Minor permit modifications—\$700.

(d) An application for a permit modification shall be considered a major modification if the application involves one or more of the following:

(1) A change in the site volume-waste capacity.

(2) A change in excavation contours, including final elevations and slopes.

(3) A change in permitted acreage.

(4) A change in the approved groundwater monitoring plan, except for the addition of wells or parameters.

(5) A change in approved leachate collection and treatment plan.

(6) A change in gas monitoring or management plan, or both.

(7) A change in the approved type, amount, origin or application of daily, intermediate or final cover materials.

(8) A change in the approved closure plan.

(9) A change in approved design.

Subchapter S. DRIP PADS

Sec.

265.500. Applicability.

265.501. Assessment of existing drip pad integrity.

265.502. Design and installation of new drip pads.

265.503. Design and operating requirements.

265.504. Inspections.

265.505. Closure.

§ 265.500. Applicability.

(a) This subchapter applies to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation or surface water run-on to an associated collection system. Existing drip pads are those constructed before January 11, 1997. All other drip pads are new drip pads.

(b) The owner or operator of a drip pad that is inside or under a structure that provides protection from precipitation so that neither runoff nor run-on is generated is not subject to regulation under § 265.503(e) or (f) (relating to design and operating requirements), as appropriate.

(c) This subchapter is not applicable to the management of infrequent and incidental drippage in storage yards if the owner or operator maintains and complies with a written contingency plan which has been approved in writing by the Department. This contingency plan will describe how the owner or operator will respond immediately to the discharge of infrequent and incidental drippage. At a minimum, the contingency plan shall describe how the facility will do the following:

(1) Clean up the drippage.

(2) Document the cleanup of the drippage.

(3) Retain documents regarding cleanup for 3 years.

(4) Manage the contaminated media in a manner consistent with applicable State and Federal law.

§ 265.501. Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 265.500 (relating to applicability), the owner or operator shall evaluate the drip pad and determine that it meets the requirements of this subchapter. By April 11, 1997, the owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified registered professional engineer that attests to the results of the evaluation. The assessment shall be reviewed, updated and recertified annually until the upgrades, repairs or modifications necessary to achieve compliance with § 265.503 (relating to design and operating requirements) are complete. The evaluation shall document the extent to which the drip pad meets each of the design and operating standards of § 265.503.

(b) By April 11, 1997, all owners or operators of existing drip pads shall submit to the Department a written plan describing changes that are needed to bring the pad into compliance with the standards of § 265.503. The plan shall include a schedule not to exceed 3 years

for completing the changes to the drip pad. A qualified professional engineer shall review and certify the plan. The plan shall be implemented as approved by the Department in writing.

(c) Upon completion of all repairs and modifications, the owner or operator shall submit to the Department the drawings for the drip pad as it was built together with a certification by a qualified registered professional engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is leaking or unfit for use, the owner or operator shall comply with § 265.503(m) or close the drip pad in accordance with § 265.505 (relating to closure).

§ 265.502. Design and installation of new drip pads.

Owners and operators of new drip pads shall ensure that the pads are designed, installed and operated in accordance with one of the following:

(1) The requirements of §§ 265.503 (except §§ 265.503(a)(4)), 265.504 and 265.505.

(2) The requirements of §§ 265.503 (except §§ 265.503(b)), 265.504 and 265.505.

§ 265.503. Design and operating standards.

(a) Drip pads shall:

(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) Have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, (for example, existing concrete drip pads shall be sealed, coated or covered) with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second so that the entire surface where drippage occurs or may run across is capable of containing the drippage and mixtures of drippage and precipitation, materials or other wastes while being routed to an associated collection system. This surface material shall be maintained free of cracks and gaps that could adversely affect its permeability and the material shall be chemically compatible with the preservatives that contact the drip pad. The requirements of this paragraph apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with this subsection instead of subsection (b).

(5) Be evaluated to document the extent to which the drip pad meets the design and operating standards of this paragraph. The owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified registered professional engineer that attests to the results of the evaluation. The assessment shall be reviewed, updated and recertified annually. The evaluation shall document the extent to which the drip pad meets the design and operating standards of this section, except for subsection (b).

(6) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations—for example—variable and moving loads such as vehicle traffic, movement of wood, and the like.

(b) If an owner/operator elects to comply with this subsection instead of subsection (a), the drip pad shall 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 shall be constructed of materials that will prevent waste from being absorbed into the liner and prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner shall 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.

(iii) Installed to cover surrounding earth that could come in contact with the waste or leakage.

(2) A leakage detection system installed immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system shall 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.

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying materials and by equipment used at the drip pad.

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad.

(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 so that it can be removed from below the drip pad. The date, time and quantity of leakage collected in this system and removed shall be documented in the operating log.

(c) Drip pads and associated collection system systems shall be maintained so that they remain free of cracks, gaps, corrosion or other deterioration that could cause hazardous waste to be released from the drip pad.

(d) The drip pad and associated collection system shall be designed and operated to convey, drain and collect liquid resulting from drippage or precipitation in order to prevent runoff.

(e) Unless the drip pad is protected by a structure, as described in § 265.500(b) (relating to applicability), the owner or operator shall design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm unless the system has sufficient excess capacity to contain run-on that might

enter the system, or the drip pad is protected by a structure or cover, as described in § 265.500(b).

(f) Unless the drip pad is protected by a structure or cover, as described in § 265.500, the owner or operator shall 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 shall be evaluated to determine that it meets the requirements of subsections (a)—(f) and the owner or operator shall obtain a statement from a qualified registered professional engineer certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation shall be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface shall be cleaned thoroughly in a manner and frequency so 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 shall document the date and time of each cleaning and the cleaning procedure used in the facility's operating record.

(j) Drip pads shall 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 shall be held on the drip pad until drippage has ceased. The owner or operator shall maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and runoff control systems shall be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition shall 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 (for example, upon detection of leakage by the leak detection system), the owner or operator shall:

(i) Enter the discovery in the facility operating record.

(ii) Immediately remove the portion of the drip pad affected by the condition from service.

(iii) Determine what steps shall be taken to repair the drip pad, remove any leakage from below the drip pad, and establish a schedule for accomplishing the clean up and repairs.

(iv) Within 24 hours after discovery of the condition, notify the Department of the condition and, within 10 working days, provide a 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 has to 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 repairs and clean up, the owner or operator shall notify the Department in writing and provide a certification, signed by a qualified, registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (1)(iv).

(n) The owner or operator shall maintain, as part of the facility operating record, documentation of past operating and waste handling practices. This shall include identification of preservative formulations used in the past, a description of drippage management practices and a description of treated wood storage and handling practices.

§ 265.504. Inspections.

(a) During construction or installation, liners and cover systems (for example, membranes, sheets or coatings) shall be inspected for uniformity, damage and imperfections (for example, holes, cracks, thin spots or foreign materials). Immediately after construction or installation, liners have to be inspected and certified as meeting the requirements of § 265.503 (relating to design and operating standards) by a qualified, registered professional engineer. The certification shall be maintained at the facility as part of the facility operating record. After installation, liners and covers shall 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 shall be inspected weekly and after storms to detect evidence of one or more of the following:

(1) Deterioration, malfunctions or improper operation of run-on and runoff control systems.

(2) The presence of leakage in and proper functioning of leakage detection systems.

(3) Deterioration or cracking of the drip pad surface.

§ 265.505. Closure.

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components—pad, liners and the like—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 subsection (a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator shall close the facility and perform postclosure care in accordance with closure and postclosure care requirements that apply to landfills under § 265.310 (relating to closure and postclosure care). For permitted units, the requirement to have a permit continues throughout the postclosure period.

(c) The owner or operator of an existing drip pad, as defined in § 265.500 (relating to applicability), that does not comply with the liner requirements of § 265.503(b)(1) (relating to design and operating requirements) shall:

(1) Include in the closure plan for the drip pad under § 265.112 (relating to closure plan; amendment to plan) both a plan for complying with subsection (a) and a contingent plan for complying with subsection (b) in case not all contaminated subsoils can be practicably removed at closure.

(2) Prepare a contingent postclosure plan under § 265.118 (relating to postclosure plan; amendment of plan) for complying with subsection (b) in case not all contaminated subsoils can be practicably removed at closure.

(d) The cost estimates calculated under §§ 265.142 and 265.144 (relating to cost estimate for closure; and cost estimate for postclosure care) for closure and postclosure care of a drip pad subject to this subsection shall 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 subsection (a).

Subchapter T. CONTAINMENT BUILDINGS

Sec.

265.520. Applicability.

265.521. Design and operating standards.

265.522. Closure and postclosure care.

§ 265.520. Applicability.

This subchapter applies to owners or operators who store or treat hazardous waste in units designed and operated under § 265.521 (relating to design and operating standards). The owner or operator is not subject to the definition of land disposal in section 3004(k) of RCRA (42 U.S.C.A. § 6924(k)) if the unit:

(1) 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 personnel and heavy equipment that operate within the units, and to prevent failure due to pressure gradients, settlement, compression or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of the equipment with containment walls.

(2) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel and handling equipment within the unit.

(3) Has, if the unit is used to manage liquids:

(i) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier.

(ii) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier.

(iii) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements.

(4) Has controls as needed to prevent fugitive dust emissions.

(5) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

§ 265.521. Design and operating standards.

(a) Containment buildings shall comply with the following design standards:

(1) The containment building shall be completely enclosed with a floor, walls and a roof to prevent exposure to the elements—for example, precipitation, wind and 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 subsection (b), shall 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 the equipment with containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure. Surfaces to be in contact with hazardous wastes shall 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 subsection. 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 the following criteria:

(i) They provide an effective barrier against fugitive dust emissions under subsection (d)(1)(iv).

(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 may 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 shall 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 shall include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier—for example, a geomembrane covered by a concrete wear surface.

(2) A liquid collection and removal system to prevent the accumulation of liquid on the primary barrier of the containment building.

(i) The primary barrier shall be sloped to drain liquids to the associated collection system.

(ii) Liquids and waste shall 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% or more.

(B) Constructed of a granular drainage material with a permeability of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 centimeters) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m²/sec or more.

(ii) If treatment is to be conducted in the building, an area in which the treatment will be conducted shall be designed to prevent the release of liquids, wet materials or liquid aerosols to other portions of the building.

(iii) The secondary containment system shall 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 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, if it meets the requirements of § 265.193(d)(1) (relating to containment and detection of releases). In addition, the containment building shall meet the requirements of § 265.193(b) and (c) to be considered an acceptable secondary containment system for a tank.

(c) For existing units other than 90-day generator units, the Department may delay the secondary containment requirement for up to 2 years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this subchapter. In making this demonstration, the owner or operator shall:

(1) Provide written notice to the Department by July 11, 1997. This notification shall 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.

(2) Respond to comments from the Department on these plans within 30 days.

(3) Fulfill the terms of the revised plans, if the plans are approved by the Department.

(d) Owners or operators of containment buildings shall:

(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 shall be designated to decontaminate equipment and any rinsate shall be collected and properly managed.

(iv) Take measures to control fugitive dust emissions so that any openings (doors, windows, vents, cracks and the like) exhibit no visible emissions. Associated particulate collection devices (for example, fabric filter, electrostatic precipitator) shall be operated and maintained with sound air pollution control practices. This state of no visible emissions shall be maintained effectively at all times during normal operating conditions, including when vehicles and personnel are entering and exiting the unit.

(2) Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of subsections (a)—(c). For units placed into operation prior to February 18, 1993, this certification shall be placed in the facility's operating record (onsite files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, certification will be required prior to operation of the unit.

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, shall 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—for example, upon detection of leakage from the primary barrier—the owner or operator shall:

(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 have to 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.

(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 has to 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 repairs and cleanup, the owner or operator shall 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 subparagraph (i)(D).

(4) Inspect and record in the facility's operating record, at least once every 7 days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(e) For a containment building that contains areas both with and without secondary containment, the owner or operator shall:

(1) Design and operate each area in accordance with the requirements in subsections (a)—(d).

(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment.

(3) Maintain in the facility's operating record a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(f) Notwithstanding any other provision of this subchapter, the Department may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

§ 265.522. Closure and postclosure care.

(a) At closure of a containment building, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components including liners, contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) (relating to definition of hazardous waste) applies. The closure plan, closure activities, cost estimates for closure and financial responsibility for containment buildings shall meet the requirements specified in Subchapters G and H (relating to closure and postclosure; and financial requirements).

(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 subsection (a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator shall close the facility and perform postclosure care in accordance with the closure and postclosure requirements that apply to landfills under § 265.310 (relating to closure and postclosure care). In addition, for the purposes of closure, postclosure and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet the requirements for landfills specified in Subchapters G and H.

CHAPTER 266. SPECIAL STANDARDS FOR THE MANAGEMENT OF CERTAIN HAZARDOUS WASTE ACTIVITIES

Subchapter C. HAZARDOUS WASTE RECYCLED BY BEING USED IN A MANNER CONSTITUTING DISPOSAL

§ 266.24. Use constituting disposal; standards applicable to users.

(a) Owners or operators of facilities that use materials in a manner that constitutes disposal are regulated under Chapter 264, Subchapters A—N; Chapter 265, Subchapters A—N and R and Chapter 270; the notification requirements under § 261.41 (relating to notification of hazardous waste activities); the financial responsibility requirements of Chapter 267 (relating to financial responsibility requirements for hazardous waste storage, treatment and disposal facilities); and the siting criteria of Chapter 269 (relating to siting). These requirements do not apply to products which contain these recyclable materials that have received the Department's written approval under § 266.20(b) (relating to applicability).

(b) The use of waste, waste oil or other material, which is contaminated with dioxin or another hazardous waste or hazardous constituent for dust suppression or road treatment is prohibited.

Subchapter D. HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

§ 266.30. Applicability.

(a) This subchapter applies to hazardous wastes that are burned for energy recovery. Hazardous wastes burned for energy recovery are termed "hazardous waste fuel." Fuel produced from hazardous waste by processing, blending or other treatment is also hazardous waste fuel.

(b) Hazardous waste having less than 8,000 Btus per pound is not a fuel and may be burned only in a permitted hazardous waste incinerator, except as provided in subsections (c), (e) and (f).

(c) Hazardous waste having more than 5,000 Btus per pound may be burned by the generator as fuel if the moisture content of the waste is the sole reason that the Btu value is below 8,000 Btus per pound.

(d) Blending or mixing is not allowed to meet the halogen content, or the Btu value in subsection (b), though hazardous wastes that exceed the values may be blended or mixed under a treatment permit issued by the Department.

(e) Hazardous wastes burned in boilers or industrial furnaces are currently regulated by the EPA, under the Hazardous and Solid Waste Amendments of 1984, at 40 CFR 266 Subpart H (relating to hazardous waste burned in boilers and industrial furnaces effective August 21, 1991). Persons or municipalities managing hazardous wastes burned for energy recovery are advised to comply with 40 CFR 266 Subpart H and related regulations in addition to the regulations in this article. Until the facility has an EPA permit under 40 CFR 266 Subpart H, it shall comply with this subchapter as well. After the EPA permit is obtained, the burning of hazardous waste fuel at the facility is no longer required to comply with this subchapter, except for the requirements of § 266.35(3) (relating to standards applicable to burners of hazardous waste fuel).

(f) The Department will lower the 8,000 Btu per pound requirement of subsection (b) to 5,000 Btu per pound if the facility demonstrates complete compliance with 40 CFR 266.104—266.112, prior to the issuance of the EPA boiler and industrial furnace permit.

§ 266.35. Standards applicable to burners of hazardous waste fuel.

Owners and operators of industrial furnaces and boilers identified in § 266.31(b) (relating to prohibitions) that burn hazardous waste fuel are "burners" and are subject to the following requirements:

(1) *Prohibitions.* The prohibitions under § 266.31 apply.

(2) *Notification.* Notification requirements under § 261.41 (relating to notification of hazardous waste activities) for hazardous waste fuel activities apply. Even if a burner has previously notified the Department or the EPA of his HWM activities and obtained an identification number, the burner shall renotify to identify his hazardous waste fuel activities.

(3) *Storage.*

(i) For short-term accumulation by generators who burn hazardous waste fuel onsite, § 262.34 (relating to accumulation) applies.

(ii) For existing storage facilities, Chapter 265, Subchapters A—L and Chapters 267, 269 and 270 apply.

(iii) For new storage facilities, the applicable provisions of Chapter 264, Subchapters A—L and Chapters 267, 269 and 270 apply.

(4) *Required notices.* Before a burner accepts the first shipment of hazardous waste fuel from a marketer, the burner shall provide the marketer with a one-time written and signed notice certifying that the burner:

(i) Has notified the EPA and the Department under § 261.41 and identified his waste-as-fuel activities.

(ii) Will burn the fuel only in a boiler or furnace identified in § 266.31(b).

(5) *Recordkeeping.* In addition to the applicable recordkeeping requirements of Chapters 264 and 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities), a burner shall keep a copy of each certification notice that he sends to a marketer for 3 years from the date he last receives hazardous waste fuel from the marketer.

(6) *Permits.* A burner operating or proposing to operate an industrial or utility boiler or industrial furnace which burns hazardous waste fuels is not required to obtain an HWM permit for the construction or operation of the air contamination sources. The facility is required to obtain approval and a permit from the Department's Bureau of Air Quality. A facility within Allegheny or Philadelphia Counties may substitute the approval of the Allegheny County Health Department's Bureau of Air Pollution Control or Philadelphia's Department of Public Health Air Management Service for Department Bureau of Air Quality approval. Written approval or a plan approval and operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources) by the Bureau of Air Quality shall be deemed to constitute an HWM permit for the construction or operation of the air contamination source under this subsection. In addition, burners are subject to the following:

(i) Submission of a hazardous waste derived fuels analysis containing, at minimum, the information required under § 264.12 or § 264.13 (relating to general requirements for hazardous waste management approvals and analyses for specific waste from a specific waste generator; and Generic Module I applications) or as otherwise specified by the Department is required.

(ii) Submission of forms specified by the Bureau of Waste Management and Water Quality Management for approval to dispose of bottom ashes, fly ashes, scrubber waste residues, scrubber residues or other residues is required.

Subchapter E. WASTE OIL BURNED FOR ENERGY RECOVERY

§ 266.40. Applicability.

(a) *General.* This subchapter applies to waste oil that is burned for energy recovery in a boiler or industrial furnace that is not regulated under Chapter 264, Subchapter O or Chapter 265, Subchapter O (relating to incinerators) except as provided by subsections (c) and (e). The waste oil is termed "waste oil fuel." Waste oil fuel includes fuel produced from waste oil by processing, blending or other treatment.

(b) *Heating value and permit requirements.*

(1) Waste oil having less than 8,000 Btus per pound is not a fuel, and if hazardous, may be burned only in a hazardous waste incinerator, or an EPA permitted boiler or industrial furnace.

(2) Except as provided in subsection (d), the blending or mixing of waste oils that are hazardous under Chapter 261 (relating to criteria, identification and listing of hazardous waste) is allowed only under a hazardous waste treatment permit. This does not preclude a generator from storing compatible waste oils in a single tank prior to disposal or recycling. Waste oil that is either nonhazardous or that is identified in subsection (d) may be blended or mixed with other nonhazardous waste oil under a residual waste processing permit.

(c) *Waste oil mixed with hazardous waste.* Except as provided by subsection (d)(2), waste oil that is mixed with hazardous waste and burned for energy recovery is subject to regulation as hazardous waste fuel under Subchapter D (relating to hazardous waste burned for energy recovery).

(d) *Waste oil burned for energy recovery.* Waste oil burned for energy recovery is subject to regulation under this subchapter rather than as hazardous waste fuel under Subchapter D if it is a hazardous waste solely because it does one of the following:

(1) Exhibits a characteristic of hazardous waste identified in Chapter 261, Subchapter C (relating to characteristics of hazardous waste), if it is not mixed with a hazardous waste.

(2) Contains hazardous waste generated only by a person subject to the special requirements for conditionally exempt small quantity generators under § 261.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators).

(e) Waste oil burned for energy recovery, and fuel produced from waste oil by processing, blending or other treatment, is subject to this subchapter unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in the following table. Waste oil fuel that does not exceed the specifications in the following table is termed "on-specification waste oil fuel" and is subject only to the requirements of this section and the analysis and recordkeeping requirements under § 266.43(b)(1) and (6) (relating to standards applicable to marketers of waste oil burned for energy recovery). Waste oil fuel that exceeds any specification level is termed "off-specification waste oil fuel" and subject to the requirements of this subchapter. Applicable standards for burning used oil containing PCBs are imposed by 40 CFR 761.20(e) (relating to prohibitions for PCBs)

<i>Constituent/Property</i>	<i>Allowable Level</i>
Arsenic.....	Maximum 5 ppm
Cadmium.....	Maximum 2 ppm
Chromium.....	Maximum 10 ppm
Lead.....	Maximum 100 ppm
Total halogens.....	Maximum 1,000 ppm
Flash point.....	Minimum 100°F (38°C)

(f) Storage and transportation of waste oil fuel shall comply with Chapter 299 (relating to the storage and transportation of residual waste).

(g) Burners of waste oil fuel shall comply with the applicable residual waste permitting requirements for the burning of waste oil (Chapter 287 (relating to residual waste management—general provisions)).

§ 266.41. Prohibitions.

(a) A person may market off-specification waste oil for energy recovery only to burners:

(1) Or other marketers who have notified the EPA and the Department of their waste oil management activities stating the location and general description of the activities, and who have an EPA identification number.

(2) Who burn the waste oil in an industrial furnace or boiler identified in subsection (b) and have a plan approval and operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources) from the Bureau of Air Quality Control, or written approval from the Bureau of Air Quality Control if the fuel is burned in Allegheny or Philadelphia Counties if Allegheny or Philadelphia County is issued first.

(b) Off-specification waste oil may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in § 260.2 (relating to definitions).

(2) Boilers, as defined in § 260.2, that are identified as one of the following:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(ii) Utility boilers used to produce electric power, steam or heated or cooled air or other gases or fluids for sale.

(iii) Waste oil-fired space heaters if:

(A) The heater burns only waste oil that the owner or operator generates or waste oil received from do-it-yourself oil changers who generate waste oil as household waste.

(B) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour.

(C) The combustion gases from the heater are vented to the ambient air.

§ 266.43. Standards applicable to marketers of waste oil burned for energy recovery.

* * * * *

(b) Marketers are subject to the following requirements:

* * * * *

(4) *Invoice system.*

* * * * *

(ii) Waste oil that meets the definition of "hazardous material" in 49 CFR 171.8 (relating to definitions and abbreviations) shall be shipped in accordance with the applicable United States Department of Transportation Hazardous Materials Regulations at 49 CFR Parts 171—180 (relating to research and special programs administration, Department of Transportation).

* * * * *

(6) *Recordkeeping.*

(i) *Waste oil fuel that meets the specification.* A marketer who first claims under subsection (b)(1) that waste oil fuel meets the specification shall keep copies of analyses, or other information relied upon to make the determination, of waste oil for 3 years. The waste oil fuel is not subject to further regulation, unless it is subsequently mixed with hazardous waste or unless it is mixed

with waste oil so that it no longer meets the specification. The marketers shall also record in an operating log and keep for 3 years the following information on each shipment of waste oil fuel that meets the specification:

* * * * *

(D) A cross reference to the record of waste oil analysis, or other information relied upon to make the determination that the oil meets specification, required under this subparagraph.

* * * * *

Subchapter H. ONSITE RECLAMATION

§ 266.90. Applicability and requirements.

(a) Owners or operators of facilities that reclaim hazardous waste onsite, at the site where it is generated are deemed to have a recycling permit for the reclamation and are subject to the notification requirements of § 261.41 (relating to notification of hazardous waste activities) and the requirements of Chapter 262 and Chapter 264, Subchapters A—E and I—L except as provided in § 264.1 (relating to scope).

(b) Owners or operators of facilities storing hazardous waste onsite in tanks, containers or containment buildings under this subchapter are deemed to have a hazardous waste storage permit for the storage of hazardous waste prior to reclamation and are subject to the notification requirements of § 261.41 and Chapter 264, Subchapters A—D, I, J and T, except as provided in § 264.1.

(c) For the purposes of this section, onsite reclamation includes reclamation of materials generated at other facilities operated or owned by the same generator, if the generator provides prior written notice to the Department and the wastes are shipped under a manifest in compliance with § 262.20 (relating to manifest).

(d) The Department may, under special circumstances, approve on a case-by-case basis the receipt and reclamation of wastes generated offsite by a different generator for reclamation at a facility regulated under this subchapter without the reclamation of the wastes resulting in the loss of onsite reclamation status under this subchapter.

(e) The Department may require an owner or operator with a permit-by-rule under this section to apply for, and obtain an individual permit when the facility is not in compliance with the requirements of subsection (a) or is engaged in an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

§ 266.91. (Reserved).

§ 266.104. Reporting.

In addition to the information required by § 264.75(e) (relating to biennial report), owners or operators shall submit the following information to the Department:

(1) A description of each waste, including the EPA hazardous waste number and the process generating the waste.

(2) The volume of waste generated and reclaimed during the reporting period.

(3) A description of the equipment and process used to reclaim the waste.

(4) A description of the ultimate use of the reclaimed material.

(5) A description of how long the waste is accumulated prior to reclamation and the method of accumulation.

(6) The portion of the Pollution Prevention and Control (PPC) plan which describes how the reclamation equipment, accumulation area and related waste conveyance systems will be managed to prevent spills or releases, how spills will be contained and how cleanup will be effectuated.

CHAPTER 270. PERMIT PROGRAM

PERMIT APPLICATION REQUIREMENTS

§ 270.11. General application requirements.

(a) A person or municipality required to have a permit—including a new applicant and permittee with an expiring permit—shall complete, sign and submit an application to the Department as described in Chapter 265, Subchapter R (relating to hazardous waste management permit program) and in this chapter. A person or municipality owning or operating a facility currently having interim status shall apply for permits when required by the Department. A person or municipality covered by hazardous waste management permits-by-rule need not apply for individual permits so long as they comply with applicable requirements for a permit-by-rule. Procedures for application, issuance and administration of research, development and demonstration permits are found exclusively in § 270.4 (relating to research, development and demonstration permits).

(b) The permit applicant shall comply with the signature and certification requirements of § 265.443 (relating to certification by responsible official).

(c) When a facility or activity is owned by one person or municipality but is operated by another person or municipality, the operator shall obtain a permit. The owner shall also sign the permit application submitted by the operator.

(d) An applicant for hazardous waste management permits shall provide applicable information required in Chapter 265, Subchapter R and § 270.12 (relating to contents of Part A permit applications) and shall supply the information on application forms specified by the Department.

(e) The Department will not process a permit unless it has received a complete application for a permit. An application for a permit is complete when the Department receives the information required by § 265.441 (relating to general permit application requirements).

(f) The owner or operator of a hazardous waste management facility with an effective permit shall submit a new complete application to the Department at least 180 days before the expiration date of the effective permit, unless permission for a later date is obtained in writing by the Department. An application may not be submitted later than the expiration date of the existing permit.

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§ 270.13. Standard conditions for permits.

* * * * *

(b) The following conditions apply to hazardous waste management permits, and shall be incorporated into permits either expressly or by reference. If incorporated by reference, a specific citation to this article will be given in the permit.

* * * * *

(11) The permittee shall retain all records of monitoring information, including calibration and maintenance records and original strip chart recordings for continuous monitoring instrumentation, copies of reports required by the act, this article or the permit, and records of data used to complete the application for this permit, for at least 3 years from the date of the sample, measurement, report or application. The permittee shall retain the records for a longer period of time if requested by the Department. The permittee shall maintain records of groundwater quality and groundwater surface elevations for the active life of the facility and during the postclosure care period as well, and shall make these records available to the Department upon request.

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PERMIT MODIFICATION, REVOCATION AND REISSUANCE

§ 270.31. Causes for permit modification or revocation and reissuance.

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(c) The Department may also modify a permit without following the procedures under § 270.33 (relating to procedures for permit issuance, modification, revocation and reissuance or revocation) when:

(1) The modification is considered a minor modification. Minor modifications are changes to the design or operation of a facility for which the Department determines that no actual change to the permit is needed. The changes shall only include the following:

* * * * *

(vi) Changes that the Department determines are minor, are consistent with and no less stringent than modifications listed in 40 CFR 270.42 Appendix I (relating to minor modifications of permits) and will enhance or improve the treatment, storage or disposal operation at the facility.

* * * * *

§ 270.33. Procedures for permit issuance, modification, revocation and reissuance or revocation.

* * * * *

(o) The Department will follow the following procedures if it modifies, revokes and reissues, or revokes a permit:

* * * * *

(3) If the Department tentatively decides to modify or revoke and reissue a permit under § 270.31(a) and (b), it will prepare a draft permit under subsections (g)—(i) incorporating the proposed changes. The Department may request additional information from the permittee and may require the permittee to submit an updated permit

application. In the case of revoked and reissued permits, the Department will require the submission of a new application. The permittee shall submit additional information or an updated or new application under a request by the Department within the time specified by the Department.

* * * * *

(6) Minor modifications under § 270.31(c)(1) are not subject to the requirements of this section.

PUBLIC NOTICE AND HEARINGS

§ 270.41. Public notice and comment requirements.

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(d) The Department will give public notice of activities described in subsection (a) by the following methods:

(1) By mailing a copy of a notice to the following (persons otherwise entitled to receive notice under this paragraph may waive the right to receive notice for classes and categories of permits):

* * * * *

(iii) An appropriate Federal or State agency with jurisdiction over fish, shellfish and wildlife resources or coastal zone management plans, State Historic Preservation Officers, Advisory Council on Historic Preservation, other appropriate government authorities including affected states, and Indian tribes.

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§ 270.60. Permits by rule.

Notwithstanding other provisions of this chapter, the following shall be deemed to have a hazardous waste management permit if the conditions listed are met:

- (1) Ocean disposal barge or vessels in compliance with § 270.1(d) (relating to the hazardous waste permit program).
- (2) Injection wells in compliance with § 270.1(e).
- (3) Publicly owned treatment works in compliance with § 265.432 (relating to POTWS).
- (4) Elementary neutralization units in compliance with § 265.433 (relating to neutralization treatment units).
- (5) Wastewater treatment units in compliance with § 265.433.
- (6) Generator treatment in compliance with § 265.435 (relating to generator treatment).
- (7) Hazardous waste recycling activities in compliance with §§ 266.70, 266.80, 266.90 and 266.100.

[Pa.B. Doc. No. 97-72. Filed for public inspection January 10, 1997, 9:00 a.m.]