

requirement for applying for an individual RCRA permit and complying with the substantive requirements of Parts 264 or 265. The proposed amendments will also reduce the resource demands on the Agency by reducing the number of individual RCRA permits that otherwise would have to be issued. The Agency believes that these savings can be achieved without significantly reducing the protection of human health and environment.

VI. Request for Comment

The Agency invites comments on all aspects of these amendments and on all of the issues discussed in this preamble. EPA recognizes that a wide variety of situations exist and is anxious to make its regulations as reasonable and workable as possible.

All comments should be addressed to the Docket Clerk (see address above) and should contain specific documentation which supports the comment.

Dated: December 22, 1980.

Douglas M. Costle,
Administrator.

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

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. Add the following definition to § 260.10.

§ 260.10 [Amended]
* * * * *

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

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

§ 263.10 [Amended]

2. Remove the note following § 263.10(c)(2).

3. Add the following section to Subpart A:

§ 263.12 Transfer facility requirements.

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 at a transfer facility for a period of ten days or less is not subject to regulation under Parts 122, 264, and 265 of this chapter with respect to the storage of those wastes.

Part 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

4. Add the following subparagraph to § 264.1(g)

§ 264.1 [Amended]

* * * * *
(g) * * *

(6) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR § 262.30 at a transfer facility for a period of ten days or less.

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

5. Add the following subparagraph to § 265.1(c)

§ 265.1 [Amended]

* * * * *
(c) * * *

(10) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR § 262.30 at a transfer facility for a period of ten days or less.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND CONTROL PROGRAM

6. Add the following definition to § 122.3

§ 122.3 [Amended]

* * * * *
"Transfer facility" means any

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

7. Add the following subparagraph to § 122.21(d)(2)

§ 122.21 [Amended]

* * * * *
(d) * * *
(2) * * *

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR § 262.30 at a transfer facility for a period of ten days or less.

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40 CFR Parts 262, 264 and 265

[SW FRL 1715-6]

Hazardous Waste Management System; Standards for Generators of Hazardous Waste, and Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule and request for comments.

SUMMARY: This regulation amends §§ 262.10, 264.71 and 265.71 to provide that owners or operators of hazardous waste treatment, storage, and disposal facilities must comply with the requirements of Part 262 whenever a shipment of hazardous waste is initiated at their facilities. The effect of this provision is to require owners and operators to comply with the standards applicable to generators including the preparation of manifests, all pre-transport requirements and the recordkeeping and report provisions of Part 262.

DATES: Effective Date: December 31, 1980. Comment Date: The Agency will accept comments on this interim final rule until March 2, 1981.

ADDRESSES: Comments should be sent to Docket Clerk (Docket No. 3002-Shipments from Permitted Facilities), Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For information concerning these regulations, contact Rolf P. Hill, (202) 755-9150, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Authority

This interim final rule is issued under the authority of sections 2002(a), 3002, 3003, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 USC 6912(a), 6923, 6924.

II. Background

Section 3004 of RCRA requires the Environmental Protection Agency (EPA) to promulgate standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA promulgated the initial set of these standards on May 19, 1980 45 FR 33220.

These regulations, which are set forth in 40 CFR Parts 264 and 265, establish operating standards and practices for the management of hazardous wastes in treatment, storage and disposal facilities.

In addition, EPA has promulgated regulations establishing standards applicable to generators of hazardous waste. 40 CFR Part 262, 45 FR 12722 (February 26, 1980) and 45 FR 33140 (May 19, 1980). These regulations, require generators, among other things, to determine whether their waste is hazardous; initiate a manifest; properly label, package, mark and placard shipments of hazardous waste; and to comply with certain recordkeeping and reporting requirements.

Owners and operators of hazardous waste management facilities may generate hazardous waste (e.g., residues created by treatment processes). With respect to the hazardous waste that these persons generate, they, like other generators, must comply with the applicable provisions of Part 262. Accordingly, if owners and operators of these facilities transport hazardous waste off-site that they have generated, they must undertake certain activities, including initiating the manifest, and properly labeling and packaging the waste.

Owners and operators of hazardous waste management facilities may also ship off-site hazardous waste which they did not generate. The most obvious example is the removal of hazardous waste from a storage facility. The owner or operator of a storage facility does not "generate" a waste simply by removing it from storage. Removing hazardous waste from storage for shipment offsite, however, means that the waste will be transported and subsequently handled elsewhere.

Other examples are off-site transportation of (1) hazardous waste removed from a disposal facility, (2) wholly or partially treated hazardous waste which has not been "delisted" under § 261.3(d) and (3) solid waste generated from the treatment, storage or disposal of hazardous waste [see § 261.3(c)(2)] which has not been "delisted" under § 261.3(d). Although, in these situations, the owner or operator has not, in fact, "generated" the hazardous waste, EPA believes he should assume the responsibilities of a generator to assure that the off-site shipments of these wastes are properly managed.

Members of the regulated community have requested that EPA clarify what regulations apply when a facility initiates a shipment of hazardous waste which it did not generate. Some

comments indicated that persons thought that such shipments would not require a manifest. However, in the preamble to the May 19 Part 261 regulations, under the heading "When does a hazardous waste cease to be a hazardous waste?", EPA stated, "as a practical matter, . . . facilities which store, dispose of, or treat hazardous waste must be considered hazardous waste management facilities for as long as they continue to contain hazardous waste, and . . . any waste removed from such facilities, . . . must be managed as a hazardous waste." (emphasis added) 45 FR 33096 (May 19, 1980). Further, in comments included in the closure requirements of various sections of Part 265 (e.g. § 265.197), the Agency stated that shipments from facilities at closure as well as throughout the operating period must be managed in accordance with Parts 262 and 263. Thus it is evident that EPA intended owners and operators of these facilities to comply with the Part 262 standards when shipping hazardous wastes from their facilities. EPA failed, however, to specify that intent in the regulations.

III. Requirements on Shipments of Hazardous Waste From Facilities

This amendment requires owners and operators of hazardous waste management facilities to comply with the Part 262 generator standards when they initiate a shipment of hazardous waste which they have not "generated" from their facilities. (These owners and operators, like other generators of hazardous waste, must comply with all the Part 262 standards for hazardous wastes they in fact generate). The owner or operator is required to determine if the waste is hazardous (§ 262.11). If the owner or operator is removing from storage hazardous waste which was originally manifested by the generator, he may rely on the information on the manifest to make the determination pursuant to § 262.11(c)(2). He is required to prepare a manifest to accompany the shipment, pursuant to Subpart B of Part 262. He must package, label, mark, and placard the waste in accordance with the applicable EPA and Department of Transportation regulations, as provided in Subpart C of Part 262. He must also comply with the Subpart D recordkeeping and reporting requirements and the special conditions applicable to international shipments (§ 262.50).

The owner or operator is not required to obtain a new EPA identification number when manifesting shipments of hazardous waste. The number already assigned to the owner or operator of the facility should be used.

The provisions of § 262.34 do not apply, however, to hazardous wastes which the owner or operator did not generate, that is, hazardous wastes which he received are not eligible for the accumulation time provisions. Those provisions relate to accumulation of waste immediately after it has been generated at the site of generation in order to allow the generator an opportunity to accumulate sufficient quantities of waste prior to treatment, storage or disposal and to make the necessary arrangements for the waste's disposition.

Today's amendment applies when the owner or operator initiates a shipment of hazardous waste. Some facilities which have storage permits may handle, in the course of transportation, hazardous waste shipments which are accompanied by a manifest designating another facility for treatment, storage or disposal of the waste. For example, a transfer facility operated by a transporter may engage in longterm storage of hazardous waste and may also hold manifested waste for short periods related to the transportation of that waste. Another amendment to the hazardous waste regulations states that the holding of manifested wastes for short periods in the course of transportation does not constitute storage requiring a RCRA permit or interim status or compliance with the 264/265 standards. The amendment discussed in this preamble applies to the removal of hazardous waste from long-term storage; the waste held for short periods (ten days or less) as part of the routine transportation of that waste would be subject to the original manifest.

These amendments do not apply to inactive facilities or to the inactive portions of treatment, storage and disposal facilities. The applicability of the RCRA hazardous waste regulations to those facilities is the subject of another amendment which is currently being developed by the Agency. In the interim, persons shipping hazardous waste from inactive facilities or inactive portions of facilities are advised to manifest each shipment and comply with the other requirements of Part 262.

The rationale for applying these requirements to owners and operators of hazardous waste management facilities parallels that underlying the entire Subtitle C system. Congress established the system to protect public health and the environment during management of hazardous waste from the time of generation through ultimate disposition. The key to the system is the manifest, which enables EPA (or the states, when

their programs are approved) to track individual shipments of hazardous waste. RCRA places the initial burden of preparing the manifest, recordkeeping, and reporting on the generator. Other requirements placed upon the generator—proper packaging, labeling, placarding and marking—are essential in ensuring transportation of hazardous wastes in a manner which protects human health and the environment. Further, section 3004(2) requires facilities to comply with the manifest system established under section 3002 which assures that hazardous wastes are sent to permitted facilities. Therefore, the owner or operator of a facility who ships hazardous waste elsewhere is in a position analogous to the generator. It is his act which ought to trigger the application or regulatory controls designed to ensure the safe transportation of hazardous wastes. For this reason, EPA believes that it is entirely appropriate for the owner or operator to comply with the Part 262 requirements.

IV. A. Interim Final Regulations

EPA has determined that good cause exists to promulgate these amendments without prior notice and comment. They conform the regulations to their original intent, and ensure "cradle-to-grave" control over hazardous waste. The failure to explicitly include these requirements has caused substantial uncertainty and confusion in the regulated community. To prolong this confusion during the completion of formal rulemaking could result in substantial hardship on the regulated community.

In addition, there are compelling environmental reasons for EPA to undertake this procedural course. There are no explicit requirements without these amendments for persons who remove hazardous waste from storage facilities. This means that a substantial volume of hazardous waste which is otherwise subject to regulation may be shipped and handled without any regulatory controls. Based on the literal language of the regulations, as presently drafted, these wastes need not be manifested, nor properly labeled or packaged, nor sent to a proper treatment, storage or disposal facility. EPA has determined, however, that these requirements are necessary to protect human health and the environment. These requirements are equally necessary whether a generator initiates a shipment of hazardous waste or whether an owner or operator of a storage facility does so.

V. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions take effect six months after promulgation. The purpose of this requirement is to allow persons handling hazardous waste sufficient time to comply with major new regulatory requirements. For most facilities, EPA believes that these amendments conform the regulations to normal operating practices and therefore the amendments do not impose new obligations on these persons. The Agency does, however, recognize that certain facilities may have to take some time to bring their practice up to the new requirements. Because of the urgency of these amendments, however, EPA has decided to make these amendments effective immediately. Without such effect, as discussed in the preceding section, serious threat to human health and the environment exists.

VI. Environmental, Economic and Regulatory Impacts

For the most part, the economic, reporting and recordkeeping impacts of these amendments are minimal. The estimated impacts developed for the May 19 regulations included the majority of those impacts related to shipments of hazardous waste from treatment at the generator's facility were included in the calculations. The Agency is unable to estimate the cost and impact increase from these amendments but believes, for the reasons stated above, that the additional environmental benefits greatly outweigh the minimal burden placed on the regulated community.

Dated: December 22, 1980.
Douglas M. Costle,
Administrator.

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

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. Add the following paragraph to § 262.10:

§ 262.10 Purpose, scope and applicability.
* * * * *

(f) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this Part. [Note: The provisions of § 262.34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping

hazardous waste which they generated at that facility.]

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

2. Add the following paragraph to § 264.71:

§ 264.71 Use of the manifest system.
* * * * *

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Part 262 of this chapter. [Comment: The provisions of § 262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]

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

3. Add the following paragraph to § 265.71:

§ 265.71 Use of the manifest system.
* * * * *

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Part 262 of this chapter. [Comment: The provisions of § 262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]

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40 CFR Parts 262, 263, 264, and 265 [SWH-FRL 1715-7]

Transportation of Hazardous Waste by Rail

AGENCY: Environmental Protection Agency.

ACTION: Interim final amendment and request for comments.

SUMMARY: Regulations promulgated in May 1980, established requirements for the transportation of hazardous waste by rail 45 FR 33150 (May 19, 1980). The