

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[SWH-FRL 2081-4]

Hazardous Waste Management System Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Interim final amendment to rule.

SUMMARY: On May 19, 1980, EPA promulgated regulations that would prohibit landfill disposal of containerized liquid wastes on or after November 19, 1981. On February 25, 1982, EPA issued proposed rules setting forth a new approach to restricting landfill disposal of these liquids, and extended the date for compliance with the May 19 requirement to allow time to complete this rulemaking. On March 11, 1982, EPA held a hearing to consider whether this interim suspension should be left in effect.

After considering the hearing record, EPA has decided to impose interim restrictions on landfill disposal of containerized liquid waste pending full rulemaking on the issue. Under these interim rules, no container holding free-standing liquid may be placed in a landfill. Guidance for Regional offices, states and the regulated industry to use in determining what constitutes freestanding liquid is set out later in this preamble.

DATES: This rule is effective on March 22, 1982.

FOR FURTHER INFORMATION CONTACT: The RCRA hazardous waste hotline, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, 800/424-9346 (382-3000 in Washington, D.C.) For specific information on this amendment, contact Rod Jenkins, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4489.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, EPA promulgated regulations which, in connection with certain earlier regulations, established most of the basic elements of the hazardous waste management program required by Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6921 et seq. See 45 FR 33066 et seq. (May 19, 1980); 45 FR

12721 et seq. (February 26, 1980). Part 265 of those regulations sets out standards that apply to existing hazardous waste treatment, storage and disposal facilities pending their receipt of a permit setting out site-specific requirements.

Sections 265.312 and 265.314 of this Part, as originally promulgated, would have forbidden the placement in a landfill of a container holding liquid waste after November 19, 1981, with certain limited exemptions.

After this regulation was promulgated, EPA received numerous suggestions that a total ban of this nature would be impossible to comply with in practice, and would lead to difficult and avoidable problems of testing containers in the attempt to determine whether they were indeed free of liquid. Accordingly, on February 25, 1982, EPA proposed alternative methods of restricting containerized liquid wastes in landfills. Under one method, the volume of drums containing any amount of liquid wastes in a landfill would be restricted to an absolute maximum of 25% of the total landfill volume, and in most cases less than that. Under the other method, EPA proposed each container would be limited to a prescribed liquid hazardous waste content such as ten percent. 47 FR 8307. EPA also extended the date for complying with §§ 265.312 and 265.314 for 90 days to allow time for consideration of this new approach. 47 FR 8304.

On March 11, 1982, in response to two petitions for reconsideration of this extension, EPA held a public hearing to consider whether some interim control might be advisable pending full resolution of these issues in rulemaking. As a result of that hearing, EPA, preferring to err on the side of caution pending completion of its rulemaking, has decided to restrict the landfill disposal of containers with liquid waste to those containing no free-standing liquids. The reasons for that decision are set out below.

II. Basis for Decision

The great majority of participants at EPA's March 11 hearing urged EPA to impose some type of interim control requirements on the land disposal of containerized liquid wastes.

Participants at the hearing divided into two camps on the type of interim controls EPA should adopt. Representatives of generators of hazardous wastes, and of landfill operators, urged EPA to make its February 25 25% by volume proposal

immediately effective. Tr.¹ 66-67 (National Solid Waste Management Association), 100 (Chemical Manufacturers Ass'n). Under this proposal, no more than 25% of a landfill's volume could be occupied by drums containing liquid wastes. EPA believes that in practice the actual volume of liquids disposed of would be less than half that. The 25% upper limit is a maximum that only applies to landfills that are exactly 25 feet deep; landfills shallower or deeper than 25 feet are limited to a lesser percentage. In addition, the proposal states that the full volume of any container with any liquids in it is charged against the 25% requirement. This means that, for example, a 55 gallon drum with ten gallons of liquid in it takes up 55 gallons, not ten gallons, of the allowable liquid volume.

Representatives of states, the general public, and of hazardous waste disposal facilities other than landfills urged EPA to control containerized liquids on a container-by-container basis. Tr. 36 (Hazardous Waste Treatment Council), 116 (New York State), 150 (Maryland), 162 (Association of State & Territorial Solid Waste Management Officials), 193 (League of Women Voters), 213 (NRDC), 229 (Rollins Environmental Services), 261 (CECOS Internat'l). They generally agreed, however, that it would be impractical to require a total absence of liquids in a container before it could be landfilled. Suggestions of how much liquid could properly be allowed ranged from three to ten percent. TR. 40, 69, 123, 138, 233.

The difference between these two proposals is not extreme. Though control of liquids on a drum-by-drum basis is plainly more restrictive than a 25% total limit, evidence at the hearing indicated that even the 25% approach would reduce the disposal of liquids in landfills below current levels. Tr. 89-90, 236. But see Tr. 38, 58.

Conversely, representatives of landfill operators stated that the 25% proposal was roughly equal in practical effect to a container-by-container approach with some exemption for small amounts of liquid, and that either approach was acceptable. Tr. 68-69, 84-86, 94 (National Solid Waste Management Ass'n).

III. EPA's Decision

Against this background, EPA has decided to prohibit, on an interim basis, the landfilling of containers which contain free-standing liquids. There are three reasons for this choice.

¹Tr. means the transcript of the March 11 hearing.

1. Most if not all of the States and localities that currently restrict the landfill disposal of containerized liquid wastes do so by restricting the wastes on a container-by-container basis. This appears to work in this context to the general satisfaction of those involved. The proposal for a 25% maximum volume, by contrast, is new.

Though EPA continues to believe that the 25% approach deserves serious consideration as a permanent method of restricting liquid wastes in landfills, the approach of choice for an interim rule should be one with which people are already familiar.

2. Proponents of the 25% approach argued that some containers of waste are too dangerous or too expensive to open and test for liquid content, as would be required under a container-by-container approach. Tr. 76-77, 85-86. However, a number of participants in the hearing stated that they did in fact open every container. Tr. 183-85, 231-32, 261. See also Tr. 93. In its post-hearing comments, the National Solid Wastes Management Association in effect agreed that all drums could be opened, though it continued to assert this was bad policy. Finally, as discussed in detail below, the guideline EPA is issuing for determining whether there are free-standing liquids in a container will not require the opening of each container in all instances.

3. Another argument advanced for the 25% approach is that some liquid wastes cannot be disposed of except in landfills. Tr. 51, 101, 106-07. See also Tr. 151, 238-39, 244.

In planning to meet restrictions on disposal of containerized liquids in landfills those affected have the choice of a wide variety of alternatives to landfilling, such as incineration, waste reclamation or recycling. EPA believes that alternatives to landfilling of liquids should be used increasingly in the future to minimize landfilling of liquid hazardous wastes. For these reasons EPA has consistently in the past rejected the argument that lack of other treatment alternatives is a proper reason to allow continued landfill disposal of free-standing liquids. See 47 FR 8307-08. However, this is a matter open for further consideration in the February 25, proposal.

IV. Free-Standing Liquids

EPA considered a number of approaches to specifying what small amounts of liquids in containers could properly be placed in landfills.

One approach would be to prohibit all land disposal of such liquids, as the original rule did, and rely on enforcement discretion to avoid

unworkable results. EPA rejected this approach because it is unwilling to establish regulatory requirements that it knows are technically unachievable and therefore unenforceable.

Another would be to establish a specific percentage of liquids that cannot be exceeded. As noted earlier, a number of hearing participants recommended this approach.

However, promulgation of such a percentage would require a precise implementing test procedure. There currently is no consensus on what procedure to pick; in fact one purpose of EPA's February 25 proposal is to help develop such a test.

EPA recognizes that the general terms of today's amendment do not provide the certainty that many of the regulated community would like to see on this point. The proposed rulemaking is focused on diminishing this uncertainty. The regulated community can help EPA to do that by providing factual information and data to the Agency as part of their comments.

Today's amendment clearly calls for landfill operators to use readily available, technically feasible techniques, such as decanting of free-standing liquids from containers or adding absorbents to containers holding free-standing liquids, to eliminate landfill disposal of containerized free-standing liquids. EPA interprets free-standing liquids as those that form distinct pools or layers within a container. Included in the definition of free-standing liquids are those covered with a scum of film, or those liquids known to accumulate in layers or pools below the surface of a container. Of course, EPA requires that the test for liquids be made without first agitating the drum or taking other steps to reduce the chances that free-standing liquids will be observed. In most cases, determining the presence or absence of free-standing liquids will not be difficult. Where it is difficult to determine whether a given substance that separates out from the waste is a free-standing liquid, the paint filter test described in the February 25 proposed rule can be used to determine whether a certain substance is or is not a free-standing liquid.

EPA also considered banning the land disposal of containerized liquids that do not occur as free-standing liquids, but instead occur as liquids occupying the pore space of an otherwise solid or semi-solid waste in the container.

EPA rejected this approach for three reasons.

First, a total ban on such liquids is impractical for the reasons given earlier in this preamble. Accordingly, any rule

on the subject would have to limit such liquids to a certain percentage of total waste. However, no meaningful percentage can be set without relying on a test procedure that has not been developed yet. Accordingly, any rule on the point would either be unenforceable for lack of a test procedure or would give arbitrary enforcement power to EPA.

Second, liquids of this nature are not likely to present a serious problem for the short period this interim rule is in effect.

Third, on samples tested to date, this pore-space liquid has been less than 5% by volume of the containerized wastes. EPA has testing underway to specify this figure more precisely and will also examine the matter further in the pending rulemaking.

Implementation of today's rule will generally require landfill operators to open and inspect all containers of wastes for free-standing liquids. EPA is persuaded by comments that this is technically feasible without prejudging whether the practice constitutes sound public policy. EPA recognizes that it will also be more costly and time-consuming and will require safety precautions for some wastes. The rule will allow landfill operators to open and inspect less than all containers where they can demonstrate that such practices assure reasonable compliance. For example, where the landfill operator receives a batch of containerized wastes and has good evidence that the content among containers does not vary significantly, and does not contain free-standing liquid, he may open and inspect a representative sample of the containers. Along similar lines, where the generator certifies to the landfill operator that he is delivering to the landfill operator wastes that comply with today's amendment, the landfill operator may satisfy his responsibilities by obtaining the generator's certification and verifying the generator's performance on a representative number of the containers received.

V. Conclusion

EPA finds that there is good cause for promulgating this regulation without going through a formal proposal. The hearing that was held provided a forum for all major interest groups in this field to attend and state their views, and they used this opportunity effectively. Moreover, today's promulgation provides a free-standing liquids rule which can be readily and easily enforced. There is good cause for making it effective immediately because it applies a rule of reason to the

Agency's original requirements and because there is general consensus based on the hearing record that interim controls of this nature are desirable. This interim rule constitutes EPA's response to the two petitions it has received on this matter.

This rule was submitted to the Office of Management and Budget for review as required by E.O. 12291.

Dated: March 17, 1982.

Anne M. Gorsuch,
Administrator.

For the reasons set out in the preamble, Part 265 of Title 40 of the Code of Federal Regulations is amended to read as follows:

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

1. The Authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), and 3004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

2. In § 265.314 paragraphs (b) and (c) are revised to read as follows:

§ 265.314 Special requirements for liquid waste

* * * * *

(b) Containers holding free liquids must not be placed in a landfill unless:

(1) All free-standing liquid (i) has been removed by decanting, or other methods, (ii) has been mixed with absorbent or solidified so that free-standing liquid is no longer observed or (iii) had been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in § 265.316 and is disposed of in accordance with § 265.316.

(c) The date for compliance with paragraph (a) of this section is November 19, 1981. The date for compliance with paragraph (b) of this section is March 22, 1982.

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