

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 265**

[SW-FRL 1999-2]

Standards for Owners and Operators of Hazardous Waste Disposal Facilities; Interim Rule**AGENCY:** Environmental Protection Agency.**ACTION:** Interim final amendments to rule.

SUMMARY: EPA is today promulgating, in interim final form, amendments to the ground-water monitoring standards for certain hazardous waste surface impoundments used to neutralize corrosive wastes. The amendments provide for a waiver of these standards for any surface impoundment that (1) Contains wastes which are hazardous only because they exhibit the corrosivity characteristic and contains no other hazardous wastes, and (2) is demonstrated to rapidly neutralize the wastes so that there is no potential for migration of any hazardous waste out of the impoundment.

The purpose of today's amendment is to relieve owners and operators of neutralization surface impoundments from having to monitor ground water in cases where such monitoring is not necessary to protect human health and the environment. Since the compliance date for the ground-water monitoring requirements is November 19, 1981, today's limited exception to those requirements is being made effective immediately.

DATE: Today's interim final amendments are effective January 11, 1982.

EPA will accept public comments on the proposed amendments until March 9, 1982.

ADDRESSES: Comments on the interim final amendments should be sent to Deneen Shrader, Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the regulatory docket as follows: "Docket No. 3004, Amendment of § 265.90(c)". Requests for a hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460.

The official docket for this regulation is located in Room 2636, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 and is available for viewing from 9:00 a.m to

4:00 p.m., Monday through Friday, excluding holidays.

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 Barry Stoll, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 755-9116.

SUPPLEMENTARY INFORMATION:**I. Purpose and Content of the Amendment**

On May 19, 1980, EPA promulgated hazardous waste regulations in 40 CFR Parts 260-265 (45 FR 33066 *et seq.*) which established, in conjunction with earlier regulations promulgated on February 26, 1980 (45 FR 12721 *et seq.*), the principal elements of the hazardous waste management program under Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6921, *et seq.*). Part 265 of the May 19 regulations set forth standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities during the "interim status" period. Subpart F (§§ 265.90-265.94) of those regulations established ground-water monitoring interim status standards applicable to land disposal facilities.

Section 265.90(c) provides that all or part of the groundwater monitoring requirements of Subpart F may be waived if the owner or operator demonstrates that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells or to surface water. The demonstration must be in writing and must be certified by a qualified geologist or geotechnical engineer and must establish the potential for migration of the hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer and from that aquifer to water supply wells or surface water. This demonstration must be based on an evaluation of several hydrogeological factors set forth in the regulation.

As presently written, this self-implementing waiver provision is available only when hydrogeological factors reduce the migration potential to a low probability.¹ The regulation does

¹ As explained in the preamble to § 265.90(c) (45 FR 33192, May 19, 1980), a complete waiver of all Subpart F monitoring requirements is available only when the owner or operator can demonstrate that

not allow consideration of the disposed wastes' characteristics and the facility design to be used as a basis for reducing monitoring requirements. At the time that the regulation was promulgated, EPA was concerned that the state of knowledge about hazardous wastes and facility designs was not sufficiently certain to justify reductions in the basic monitoring system during interim status. (See 45 FR 33192, May 19, 1980.)

Since the time it promulgated § 265.90(c), EPA has become aware of one situation where it is appropriate to allow a waiver of ground-water monitoring requirements to be based upon consideration of the facility and the wastes disposed in the facility. Several industries operate surface impoundments which contain no hazardous wastes except corrosive wastes which themselves are hazardous only due to their corrosivity. In some cases, these wastes may be placed in the impoundment together with large volumes of non-hazardous wastes. In some of these cases, particularly where active mechanical mixing is performed in the impoundment, it may be reliably demonstrated that the corrosive wastes are neutralized shortly after being placed in the impoundment. In such cases, there may be no potential for any hazardous wastes to migrate out of the impoundment.

For the neutralization surface impoundments described above, EPA believes that it makes little sense to monitor the ground water beneath the facilities. Therefore, EPA is amending § 265.90 to provide a waiver of Subpart F requirements for these types of facilities upon a demonstration that there is no potential for migration of hazardous wastes out of the facility. The demonstration would have to show, based on consideration of the corrosive wastes and the impoundment, that the corrosive wastes will be neutralized before they migrate out of the facility. The demonstration must be certified by a professional qualified to make this type of technical demonstration, rather than necessarily by a geologist or geotechnical engineer (as required in § 265.90(c)).

It may be that there are types of facilities other than neutralization surface impoundments for which reliable demonstrations can in some instances be made, based upon consideration of the nature of the wastes and of the facility, to show that there is no potential for migration of hazardous waste or hazardous waste

there is no potential for migration to water supply wells or surface water.

constituents from the facility. EPA welcomes information (including detailed data) on such facilities.

II. Promulgation of Today's Amendment in Interim Final Form

The compliance date for the existing Subpart F ground-water monitoring requirements is November 19, 1981. Unless today's amendment is promulgated and takes effect immediately, owners or operators of neutralization surface impoundments would be required to comply immediately with the Subpart F requirements even when they can demonstrate that those requirements are unnecessary to protect human health and the environment. Such a result would be contrary to the public interest. Therefore, EPA believes that good cause exists to promulgate today's amendment in interim final form without prior notice and comment.

EPA invites public comment on today's interim final rule. Consistent with its duty to fully consider all comments, EPA will promulgate a final rule as soon as possible after the close of the public comment period.

III. Effective date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations take effect six months after their promulgation. The purpose of this statutory requirement is to allow persons affected by the regulations sufficient lead time to comply with major new regulatory requirements. Today's amendment, however, does not impose a new requirement but rather relaxes an existing requirement. Therefore, the Agency believes it is consistent with the intent of Section 3010(b) to make today's amendment immediately effective.

IV. Regulatory Analysis

Section 3(b) of Executive Order 12291, 40 FR 13193 (February 19, 1981), requires

EPA to initially determine whether a rule that it intends to propose or issue is a major rule and to prepare regulatory impact analyses for all major rules.

EPA has determined that the amendment being promulgated today is not a major rule. As discussed above, this amendment will allow a waiver of ground-water monitoring requirements under a limited set of circumstances. Accordingly, a Regulatory Impact Analysis is not being prepared for this amendment.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

The information collection requirements in this interim final rule will be submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act of 1980. The information requirements or recordkeeping in this interim final rule will not take place until it has been cleared by the Office of Management and Budget. If OMB approves, the information collection requirements will take effect as set forth in this interim final rule. If not, EPA will revise the information requirements (and this rule if appropriate) to comply with OMB's determination.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a regulatory analysis. The additional waiver opportunity created by this amendment should, if anything, reduce the burden of compliance with the hazardous waste disposal regulations for small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant adverse impact on a substantial number of small entities.

Dated: December 28, 1981.

Anne M. Gorsuch,
Administrator.

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

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

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. Section 265.90 is amended by adding paragraph (e) to read as follows:

§ 265.90 Applicability.

(e) The ground-water monitoring requirements of this Subpart may be waived with respect to any surface impoundment that (1) is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristic under § 261.22 of this Chapter or are listed as hazardous wastes in Subpart D of Part 261 of this Chapter only for this reason, and (2) contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstration must establish, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

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