

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[SWH-FRL 2173-3]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Elsewhere in today's Federal Register the Environmental Protection Agency is promulgating standards around which hazardous waste surface impoundments, waste piles, land treatment units, and landfills will be permitted. These rules suggest some conforming changes to Part 265, the Interim Status Standards, for consistency and compatibility. Most of these are promulgated as part of today's rulemaking. A few however, potentially have more impact and could benefit, in the Agency's view, from additional public input. For these reasons, the Agency is proposing the following conforming changes.

(1) A variance to the two foot freeboard requirement for surface impoundments.

(2) Final cover performance requirements for surface impoundments and landfills.

(3) An additional variance allowing placement of some ignitable or reactive wastes in surface impoundments.

(4) More definitive requirements respecting placement of containers in landfills.

DATES: EPA will accept comments on the proposed rules on or before November 23, 1982.

ADDRESS: Comments should be sent to Docket Clerk (Docket 3004—Land Disposal Interim Status Proposal), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The public docket for this proposed rule is located in Room S-269, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 800-424-9346 (in Washington, D.C. call 382-3000) or Rodney Jenkins (202) 382-4658, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Explanation of the Proposal

Elsewhere in today's Federal Register, EPA has promulgated regulations affecting treatment, storage, and disposal of hazardous wastes in surface impoundments, waste piles, land treatment units, and landfills. Those rules establish standards that must be met for facilities to receive a permit under the Resource Conservation and Recovery Act (RCRA) hazardous waste regulatory program. Also included are a series of conforming changes to the interim status requirements of Part 265, which were made to provide consistency and compatibility. There are, however, a few additional conforming changes which the Agency believes should be adopted during interim status. Because they may have substantial impact on interim status operations as well as on the environment, and because, in most cases, the public has not had sufficient opportunity to comment on the appropriateness of applying them to the interim status period, EPA is proposing these changes today.

A. Surface Impoundments—General Operating Requirements

Section 265.222 contains the rules designed to prevent overtopping of impoundment dikes. The current interim status regulations require not only that overtopping not occur but that a minimum freeboard of two feet be maintained to ensure it. The Agency received numerous comments claiming that the two foot requirement is not necessary if the performance requirement to prevent overtopping is in place. In any event, some claimed, the two foot minimum might not be sufficient in some cases.

EPA generally agrees with these commenters and, in the Part 264 regulations, the Agency requires only that overtopping be prevented. As with most Part 264 requirements, this will be implemented through the permitting process, when the applicant will demonstrate that design features and operating practices at the facility will, in fact, prevent overtopping. During interim status, in the absence of Agency review provided by the permitting process, EPA has concern that a general performance requirement, such as "prevent overtopping", can be adequately self-implementing or readily enforced. Therefore, the Agency is proposing today to expand the two feet minimum freeboard requirement by allowing a lesser level if a qualified engineer certifies that alternate design features or operating procedures will prevent

overtopping. EPA believes that a qualified engineer can review design and operating features and adequately conclude whether overtopping is possible. The owner or operator would also be required to maintain the certification and the basis for it at the facility to facilitate enforcement inspections. The Agency believes this approach to be self-implementable and to provide a degree of protection equivalent to that of the two foot minimum.

B. Surface Impoundments—Closure and Post-Closure Care

The current interim status requirements allow surface impoundments to be closed by digging up remaining wastes and contaminated liners, equipment, and surrounding soils. Alternately, the owner or operator may solidify liquids and apply a final cover in accordance with the landfill requirements for closure (§ 265.310). Also, in the second case, he must carry out the post-closure care requirements as if his impoundment were a landfill.

The Agency does not propose to change this basic approach and, in fact, has adopted it as the basis for the Part 264 permitting standards. EPA believes that the new standards in Part 264 are more easily understood and that they are as applicable during interim status as for permitted facilities. The Agency further believes the new Part 264 rules are readily implementable during interim status as well since the existing interim status closure and post-closure care review process is similar to the review process for closure and post-closure care plans conducted during the permitting process. Therefore, the Agency is proposing to adopt, as interim status requirements, the new Part 264 closure and post-closure care requirements for surface impoundments (§ 264.228) except for some of the post-closure care requirements. (Interim status facilities are not required to have leak detection systems or leachate management facilities and, thus, the post-closure requirements of Part 264 respecting them are inappropriate for interim status facilities.)

The fundamental requirements are not greatly different than the interim status requirements promulgated on May 19, 1980. The new requirements proposed today are, however, much more explicit, identifying more clearly what is expected of the final cover. They are also somewhat more stringent. The cover must now "minimize" infiltration instead of simply "controlling" it. It must not be any more permeable than the bottom liner to prevent the "bathtub"

effect. Since the bottom liner may be highly impermeable, the cap may also have to be impermeable as well. It must also accommodate settling and subsidence. The reasons for these requirements are discussed at length in the preamble to the Part 264 requirements promulgated today elsewhere in this issue of the **Federal Register**.

The proposed interim status post-closure care requirements also contain some differences from those now in place. The new provisions require that erosion from precipitation be prevented. This requirement is appropriate for interim status just as it is for permitted units. The current interim status provisions relating to leachate collection systems, gas collection systems, maintenance of benchmarks, and restriction of access would be dropped as inappropriate under this Proposal, the first three because surface impoundments are not required to have such equipment, and the last because it is redundant to § 265.117(b).

C. Surface Impoundments—Ignitable or Reactive Waste

The existing limitations on placing ignitable or reactive waste in surface impoundments allow the practice only if placing the waste in the impoundment results in the waste not being ignitable or reactive any more; or the impoundment is used solely for emergencies. The new Part 264 requirements allow use of impoundments for ignitable or reactive waste if the waste is protected from conditions that could cause it to ignite or react. EPA doesn't expect this variance to be used much, but concedes that protection against carelessly thrown matches and from certain reactions may be practical. Since the management methods providing protection can be reviewed during permitting, EPA agrees that the new variance provides additional flexibility to the owner or operator without sacrificing human health or environmental protection.

Adoption of the same variance during interim status, however, is fraught with the same enforcement and self-implementation problems as adoption of the freeboard variance discussed in Section A. The Agency proposes to circumvent these difficulties by using the same approach proposed for the freeboard variance, namely that the owner or operator obtain certification from a qualified chemist or engineer that the design features of this facility or the operating practices employed will prevent ignition or reaction. EPA expects that a qualified engineer or chemist can evaluate the operation and

adequately determine that it is safe. Enforcement of the rule can adequately be carried out by comparing the basis for the certification kept at the facility against actual practice.

D. Landfills—Closure and Post-Closure Care

The Part 264 Subpart N requirements for closure and post-closure care promulgated today elsewhere in this **Federal Register**, are being proposed here in modified form for adoption as interim status rules. As discussed in Section B of this preamble for surface impoundments, the new rules are clearer and more explicit. Because of this, they should be more easily implemented during interim status than the existing rules.

The interim status closure and post-closure requirements in place now are very general in nature, requiring that owners or operators develop a plan to "control" infiltration based on consideration of certain factors. The new requirements are more specific and are more stringent. Covers must be designed to "minimize" infiltration instead of simply "controlling" it. They must also allow no more precipitation to pass through than would the bottom liner to prevent the "bathtub effect". Additionally, the cover must accommodate settling and subsidence. These provisions are as applicable to landfills which close under interim status as they are to permitted landfills.

The post-closure care requirements for interim status units adopted today are somewhat different than those adopted in Part 264. The Part 264 provisions include some requirements relating to unit components (e.g., leachate collection and treatment systems) which are not required during interim status. Post-closure care provisions affecting these systems would, therefore, be inappropriate.

E. Landfills—Special Requirements for Containers

The current interim status requirements mandate that empty containers be crushed flat prior to placement in the landfill. The purpose of this requirement is to minimize subsidence due to empty containers. Collapse of empty containers is thought to be a leading cause of differential subsidence which in turn poses a serious threat to the continuity and proper functioning of the final cover.

Commenters on this provision made three basic points:

(1) Small containers should be exempted,

(2) Provide guidance on when a container is empty (or full) for purposes of this rule, and

(3) Provide guidance on how much crushing and shredding is necessary to comply.

The agency agrees with all of these points, and, in the Part 264 requirements promulgated today, has accommodated points (1) and (2). The rationale for the various provisions is discussed in the Preamble to that issuance. EPA believes those provisions respond to the commenters requests with regard to interim status but wishes to propose them to obtain added comment.

The Agency is not yet able to provide more specific general guidance at present on how much shredding or crushing is necessary to comply with the rule. EPA believes that crushing sufficiently to produce a void space of 10 percent or less of the volume originally present should adequately minimize differential subsidence. The Agency is not absolutely certain, however, that shredding and crushing equipment can actually achieve that level. In the Preamble to the Part 264 promulgation, EPA has asked for data and may propose a change at a later time.

II. Classification

The regulations proposed today are Interim Status Part 265 conforming changes to the Part 264 permitting standards promulgated elsewhere in today's **Federal Register**. Considering the magnitude of the costs and impacts of the promulgated regulations, the Agency does not believe these proposed requirements will result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or in domestic or export markets. Therefore, EPA does not expect today's proposed rule to be subject to the major rule provisions of Executive Order 12291 and, therefore, does not believe that a regulatory impact analysis is necessary.

The proposed rules might have a significant impact on small entities, however, thereby triggering the requirements of the Regulatory Flexibility Act. As part of the Regulatory Flexibility Analysis being conducted for the Part 264 permitting regulations promulgated today, EPA will consider the impact of these proposed rules on small entities. The results of that analysis will be available for review,

prior to any action to finalize these proposed rules. In performing this analysis EPA will determine in more detail the costs to the economy of the proposal and, if necessary, perform a regulatory impact analysis.

The certification requirements of proposed §§ 265.222(b) and 265.229(b) are subject to the OMB clearance requirements of the Paperwork Reduction Act of 1980.

This proposal was submitted to the Office of Management and Budget for review as required by Executive Order 12291 and the Paperwork Reduction Act.

III. Request for Comment

EPA invites comments on all aspects of the proposed rule. All comments should be addressed to the Docket Clerk (see Addresses above) and should prominently bear the notation: "Docket 3004—Land Disposal Interim Status Proposal". All comments should contain specific documentation in their support.

Lists of Subjects in 40 CFR 265

Hazardous materials, Packaging and containers, Reporting and record-keeping requirement, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: July 9, 1982.

Anne M. Gorsuch,
Administrator.

For the reasons set out in the preamble, Part 265, Subparts K and N, of Title 40 of the Code of Federal Regulations are proposed to be amended 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: Sections 1006, 2002(a), and 3004 of the 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 40 CFR 265, Subpart K, §§ 265.222, 265.228, and 265.229 are revised to read as follows:

§ 265.222 General operating requirements.

(a) A surface impoundment must maintain enough freeboard to prevent any overtopping of the dike by overflowing, wave action, or a storm. There must be at least 60 centimeters (two feet) of freeboard.

(b) A freeboard level less than 60 centimeters (two feet) may be maintained if the owner or operator obtains certification by a qualified

engineer that alternate design features or operating plans will, to the best of his knowledge and opinion, prevent overtopping of the dike. The certification, along with a written identification of alternate design features or operating plans preventing overtopping, must be maintained at the facility.

§ 265.228 Closure and post-closure care.

(a) At closure, the owner or operator must:

(1) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) of this chapter applies; or

(2)(i) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

(ii) Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

(iii) Cover the surface impoundment with a final cover designed and constructed to:

(A) Provide long-term minimization of the migration of liquids through the closed impoundment;

(B) Function with minimum maintenance;

(C) Promote drainage and minimize erosion or abrasion of the cover;

(D) Accommodate settling and subsidence so that the cover's integrity is maintained; and

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

(b) In addition to the requirements of § 265.117, during the post-closure care period, the owner or operator of a surface impoundment in which wastes remain after closure in accordance with the provisions of paragraph (a)(2) of this section must:

(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 ground-water monitoring system and comply with all other applicable requirements of Subpart F of this part; and

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

§ 265.229 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a surface impoundment, unless:

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

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this chapter; and

(2) Section 265.17(b) is complied with; or

(b)(1) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; and

(2) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of his knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

(3) The certification and the basis for it are maintained at the facility; or

(c) The surface impoundment is used solely for emergencies.

3. In 40 CFR 265, Subpart N, §§ 265.310 and 265.315 are revised to read as follows:

§ 265.310 Closure and post-closure care.

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

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

(b) After final closure, the owner or operator must comply with all post-closure requirements contained in §§ 265.117–265.120 including maintenance and monitoring throughout the post-closure care period. The owner or operator must:

(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 ground-water monitoring system and comply with all other applicable requirements of Subpart F of this part;

(3) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(4) Protect and maintain surveyed benchmarks used in complying with § 265.309.

§ 265.315 Special requirements for containers.

Unless they are very small, such as an ampule, containers must be either:

- (a) At least 90 percent full when placed in the landfill; or
- (b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

[FR Doc. 82-19472 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M