ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124 and 270

[SWH-FRL 2251-6]

Hazardous Waste Management System: The Hazardous Waste Permit Program; Procedures for Decisionmaking

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency is proposing to amend its hazardous waste permit regulations today. These regulations were promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act (RCRA), and were included in the Consolidated Permit Regulations. The Agency is proposing to allow owners and operators of existing hazardous waste management facilities who submit an incomplete Part A of the RCRA permit application to receive a notice of the deficiency and an opportunity to explain or cure the deficiency before the owner or operator is subject to EPA enforcement for operation without a permit. The Agency also is proposing to amend the regulations to require that if the Administrator denies a request for a panel hearing on an initial permit for an existing hazardous waste management facility, he must give his reasons for the denial.

Today's actions are prompted by a settlement stipulation concerning these issues in the lawsuit on the Consolidated Permit Regulations. These proposed amendments will not have an economic impact on the regulated community, nor will they have any impact on public health or the environment.

DATE: EPA will accept comments on these proposed amendments until July 11, 1983.

ADDRESS: Comments on these amendments should should be addressed to the Docket Clerk (Docket 3005—Hearings), Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or in Washington, D.C. at 382-3000. For specific information on this proposed amendment, contact Deborah Wolpe, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 382-4754.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1980, and May 19, 1980, EPA promulgated regulations implementing Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.* These regulations establish the first phase of a comprehensive program for the handling and management of hazardous waste (40 CFR Parts 260-265, 45 FR 33066-33289). In addition, on May 19, 1980, EPA promulgated the Consolidated Permit Regulations, governing five permit programs.[1] On January , 1983, the Consolidated Permit Regulations were deconsolidated. Each permit program now appears in a separate Part of the Code of Federal Regulations. The changes proposed today concern only the RCRA portion of the Consolidated Permit Regulations, now codified at 40 CFR Part 270.

The Subtitle C RCRA regulations, among other things, require hazardous waste management (HWM) facilities which treat, store, or dispose of hazardous waste to obtain a permit from EPA or an authorized state [2] and require that hazardous wastes be designated for, delivered to, and treated, stored, or disposed of only in these permitted facilities.

Recognizing the EPA would not be able to issue permits to all HWM facilities before the Subtitle C program became effective, Section 3005(e) of RCRA provides that a facility that meets certain requirements will be treated as having been issued a permit until such time as final administrative action is taken on its permit application. This statutory authorization to operate a HWM facility between the effective date of the Subtitle C program (November 19, 1980) and the issuance or denial of a final permit, is known as "interim status."

Interim status is conferred on any person who:

(1) Owns and operates a facility required to have a permit, which is in existence on November 19, 1980;

(2) has complied with the requirements of Section 3010(a) of RCRA (notification of hazardous waste activity); and

(3) has made an application for a permit under Section 3005 of RCRA.

EPA has defined the term "application for a permit" under section 3005(e) to mean only Part A of the permit application [See 40 CFR 270.70]. The application for a RCRA hazardous waste management permit is in two parts—A and B. Part A includes some very basic information about a facility such as its location, owner, the wastes it handles and the processes it employs [see 40 CFR 270.13]. Part B consists of more technical information reflecting the facility standards in 40 CFR Part 264. To qualify for interm status, however, only Part A of the permit application must be submitted.

This preamble and today's proposed amendments relate to the procedural aspects of failure to qualify for interim status, and denial of a permit.

II. Failure to Qualify for Interim Status

An owner or operator of a HWM facility may fail to qualify for interim status for any of the reasons listed in the statute as prerequisites to interim status: (a) The facility was not in existence on or before November 19, 1980; (b) the owner or operator failed to comply with Section 3010 of RCRA (*i.e.*, failed to notify, if required); or (c) the owner or operator failed to submit Part A of his permit application on time.[3] In addition, an owner or operator may fail to qualify for interim status if he fails to submit a complete Part A permit application. Section 270.70 of the regulations currently states that if, upon examination or reexamination of a Part A application, EPA determines that it fails to meet the standards of the regulations, EPA may notify the owner or operator that the application is deficient. Section 270.70 provides that the result of such a determination is that the owner or operator is not entitled to

[1] The five permit programs which were covered by the Consolidated Permit Regulation are: the hazardous waste management (HWM) program under Subtitle C of RCRA, the Underground Injection Control (UIC)-program under Part C of the Safe Drinking Water Act, the National Pollutant Discharge Elimination System (NPDES) program under section 402 of the Clean Water Act, the "Dredge and Fill" program under section 404 of the Clean Water Act, and the Prevention of Significant Deterioration (PSD) program under regulations implementing section 165 of the Clean Air Act [45 FR 33290-33588 (May 19, 1980), previously codified at 40 CFR Parts 122-124].

[2] Pursuant to Section 3006 of RCRA, a state may obtain authorization to run the hazardous waste program in lieu of the Federal program. For a discussion of state authorization of the RCRA program, see the preamble to 40 CFR Part 123 (now Part 271) in the May 19, 1980 Federal Register, 45 FR 33386, and the preamble discussion accompanying the January 26, 1981 amendments to those regulations, 46 FR 8298; and subsequent amendments on July 26, 1982, 47 FR 32373.

[3] Failure to file a Part A on time may not always result in a failure to qualify for interim status. The Agency may, by compliance order issued under Section 3008 of RCRA, extend the date by which the owner or operator of an existing HWM facility may submit Part A of its permit application, as there is no statutory deadline for submitting the permit application. [See 40 CFR 270.10(e)(3)].

interim status, and is subject to EPA enforcement for operating without a permit.

Petitioners in the litigation on the Consolidated Permit Regulations, *NRDC* v. *EPA*, No. 80–1607, and consolidated cases (D.C. Cir., filed June 2, 1980),[4] argued that a determination that an owner or operator never acquired interim status cannot be made without some procedural safeguards. They argued that notice and opportunity for comment are necessary before the Agency can require a facility to cease operations because it failed to qualify for interim status.

The Agency believes that, as a practical matter, there are procedural safeguards already in place. It is standard operating procedure to allow a facility to correct, explain, or resubmit Part A of the permit application if it is found deficient, although such a procedure is not included in the regulations. To assuage petitioners' concerns, however, the Agency is today proposing to amend § 270.70 to expressly provide that before EPA determines that Part A of a permit application is deficient, it will notify the owner or operator in writing of the apparent deficiency. The notice will specify the grounds for EPA's belief that the application is deficient, and will give the owner or operator 30 days from the date of receipt to respond to the notification and to explain or cure the deficiency. If, after such notice and opportunity for response, EPA still finds that the application is deficient, it then can take appropriate enforcement action.

Some petitioners asserted that, in addition to notice and opportunity for comment on EPA's decision that a Part A application is deficient, the permit applicant should be granted a hearing on request. In EPA's view, a hearing is unnecessary. The statute does not require a hearing and issues in controversy should be simple and straight-forward enough to be resolved without resort to a hearing.

This proposal would put in regulatory form what is already standard Agency procedure. EPA believes that it is reasonable to give permit applicants an opportunity to cure deficient applications. Today's proposal would guarantee applicants that opportunity.

III. Opportunity for a Hearing Prior to Denial of an Initial Permit

As stated earlier, Section 3005(e) of RCRA states that any person who owns or operates an existing facility meeting the criteria listed in that section, shall be treated as having been issued a RCRA permit until such time as final administrative disposition of the permit application is made. Final administrative disposition occurs when EPA either issues or denies the permit.

The petitioners in the NRDC lawsuit raised several issues concerning the issuance or denial of an initial RCRA permit. They argued that due process requires the opportunity for a hearing before a permit is denied for a facility operating under interim status. In addition, they argued that the imposition of extensive, expensive, conditions in a permit might be tantamount to a denial of a permit, therefore a hearing should be available in such situations as well. The petitioners admitted that a full evidentiary hearing would not be necessary in every case, but some type of hearing ought to be available.[5]

EPA's position with respect to formal adjudicatory hearings was stated in the preamble to the May 19, 1980 regulations. It is EPA's position that such hearings are not required for the issuance of RCRA permits. The Agency stated that the requirements of due process are flexible, and that other procedures may be used which can be adapted to the nature of the problem being addressed (See 45 FR 33409–33411).

EPA believes that the current regulations meet the applicable due process tests. The regulations provide for notice of what the Agency proposes to do, an opportunity to challenge that proposal both through written comments and an informal public hearing, and a response to comments and a decision based on the administrative record.

Petitioners believed that the May 19, 1980 regulations only gave a right to this public hearing in situation were EPA proposed to issue a permit, and not when the Agency proposed to deny a permit. As promulgated on May 19, 1980, section 124.12(a) stated that the Director shall hold a public hearing whenever there is a " * * * significant degree of public interest in a draft permit." EPA's intention when promulgating this regulation was to provide a public hearing in situations where EPA issues either a tentative decision to issue or to deny a permit. In fact, a notice of intent to deny a permit is considered a draft permit.[6] This was clarified in amendments promulgated on July 15, 1981 (46 FR 36704) in response to an amendment to Section 7006(b) of RCRA.

As stated in the preamble to those amendments, the Agency intends that the requirement to hold an informal hearing (when one is requested) apply to cases where the Agency has tentatively decided to deny a permit as well as when the Agency has tentatively decided to issue a permit. All that RCRA and due process require is the opportunity for an informal hearing. That opportunity exists both for the issuance and denial of a RCRA permit.

The petitioners also were concerned that in some instances, there would be complicated factual issues that could be addressed better through a formal, rather than an informal, hearing. As the regulations are currently written, the Regional Administrator always has the discretion to hold a formal panel hearing. However, the petitioners objected to a lack of assurance in the regulations that they would receive a written response to a request for such a hearing, should the Regional Administrator deny the request. They were concerned that there would be situations were EPA and the permit applicant would disagree about changes necessary to bring the facility into compliance with the regulations. In situations where the Regional Administrator proposes to issue a permit, but the applicant disagrees as to major permit conditions, the petitioners want the opportunity for a panel hearing.

As a matter of policy, EPA has determined that permit applicants should have an opportunity for a panel hearing when there is a tentative decision to deny the initial permit for an

[4] For further discussion of the *NRDC* v. *EPA* case and the settlement agreement filed on the RCRA-related issues, see the preamble to the proposed amendments on owner signature and certification, 47 FR 32038 (July 23, 1982).

[5] There are three types of hearings available under Part 124. These are: (1) Public hearings. Public, or informal, hearing must be held whenever the Director receives written notice of opposition to a RCRA draft permit and a request for a hearing within 45 days of public notice of the draft permit [See 40 CFR 124.121]; (2) Evidentiary hearings. Evidentiary hearings under Subpart E of Part 124 are formal adversarial hearings conducted by a judicial officer pursuant to formal rules of practice. Evidentiary hearings are available under Section 3008 of RCRA in connection with the termination of a RCRA permit. They are not available upon the issuance or denial of a RCRA permit. See 40 CFR 124.12 and 124.71(a) and the preamble discussion at 45 FR 33409–11; and (3) Panel hearings. Panel hearings under Subpart F of Part 124 are nonadversarial hearings before a panel consisting of three or more EPA employees having special expertise or responsibility in areas related to the issues to be decided. A panel hearing is available whenever the Regional Administrator determines that as a matter of discretion, it would be an appropriate way to process a draft permit. Evidentiary hearings and Panel hearings are both considered formal adjudicatory hearings, as they conform to the formal hearing requirements of the Administrative Procedure Act.

[6] If the Director tentatively decides to deny the permit, he issues a "notice of intent to deny" the permit. A notice of intent to deny is a type of draft permit, which is processed under the same procedures as any draft permit [See 40 CFR 124.6(b)].

existing facility, and where the applicant and EPA disagree on major conditions in the initial draft permit for an existing facility. Today's proposed amendment to § 124.12(e)(2) provides assurance that such a hearing will not be arbitrarily denied.

Under today's proposal, the permit applicant may request a panel hearing pursuant to §124.114. Such a request must be made before the end of the 45-day public comment period. The applicant must explain in his request why he believes that the issues for which he requests a hearing are genuine issues of material fact, and are issues which are determinative with respect to one or more contested permit conditions. If the Regional Administrator denies the request for a panel hearing, he must send a brief written statement to the applicant explaining his reasons for concluding that no determinative issues have been presented for resolution in a panel hearing.

This proposal would give the petitioners the assurance they want that a panel hearing will not be unreasonably denied.

It should be noted that in circumstances where the Administrator remands an appeal to the Regional Administrator, the Administrator may direct the Regional Administrator to hold a non-adversary panel hearing, if none has been held before.

VI. Economic Impact

These proposed amendments will not have any economic impact on the regulated community. as stated in the background information, it is standard operating procedure for the Agency to allow an applicant the opportunity to correct, explain or cure an incomplete Part A of the RCRA permit. This proposal, therefore does not change anything but the regulatory language.

The second regulatory change requires the Regional Administrator to provide a written reason for denying an applicant's request for a formal hearing. This proposed change increases the paperwork of the Regional Administrator, but does not affect the regulated community.

VII. Request for Comments

The Agency invites comments on all aspects of these proposed regulations. EPA anticipates that finalization of today's proposal will provide part of the basis for the settlement of the *NRDC* v. *EPA* litigation affecting the RCRA portion of the Consolidated Permit Regulations. However, EPA will carefully consider all public comments on this proposal before making its final decision.

VIII. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations, and revisions thereto take effect six months after their promulgation. In addition, Section 553(d) of the Administrative Procedure Act requires publication of a substantive rule not less than 30 days before its effective date. The purpose of these requirements is to allow the regulated community sufficient lead time to prepare to comply with major new regulatory requirements. For the amendments proposed today, however, the Agency believes that an effective date 30 days or six months after promulgation would cause unnecessary disruption in the implementation of the regulations and might deny the public certain safeguards in the permitting process. These amendments, if promulgated in final form, would not impose substative requirements on the regulated community, but rather would guarantee certain procedural safeguards. The Agency believes that this is not the type of regulation that Congress had in mind when it provided a delay between the promulgation and the effective date of revisions to regulations. Consequently, EPA believes that it will have good cause to make these amendments effective immediately if and when they are promulgated in final form, but requests comments on whether such action would cause hardship for the regulated community or would otherwise be inappropriate.

IX. Executive Order 12291

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to 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 on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not major because it will not result in an effect on the economy of $100 million or more. It merely provides some procedural safeguards upon the failure to qualify for interim status and the issuance or denial of a RCRA permit. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This amendment is not a major regulation, therefore no Regulatory Impact Analysis is being prepared.

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

X. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the reporting or recordkeeping provisions that are included in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval under Section 3504(h) of the Act. Any final rule will include an explanation of how the reporting or recordkeeping provisions contained therein respond to any comments by OMB or the public.

XI. President's Task Force on Regulatory Relief

The President's Task Force on Regulatory Relief designated the Consolidated Permit Regulations (40 CFR Parts 122–124) for review by EPA. This proposal supports the goals of the Task Force by reducing the burden of the RCRA portion of the Consolidated Permit Regulations (now deconsolidated) on the regulated community. This proposal also fulfills one of EPA's obligations in the settlement of industry litigation on the RCRA portion of the Consolidated Permit Regulations. In addition to issuing proposals aimed at settling the litigation, the Agency has deconsolidated the regulations to make them more easily usable by the public. As a result of deconsolidation, there was some reorganization of the regulations. Thus, this proposed amendment is in somewhat different format and location than it appeared in the settlement agreement.

XII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of proposed rulemaking for any rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility

analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment imposes no substantive requirements on the regulated community. Accordingly, I hereby certify that this proposed regulation, if issued in final form, will not have a significant economic impact on a substantial number of small entities.

Dated: April 26, 1983.

Lee L. Verstandig,

Acting Administrator.

List of Subjects

40 CFR Part 270

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Waste pollution control, Water supply, Indians—lands.

PART 270—[AMENDED]

It is proposed that 40 CFR Parts 270 and 124 be amended as follows:

1. The authority citation for Part 270 reads as follows:

Authority: Sections 1006, 2002(a), 3005, 3007 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA) (42 U.S.C. 6901, 6912(a), 6925, 6927 and 6974).

2. In Part 270, it is proposed to amend § 270.70 by revising paragraph (b) to read as follows:

§ 270.70 Qualifying for interim status.

* * * * *

(b) *Failure to qualify for interim status.* If EPA has reason to believe upon examination of a Part A application that it fails to meet the requirements of § 270.13, it shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for EPA's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in his Part A application. If, after such notification and opportunity for response, EPA determines that the application is deficient it may take appropriate enforcement action.

PART 124—[AMENDED]

3. The authority citation for Part 124 reads as follows:

Authority: The Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; the Clean Water Act, 33 U.S.C. 1251 *et seq.*; the Clean Air Act, 42 U.S.C. 1857 *et seq.*

4. In Part 124, it is proposed to amend § 124.12 by revising paragraph (e) to read as follows:

§ 124.12 Public hearings.

* * * * *

(e)(1) At his or her discretion, the Regional Administrator may specify that RCRA or UIC permits be processed under the procedures in Subpart F.

(2) For initial RCRA permits for existing HWM facilities, the Regional Administrator shall have the discretion to provide a hearing under the procedures in Subpart F. The permit applicant may request such a hearing pursuant to § 124.114 on one or more issues, if the applicant explains in his request why he or she believes those issues: (1) Are genuine issues of material fact and; (2) are determinative with respect to one or more contested permit conditions, identified as such in the applicant's request, that would require extensive changes to the facility ("contested major permit conditions"). If the Regional Administrator decides to deny the request, he or she shall send to the applicant a brief written statement of his or her reasons for concluding that no such determinative issues have been presented for resolution in such a hearing.

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40 CFR Parts 264 and 270

[SW FRL 2251-7]

Hazardous Waste Management System: Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and the Hazardous Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the hazardous waste permit regulations. The regulations require, among other things, that a permittee under the Resource Conservation and Recovery Act maintain records of all ground-water monitoring data for the active life of the hazardous waste mangement facility. Today's proposal would change this requirement to allow the permittee to retain records of ground-water monitoring data for ten consecutive years only. This proposal eliminates a burdensom recordkeeping requirement without compromising protection of human health and the environment.

This amendent, if promulgated in the same form as proposed here, would result in an estimated savings to the regulated community of approximately $45,000 a year by reducing the burden of retaining ground-water monitoring records.

DATE: EPA will accept comments on this proposal until July 11, 1983.

ADDRESS: Comments should be addressed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the docket as "Docket 3004—Ground-water Monitoring Data."

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline toll-free at (800) 424-9346 or in Washington, D.C. at 382-3000; or Deborah Wolpe, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 382-4754.

SUPPLEMENTARY INFORMATION: On February 26, 1980, and May 19, 1980, EPA promulgated regulations implementing Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.* These regulations established the first phase of a comprehensive program for the handling and management of hazardous waste (40 CFR Parts 260-265, 45 FR 33066-33289). In addition, on May 19, 1980, EPA promulgated the Consolidated Permit Regulations governing five permit programs.[1] On January ——, 1983, the Consolidated Permit Regulations were deconsolidated. Each of the five permit programs now appears in a separate Part of the Code of Federal Regulations. The changes proposed today affect only

[1] The five permit programs which were covered by the Consolidated Permit Regulations are: The Hazardous Waste Management (HWM) program under Subtitle C of RCRA, the Underground Injection Control (UIC) program under Part C of the Safe Drinking Water Act, the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Clean Water Act, the State "Dredge or fill" program under Section 404 of the Clean Water Act, and the Prevention of Significant Deterioration (PSD) program under regulations implementing Section 165 of the Clean Air Act. [Previously codified in 40 CFR Parts 122-124, 45 FR 33290-33588].

the hazardous waste permit program under Subtitle C of RCRA, now codified at 40 CFR Part 270.

Section 270.30 lists conditions which are applicable to all RCRA permits. Among them is a requirement that the permittee retain records of all monitoring information for a period of at least three years from the date of the sample, measurement, report or application. See 40 CFR 270.30(j)(2) [originally § 122.7(j)(2)]. Section 270.30(j)(2) additionally requires, however, that the permittee maintain records "from all ground-water monitoring wells and associated ground-water surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well."

In addition, 40 CFR 264.73 states that the owner or operator of a permitted facility must keep a written operating record at the facility containing certain information, including ground-water monitoring data, which must be included in the operating record *until closure* of the facility. (See 40 CFR 264.73(b)].

Section 270.30(j)(2) has been challenged as unreasonable in a lawsuit on the Consolidated Permit Regulations, *NRDC* v. *EPA*, No. 80–1607 and consolidated cases, (D.C. Cir., filed June 2, 1980).[2] Petitioners in the suit claimed that this requirement of maintaining records for the active life of the facility is unnecessary, as the permit-issuing authority can readily obtain the necessary information from the RCRA annual reports required under 40 CFR 265.75(f) and 265.94.[3]

Athough EPA does not agree that it is duplicative to require the facility owner or operator to maintain such data for the lifetime of the facility, the Agency believes that this recordkeeping requirement is more burdensome than it need be. The Agency is therefore proposing to amend § 270.30(j)(2) to require the permittee to retain records of all ground-water monitoring activities for ten consecutive years only, and to amend § 264.73 to require that the permittee maintain the ground-water monitoring data in the facility's written operating record also for ten years. The Agency believes that ten years is a reasonable period of time to require the facility owner or operator to maintain records. In addition to this ten year record of monitoring data, ground-water quality background values will be specified in the permit itself. The last ten years of ground-water monitoring data, in addition to the background values is sufficient information for the facility owner or operator and EPA to make a realistic assessment of changes in ground-water quality.

It should be noted that on a case by case basis, EPA may always require a facility to retain the ground-water monitoring records for more than ten years. Section 264.74 states that the retention period for all records under Part 264 is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Administrator for other reasons. Therefore, the effect of this proposal would be to eliminate a burdensome recordkeeping requirement without compromising EPA's access to information, or the protection of human health and the environment.

IV. Request for Comments

The Agency invites comments on all aspects of these proposed regulations. EPA anticipates that finalization of today's proposal will provide part of the basis for settlement of the *NRDC* v. *EPA* litigation affecting the RCRA portion of the Consolidated Permit Regulations. However, EPA will carefully consider all public comments on this proposal before making its final decision. EPA is specifically requesting comments on whether reducing the recordkeeping requirement for groundwater monitoring data to ten years is sufficient to meet the objectives of Subpart F, and whether it is clear that this proposal requires the owner or operator to retain the data from the last ten consecutive years, and not any random ten years.

V. Economic Impact

The change proposed today will only affect facilities that require ground water monitoring, i.e, landfills, surface impoundments, land treatment units and some waste piles.

EPA estimates that this proposal will reduce compliance costs to the regulated community by approximately $45,000 a year. This represents an annual cost savings of approximately $30 per facility.

VI. Executive Order 12291

Under Executive Order 12291, (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to 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 on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not major because it will not result in an effect on the economy of $100 million or more annually. Although it will effect the economy, the effect will not be the result of an increase in costs or prices to industry in terms of compliance with the regulations. Rather, the effect is to reduce the cost of compliance slightly. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this amendment is not a major regulation, and no regulatory impact analysis is being prepared.

This amendment was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the Office of Solid Waste Docket, Room S–269, U.S. EPA, 401 M Street, SW, Washington, D.C., 20460.

VII. Paperwork Reduction Act

The information reporting and recordkeeping provisions in this rule have been submitted for approval to the Office of Management and Budget (OMB) under Section 3504(b) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Any final rule will explain how its reporting or recordkeeping provisions respond to any OMB or public comments.

VIII. President's Task Force on Regulatory Relief

The President's Task Force on Regulatory Relief designated the Consolidated Permit Regulations (40 CFR Parts 122–124) for review by EPA. This proposal supports the goals of the Task Force by reducing the burden on the regulated community. This proposal also fulfills one of EPA's obligations in the settlement of the RCRA portion of industry litigation on the Consolidated Permit Regulations. In addition to

[2] For further discussion of the *NRDC* v. *EPA* lawsuit and the settlement agreement filed on the RCRA-related issues in the case, see the preamble to the proposed amendments to §§ 122.4 and 122.7 concerning owner signature and certification, (now §§ 270.7 and 270.11), 47 FR 32038 (July 23, 1982).

[3] This was the litigants' actual argument. Their assumption was that Part 264 would contain requirements very similar to §§ 265.75(f) and 265.94. In fact, however, the Part 265 requirements do not apply to permitted facilities. There currently is no such requirement that ground-water monitoring data be reported in the annual report for permitted facilities (Part 264). Therefore, the argument that maintaining these records at the permitted facility is duplicative has no basis.

issuing proposals aimed at settling the litigation, the Agency has deconsolidated the regulations to make them more easily usable by the public. As a result of deconsolidation, there was some reorganization of the regulations. Thus, this proposed amendment is in somewhat different format and location than it appeared in the settlement agreement.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have a significant economic impact on a substantial number of small entities because it imposes no new substantive requirements. It will result in a slight reduction of regulatory requirements. Accordingly, I hereby certify that this proposed regulation, if issued in final form, will not have a significant economic impact on a substantial number of small entities.

Dated: April 26, 1983.

Lee. L. Verstandig,

Acting Administrator.

List of Subjects

40 CFR Part 264

Hazardous materials, Packaging and containers, Recordkeeping and reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Hazardous material, Air pollution control, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

PART 270—[AMENDED]

It is proposed that Title 40, Part 270 of the Code of Federal Regulations be amended as follows:

1. The authority citation for Part 270 reads as follows:

Authority: Sections 1006, 2002(a), 3005, 3007 and 7004 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), 6925, 6927 and 6974).

2. It is proposed that 40 CFR Part 270 be amended by revising paragraph (j)(2) of § 270.30 to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(j) * * *

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. The permittee shall maintain records of all ground-water monitoring data and associated evaluations for ten years. Whese time periods may be extended by request of the Director at any time.

PART 264—[AMENDED]

3. The authority citation for Part 264 reads as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010 and 7004 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), 6921 through 6927, 6930 and 6974).

4. It is proposed that 40 CFR Part 264 be amended by revising paragraph (b) of § 264.73 to read as follows:

§ 264.73 Operating record.

* * * * *

(b) The following information, other than the Subpart F ground-water monitoring data required in paragraph (b)(6) of this section, must be recorded, as it becomes available, and maintained in the operating record until closure of the facility. Data associated with Subpart F ground-water monitoring must be recorded, as it becomes available, and maintained in the operating record for ten years.

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[FR Doc. 83-12490 Filed 5-9-83; 8:45 am]

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40 CFR Part 270

[SW H-FRL 2251-8]

Hazardous Waste Management System; the Hazardous Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend its hazardous waste permit regulations to allow some hazardous waste permits to be automatically transferred from the original permitted owner to the new owner of a hazardous waste treatment, storage, or disposal facility if the original owner gives 90 days advance notice of the transfer. This proposal would only allow such transfers to occur automatically if the new owner makes no changes in the operation of the facility, and meets other prerequisites specified in these proposed regulations.

Because these amendments are proposed, they will have no immediate economic impact. If these amendments are promulgated in the same form as proposed today, the Agency expects that they will result in a minimal savings to the regulated community. The savings would be realized by reducing the time and procedural requirements involved in transferring a permit to a new owner or operator. There would be no impact on the environment as this proposal would result in a reduction of paperwork, but no reduction of substantive requirements.

DATE: The Agency will accept comments on these proposed amendments until July 11, 1983.

ADDRESS: Comments on these amendments should be addressed to the Docket Clerk (Docket 3005—Transfers of Permits), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA hotline toll-free at (800) 424-9346 in Washington, D.C. at (202) 382-3000; or Deborah Wolpe, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 382-4754.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 26, 1980 and May 19, 1980, EPA promulgated regulations implementing Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.* These regulations established the first phase of a comprehensive regulatory program for the handling and management of hazardous waste (40 CFR Parts 260-265, 45 FR 33066-33289). In addition, on May 19, 1980, EPA promulgated the Consolidated Permit Regulations governing five permit programs.[1] (40

[1] The five permit programs which were governed by the Consolidated Permit Regulations are: the

CFR Parts 122–124, 45 FR 33290–33588). Subsequently, on January ——, 1983, the Consolidated Permit Regulations were deconsolidated. Each of the five permit programs now appears in a separate Part of the Code of Federal Regulations. The changes proposed today concern only one of these permit programs—the hazardous waste permit program under Subtitle C of RCRA, now located at 40 CFR Part 270.

The Subtitle C regulations require, among other things, that facilities which treat, store, or dispose of hazardous waste obtain a permit from EPA or an authorized state,[2] and require that hazardous wastes be designated for, delivered to, and treated, stored, or disposed of only in these permitted facilities. A RCRA permit is obtained by the owner, and, if the facility is owned by one person and operated by another, by the operator of a hazardous waste management (HWM) facility. See 40 CFR 270.7(b).

The privileges associated with a RCRA permit attach only to the person authorized to conduct the permitted activity and are not inherently assignable. As a practical matter, however, the Agency allows changes in ownership or operational control of some facilities to occur without requiring the issuance of an entirely new permit.

II. Current Regulations on Transferring Permits

Permits are not transferable to any person except after notice to the Director.[3] When the Director receives notice of a proposed change in ownership or operational control, he decides whether the change should involve: (1) A revocation and reissuance of the permit; (2) a "major" modification to the existing permit; or (3) a minor modification to the existing permit.[4] The type and extent of the changes to the permit necessitated by the transfer of control determine whether and how the permit will be transferred. Each of these approaches entails different procedures and consequences.[5]

A. Transfer by Revocation and Reissuance

The Director may require revocation and reissuance of any permit that is being transferred. As a practical matter, such procedures probably would be invoked only when the new owner or operator proposes significant changes to the facility such as changes in the processes used and the wastes handled.

The revocation and reissuance of a permit entails essentially the same procedures as issuance of a permit. A new permit application must be submitted, and all applicable procedures in 40 CFR Part 124 must be followed, i.e., a draft permit must be prepared, and public notice and an opportunity for public comment and hearing on the draft permit must be given. The entire permit is reopened when a permit is being revoked and reissued.

This method of transferring permits is therefore time-consuming. For this reason it generally will be used only when the new owner or operator will change the operation of the entire facility significantly.

B. Transfer by "Major" Modification of the Permit

In many cases, a change in ownership or operational control will involve only a modification to the existing permit, rather than a complete revocation of the existing permit and issuance of a new permit. A modification generally should be adequate if the changes necessitated by the transfer do not entail numerous significant changes to the existing permit. For example, if the new pemittee proposes changes to the closure or post-closure plan, or financial mechanisms, but not the actual operation of the currently permitted facility, a major modification should be sufficient.

A major modification to a permit still requires that the procedures outlined in 40 CFR Part 124 (i.e., draft permit, public notice etc.) be followed. However, only those portions of the permit application concerning the conditions being changed or added is required, and only those permit conditions which are being modified are reopened at this time. Thus, the public is informed of the changes and has an opportunity to comment, but the transfer would not be as involved or time-consuming as a transfer which entails revocation and reissuance of a permit. Of course the permittee may always request that the transfer be handled as a revocation and reissuance, rather than a modification to an existing permit.

C. Transfer by Minor Modification of the Permit

Some changes in ownership or operational control may require only a minor modification of the permit under 40 CFR 270.42(d). Section 270.42 provides that, in certain circumstances, with the consent of the permittee, the Director may modify a permit without following the procedures of Part 124 when there is a change in ownership or operational control. A transfer may only be handled as a minor modification to the permit if the Director determines that no changes to the permit other than the change in ownership or operational control (and any other changes listed in § 270.42 as minor modifications[6] are necessary, and provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Director. (See 40 CFR 270.42(d)). For example, a transfer of control between subsidiaries of the same corporation should involve only a change in name, and therefore could be treated as a minor modification to the permit.

A minor modification may be processed much faster than either a major modification, or a revocation and reissuance, as no draft permit need be prepared, and no public notice procedures are required. However, the permittee must wait for EPA to act on the modification before the transfer may take place, and transfer by minor modification is only available under very limited circumstances.

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hazardous waste management (HWM) program under Subtitle C of RCRA; the Underground Injection Control (UIC) program under Part C of the Safe Drinking Water Act; the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Clean Water Act; the State "Dredge or Fill" program under Section 404 of the Clean Water Act; and the Prevention of Significant Deterioration (PSD) program under regulations implementing Section 165 of the Clear Air Act.

[2] Section 3006 of RCRA provides that the Administrator of EPA shall authorize state hazardous waste management programs to operate in their respective jurisdictions in lieu of the Federal program. Such programs must meet minimum EPA guidelines. See the preamble to 40 CFR Part 123 (now Part 271) in the May 19, 1980 **Federal Register**, 45 FR 33386; the preamble discussion accompanying the January 26, 1981 amendments to those regulations, 46 FR 8298; and subsequent amendments on July 26, 1982, 47 FR 32373.

[3] The term "Director" as used in the hazardous waste permit regulations, is defined to mean the EPA Regional Administrator or the State Director of an authorized state program, as the circumstances require. See 40 CFR 270.1.

[4] See 40 CFR 270.30(1)(3). The Director may require modification or revocation or reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.

[5] Automatic transfers are allowed for NPDES and certain UIC permits only, but not RCRA permits. See 40 CFR 122.61 and 144.38.

[6] The other changes listed in § 270.42 as minor modifications to RCRA permits are changes in the lists of facility coordinators or equipment in the contingency plan; changes in the estimates of maximum inventory in the closure plan; changes in the estimates of the expected year of closure; changes approving periods longer than 90 or 180 days for the time allowed for closure; certain changes in the trial burn for incinerators; and certain changes in land treatment programs. The Agency is planning to propose to expand the list of minor modifications in the near future.

D. Automatic Transfer of Permits

The regulations currently do not provide for automatic transfers of RCRA permits. However, NPDES and some UIC permits may be transferred to a new permittee automatically, if the requirements of §§ 122.61 or 144.38 are fulfilled. For an NPDES or UIC permit to be transferred automatically, the current permittee must notify the Director at least 30 days in advance of the proposed transfer date, and include in the notice a written agreement containing a specific date for the transfer of permit responsibility, coverage and liability. The transfer is automatic if the Director does not notify them of his intent to modify or revoke and reissue the permit within the 30 days.

For NPDES and UIC permits that are automatically transferred under §§ 122.61 or 144.38 the cause for modification survives the transfer, so that the Director may later modify the permit to reflect the changes to the facility resulting from the transfer, without holding up the transfer. This procedure allows a transfer to take place with no delay other than the 30-day notice period. This procedure is less burdensome on new owners or operators, therefore, as they need not wait for EPA to make the change to the permits, as they do when the permit is modified or revoked and reissued prior to the actual transfer.

III. Proposed Changes

Section 270.40, concerning transfers of RCRA permits, has been challenged as unreasonably restrictive. Industry petitioners, in settlement discussions dealing with the lawsuit on the consolidated permit regulations,[7] have argued that requiring a modification or revocation and reissuance of a permit for most RCRA permits before a transfer may take place is unduly burdensome. They have asserted that the requirements, details, and formalities attending property transfers are burdensome enough without involving EPA. Thus, they suggest that EPA should allow transfers of RCRA permits under an approach similar to that used for NPDES and UIC permits, allowing "automatic" transfers of permits for RCRA facilities.

Today the Agency is proposing to allow some RCRA permits to be transferred automatically, under a scheme similar to that used for NPDES and some UIC permits. The Agency agrees that many transfers ought to be subject to a streamlined transfer procedure, one not involving prior Agency action.

Today's proposal provides that a transfer may take place "automatically" if the new permittee proposes no changes in the operation of the facility and the Director receives notice from the existing permittee at least 90 days in advance of the proposed transfer date and receives a written agreement containing: (1) A specific date for transfer of permit responsibility, coverage and liability; (2) a demonstration that the financial responsibility regulations will be met by the new permittee, including a copy of the appropriate documents; and (3) a signed statement by the new permittee agreeing to comply with the existing permit conditions and the revised financial instruments.

If the new permittee does not receive notice from the Director within the 90-day advance notice period that modification or revocation and reissuance is necessary prior to the transfer, the transfer is effective on the date specified in the notice. EPA would plan to modify the permit, after the date of transfer, to reflect the new owner or operator's name and the revised financial instruments. If, however, the Director gives notice within the 90-day advance notice period, that a major or minor modification or revocation and reissuance of the permit is necessary prior to the transfer, the applicable procedures must be followed.

This is a change from the May 19, 1980 regulations. In the preamble to those regulations, the Agency stated that for RCRA facilities, it would always be necessary to modify the permits upon the transfer of ownership or operational control of the permitted facility. EPA had determined that this was necessary because we believed that all RCRA permits would contain conditions which would be personal to the permittee and which necessarily would change when the permittee changes, such as the closure and post-closure plans, the contingency plan, and provisions for financial responsibility.

The Agency no longer believes that all of the closure, inspection, and contingency plans are personal to the permittee. Many can be generally applicable to the facility. To expedite transfers of property, EPA is proposing to allow an automatic transfer of the permit when these conditions would not change, and then later process the facility's change of name and financial instruments as a modification to the permit.

It will be up to the original and new permittees whether they wish to apply to the Director for an automatic transfer or a minor modification, the major difference being that for a minor modification, they would wait for the Agency to take action on the permit modification before the transfer takes place.

it should be noted that EPA does not intend to allow any automatic transfers where a major modification to the permit would be necessary.

Ninety days is the same amount of advance notice that is required by EPA for transfers of facilities during interim status. (See 40 CFR 270.72). The Agency believes that in most cases, it needs that amount of time to review the revised financial instruments. It has been the Agency's experience, however, that the 90-day notice period may need to be shortened in certain circumstances, *e.g.*, a court-ordered transfer of ownership necessitating a permit transfer in less than 90-days. Therefore, the Agency is proposing to add a provision to § 270.40(b) that for good cause shown by either the existing or new permittee, the Director may allow a shorter advance notice period.

The Director must get actual notice of the transfer before the 90-days advance notice period begins. The permittee is therefore advised to send his notice by certified mail.

IV. Transfer of State Permits

Many states preclude any permit transfers and require that new facility owners apply for and obtain a new permit in all instances of changes in ownership or operational control. This proposal would not affect transfers of permits in states which preclude permit transfers under state law because Section 3009 of RCRA allows States to impose requirements that are more stringent than those imposed by the Federal regulations.

V. Economic Impact

EPA estimates that the savings attributable to this proposal would be equal to the difference between the cost of a minor modification to a permit and the cost of the automatic transfer (i.e., difference in when the modification to the permit occurs). This amendment merely allows the permittee a measure of convenience, by assuring the permittee that he may make his modification within 90 days. Because the cost of this convenience is negligible, there would be very little if any cost savings.

[7] *NRDC* v. *EPA*, No. 80-1607 and consolidated cases (D.C. Cir., filed June 2, 1980). For further discussion of the lawsuit and the settlement agreement dealing with the RCRA-related issues in the case, see the preamble to the proposed amendments to §§ 122.4 and 122.6 (now §§ 270.7 and 270.11), 47 FR 32038 (July 23, 1982).

VI. Request for Comments

The Agency invites comments on all aspects of these proposed regulations. EPA anticipates that finalization of today's proposal will provide part of the basis for the settlement of the *NRDC v. EPA* lawsuit on the RCRA portion of the conslidated permit regulations. However, EPA will carefully consider all public comments on this proposal before making its final decision.

VII. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations, and revisions thereto take effect six months after their promulgation. In addition, section 553(d) of the Administrative Procedure Act requires publication of a substantive rule note less than 30 days before its effective date. The purpose of these requirements is to allow the regulated community sufficient lead time to prepare to comply with major new regulatory requirements. For the amendments proposed today, however, the Agency believes that an effective date six months after promulgation would cause unnecessary disruption in the implementation of the hazardous waste management program and would contravene the purpose of these amendments. These amendments, if promulgated in final form, would allow some RCRA permits to be transferred from a permittee to a new owner or operator without prior modification or revocation and reissuance.

The Agency believes that this is not the type of regulation that Congress had in mind when it provided a delay between the promulgation and the effective date of revisions to regulations. Indeed, this is a rule that would relieve an existing restriction. (See 42 U.S.C. 553(d)(1)). Consequently, EPA believes that it will have good cause to make these amendments effective immediately if and when they are promulgated in final form, but requests comments on whether such action would cause hardship for the regulated community or would otherwise be inappropriate.

VIII. Executive Order 12291

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a regulatory Impact Analysis. A major rule is defined as a regulation which is likely to 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 on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulation is not major because it will not result in an effect on the economy of $100 million or more. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This amendment is not a major regulation, therefore no Regulatory Impact Analysis is being prepared.

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

IX. Paperwork Reduction Act

The reporting or recordkeeping provisions in this rule have been submitted for approval to the Office of Management and Budget (OMB) under Section 3504(b) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.* Any final rule will explain how its reporting or recordkeeping provisions respond to any OMB or public comments.

X. President's Task Force on Regulatory Relief

The President's Task Force on Regulatory Relief designated the Consolidated Permit Regulations (40 CFR Parts 122–124) for review by EPA. This proposal supports the goals of the Task Force by reducing the burden on the regulated community. This proposal also fulfills one of EPA's obligations in the settlement of the RCRA portion of industry litigation on the Consolidated Permit Regulations. In addition to issuing proposals aimed at settling the litigation the Agency has deconsolidated the regulations to make them more easily usable by the public. As a result of deconsolidation there was some reorganization of the regulations. Thus, this proposed amendment is in somewhat different format and location than it appeared in the settlement agreement.

XI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish general notice of proposed rulemaking for any rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

These amendments will not have a significant economic impact on a substantial number of small entities. If these amendments are promulgated in the same form as proposed today, the Agency expects that it will result in minimal savings to the community.

Accordingly, I hereby certify that this proposed regulation, if issued in final form, will not have a significant economic impact on a substantial number of small entities.

Dated: April 26, 1983.

Lee L. Verstandig

Acting Administrator.

List of Subjects in 40 CFR Part 270

Administrative practices and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

PART 270—[AMENDED]

It is proposed that 40 CFR Part 270 be amended as follows:

1. The authority citation for Part 270 reads as follows:

Authority: Sections 1006, 2002, 3005, 3007 and 7004 of the Solid Waste Disposal Act, as amended by of the Resource Conservation and Recovery Act of 1976, as amended (RCRA) (42 U.S.C. 6905, 6912, 6925, 6927 and 6974).

2. It is proposed that § 270.40 be amended by designating the existing section as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 270.40 Transfer of permits.

* * * * *

(b) *Automatic Transfers.* As an alternative to transfers under paragraph (a) of this section, any RCRA permit may be automatically transferred to a new permittee if the new permittee proposes no changes in operation, and:

(1) The Director receives notice by certified mail from the existing permittee at least 90 days in advance of the proposed transfer date specified in the agreement mentioned in paragraph (b)(2) of this section, unless the Administrator allows a shorter advance notice period for good cause shown by the existing or new permittee;

(2) The notice includes: (i) A written agreement between the existing and new permittee, signed by both,

containing a specific date for transfer of permit responsibility, coverage, and liability; (ii) a demonstration that the financial responsibility requirements of 40 CFR Part 264 will be met by the new permittee, including a copy of the revised financial instruments or other appropriate documents; (iii) a signed statement by the new permittee agreeing to comply with the existing permit conditions, and the revised financial requirements; and

(3) The new permittee receives no notice from the Director, within 90 days from the date the Director received the notice referred to in paragraph (b)(1) of this section, that modification, or revocation and reissuance of the permit is necessary. If such notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section. EPA may modify the permit after the effective date of the transfer to include the new permittee's name and the revised financial instruments. If, within the 90 day advance notice period, the Director gives notice that modification or revocation and reissuance of the permit is necessary under § 270.41(b)(2), the applicable procedures of Part 124 must be followed, rather than these procedures for an automatic transfer.

* * * * *

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