

1881 or the Act of 1905 which have not been published under § 12(c) of the Act of 1946, or on any ground specified in § 14 (c) or (e) of the Act of 1946. In all other cases the petition and the required fee must be filed within five years from the date of registration of the mark under the Act of 1946 or from the date of publication under § 12(c) of the Act of 1946.

(c)(1) The petition must be accompanied by the required fee for each class in the registration for which cancellation is sought (see §§ 2.6(1) and 2.85(e)). If the fees submitted are insufficient for a cancellation against all of the classes in the registration, and the particular class or classes against which the cancellation is filed are not specified, the Office will issue a written notice allowing petitioner until a set time in which to submit the required fee(s) (provided that the five-year period, if applicable, has not expired) or to specify the class or classes sought to be cancelled. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the cancellation will be presumed to be against the class or classes in ascending order, beginning with the lowest numbered class, and including the number of classes in the registration for which the fees submitted are sufficient to pay the fee due for each class.

(2) If persons are joined as party petitioners, each must submit a fee for each class for which cancellation is sought. If the fees submitted are insufficient for each named party petitioner, the Office will issue a written notice allowing the named party petitioners until a set time in which to submit the required fee(s) (provided that the five-year period, if applicable, has not expired) or to specify the petitioner(s) to which the submitted fees apply. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the first named party will be presumed to be the party petitioner and additional parties will be deemed to be party petitioners to the extent that the fees submitted are sufficient to pay the fee due for each party petitioner. If persons are joined as party petitioners against a registration sought to be cancelled in more than one class, the fees submitted are insufficient, and no specification of parties and classes is made within the time set in the written notice issued by the Office, the fees submitted will be applied first on behalf of the first-named petitioner against as many of the classes in the registration as the submitted fees are sufficient to pay, and any excess will be applied on behalf of the second-named

party to the petition against the classes in the registration in ascending order.

(3) The filing date of the petition is the date of receipt in the Patent and Trademark Office of the petition together with the required fee. If the amount of the fee filed with the petition is sufficient to pay for at least one person to petition to cancel one class of goods or services but is less than the required amount because multiple party petitioners and/or multiple classes in the registration for which cancellation is sought are involved, and the required additional amount of the fee is filed within the time limit set in the notification of the defect by the Office, the filing date of the petition with respect to the additional party petitioners and/or classes is the date of receipt in the Patent and Trademark Office of the additional fees.

5. Section 2.112 is revised to read as follows:

§ 2.112 Contents of petition for cancellation.

(a) The petition to cancel must set forth a short and plain statement showing how the petitioner is, or will be damaged by the registration, state the grounds for cancellation, and indicate the respondent party to whom notification shall be sent. A duplicate copy of the petition, including exhibits, shall be filed with the petition.

(b) Petitions to cancel different registrations owned by the same party may be joined in a consolidated petition when appropriate, but the required fee must be included for each party joined as petitioner for each class sought to be cancelled in each registration against which the petition to cancel is filed.

6. Section 2.161 is revised to read as follows:

§ 2.161 Cancellation for failure to file affidavit or declaration during sixth year.

Any registration under the provisions of the Act of 1946 and any registration published under the provisions of section 12(c) of the Act (§ 2.153) shall be cancelled as to any class in the registration at the end of six years following the date of registration or the date of such publication, unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit or declaration in accordance with § 2.20 showing that said mark is in use in commerce as to such class or showing that its nonuse as to such class is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

7. Section 2.162 is amended by revising paragraphs (e), (f) and (g) to read:

§ 2.162 Requirements for affidavit or declaration during sixth year.

* * * * *

(e) State that the registered mark is in use in commerce and specify the nature of such commerce (except under paragraph (f) of this section). The statement must be supported by evidence which shows that the mark is in use, and normally such evidence consists of a specimen or a facsimile specimen which is currently in use, or a statement of facts concerning use. The supporting evidence should be submitted with the affidavit or declaration, but if it is not or if the evidence submitted is found to be deficient, the evidence, or further evidence, may be submitted and considered even though filed after the sixth year has expired;

(f) If the registered mark is not in use in commerce, recite facts to show that nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. If the facts recited are found not to be sufficient, further evidence or explanation may be submitted and considered even though filed after the sixth year has expired; and

(g) Contain the statement of use in commerce or statement as to nonuse and appropriate evidence, as required in paragraphs (e) and (f) of this section, for each class to which the affidavit or declaration pertains in this registration.

(Secs. 8 and 9, Pub. L. 97-247 (96 Stat. 320))

Dated: January 19, 1983.

Donald J. Quigg,
Deputy Commissioner of Patents and Trademarks.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 262, 264, and 265

[SW-FRL-2283-7]

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste and Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today issuing final amendments to its hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) which change the reporting requirements for hazardous waste generators and owners or operators of hazardous waste treatment, storage, and disposal (TSD) facilities. These amendments will reduce the paperwork burdens on the regulated community and will allow EPA to obtain needed data on hazardous waste management. The amendments increase the interval between required reports from annual to biennial and require the biennial report to be submitted by March 1 of even numbered years describing hazardous waste activities during the previous calendar year. Under today's amendments, hazardous waste generators and TSD facilities are not required to submit an annual report for 1982.

EFFECTIVE DATE: February 28, 1983.

ADDRESSES: The public docket for this rulemaking is available at Room S-269, 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: RCRA/Superfund Hotline at (800) 424-9346 (Toll-free) or in Washington, D.C. (202) 382-3000.

For technical information, contact Robert B. Axelrad, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, (202) 382-5218.

SUPPLEMENTARY INFORMATION:

Preamble Outline

- I. General Authority
- II. Background of Annual Report Requirement
- III. Summary of Survey Proposal
- IV. Discussion of Comments
 - A. Burden Reduction Potential of the Proposed Rule
 - B. Elimination of Reporting by all Generators and TSD Facilities
- V. Revised Approach
- VI. Status of 1982 Annual Reports
- VII. Specific Amendments
- VIII. Executive Order 12291
- IX. Paperwork Reduction Act
- X. Regulatory Flexibility Act

I. General Authority

Today's amendments are issued primarily under the authority of Sections 3002 and 3004 of the Solid Waste Disposal Act, as amended by Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 *et seq.*

Section 3002(6) requires generators of hazardous waste to submit reports at

such times as the Administrator deems necessary, setting out the quantities of hazardous waste generated and their disposition. Section 3004(2) of RCRA requires EPA to establish reporting requirements respecting satisfactory reporting from hazardous waste TSD facilities.

II. Background of the Annual Report Requirement

In February and May of 1980, EPA promulgated regulations establishing the reporting requirements authorized by Sections 3002(6) and 3004(2) of RCRA. Under 40 CFR 262.41, generators who ship hazardous wastes off-site are required to submit reports annually by March 1 for the reporting year ending the previous December 31. The reports are to specify, among other things, the amount of each type of hazardous waste shipped to each TSD facility during the reporting year, as well as the names, addresses, and EPA identification numbers of all transporters utilized in such shipments. Under 40 CFR 264.75 and 265.75, the owners or operators of hazardous waste TSD facilities must submit annual reports specifying, among other things, the amount of each type of hazardous waste received from each generator from which the facility received hazardous waste during the reporting year.

In 1981, EPA began to reevaluate this reporting requirement in light of EPA's current and future information needs. This review led EPA to tentatively conclude that conducting periodic surveys of a representative sample of all generators and TSD facilities might be preferable to requiring annual reports only from handlers in unauthorized States.¹

On October 12, 1982, EPA published a notice of proposed rulemaking (47 FR 44932) requesting comment on the Agency's intention to replace the annual report requirement with a requirement that hazardous waste handlers respond to a biennial sample survey. As a result of comments received on that proposal, EPA has reconsidered the biennial survey approach and is today issuing amendments that will require reporting by all generators and TSD facilities in unauthorized States on a biennial basis.

III. Summary of the Survey Proposal

The biennial survey proposal was intended to permit EPA to obtain better and more reliable national data on hazardous waste management than is

¹EPA's annual report requirement applies only to generators and TSD facilities located in States that have not received Phase I Interim Authorization or Final Authorization to operate their own hazardous waste programs.

currently available through the existing annual reporting system. EPA proposed to survey approximately 10% of the regulated community in all fifty States once every two years, using a statistical, stratified sampling technique. EPA explained in the October 12, 1982 notice that the survey would: (1) Provide more detailed information, (2) provide better national data, and (3) reduce paperwork burdens.

The biennial survey proposal sought public comment on a variety of issues including: (1) Whether a 10% survey of hazardous waste handlers in all fifty States was preferable to the existing annual report required of generators and TSD facilities in unauthorized States; (2) whether surveys should be conducted biennially or at some other frequency; (3) the size and scope of the surveys; (4) mechanisms for cooperation with States to minimize the reporting burden and maximize sharing of information obtained; and (5) the Agency's intention to make the amendments effective immediately to relieve hazardous waste handlers in the unauthorized States from having to submit 1982 annual reports to EPA.²

IV. Discussion of Comments

EPA received 44 comments on the biennial survey proposal from a cross section of the regulated community, State and Federal government agencies and environmental organizations. The comments covered a wide range of issues. The major issues raised by commenters were: (A) The degree of burden reduction that would be achieved through the proposed amendments; and (B) whether it is appropriate to rescind the requirement that all generators and TSD facilities report to EPA on their hazardous waste activities.

A. Burden Reduction Potential of the Proposed Rule

In the October 12, 1982 Federal Register notice, EPA explained that the biennial survey proposal would substantially reduce the paperwork burden on the regulated community by requiring only 10% of hazardous waste handlers to respond to a survey to be conducted every two years. However, while some commenters agreed that the biennial survey would result in a significant decrease in reporting burden, the majority of commenters disagreed. These commenters believed that the proposed biennial survey would result in a substantial increase in reporting

²1982 Annual Reports would be due on March 1, 1983.

burden for most hazardous waste handlers since it would add an additional information requirement in many States rather than eliminating a reporting burden. In particular, commenters expressed concern that States which have independent reporting requirements would probably retain those requirements even if EPA rescinds its annual report. Firms would therefore be required to comply with State annual (or more frequent) reporting requirements as well as respond to EPA surveys. Many commenters argued that EPA's inability to preempt State requirements³ would result in a multi-layered set of reporting requirements under which: (1) Many States would continue to require their own version of reports, (2) other States which are prevented by State legislation from establishing more stringent requirements than EPA's would develop their own survey programs to remain consistent with EPA requirements, and (3) handlers in all States would be subject to EPA surveys. These commenters felt that such a system of duplicative and overlapping requirements would substantially increase the recordkeeping and reporting burdens, particularly for firms that operate interstate or have a large number of installations and must comply with multiple State as well as EPA reporting requirements.

Virtually all of the commenters strongly recommended that EPA obtain whatever information it needed from the authorized State agencies themselves rather than impose a new requirement or duplicate reporting requirements in the authorized States. Comments from State hazardous waste management agencies also supported this approach.

In proposing the biennial survey, EPA believed that the variations among State reporting requirements would prohibit EPA from obtaining usable nationwide information. EPA was also concerned that the limited nature of the annual report data would not be sufficient to meet the Agency's information needs. However, EPA finds the arguments presented by commenters to be persuasive. EPA agrees that the use of existing data wherever possible to minimize reporting burden is a desirable approach and that further efforts to utilize existing State data should be made prior to imposing a new or potentially duplicative reporting requirement on installations that must submit annual or more frequent reports to State agencies.

³ RCRA does not prohibit States from promulgating more stringent requirements than the Federal regulations.

The Agency now believes that much of the information needed for general management purposes (e.g. determining who is generating, treating, storing or disposing of hazardous waste as well as where and how such wastes are being handled) can be gleaned from existing State reporting systems. In order to obtain the necessary management information directly from State agencies, EPA intends to modify the State/EPA Memoranda of Agreement as necessary to provide for the transfer of such information.

EPA is still convinced, however, that it will periodically require more detailed information for specific rulemaking purposes than is available from the existing report forms, regardless of frequency of reporting or whether the reports are submitted to EPA or to State agencies. A number of commenters argued that Section 3007 of RCRA could not be construed to authorize a national survey in authorized States since Section 3007 focuses on site-by-site inspections and should not be used to circumvent restrictions on reporting embodied in Section 3006 (which states that once a State receives program approval, "such State is authorized to carry out such program in lieu of the Federal program * * *") and Section 3002(6), which commenters argue limits submission of reports to " * * * State Agency in any case in which such State carries out an authorized permit program * * *".

EPA does not agree that Sections 3002 and 3006 restrict the Agency's authority under Section 3007 to obtain information it deems necessary for rulemaking or enforcement purposes. In addition, many commenters agreed that EPA would occasionally need additional data and that such data could properly be collected through the use of small statistically valid samples. The Agency will, therefore, periodically conduct special surveys of small samples of the regulated community on an as needed basis for specific rulemaking activities.

However, in light of the large number of comments indicating that the biennial survey would increase rather than decrease reporting burden if conducted in authorized States, and because the Agency now believes it can obtain the necessary information directly from the States, EPA has decided not to impose any additional routine reporting requirements on handlers in States with interim or final authorization.

B. Elimination of Reporting by All Generators and TSD Facilities

A high percentage of commenters strongly objected to EPA's proposal to eliminate the requirement that all

generators and TSD facilities report on their hazardous waste activities on a regular basis. Many commenters felt that: (1) Reporting at regular intervals was essential to the development of a strong national data base on hazardous waste activities; (2) across-the-board reporting was important as a compliance incentive and enforcement mechanism as well as to improve public confidence in the hazardous waste regulatory program; and (3) the current reporting requirement was the least burdensome reporting mechanism since the annual report forms request easily accessible information in a format compatible with existing recordkeeping systems.

The Agency is not convinced that a carefully designed 10 percent survey conducted every two years would provide EPA with insufficient data to characterize hazardous waste activity and trends. However, EPA does recognize that the implementation of the program would benefit from a sound data base on all facilities.

Also, EPA does find some merit to the arguments presented by commenters that requiring reports from all generators and TSD facilities provides stronger incentives for firms to maintain proper and complete records than would a random and occasional sampling system. The Agency also agrees that the development and maintenance of public confidence in the hazardous waste management program is an important goal and that the elimination of publicly accessible information on all hazardous waste handlers might reduce confidence in EPA's ability to protect the public from future hazardous waste incidents.

EPA found the comments of several major associations representing a large portion of the hazardous waste management industry to be of particular interest. These commenters, although generally supportive of EPA efforts to reduce regulatory burden, nevertheless felt that EPA should have information on the activities of all hazardous waste generators and TSD facilities and that the current annual report was the least burdensome reporting system for two reasons: (1) The required report is of minimal length and requests information that is easily accessible using current recordkeeping procedures; and (2) the least burdensome requirements are those that are known and consistent, characteristics that these commenters felt were not embodied in the biennial survey proposal.

V. Revised Approach

As a result of the comments received on its October 12, 1982 proposal, EPA

has reconsidered the biennial survey approach and instead is implementing minor modifications to its existing reporting requirements to increase the interval between reports from one year to two years and to bring all of EPA's existing regulations into conformance with this amendment. EPA believes that these modifications address the comments received and will achieve real and substantial reductions in burden while permitting EPA to obtain the information it needs to update and refine the regulatory program.

This approach incorporates the following features:

(1) Retention of the requirement that all generators and TSD facilities in the unauthorized States submit reports to EPA on their hazardous waste activities.

The majority of commenters indicated that EPA should not collect information directly from handlers located in authorized States since a majority of States intend to retain requirements that all handlers submit annual or more frequent reports on their activities. As stated previously, EPA may not prevent States from adopting more stringent requirements than the Federal regulations. In addition, many States currently require reports to be submitted in a format similar or identical to EPA's existing annual report. Retaining across-the-board reporting by all generators and TSD facilities in States where EPA operates the hazardous waste program will therefore serve to maintain a maximum degree of consistency between State and Federal requirements and maximize the potential for EPA to obtain uniform information from both authorized and unauthorized States. This approach also responds to comments indicating that the existing reporting requirement is the least burdensome reporting system and necessary to establish a sound data base, promote confidence in the hazardous waste management system, and support enforcement of the regulatory program.

(2) Amending §§ 262.41, 264.75, and 265.75 to require such reports to be submitted biennially instead of annually. The reports will cover only hazardous waste generated and/or treated, stored or disposed of in *odd* numbered years and will be required to be submitted by March 1 of each *even* numbered year.

As stated in the biennial survey proposal, EPA believes that requiring reporting every year is unnecessarily burdensome and that biennial reporting is adequate to characterize hazardous waste activity, update the data base, and ensure compliance with recordkeeping requirements and other

provisions of RCRA. A large majority of commenters support reducing the frequency of required reports.

(3) Modification of existing State authorization requirements to require States to require, at a minimum, biennial reports, and to submit certain data to EPA by the authorized States on a biennial basis.

As discussed above, EPA needs certain information on hazardous waste activity in order to refine and update its hazardous waste regulations. In response to comments on the biennial survey proposal, EPA intends to obtain as much of the data the Agency requires as possible from the State agencies in the authorized States. Summary information on the quantities and types of hazardous waste generated, transported, stored, treated, or disposed of is currently required to be submitted to EPA by the States on an annual basis (40 CFR § 122.18). Under today's amendments, these summaries will be required biennially to conform to the biennial report schedule. EPA is now in the process of exploring whether modifications to the Memoranda of Agreement should be made to more precisely specify the form and content of these summaries.

VI. Status of 1982 Annual Reports

Under the existing regulations, generators of hazardous waste and owners or operators of treatment, storage and disposal facilities are required to submit reports on their 1982 activities by March 1, 1983.

Since the Summer of 1982, EPA has collected substantial quantities of data through the RIA survey process and submission of 1981 annual reports and the Agency is now in the process of collating and evaluating this information. This should provide EPA sufficient data to characterize current hazardous waste management activities. For this reason, the Agency does not intend to collect a 1982 annual report. EPA will eliminate the requirement to submit a 1982 annual report by making today's amendments effective before March 1, 1983, the date the 1982 report is currently due. Thus, the next generator and TSD facility report will be due on March 1, 1984, covering the 1983 calendar year.

Section 3010(b) of RCRA requires that revisions to RCRA Subtitle C regulations take effect six months after date of publication. The purpose of this provision is to allow the regulated community adequate lead time to prepare to comply with major new regulatory requirements. Because the amendments promulgated today reduce reporting requirements for hazardous

waste handlers, EPA does not believe that making them effective less than six months after date of publication would be contrary to the purposes of Section 3010(b).

EPA also believes that relieving hazardous waste handlers of the obligation to file 1982 annual reports is consistent with both the comments received on the proposed rule and the shift from annual to biennial reports.

VII. Specific Amendments

EPA is today finalizing the following amendments to bring all of EPA's existing RCRA regulations into conformance with the shift to a biennial report requirement.

1. 40 CFR 262.40 and 262.41 have been revised to reflect the shift to biennial reports and to bring the regulatory language of Part 262 into conformance with that in 40 CFR Parts 264 and 265. In addition, the annual report forms (EPA Forms 8700-13 and 8700-13A) and their associated instructions are being deleted from the Appendix to Part 262. EPA is now making clarifying modifications to the generator report instructions and will publish revised forms and instructions in the **Federal Register** as soon as possible, subject to OMB approval. These revisions will not substantively alter the information required to be submitted. For recordkeeping purposes, it should be noted that the DOT Hazard Class code numbers which appeared in the 1981 Generator Annual Report instructions will not be further revised.

2. 40 CFR Parts 264 and 265 are being revised to reflect the shift to a biennial reporting period.

The annual report forms contained in Appendix II to the TSD facility regulations at 40 CFR Parts 264 and 265 (EPA Forms 8700-13 and 8700-13B) will also be deleted. EPA is now in the process of making clarifying modifications to the facility report forms and instructions and will publish revised forms in the **Federal Register** as soon as possible, subject to OMB clearance. These modifications will correct inconsistencies in the handling codes between the biennial report and Part A permit applications and will permit the revised form 8700-13B to also serve as the Unmanifested Waste Report forms, required for use by facility owners and operators under 40 CFR 264.76 and 265.76. Firms may continue to use the Unmanifested Waste report forms and instructions which appeared in the May 19, 1980 **Federal Register** (45 FR 33239) until EPA publishes the revised forms and instructions. The revisions to the facility report form and instructions will

not alter the information required to be submitted.

3. 40 CFR 265.94 (Ground-water Monitoring Reporting).

Section 265.94 currently requires owners and operators of surface impoundments, landfills, and land treatment facilities to submit annual ground-water monitoring data and analyses as part of, or attached to, their annual reports to EPA's Regional Administrators. Because today's amendments require owners and operators to report on their hazardous waste activities on a biennial basis, and because the Agency is still requiring ground-water information on an annual basis, EPA is amending § 265.94 to require this annual ground-water monitoring data to be submitted independently to Regional Administrators by March 1 of each year. This amendment does not affect the nature or frequency of the data required to be submitted.

4. 40 CFR 122.18 is being revised to require States to provide certain summary information to EPA biennially instead of annually.

5. 40 CFR 122.26 and 122.28 are being revised slightly to bring them into conformance with the shift to biennial reports.

Today's amendments apply only to generators and TSD facilities in States that do not have interim or final authorization to operate their own hazardous waste program. However, authorized States must comply with the provisions for interim or final authorization specified in 40 CFR Part 123, including requirements that States have reporting requirements substantially equivalent, or equivalent, to those specified in Parts 262, 264, and 265. States with interim or final authorization must therefore require, at a minimum, reporting by all generators and TSD facilities on a biennial basis.

VIII. Executive Order 12291

In accordance with Executive Order 12291, EPA has determined that today's revisions of the RCRA regulations will not 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. Therefore, today's amendments are not subject to the major rule provisions of the Executive Order and

no regulatory impact analysis is required.

These amendments have been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. OMB's comments, and EPA's responses will be made available for public inspection at the Office of Solid Waste Public Docket (see addresses, above, for location and public hours).

IX. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Office of Management and Budget (OMB) to review information collection requirements in Federal regulations. EPA will shortly submit to OMB information necessary for approval of the amended reporting requirements promulgated today.

X. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., Federal Agencies must prepare regulatory flexibility analyses for all rules to assess their impact on small entities. No regulatory analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The economic impact of this regulation will be to reduce the costs of complying with EPA's hazardous waste management regulations for generators of hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities, including small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 122

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

40 CFR Part 262

Hazardous materials, Labeling, Packaging and containers, Reporting requirements, Waste treatment and disposal.

40 CFR Part 264

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

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: January 21, 1983.

Anne M. Gorsuch,
Administrator.

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

PART 262—STANDARDS FOR GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 reads as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, and 3005, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), (42 U.S.C. 6905, 6912, 6922, 6923, 6924, 6925).

2. 40 CFR 262.40(b) is revised to read as follows:

§ 262.40 Recordkeeping.

* * * * *

(b) A generator must keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

* * * * *

3. 40 CFR 262.41 is revised to read as follows:

§ 262.41 Biennial report.

(a) A generator who ships his hazardous waste off-site must prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year. The biennial report must be submitted on EPA Form 8700-13 A and must cover generator activities during the previous calendar year, and must include the following information:

- (1) The EPA identification number, name, and address of the generator;
- (2) The calendar year covered by the report;
- (3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility to which waste was shipped during the year; for exported shipments, the report must give the name and address of the foreign facility.
- (4) The name and EPA identification number of each transporter used during the reporting year.
- (5) A description, EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), DOT hazard class, and quantity of each hazardous waste shipped off-site. This information must be listed by EPA identification number

of each off-site facility to which waste was shipped.

(6) The certification signed by the generator or his authorized representative.

(b) Any generator who treats, stores, or disposes of hazardous waste on-site must submit a biennial report covering those wastes in accordance with the provisions of 40 CFR Parts 122, 264, 265, and 266.

Appendix [Removed]

4. The Appendix to 40 CFR Part 262, entitled Appendix—Form—Annual Report (EPA Form 8700-13), and the associated section entitled General Instructions, Hazardous Waste Report (EPA Form 8700-13), are removed from the Code of Federal Regulations.

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

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

Authority: Secs. 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).

6. The introductory text of 40 CFR 264.75 is revised to read as follows:

§ 264.75 Biennial report.

The owner or operator must prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year. The biennial report must be submitted on EPA form 8700-13B. The report must cover facility activities during the previous calendar year and must include:

* * * * *

7. Section 264.76 is amended by revising the first paragraph to read as follows:

§ 264.76 Unmanifested waste report.

If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in § 263.20(e)(2) of this Chapter, and if the waste is not excluded from the manifest requirement by § 261.5 of this Chapter, then the owner or operator must prepare and submit a single copy of a report to the Regional Administrator within fifteen days after receiving the waste. The unmanifested waste report must be submitted on EPA form 8700-13B. Such

report must be designated 'Unmanifested Waste Report' and include the following information:

* * * * *

8. The introductory text of 40 CFR 264.77 is revised to read as follows:

§ 264.77 Additional reports.

In addition to submitting the biennial reports and unmanifested waste reports described in §§ 264.75 and 264.76, the owner or operator must also report to the Regional Administrator:

* * * * *

Appendix II [Removed]

9. Appendix II to 40 CFR Part 264 entitled Appendix II—EPA Report Form and Instructions is removed from the Code of Federal Regulations.

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

10. 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).

11. The introductory text of 40 CFR 265.75 is revised to read as follows:

§ 265.75 Biennial report.

The owner or operator must prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year. The biennial report must be submitted on EPA Form 8700-13B. The report must cover facility activities during the previous calendar year and must include the following information:

* * * * *

12. 40 CFR 265.76 is amended by revising the introductory paragraph to read as follows:

§ 265.76 Unmanifested waste report.

If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in § 263.20(e)(2) of this Chapter, and if the waste is not excluded from the manifest requirement by § 261.5 of this Chapter, then the owner or operator must prepare and submit a single copy of a report to the Regional Administrator within fifteen days after receiving the waste. The unmanifested waste report must be

submitted on EPA form 8700-13B. Such report must be designated 'Unmanifested Waste Report' and include the following information:

* * * * *

13. 40 CFR 265.77 is amended by revising the introductory paragraph to read as follows:

§ 265.77 Additional reports.

In addition to submitting the biennial report and unmanifested waste reports described in §§ 265.75 and 265.76, the owner or operator must also report to the Regional Administrator:

* * * * *

Appendix II [Removed]

14. Appendix II to 40 CFR Part 265, entitled Appendix II—EPA Report Form and Instructions is removed from the Code of Federal Regulations.

15. 40 CFR 265.94 is amended by revising paragraphs (a)(2) (ii) and (iii) and (b)(2) to read as follows:

§ 265.94 Recordkeeping and reporting.

- (a) * * *
- (2) * * *

(ii) Annually: Concentrations or values of the parameters listed in § 265.92(b)(3) for each ground-water monitoring well, along with the required evaluations for these parameters under § 265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with § 265.93(c)(1). During the active life of the facility, this information must be submitted no later than March 1 following each calendar year.

(iii) No later than March 1 following each calendar year: Results of the evaluations of ground-water surface elevations under § 265.93(f), and a description of the response to that evaluation, where applicable.

- (b) * * *

(2) Annually, until final closure of the facility, submit to the Regional Administrator a report containing the results of his or her ground-water quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the ground water during the reporting period. This information must be submitted no later than March 1 following each calendar year.

* * * * *

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

16. The authority citation for Part 122 reads as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 3007 et seq.; and Clean Water Act, 33 U.S.C. 1251 et seq.

16. 40 CFR 122.18(c)(3) is revised to read as follows:

§ 122.18 Non-compliance and program reporting by the Director.

* * * * *

(c) * * *
(3) For RCRA only, in addition to the annual non-compliance report, the Director shall prepare a "program report" which contains information (in a manner and form prescribed by the Administrator) on generators and transporters and the permit status of regulated facilities. The Director shall also include, on a biennial basis, summary information on the quantities and types of hazardous wastes generated, transported, treated, stored, and disposed during the preceding odd numbered year. This summary information shall be reported in a manner and form prescribed by the Administrator and shall be reported according to EPA characteristics and lists of hazardous wastes at 40 CFR Part 261.

* * * * *

17. 40 CFR 122.26(a)(3) (v) and (c)(3)(v) and (vi) are revised to read as follows:

§ 122.26 Permits by rule.

* * * * *

- (a) * * *
- (3) * * *
- (v) 40 CFR 264.75, Biennial report; and
- (vi) * * *
- (b) * * *
- (c) * * *
- (3) * * *
- (v) 40 CFR 264.75, Biennial report;
- (vi) 40 CFR 264.76, Unmanifested waste report; and

* * * * *

18. 40 CFR 122.28 is amended by revising paragraph (e)(3) to read as follows:

§ 122.28 Additional conditions applicable to all RCRA permits.

* * * * *

(e) * * *
(3) Biennial report: A biennial report must be submitted covering facility

activities during odd numbered calendar years. (See 40 CFR 264.75.)

* * * * *

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40 CFR Part 123

[HW-4-FRL 2294-3]

Hazardous Waste Management Programs; Kentucky; Authorization for Interim Authorization Phase II, Components A and B

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Hazardous Waste Management Program.

SUMMARY: The Commonwealth of Kentucky has applied for Interim Authorization, Phase II, Components A and B, which would allow the State, rather than EPA, to issue or deny permits regulating the operation of facilities that treat and store hazardous waste. EPA has reviewed Kentucky's application and has determined that Kentucky's hazardous waste program is substantially equivalent to the Federal program. Therefore, EPA is granting the Commonwealth of Kentucky Interim Authorization for Phase II, Components A and B.

EFFECTIVE DATE: Interim Authorization Phase II, Components A and B, for Kentucky is effective on January 28, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone (404) 881-3016.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. The Act (RCRA) includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive final authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program

under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State agency Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous waste, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State Programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the January 26, 1981, **Federal Register** (46 FR 7965), the Environmental Protection Agency announced that States could apply for Components A and B of Phase II of Interim Authorization. Component A, analogous to Federal regulations published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments, and waste piles. Component B, analogous to Federal regulations published in the **Federal Register** January 23, 1982 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 123, Subpart F, as amended at 47 FR 32373 (July 26, 1982).

The Commonwealth of Kentucky received Interim Authorization for Phase I on April 1, 1981.

Draft Application

The Commonwealth of Kentucky submitted its draft application for Phase II Interim Authorization, Components A and B, on December 21, 1981. After detailed review, EPA identified several areas of major concern and transmitted comments to the State for its consideration.

Major issues raised during EPA's review of the draft application were: