ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, and 270

[FRL-3334-2]

Delay of the Closure Period for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend portions of the closure requirements under Subtitle C of the Resource Conservation and Recovery Act (RCRA) applicable to owners and operators of certain types of hazardous waste land disposal facilities. The proposed amendments would allow, under limited circumstances, a landfill or surface impoundment to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit. This proposed rule details the circumstances under which a unit may remain open to receive non-hazardous wastes and describes the conditions applicable to such units.

DATE: Comments must be submitted on or before July 21, 1988.

ADDRESS: The public must send an original and two copies of their comments to: EPA RCRA Docket (S-201) (WH-562), 401 M Street SW., Washington, DC 20460.

Place the docket #F-88-DCPP-FFFFF on your comments. For additional details about the OSW docket see the "OSW Docket" section in "Supplementary Information".

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC, or Sharon Frey, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-6725.

SUPPLEMENTARY INFORMATION: The OSW docket is located at: EPA RCRA Docket (Sub-basement), 401 M Street SW., Washington, DC 20460.

The docket is open from 9:00 to 4:00 Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call 475-9327 for appointments. The public may copy materials at the cost of $.15/page. Charges under $15.00 are waived.

Preamble Outline

I. Authority

These requirements are proposed under the authority of sections 1006, 2002(a), 3004, 3005, and 3006 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), 6924, 6925, and 6926).

II. Background

Section 3004 of RCRA Subtitle C requires the Administrator of EPA to promulgate regulations establishing such performance standards applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs), as may be necessary to protect human health and the environment. Section 3005 requires the Administrator to promulgate regulations requiring each person owning or operating a TSDF to have a permit, and to establish requirements for permit applications. Recognizing that a period of time would be required to issue permits to all facilities, Congress created "interim status" in section 3005(e) of RCRA. Owners and operators of existing hazardous waste TSDFs who qualify for interim status will be treated as having been issued permits until EPA takes final administrative action on their permit applications. The privilege of carrying on operations during interim status carries with it the responsibility of complying with appropriate portions of the section 3004 standards.

EPA has issued several sets of regulations to implement RCRA section 3004. These regulations include Part 264 (which provides standards for owners and operators of TSDFs that have been issued RCRA permits) and Part 265 (which provides standards for owners and operators of interim status TSDFs) of Title 40 of the *Code of Federal Regulations* (CFR). Subpart G within these two Parts addresses requirements for closing TSDFs and maintaining them after closure if necesary. The Subpart G requirements in both of these Parts, particularly the closure deadlines found in §§ 264.112, 265.112, 264.113, and 265.113, would be affected by the promulgation of today's proposal.

The requirements at §§ 264.113 and 265.113 were last amended on May 2, 1986 (51 FR 16422). Prior to that final rule, §§ 264.113(a) and 265.113(a) required the owner or operator to treat, remove from the site, or dispose of all hazardous wastes in accordance with the approved closure plan within 90 days after receiving the final volume of *hazardous* wastes (or for interim status facilities, within 90 days after approval of the closure plan, if that is later). Prior to the May 2, 1986, rules, §§ 264.113(b) and 265.113(b) also required the owner or operator to complete closure activities within 180 days after receiving the final volume of *wastes* (or approval of the closure plan). Preambles and supporting documents to the earlier rulemakings on May 19, 1980 and January 12, 1981 did not address the rationale for distinguishing between the deadlines for the final receipt of *hazardous* waste in §§ 264.113(a) and 265.113(a) and the final receipt of both hazardous and non-hazardous waste in the deadlines in §§ 264.113(b) and 265.113(b).

To make § § 264.113(b) and 265.113(b) consistent with the deadlines in § § 264.113(a) and 265.113(a), the Agency proposed, on March 19, 1985, that closure be completed within 180 days after the final receipt of *hazardous* wastes rather than after the final receipt of wastes (50 FR 11068). The changes to § § 264.113(b) and 265.113(b) were promulgated as proposed on May 2, 1986 (51 FR 16422), following public comment. After promulgation of the May 2, 1986, amendments, lawsuits were filed challenging the requirement that closure be completed within 180 days after the final receipt of *hazardous* waste. The litigants, Union Carbide Corporation (Union Carbide) and the Chemical Manufacturers Association (CMA), contended that this change was inconsistent with the Congressional intent evidenced in the Hazardous and Solid Waste Amendments (HSWA) legislative history regarding closure of surface impoundments, and further that the change was unnecessary to protect human health and the environment, and that it would discourage waste minimization and other goals Congress expressed in HSWA.

Union Carbide and CMA were particularly concerned about the effect of the amended closure regulations on surface impoundments that ceased the receipt of hazardous wastes in compliance with section 3005(j) of RCRA. This section of the statute requires that all surface impoundments that had interim status on November 8, 1984, either satisfy certain minimum technological requirements (MTRs) (i.e., double liner, leachate collection system, and ground-water monitoring requirements) applicable to new surface impoundments, receive a variance from these requirements, or cease the receipt, storage or treatment of hazardous waste by November 8, 1988. The May 2, 1986, closure rule would require interim status surface impoundments that failed to meet MTRs by the November 8, 1988, deadline to close within 180 days, because November 8, by statute, would be the date of final receipt of hazardous waste for these units. Union Carbide and CMA, however, argue that the legislative history of HSWA explicitly indicates Congressional intent to allow disposal surface impoundments that stop receiving hazardous wastes to remain open and receive non-hazardous wastes after this deadline, even if they do not retrofit to satisfy the MTRs.

The legislative history of section 3005(j) of RCRA (130 *Cong. Rec.* S9182 (daily ed. July 25, 1984)) contains a brief discussion that indicates that the retrofitting requirements do not in themselves require the closure of an impoundment that ceases to receive hazardous wastes and that requiring such closure would not be proper if the management of the impoundment were protective of human health and the environment. In the preamble to the May 2, 1986, final rule, the Agency argued that, while the legislative history evidences that fact that section 3005(j) of RCRA itself does not mandate closure of an interim status surface impoundment that ceases to receive hazardous wastes, it leaves unimpaired EPA's pre-existing authority to establish by regulation additional closure requirements as necessary to protect human health and the environment. In other words, EPA concluded that the statute did not directly address the issue and did not constrain its discretion to promulgate closure regulations for surface impoundments subject to the retrofitting requirements. EPA concluded on a factual and policy-making basis that expeditiously closing hazardous waste surface impoundments after they stop receiving hazardous wastes was necessary to ensure protection of human health and the environment. The Agency primarily was concerned that, in certain circumstances, proper management of the facility might be continued which could lead to an increased possibility of releases and therefore risks to human health and the environment.

III. Synopsis of Proposed Rule

A. Rationale for Proposed Rule

Since the challenge to the May 2, 1986, final rule, EPA has been engaged in negotiations to settle the suit brought by Union Carbide and CMA. While no written settlement of this action has yet been signed, as a result of the discussions EPA now believes that it may not be necessary to require closure and termination of the receipt of nonhazardous wastes at all non-retrofitted surface impoundments. Under certain carefully controlled circumstances it may be possible for a nonretrofitted surface impoundment to continue to receive nonhazardous waste in manner that is protective of human health and the environment. EPA also believes that other types of land disposal units may be able to continue to accept nonhazardous wastes if they are similarly controlled. The types of controls that EPA deems necessary are discussed in detail in Part IV of this preamble.

There also are a number of sound policy reasons why it is desirable to allow units to delay closure to continue to receive nonhazardous waste, provided that it does not jeopardize protection of human health and the environment. First, the Agency is concerned that the existing closure deadlines could limit incentives for hazardous waste minimization. This would be inconsistent with the Ageny's overall policies and goals as well as Congressional intent expressed in HSWA. For example, a generator with on-site hazardous waste storage, treatment, or disposal capacity might refrain from recycling wastes or modifying production processes to eliminate the generation of hazardous wastes, if such actions resulted in specific units no longer receiving hazardous wastes. In this case, the current closure rules would require the closure of that unit, even if it had remaining capacity useful for the management of nonhazardous waste.

Second, the land disposal prohibitions may require that owners and operators of land disposal units stop using the units for the management of certain hazardous wastes, e.g., wastes containing banned solvents. As a consequence, these requirements might trigger closure of the units, even if capacity remains for managing other hazardous wastes or nonhazardous wastes in an environmentally protective manner. Finally, the closure regulations could act as a disincentive to the delisting of a waste stream, if such delisting resulted in a triggering of the closure requirements.

In all of these cases, the Agency recognizes that closure of the unit while the unit has remaining capacity to receive nonhazardous wastes could disrupt facility operations or impose substantial economic burdens on the facility owner or operator. This is particularly likely in the case of treatment impoundments (such as wastewater treatment units) that serve as an integral part of an industrial waste management system, providing management for both hazardous and nonhazardous waste streams. The Agency continues to believe that, in general, units that cease the receipt of hazardous wastes should initiate closure in accordance with Parts 264 and 265 standards. However the Agency believes that, under certain conditions, closure activities can be deferred without increasing the risks to human health and the environment. For example, landfills which meet the permitting requirements to manage hazardous wastes should pose few additional risks to human health and the environment provided added nonhazardous wastes are compatible with previously disposed hazardous

wastes. Today's proposal attempts to promote these policy goals while continuing to protect human health and the environment by establishing specific applicability requirements, environmental controls *and,* the continued application of Subtitle C requirements to units wishing to remain open after the final receipt of hazardous wastes to receive nonhazardous wastes.

The Agency therefore is proposing to allow units that cease the receipt of hazardous wastes to delay closure, so that they may remain open to receive nonhazardous wastes provided that they meet the requirements of today's proposal in addition to current Subtitle C regulations. EPA considers these requirements discussed below to be consistent with the full set of regulatory and legislative requirements currently in place for units or facilities that accept hazardous waste.

B. Summary of Proposed Rule

Today's proposal would allow an owner or operator of a permitted or interim status surface impoundment or landfill in compliance with applicable requirements to remain open following the final receipt of *hazardous* waste to receive only non-hazardous wastes, if he additionally satisfies the specific conditions being proposed today, and continues to conduct operations in accordance with all applicable Subtitle C interim status and permit requirements. The requirements included in today's proposal vary with the type of unit, with additional conditions imposed on surface impoundments that do not meet the Part 264 liner and leachate collection system requirements. In general, however, the facility owner or operator would be required to operate under full permit requirements of 40 CFR Part 264, including corrective action requirements. Facilities currently in interim status which meet the requirements of today's proposal may defer closure while the permit application is being reviewed. In addition, surface impoundments that did not meet the liner and leachate collection system requirements would be required to remove all hazardous waste, or, if hazardous waste were not removed, to close at the first indication of ground-water contamination.

Exhibit 1 shows requirements applicable to all owners or operators wishing to delay closure, regardless of the type of unit involved. The requirements for permitted and interim status facilities are basically the same; the differences are primarily procedural in nature. As Exhibit 1 illustrates, owners or operators wishing to keep units open would be required to seek a permit modification at least 120 days prior to the final receipt of hazardous wastes, or, for interim status facilities, to submit an amended Part B permit application (or a Part B application if not previously required) at least 180 days prior to the final receipt of hazardous wastes. (Owners or operators of units that received their final volume of hazardous wastes before the promulgation of this rule would be eligible to keep their units open if they submitted the appropriate demonstrations within 90 days after the notice of the final rule has been published in the **Federal Register.**)

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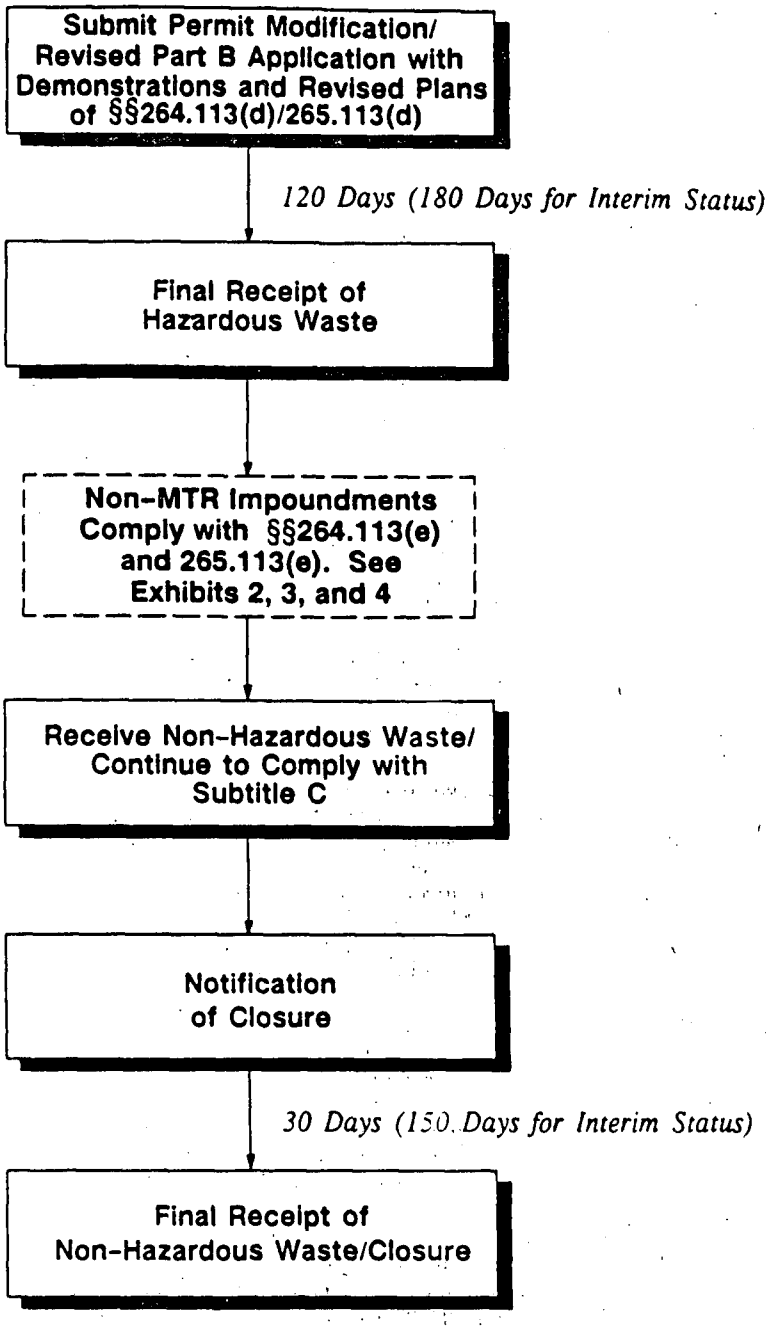
Exhibit 1

Requirements Applicable to All Facilities Wishing to Defer Closure



* Note: If a permit or permit modification is denied at any time, or interim status terminated for the affected unit, closure pursuant to §§ 264.113(a) and (b) or 265.113(a) and (b) must be initiated.

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The request for a permit modification or the amended Part B permit application must include a number of demonstrations, including ones showing that: (1) The unit has the existing design capacity to manage non-hazardous wastes; and (2) the non-hazardous wastes are not incompatible with any remaining wastes in the unit. As part of the permit modification or the amended Part B application, the owner or operator also must submit revised facility plans, including the waste analysis, ground-water monitoring, and closure and post-closure plans, and, if necessary, the closure and post-closure cost estimates and financial assurance to reflect changes associated with operating the unit to receive only non-hazardous wastes.

Owners or operators wishing to remain open following the final receipt of hazardous waste also must continue to comply with all Part 264 permit requirements (or Part 265 requirements until a permit has been issued), including ground-water monitoring and corrective action requirements and closure and post-closure care requirements. In addition, if the Regional Administrator determines that continued operation of the unit or facility will pose a substantial risk to human health and the environment, the unit would not be eligible to delay closure. Data collected pursuant to RCRA section 3019 and any other relevant information may be used by the Regional Administrator to make a determination of whether a substantial risk exists. Finally, units must be closed in accordance with the approved closure plan and the Subpart G regulations applicable to hazardous waste management units. Owners or operators must notify the Agency at least 30 days prior to the final receipt of non-hazardous wastes at that unit (or at least 150 days for interim status units without approved closure plans) and initiate closure activities in accordance with Subpart G regulations.

If a request to modify the permit to manage only non-hazardous wastes is denied, the permit is revoked at any time, a RCRA permit is denied for interim status facilities or interim status is otherwise terminated, the owner or operator must initiate closure following the final receipt of hazardous waste. Closure must be conducted in accordance with the approved closure plan and the deadlines currently in § 264.113 (a) and (b) or § 265.113 (a) and (b).

Today's proposal includes an additional set of requirements applicable to surface impoundments that do not satisfy the liner and leachate collection system requirements specified under HSWA or have not received a waiver from these requirements, but wish to remain open for non-hazardous waste management. For these impoundments, the Agency is proposing a combination of source control, accelerated corrective measures, and strict limitations on continued operations following the detection of a release to ground water. The Agency believes that compliance with these additional requirements and limitations when coupled with cessation of the receipt of hazardous wastes at these impoundments, will ensure the protection of human health and the environment. Exhibits 2, 3, and 4 show the additional requirements applicable to surface impoundments that do not meet the liner and leachate collection system requirements. These requirements, which are in addition to the requirements shown in Exhibit 1 and discussed above, are briefly summarized below.

In addition to these general requirements, all owners and operators of surface impoundments subject to section 3005(j) that do not satisfy the liner and leachate collection system requirement (Exhibits 2, 3, and 4) must provide a contingent corrective measures plan with their request to modify the permit (or, for interim status facilities, in their amended Part B permit application). This plan will ensure that corrective measures can be implemented promptly in the event of a release. (The contents of a contingent corrective measures plan are discussed in IV.B.2.a of today's preamble.)

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Exhibit 2

Surface Impoundment/Waste Removal Alternative with Release Detected Before/At Time of Final Receipt of Hazardous Waste

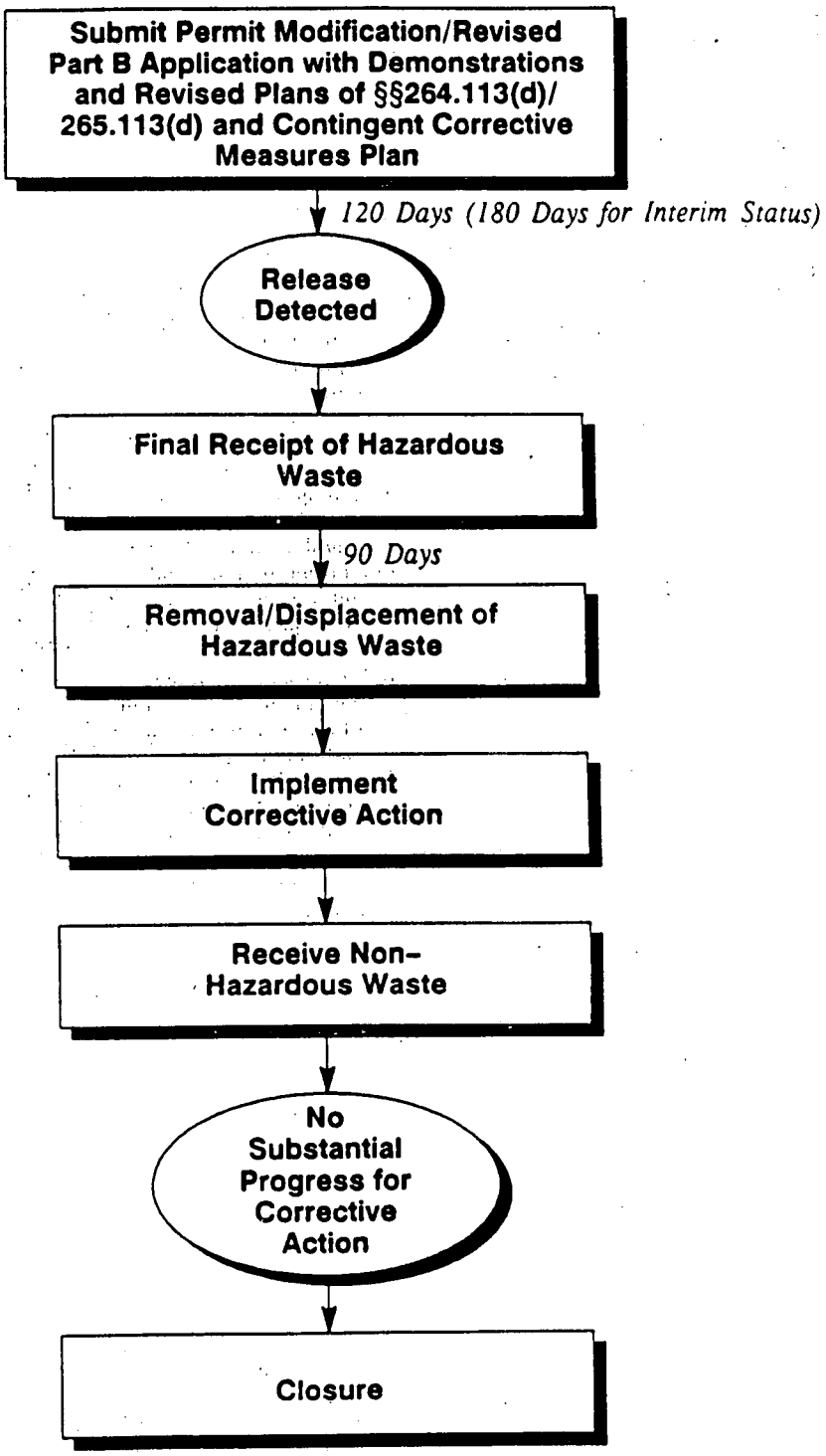


Exhibit 3

Surface Impoundment/Waste Removal Alternative with Release Detected After Final Receipt of Hazardous Waste

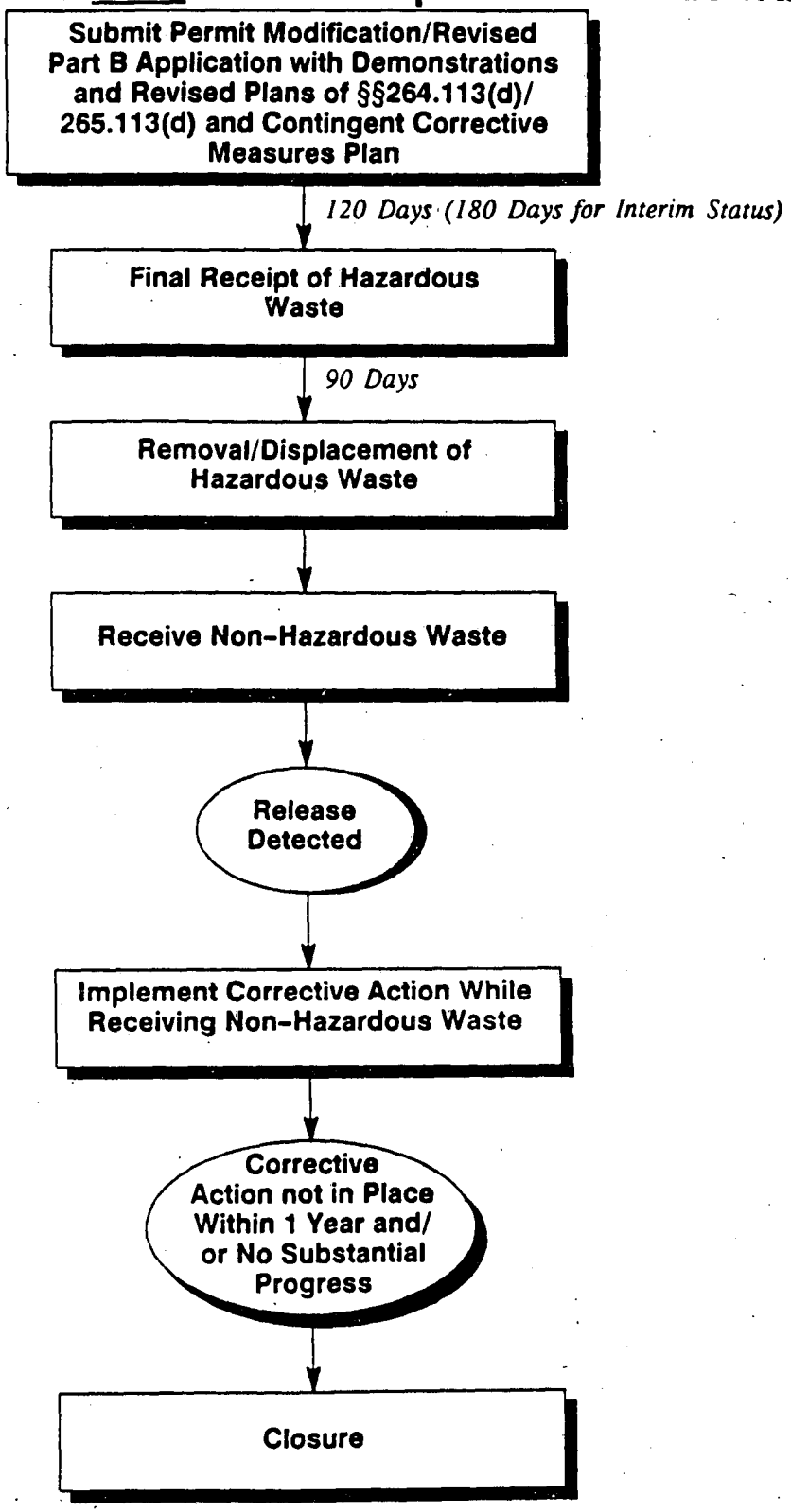
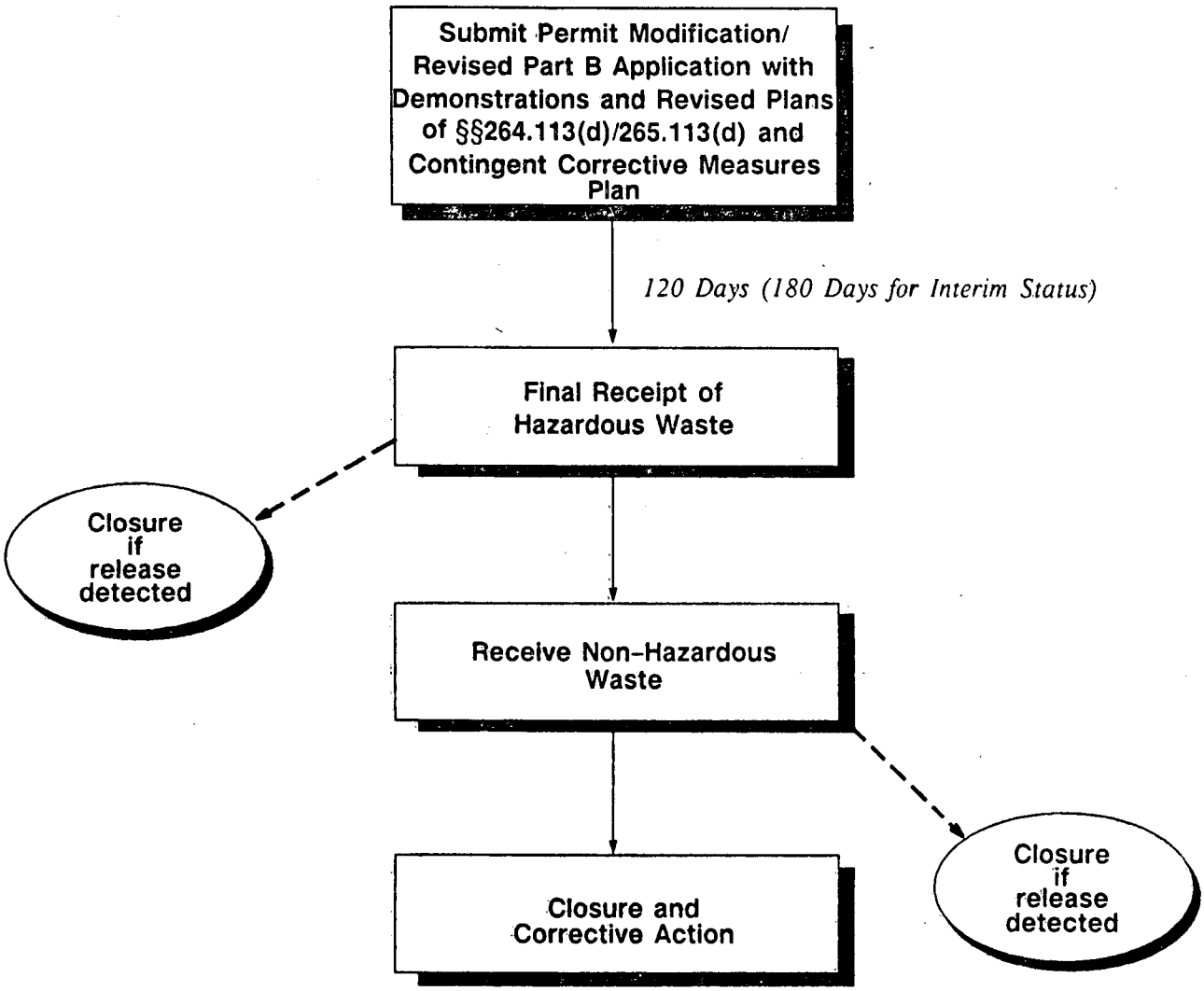


Exhibit 4

Surface Impoundment/Hazardous Wastes Remain Alternative



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With the submission of these initial demonstrations and contingent corrective measures plan, the owner or operator must indicate whether he intends to remove wastes from the impoundment or not. As summarized below and in Exhibits 2, 3, and 4, this decision will determine both eligibility of the impoundment to delay closure and the specific additional requirements applicable to the impoundment. Selection of an alternative will depend in part on whether a release has been detected from the impoundment.

If a release has been detected at an impoundment at or before the time of the final receipt of hazardous waste, the unit will be eligible to delay closure *only* if (1) the hazardous wastes are removed as discussed below *and* (2) corrective measures are implemented *prior* to the receipt of non-hazardous wastes (see Exhibit 2). Waste removal may be accomplished by either removing all hazardous liquids and sludges or, if removal of all hazardous wastes is infeasible or impracticable, by removing the sludges and displacing the hazardous liquids and suspended solids with non-hazardous wastes. Owners or operators who do not intend to remove the hazardous wastes from the impoundment (i.e., disposal impoundments) are not eligible to delay closure if a release has been detected at or before the final receipt of hazardous wastes.

If releases are detected *after* the final receipt of hazardous wastes, owners or operators of units that have removed sludges and removed or displaced the hazardous liquids may continue to operate the unit to receive non-hazardous wastes provided that corrective measures are implemented within one year from the date of the release (see Exhibit 3). Owners or operators who do not remove all hazardous wastes prior to receiving only non-hazardous wastes (i.e., disposal impoundments in Exhibit 4) must promptly initiate closure within 30 days of detection of the release in accordance with the deadlines in § 264.113(a) and (b) or § 265.113(a) and (b) if a release is subsequently detected.

Regardless of when the release is detected, the owner or operator must begin closure if he fails to make substantial progress in implementing the corrective measures and achieving the ground-water protection standard (or background levels for facilities that have no established ground-water protection standard). Substantial progress will be determined on a case-by-case basis. In general, however, the achievement of substantial progress will be measured by whether the owner or operator has met significant deadlines in the compliance schedule, permit, or enforcement order that establishes timeframes for achieving the facility's ground-water protection standard or background levels, if applicable. The Agency also is proposing procedural requirements for triggering closure of the unit if the Agency determines that the owner or operator fails to demonstrate substantial progress. This is discussed further in Section IV.B.2.d of today's proposal.

Today's proposal applies only when an owner or operator of a unit wishes to remain open following the final receipt of hazardous wastes to receive only non-hazardous wastes and meets all of the conditions in today's rule. Today's rule does not affect requirements applicable to owners or operators allowed to receive *hazardous* waste who wish to suspend operations temporarily and receive additional *hazardous* wastes in the future. The existing requirements in § 264.113(a) and (b) and § 265.113 (a) and (b) already include provisions for extending the deadlines for initiating and completing closure under these circumstances. The current Subpart G regulations also do not preclude an owner or operator from receiving non-hazardous wastes during the closure period as part of the closure activities provided that it does not interfere with closure activities. Today's proposal also does not affect these requirements.

IV. Section-by-Section Analysis of Proposed Rule

The following sections of this preamble address the major issues and present the Agency's rationale for the specific regulations proposed today. The preamble is arranged in a section-by-section sequence for ease of reference. Section A addresses the applicability of today's proposal. Section B discusses the Part 264 technical requirements applicable to permitted facilities, while the Part 270 procedural requirements applicable to permitting are addressed in Section C. Section D discusses the conforming changes to Parts 264 and 265 interim status standards. The requirements proposed in Parts 264 and 265 are substantively identical, but have slightly different procedural requirements.

A. Applicability

Today's proposal is restricted to permitted and interim status landfill and surface impoundment units that: (1) Are in compliance with applicable permit or interim status requirements; (2) cease to receive hazardous wastes; *and* (3) will subsequently receive only non-hazardous waste. For a unit to qualify as no longer receiving hazardous wastes, no additional hazardous wastes or wastes that generate a hazardous waste, shall be placed in the unit.[1] Today's proposal does not extend the option to delay closure to units that lost interim status pursuant to section 3005(e) (2) or (3) of RCRA.

Today's proposal also does not extend the option to delay closure to manage only non-hazardous wastes to storage units (i.e., storage or treatment tanks, container storage areas, or waste piles), incinerators, or land treatment units. If owners or operators of such units wish to receive non-hazardous wastes after the final receipt of hazardous wastes, they must comply with the current closure requirements, including decontamination procedures. The Agency believes that the activities necessary to close storage units (i.e., tanks, container storage areas, waste piles) and incinerators are compatible with the future use of the unit because by definition these units were always intended to only handle wastes on a temporary basis. Further, the Agency believes that requiring these units to conduct closure prior to receiving only non-hazardous wastes will not impose an undue burden on owners or operators.

The Agency is also not proposing in today's rule to allow land treatment units the option of delaying closure following the final receipt of hazardous waste. The Agency is not currently aware of any likely situations when the delay of closure to receive only non-hazardous wastes would be desirable or practical. However, EPA requests public comment on whether the option to delay closure should be applicable to land treatment units. If there are reasons to allow owners or operators of these units the option to remain open following the final receipt of hazardous wastes to receive only non-hazardous wastes, they would become subject to the requirements proposed in §§ 264.113(d) or 265.113(d), including demonstrations that the management of non-hazardous wastes in the land treatment unit will not be incompatible with any prior hazardous waste management

[1] For example, when a non-listed rinsewater from an electroplating operation is discharged into a surface impoundment, a listed wastewater treatment sludge from electroplating operations is formed in the impoundment. While the waste that enters the impoundment is non-hazardous, a listed hazardous waste is generated and thus received in the impoundment. Therefore, this unit would not qualify as a unit no longer receiving hazardous wastes.

operations. Owners or operators also would continue to be subject to all applicable Parts 264 or 265 requirements under Subpart M, including the treatment demonstration requirements in § 264.272.

EPA also requests comments on whether the closure delay option offered to landfills and surface impoundments should be extended to other hazardous waste units. We also request comment on the types of requirements that would be appropriate for other types of units seeking to delay closure in order to change to non-hazardous waste operations after the final volume of hazardous waste has been received.

B. Part 264 Standards

The Agency is proposing to amend § 264.112(d) and § 264.113 (a), (b), and (c), and to add new paragraphs (d) and (e) to § 264.113.

As previously discussed, the current Part 264 standards require a facility owner or operator to treat, dispose of or remove all hazardous wastes within 90 days (264.113(a)) and to complete closure activities within 180 days (264.113(b)) of the last receipt of hazardous wastes. Further, 264.112(d) establishes that the date that the owner or operator expects to begin closure, and therefore must notify EPA, is no later than 30 days after the receipt of the last known volume of hazardous wastes. Today's amendments will provide an additional justification for an extension of the closure period to allow for management of only non-hazardous wastes. Additionally, a conforming change is being made to § 264.112(d) to address final closure of units that qualify for this new closure extension.

The changes to § 264.113 supplement the existing general facility and technology-specific Part 264 standards by adding a separate set of requirements for owners or operators of hazardous waste management units that will delay closure in order to remain open to manage solely non-hazardous waste stream(s). These requirements are proposed to provide assurance that public health and the environment will be adequately protected at these units during the period prior to closure. All owners or operators wishing to delay closure are required to apply for a modification of their facility operating permits. This permit modification request must be accompanied by certain demonstrations and amended facility plans. Procedures for requesting a permit modification to delay closure, including timing requirements, are discussed in Section III.C of this preamble. Additional requirements are proposed in § 264.113(e) for surface impoundments that do not meet the liner and leachate collection system requirements in Part 264. Surface impoundment units will be subject to proposed §§ 264.113 (d) and (e) whereas landfill units will be subject to proposed § 264.113(d) only. The owner or operator must also continue to comply with existing Part 264 permit requirements.

1. General Conditions for Delay of Closure

Today's proposed rule imposes additional requirements on units wishing to remain open after the final receipt of hazardous wastes. These requirements supplement existing Subtitle C requirements. Under today's proposal an owner or operator must comply with all other applicable Part 264 requirements, including ground-water monitoring and corrective action requirements. Additional requirements are discussed below and in Section IV.B.2. A discussion of deadlines for complying with these requirements is in Section IV.C.

a. *Demonstrations for Extensions to Closure Deadlines.* Proposed §§ 264.113 (d) and (e) specify the conditions which must be met to delay closure to manage only non-hazardous wastes. First, the owner or operator must request a permit modification and, under § 264.113(d)(1) make a series of demonstrations. Sections 264.113(d)(1) (i) and (ii) propose that the owner or operator demonstrate that the unit has existing design capacity to receive non-hazardous wastes, and that there is a reasonable likelihood that the unit will receive non-hazardous wastes within one year after the final receipt of hazardous wastes. These demonstrations are consistent with the demonstrations currently required in §§ 264.113 (a) and (b) to extend the closure deadlines if an owner or operator wishes to suspend hazardous waste management operations temporarily and recommence receiving hazardous wastes at a later time.

Design capacity as specified in these sections refers to the operational design capacity included within the facility's Part A application. Since a primary purpose of the proposed rule is to allow facility owners and operators with existing waste disposal capacity to use this capacity effectively, the Agency does not believe that facilities should be allowed to expand their design capacity to accommodate even greater amounts of wastes.

In addition, to ensure that use of the unit to manage non-hazardous waste is protective of human health and the environment, the Agency is proposing to require in § 264.113(d)(1)(iii) that owners or operators must demonstrate that treatment, storage, or disposal of non-hazardous waste (including the interaction between non-hazardous wastes that may be co-managed) will not pose any potential threats to human health and the environment as a result of past and existing hazardous waste management operations. In this demonstration, owners or operators would be required to consider fully any potentially detrimental effects concerning the design, operation, closure, and post-closure of the unit due to the addition of non-hazardous wastes. Potentially detrimental effects include those due to the incompatibility of non-hazardous wastes and constituents with the hazardous wastes that previously had been disposed of in the unit. For example, detrimental effects might occur if a neutral pH metallic sludge (listed as F006) remained at the bottom of a unit that received non-hazardous waste containing relatively high acid levels. The elevated levels of acid in the non-hazardous waste would tend to solubilize the metals in the F006 sludge, resulting in a leachate with potentially significant levels of toxic metals. Potential problems that may affect a unit's ability to comply with Subtitle C requirements also must be addressed. For example, at a landfill the impacts of adding non-hazardous wastes may include subsidence, settlement of the cap, or leachate or methane gas generation.

In many cases, especially for wastewater treatment impoundments, both hazardous and non-hazardous waste streams will have been previously managed simultaneously in the unit and compatibility of operations should be relatively easy to demonstrate to the Agency. On the other hand, EPA does not believe, for example, that receipt of municipal solid waste at a landfill previously used to manage hazardous waste would ever be considered compatible given the potential for the generation and migration of methane gas, subsidence, and settling of the cap.

As discussed below, the proposal requires that the unit continue to comply with all RCRA Subtitle C permit conditions. Because a unit or facility that delays closure is handling non-hazardous wastes, such facilities may be subject to State laws regulating the management of municipal or industrial solid wastes. Therefore, the Agency expects owners and operators to conduct management of the non-hazardous wastes in a manner consistent with any applicable State and local requirements for facilities that handle non-hazardous wastes.

Finally, §§ 264.113(d)(1) (iv) and (v) require owners and operators to demonstrate that closure of the unit is incompatible with its continued operation and that the unit is (and will continue to be) in compliance with all applicable permit requirements. These requirements are consistent with current requirements for approval to extend the closure period under §§ 264.113 (a) and (b). In reviewing compliance with applicable regulations, the Agency is concerned that ground-water systems pursuant to § 264.97 be in place. The Agency in particular would expect facilities delaying closure under today's proposal to have monitoring wells in place as required by Subpart F.

b. *Changes to Facility Plans.* The Agency is proposing in § 264.113(d)(2) to require as a condition of delaying closure that owners or operators submit, with their permit modification, a request to make the appropriate changes to the waste analysis, ground-water monitoring and response, and closure and post-closure plans, and associated changes to the closure and post-closure cost estimates and financial assurance required elsewhere in Part 264. Just as facility plans must be revised to reflect substantial changes in the types of *hazardous* wastes handled or the hazardous waste management practices employed, the Agency believes that selected plans for the facility, and, in particular, the waste analysis plan, ground-water monitoring plan, and closure and post-closure plans and cost estimates, may have to be modified to reflect the changes associated with operation of the unit to receive only non-hazardous wastes.

The ground-water monitoring plan may also need to be revised to account for the presence of any hazardous constituents, such as those published in Appendix VIII of Part 261 or Appendix IX in Part 264, in the non-hazardous waste. In addition, at some facilities it may be necessary to revise the ground-water monitoring plan to address the installation of additional wells for those units that will be remaining open to receive only non-hazardous wastes in order to detect releases from those units. Revisions to the closure and post-closure plans may be necessary if the activities to be conducted differ from those previously planned (e.g., procedures for handling wastes at closure or the date of final closure, if required under § 264.112(b)(7)). To the extent that revisions to the closure or post-closure care plans increase the cost estimates, the cost estimates and the amount of financial assurance required in §§ 264.143 and 264.145 also must be increased.

c. *Exposure Assessment Information.* Under proposed § 264.113(d)(4), owners or operators of landfills and surface impoundments must include the human exposure assessment required under RCRA section 3019(a). Facilities will not be eligible to delay closure to receive non-hazardous waste if the Regional Administrator determines that the unit poses a substantial risk to human health. Such a determination will be based on data from the human exposure assessement, as well as on any other relevant information. Upon determination that a unit poses a substantial risk to human health, the unit will be required to close following the final receipt of hazardous wastes pursuant to the current deadlines in Subpart G.

d. *Permit Revisions.* Finally, the Agency is proposing in § 264.113(d)(5) to require that the request to modify the permit include revisions as appropriate to affected conditions of the permit to account for the management of only non-hazardous waste in a unit previously managing hazardous waste. Because some hazardous constituents may remain in a unit even in cases where hazardous wastes have been flushed or removed, the Agency believes that it is important for the protection of human health and the environment that information concerning the management of non-hazardous waste be included in the permits of facilities seeking to delay closure under today's proposal. In addition, this requirement is consistent with the Agency's intent that units delaying closure continue to be subject to the permitting requirements of Subtitle C. Receipt of non-hazardous waste under today's proposal, therefore, would be considered analogous to adding a hazardous waste stream to a facility during its normal operating life. Permit revisions that the Agency would consider necessary include revisions to the exposure information required under § 270.10(j) to account for the potential danger to the public due to the continued presence of hazardous constituents in the unit following the final receipt of hazardous waste. A list of the non-hazardous wastes to be managed as required for hazardous waste under §§ 270.17(a) and 270.21(a), and revised descriptions of the processes to be used in the unit for treating, storing, and disposing of wastes as required under § 270.13(h)(i) would also be required. Other required revisions might include an updated demonstration of financial assurance as required under § 270.14(b)(15) and a revised ground-water monitoring plan as required under § 270.14(c)(5) and discussed in Section IV.B.1.b above.

2. Surface Impoundments that Do Not Meet Liner and Leachate Collection System Requirements

Congress has recognized that surface impoundments may pose certain waste management problems as evidenced by the provisions of RCRA section 3005(j), which state that interim status surface impoundments in existence on November 8, 1984, must either satisfy the MTRs applicable to new units (i.e., be designed with double liners, leachate collection systems, and ground-water monitoring), receive a waiver from these requirements, or stop the receipt, storage, or treatment of hazardous wastes by November 8, 1988. These requirements are discussed in the March 28, 1986 **Federal Register** (See 51 FR 10707).

Because of this additional concern for surface impoundments that do not meet the MTRs, and Agency believes that controls beyond those already discussed above must be imposed on these units as a condition of delaying closure to receive only non-hazardous wastes where some hazardous wastes are to remain in the unit. For surface impoundments that othrewise satisfy the permit requirements (including compliance with Subpart F ground-water monitoring) but do not meet liner and leachate collection system requirements, EPA believes that additional controls are necessary to ensure that such units delaying closure under today's proposed rule afford a level of protection consistent with that of units that are retrofitted to meet these requirements. Although these units are no longer receiving additional hazardous wastes, hazardous wastes (e.g., sludges) from previous operations may be present in the unit. Because of the potential presence of hazardous wastes in these impoundments, continued operation of the units for any waste management is concern due to the likelihood of leakage, especially from unlined units. Therefore, today's rule proposes that all surface impoundments that do not comply with double liner and leachate collection system requirements in Part 264 applicable to new units and RCRA section 3005(j) must submit not only the required demonstrations and the modified facility plans discussed above, but also comply with additional requirements in § 264.113(e) to ensure protection of human health and the environment. These requirements are discussed below.

a. *Contingent Corrective Measures Plan.* In addition to the demonstrations and requirements described in IV.B.1 above, proposed § 264.113(e)(1) requires owners or operators of surface impoundments that do not satisfy liner and leachate collection system requirements to submit a contingent corrective measures plan with the request to modify the permit as a condition of delaying closure unless a corrective action plan has already been submitted under § 264.99. (The requirements for initiating corrective action are discussed further in today's preamble at IV.B.2.c below.) Requiring this plan in advance of a release will ensure that if a leak does occur, corrective measures can be implemented quickly to prevent further contamination of ground water, contain existing contamination, and lead to steady progress in achieving the ground-water protection standard at the unit.

The Agency expects such a plan to include as many elements of a full corrective action program as possible and to be sufficiently detailed with respect to actual remedial activities to ensure rapid implementation in the event of a release. Because the exact extent and type of release will not be known, the contingent corrective measures plan should describe a range of possible remedies that may be appropriate under several likely release scenarios. While the Agency recognizes that it would be impossible to plan for all contingencies, EPA believes that, using data on the types of constituents at the facility, hydrogeologic conditions, location of ground-water monitoring wells, and available remedial technologies, it is possible to develop a fairly detailed set of alternative measures.

The plan should include an extrapolation of future contaminant movement, a discussion of the likely contaminants of concern, and a description of those corrective measures that can be installed quickly to address *inter alia* releases of different types of constituents or releases at variable rates and plumes of different size and depth. The plan should also identify potential interim measures such as alternate water supplies, stabilization and repair of side walls, dikes, and liners, or reduction of head, if appropriate. The range of corrective measures should be described in detail, including the equipment and the physical components required. For example, the plan should describe the type and placement of the containment measures to be used (e.g., slurry walls, low permeability barriers, etc.), the number and types of wells and how they will be used (e.g., diversion wells or wells for collecting the flow), and the proposed treatment technologies (e.g., carbon adsorption, ion exchange, chemical precipitation, etc.). The plan should also identify any site-specific problems which could affect a corrective measures program, such as underground utilities and migration of the plume under structures.

The Agency believes that much of the data for the contingent corrective measures plan should be readily available to owners or operators. Information on constituents, plume direction, location of wells, and potential human and environmental exposures is included with the Part B permit application. Additional information may also be available as a result of actions taken or ongoing to comply with corrective action requirements under either Subpart F or a RCRA section 3008(h) corrective action order or permit conditions pursuant to RCRA section 3004(u).

The preparation of the contingent corrective measures plan does not relieve the owner or operator of any existing or future requirements of a corrective action program or schedules of compliance in a RCRA section 3008(h) corrective action order. The measures identified in the contingent corrective measures plan are anticipated to be complementary to any long-term corrective measures that may be determined to be required following more in-depth analysis of the release and remedy evaluation. Changes to the contingent plan may be made under applicable permit modification requirements.

b. *Alternatives.* Today's proposal in section 264.113(e) offers owners or operators of surface impoundments that do not satisfy the double liner and leachate collection requirements three alternatives for delaying closure to receive non-hazardous wastes. These options offer flexibility to owners or operators to account for different types of management practices. However, regardless of the option chosen, the combined requirements are designed to assure that impoundments that do not meet double liner and leachate collection system requirements ensure protection of human health and the environment. As part of the demonstrations required in the request to modify the permit to delay closure, an owner or operator of a surface impoundment eligible to delay closure must include a plan for complying with one of the three alternatives described below.

(1) *Alternative 1—Removal of Hazardous Wastes.* Under the first alternative, proposed in section 264.113(e)(2)(i), an owner or operator of a surface impoundment must remove all hazardous liquids and hazardous sludges from the impoundment prior to the receipt of nonhazardous waste. In addition, in the event of a release to ground water, the facility would have to comply with the corrective action requirements discussed in Section IV.B.2.c below.

The Agency recognizes that for lined units, it may be necessary to leave some wastes immediately above the liner to avoid impairing the integrity of the liner. Therefore, the Agency is proposing to allow sludges to remain immediately above the liner *only* to the extent necessary to maintain the integrity of the liner. In cases where the unit is unlined, the hazardous waste must be removed down to the underlying and adjacent soil. This degree of removal will maintain the structural uniformity of the bottom of the unit. The amount of hazardous sludge that must be removed will be determined on a case-by-case basis, taking into consideration the physical and chemical characteristics of the sludge, technology available to remove the sludge, and liner material.[2] The Agency will not consider the economic practicability of sludge removal in determining the amount of sludge that must be removed. At the time of final closure, the impoundment will still be subject to Subpart G closure requirements. If the unit chooses to "clean close", additional sludge removal may be required to meet clean closure standards. This final determination will be made at the time of final closure.

As specified in proposed § 264.113(e)(4)(i), the hazardous wastes (liquids and sludges) must be removed no later than 90 days after the final receipt of *hazardous* wastes. The Regional Administrator may approve a request for a longer period of time based on need (e.g., additional time is required because of adverse weather conditions or specific operating practices), and a demonstration that an extension will not pose a threat to human health and the environment. (The requirement to remove wastes as a condition of delaying closure applies only to the

[2] The draft RCRA Guidance Document, "Minimum Technology Guidance on Single Liner Systems for Landfills, Surface Impoundments, and Waste Piles—Design, Construction, and Operation," issued may 24, 1985, for example, suggests that a minimum of 18 inches of protective soil or equivalent is appropriate to protect liners from damage when mechanical equipment is used to remove sludge or contents of the impoundment.

hazardous wastes in the impoundment.) The deadline and the criteria for requesting an extension to the 90-day deadline are consistent with the current provisions in § 264.113(a) for removing all *hazardous* wastes at closure and for requesting an extension to that deadline. The Agency wishes to ensure that owners or operators of surface impoundments that do not satisfy the double liner and leachate collection system requirements and who choose to remove hazardous wastes do so within the same time frames were they to close their units following the final receipt of *hazardous* wastes.

(2) *Alternative 2—Flushing Hazardous Wastes*— (a) *Sludge Removal and Flushing of Liquids.* The second alternative, proposed in § 264.113(e)(2)(ii), would allow an owner or operator to delay closure if he removed the hazardous sludges as required in Alternative 1 (e.g., dredging or pumping) and removed the liquid hazardous wastes and suspended solids from the unit by flushing the unit with the non-hazardous influent. This alternative is available only where the owner or operator can demonstrate that it is infeasible or impracticable to remove all of the hazardous waste from the impoundment as discussed in Alternative 1. The owner or operator also would be required to demonstrate that the liquid wastes and suspended solids remaining in the unit did not exhibit a characteristic of hazardous wastes identified in Subpart C of Part 261. As in Alternative 1, the owner or operator also must comply with corrective action requirements discussed below.

The Agency believes that units employing biological treatment methods may be able to demonstrate that it is infeasible or impracticable to remove all of the hazardous wastes as discussed in Alternative 1. In a biological treatment impoundment, the hazardous wastes of concern include the sludge that has settled to the bottom of the unit and the liquid phase. If the hazardous liquids are removed by draining the impoundment, the following problems could arise. First, in many cases the facility's wastewater treatment system would be shut down, which could force the facility to stop some of its operations for a significant period of time while the removal activities were completed. Second, the microorganisms which had been acclimated to the facility's wastes would be destroyed and the facility would have to reacclimate a new biomass.

Under Alternative 2, at least 95 percent of the liquid and suspended hazardous wastes must be displaced by flushing with non-hazardous influent. The owner or operator must demonstrate that 95 percent of the liquid, as measured by volume, has been displaced. The Agency would consider a tracer study to be an appropriate means of making this demonstration. For example, in some impoundments, depending on the waste types and the environment, a radioisotope (e.g., deuterated marker compounds) or an easily detected and identifiable chemical compound could be introduced into the impoundment, allowing the wastes remaining in the impoundment to be measured. Use of chemical dyes to trace the flow of wastes also may be appropriate methods in some circumstances.

As specified in § 264.113(e)(4)(ii), the owner or operator must begin flushing the impoundment and removing hazardous sludges no later than 15 days after the final receipt of hazardous wastes and complete the 95 percent displacement and removal of hazardous wastes no later than 90 days after the final receipt of hazardous wastes. This deadline is consistent with the deadline in § 264.113(a) for removing hazardous wastes at closure. For multi-unit treatment impoundments, 95 percent of the hazardous wastes in the last unit in the train must be displaced no later than 90 days after the final volume of hazardous wastes has been received at the first unit. The Regional Administrator may grant an extension to the 90-day deadline if the owner or operator can demonstrate that the retention time necessary to flush the unit or remove all of the sludge necessitates a longer time period and that an extension will not pose a threat to human health and the environment.

The Agency recognizes that the retention time necessary to complete the 95 percent displacement will vary significantly among units, depending on site-specific factors such as size, depth, average flow rate, and the type of treatment that is being conducted (e.g., aerobic, anaerobic, aeration, settling, facultative). The Agency believes that a 90-day deadline should be sufficient for all but the largest impoundments or for multi-unit treatment impoundments. Data on the average retention time for a number of different sizes and types of impoundments suggest that only very large impoundments (e.g., 200-acre impoundments) or treatment train impoundments comprised of several units are likely to have retention times of over 90 days. Most of the impoundments examined had average retention times of less than 50 days, suggesting that displacement and sludge removal could be completed within the proposed deadline. For units that cannot complete the displacement within the 90-day deadline, the Agency would have the authority to extend the deadline. To support an extension, EPA would expect an owner or operator to submit data on the size of the unit, the type of treatment being conducted, the average flow rate (e.g., millions of gallons per day), and documentation supporting the claim that the unit's retention time and the time required to remove the sludge would exceed 90 days.

The Agency recognizes that the 90-day deadline also may be insufficient for treatment facilities composed of multiple impoundments. For example, a treatment system comprised of an equalization pond, two anaerobic ponds, and an aerobic pond could have a combined retention time exceeding 90 days. In this case, the Agency would entertain a request for an extension of the 90-day deadline.

The Agency considered proposing that the flushing process be completed within 180 days to allow owners or operators of very large impoundments sufficient time to remove the sludges and complete the flushing process. The Agency was concerned that owners or operators not delay the flushing process and, as a result, is proposing that the flushing begin no later than 15 days after the final receipt of hazardous wastes and be completed no later than 90 days after the final receipt. The Agency is requesting comments on whether 90 days is an adequate amount of time to complete the sludge removal and flushing process for most facilities and data on retention times of impoundments to support an alternative deadline, if appropriate.

(b) *Relationship to Mixture Rule.* EPA's "mixture rule" for the definition of hazardous wastes raises an interesting issue for facilities that treat hazardous wastes in a series of connected surface impoundments. Under the requirements of 40 CFR 261.3(a)(2)(iv), where a listed hazardous waste mixes with a non-hazardous waste, the entire mixture is considered to be the listed waste and must be handled as hazardous. Such mixing might occur in a surface impoundment that is delaying closure to receive non-hazardous wastes under any of the three alternatives described above. If the impoundment in which the mixing occurred was the first impoundment in a treatment train, the material it discharged to "downstream" impoundments would be considered a hazardous waste. The "downstream"

impoundments would have to retrofit to continue to receive this mixed hazardous waste stream after November 8, 1988.

Retrofitting, however, might not be required in all circumstances. The key question would be whether in fact any mixing of non-hazardous and hazardous wastes occurs in the first impoundment in the series. The Agency has stated, in somewhat analogous circumstances, that no mixing occurs in a wastewater treatment unit that manages a non-hazardous liquid waste even if that liquid generates a hazardous sludge that settles to the bottom of the same unit, unless the sludge is in some way physically dredged up and mixed with the liquid. EPA believes it would be appropriate to apply the same principle here. There should be even less opportunity for mixing here because in many cases much of the original hazardous sludge will be removed, and in all cases no additonal quantities of hazardous sludge will be generated. Consequently, if there is no further disturbance of remaining hazardous waste in an impoundment delaying closure, EPA will presume that no mixing occurs and that the non-hazardous waste does not become a hazardous waste. Subsequent surface impoundments would be able to accept this non-hazardous waste if they met the requirements proposed today.

Final closure activities, of course, may disturb and mix the wastes and as previously discussed, the hazardous waste rules apply at final closure. Sludges within all impoundments continue to be considered hazardous wastes unless delisted.

(3) *Alternative 3—Leaving Hazardous Wastes in Place.* The third alternative proposed in § 264.113(e)(3) allows owners or operators of disposal impoundments who do not intend to remove all hazardous wastes, including liners and contaminated soils, at closure, but instead will leave some hazardous wastes in place, to delay closure under only limited circumstances. Because hazardous wastes are not removed prior to the receipt of non-hazardous wastes, the Agency is proposing more stringent requirements for disposal impoundments than for impoundments at which hazardous wastes are removed. For disposal impoundments, the Agency is limiting the availability of the option to delay closure to those impoundments that do not have a statistically significant increase over background values of detection monitoring parameters or constituents or have not exceeded the facility's ground-water protection standard at the point of compliance on the date of the final receipt of hazardous wastes. This determination will be based on the most recent monitoring data as required in Part 264 Subpart F. In addition, if a release is detected after the final receipt of hazardous wastes, the owner or operator must promptly initiate closure of the disposal impoundment in accordance with the approved closure plan no later than 30 days after the detection of the release and comply with the corrective action requirements including those discussed below.

c. *Corrective Action Requirements.* All units that delay closure will remain subject to all applicable corrective action requirements. In addition, owners or operators of surface impoundments that do not meet the double liner and leachate collection system requirements must submit a contingent corrective measures plan as a condition of delaying closure. The Agency is proposing in § 264.113(e) additional conditions that apply if there is a statistically significant increase over background values of detection monitoring parameters or constituents for interim status units or if a release that exceeds the facility's ground-water protection standards at the point of compliance is detected at these impoundments. This determination will be made based on the unit's most recent monitoring data as required under Part 264 Subpart F. The purpose of the contingent corrective measures plan and the corrective action requirements in § 264.113(e) is to ensure that if a release is detected, interim corrective measures, at a minimum, are instituted quickly.

As mentioned earlier, the corrective action requirements proposed in § 264.113(e) have no effect on an owner's or operator's obligations to comply with all of the requirements in Part 264, Subpart F. Rather, the requirements in today's proposal are in addition to the corrective action requirements specified in Subpart F to ensure that the delay of closure to receive only non-hazardous wastes at surface impoundments that do not meet the double liner and leachate collection system requirements does not compromise the protection of human health and the environment. Moreover, the Regional Administrator retains the authority to require additional corrective measures as deemed necessary in the final corrective action plan. Finally, today's proposal will not affect future changes to Subpart F that are currently under consideration. For example, if the Agency revises the methods for setting the ground-water protection standards, disposal impoundments that exceed their ground-water protection standard as a result of such regulatory amendments would still be required to close. If necessary, conforming amendments will be made to today's rule to be consistent with any future changes to Subpart F.

The Agency is concerned that basing the evidence of a release from a unit on contamination of ground water alone may overlook releases that have occurred but have not yet been detected by the ground-water monitoring system. The Agency is also concerned about contamination to media besides ground water, e.g., soil contamination or leaching of hazardous constituents to surface water. While the unit remains subject to all corrective action requirements for all media, the initial determinations of whether expedited corrective action is required under today's proposal for delayed closure are based on ground-water monitoring data. The Agency is requesting comments on the approach of basing the evidence of a release on ground-water monitoring results only and whether other options may be appropriate.

The Agency is proposing more stringent corrective action requirements for disposal impoundments because of the greater risks associated at units where hazardous wastes have not been removed. The Agency is also imposing more stringent requirements on impoundments that are leaking on the date of the final receipt of hazardous waste to ensure that these units do not exacerbate any threats to human health and the environment. These requirements are discussed in detail below.

(1) *Disposal Impoundments.* As discussed above, § 264.113(e)(8) proposes that disposal impoundments must not have detected a release to ground water as a condition of delaying closure to receive only nonhazardous waste. Any disposal impoundment having a statistically significant increase over background values of monitoring parameters or constituents or exceeding the ground-water protection standard on the date of the final receipt of hazardous waste, based on the most recent ground-water monitoring data as required under Part 264, Subpart F, is not eligible for delayed closure. If a statistically significant increase in background values is detected, or if the ground-water protection standard is exceeded, corrective action must be conducted as required under Subpart F and the unit must be closed in accordance with the approved closure

plan and other requirements in Subparts G and K.

(2) *Surface Impoundments At Which Wastes Are Removed.* The Agency is proposing in § 264.113(e) (5), (6), and (7) the corrective action requirements imposed on owners or operators who intend to remove hazardous wastes from their impoundments as a condition of delaying closure. These sections vary depending on whether or not a release has been detected by the date of the final receipt of hazardous wastes. These regulations are discussed below.

(a) *Releases at the Time of the Final Receipt of Hazardous Wastes* (Exhibit 2 in Section III.B of this preamble). The Agency is proposing in § 264.113(e) (5) and (6) to require owners or operators of surface impoundments intending to remove hazardous wastes to cease the receipt of all wastes if they have detected contamination statistically greater than background levels of detection monitoring parameters or constituents, or in excess of their ground-water protection standard at the point of compliance. The most recent monitoring data required under Subpart F will be used to make this determination by the date of the final receipt of hazardous wastes. An exception would be granted to owners or operators who remove hazardous wastes from the impoundment by flushing with non-hazardous wastes. In this case, the impoundment may continue to receive non-hazardous waste only to complete the flushing process in accordance with the timeframes established in § 264.113(e)(4)(ii).

Non-hazardous wastes may not be received at a unit with a release statistically greater than background levels or exceeding the ground-water protection standard on the date of the final receipt of hazardous waste until corrective measures have been implemented. These measures must be consistent with an approved contingent corrective measures plan or with provisions of an approved corrective action plan otherwise required in Subpart F. The specific corrective measures that must be implemented to allow a facility to receive nonhazardous wastes will be specified on a case-by-case basis in the plan. However, if an owner or operator can demonstrate that the release is not statistically greater than background levels or does not exceed the facility's ground-water protection standard, he may continue to receive non-hazardous wastes.

The Agency intends that the corrective measures to be implemented be more than studies of the extent of contamination or development of remedial alternatives. Rather, the Agency would expect containment and/or remediation activity, consistent with the activities described in the contingent corrective measures plan, to be undertaken. For example, installing removal wells and a slurry wall and starting the pumping and treating of contaminated ground water might satisfy the requirement that corrective measures be implemented.

The Agency recognizes that stopping the receipt of all wastes until corrective measures have been implemented could adversely affect the operations of some types of facilities. The Agency believes that in most cases, however, the delay should not be extensive. First, many of the units that may have to stop the receipt of wastes because a release has been detected at the time of the final receipt of hazardous wastes will have already triggered compliance monitoring and/or be engaged in a corrective action program under Subpart F prior to today's proposal. In fact, remedies may already be under review for such units. Therefore, there should not be an extensive delay before the unit is placed on a compliance schedule for corrective action and the unit can receive non-hazardous wastes. Second, because these units have detected releases, the Agency expects that in most cases these facilities will have a high priority for approval of corrective action plans. At the same time, prohibiting the continued receipt of non-hazardous waste until corrective measures have begun should provide an incentive for owners or operators to implement corrective measures as soon as possible after the approval of a corrective action plan.

The Agency considered allowing units that are leaking on the date of the final receipt of hazardous wastes to receive non-hazardous wastes if the owner or operator makes a demonstration that the receipt of non-hazardous wastes will not exacerbate threats to human health and the environment or impede the effectiveness of the corrective measures, and that these corrective measures will be implemented within one year from the final receipt of hazardous waste. It has been argued that, particularly for owners or operators who will remove the hazardous wastes by flushing with non-hazardous influent, allowing the further receipt of non-hazardous wastes at these units after flushing has been completed may not increase the environmental risks. According to the argument, allowing the continued receipt of non-hazardous wastes will further dilute certain types of constituents in the impoundment and thus may decrease the potential for threats to human health and the environment.

The Agency is not proposing this approach for a number of reasons. First, because hazardous wastes remain in the unit, it would be necessary to evaluate the impacts of allowing the receipt of non-hazardous wastes on the effectiveness of the corrective action program. Because the units in question do not satisfy liner and leachate collection system requirements, the Agency must be assured that the requirements applicable to these units provide adequate protection of human health and the environment. (This is a particular concern for facilities awaiting permit approval where characterization of ground-water flows, hydrogeologic conditions, the extent of the plume, etc., may not yet have been subject to the rigorous review that occurs during permitting.) The Agency is not convinced that it will be possible to effectively evaluate such impacts. The Agency also is uncertain about what criteria should be used to evaluate the impacts of the continued receipt of non-hazardous wastes on the effectiveness of corrective action. Finally, the Agency is concerned that the effort required to evaluate these demonstrations will be time-consuming and not an effective use of Agency resources.

The Agency is requesting comments on whether impoundments not meeting liner and leachate collection system requirements that are leaking on the date of the final receipt of hazardous wastes should be allowed to receive non-hazardous wastes prior to the institution of a corrective action program. Particularly, the Agency is soliciting information on the impacts of hydraulic head on the effectiveness of corrective action, the types of data necessary to make these determinations, deadlines for making these demonstrations, and whether this option should be available to all impoundments or only impoundments that have already received permits.

(b) *Releases After the Final Receipt of Hazardous Wastes* (Exhibit 3 in Section III.B of this preamble). Today's rule proposes in § 264.113(e)(7) to allow an owner or operator of an impoundment that does not meet liner and leachate collection system requirements and whose hazardous wastes have been removed to continue operating the unit if a release is detected after the date of the final receipt of hazardous wastes under limited circumstances. After the detection of a release, the unit only be allowed to continue to receive non-hazardous waste *only* if corrective measures consistent with the approved

contingent corrective measures plan are implemented within one year of the detection of the release, or approval of the contingent corrective measures plan, whichever is later, and if the continued receipt of non-hazardous waste will not pose a threat to human health and the environment. Again, the conditions for demonstrating that corrective measures have been established will be specified on a case-by-case basis in the corrective action plan. (As discussed earlier, the Regional Administrator retains the authority to require additional corrective measures in the final corrective action plan.)

Again, while a demonstration that corrective measures have been put in place must be more than the completion of studies, the implementation of interim measures (e.g., installing slurry walls and initiating a pump and treat program) may be sufficient. If the Regional Administrator determines that the continued receipt of non-hazardous waste during this one-year period is posing a threat to human health or the environment, he has the authority to either require that corrective measures be implemented in less than one year or to require that the receipt of non-hazardous wastes cease until corrective measures are implemented.

While it is the Agency's policy that corrective action be undertaken promptly, it recognizes that at large units or facilities a longer time could be needed to completely assess the nature and extent of the contamination and specify remedies or that delays in cleanup activities could be caused by timing issues beyond the control of the owner or operator (e.g., availability of cleanup contractors, weather conditions). The Agency considered giving the Regional Administrator the authority to grant extensions to the one-year deadline for implementing corrective measures. However, the Agency wished to avoid additional administrative burdens and delays in getting corrective measures implemented and still believes that one year should provide adequate time. The Agency is requesting comments on this one-year deadline and suggestions on other alternatives.

d. *Evaluating Progress of Corrective Action.* In § 264.113(e)(10), the Agency is proposing that impoundments that have removed all hazardous wastes and have been allowed to delay closure to receive non-hazardous waste in accordance with the requirements in § 264.113 (d) and (e)(2) must initiate closure if the owner or operator fails to make substantial progress in implementing corrective action and achieving the facility's ground-water protection standard or background levels if the facility has not yet established a ground-water protection standard.

The Agency is not proposing to define "substantial progress" in today's rule. Rather, the Agency believes that this determination should be made on a case-by-case basis based on an evaluation of the progress of the corrective action program towards achieving the ground-water protection standard (or background levels if applicable). In addition, the Regional Administrator will evaluate the effect of the continued receipt of non-hazardous waste on the effectiveness of the corrective measures being taken in determining whether substantial progress towards the ground-water protection standards has been achieved. In general, the Agency would consider the failure to comply with significant deadlines in the schedule of compliance, the permit, or other enforcement orders that establish timeframes for achieving the facility's ground-water protection standard as cause for closure. The Agency does not intend failure to comply with procedural or reporting requirements that do not affect the progress of corrective action to be cause for closure; on the other hand, compliance with deadlines for procedural or reporting requirements alone will not be considered a demonstration of substantial progress.

A determination of whether the unit has demonstrated substantial progress in its corrective action program would be based, in part, on the results of the semi-annual reports required under § 264.113(e)(9). Proposed § 264.113(e)(9) requires the owner or operator to submit reports to the Regional Administrator that describe the progress of the corrective measures, including results of ground-water monitoring and the effect of the receipt of non-hazardous wastes on the effectiveness of the corrective action. The amount of time allowed for demonstrating that substantial progress toward achieving the ground-water protection standard has been achieved, will be a site-specific decision that is dependent upon the nature, extent, and magnitude of the contamination, as well as the nature of the remedial measures.

Today's rule also establishes an accelerated set of procedures for initiating closure if the owner or operator fails to demonstrate substantial progress in achieving the ground-water protection standard. The objective of these accelerated procedures is to reduce delays in initiating closure, while still providing adequate due process to the owner or operator and adequate notice to the public.

Under proposed § 264.113(a)(11), the Regional Administrator must notify the owner or operator in writing that he has failed to make substantial progress and that he will be required to close the unit in accordance with the deadline in § 264.113 (a) and (b). The Regional Administrator must provide the owner or operator a detailed statement of reasons for his determination and also publish a newspaper notice of this decision and provide a 20-day comment period. If the Regional Administrator does not receive written comments on the decision to require closure of the unit, the decision will be final five days after the close of the comment period. The Regional Administrator will then notify the owner or operator that he must submit a revised closure plan, if necessary, within 15 days of the final notice and commence closure in accordance with the deadlines in § 264.113 (a) and (b). If written comments are received, the Regional Administrator will make a final determination no later than 30 days after the end of the comment period and notify the owner or operator and the public of the decision by newspaper notice.

Because the Agency is concerned that closure be commenced as quickly as possible once it is determined that the unit is not demonstrating substantial progress towards achieving the ground-water protection standard to ensure protection of human health and the environment, today's proposal does not provide for administrative appeals of the Regional Administrator's decision to require closure. The proposed rule, however, does include a formal comment period (in addition to informal negotiations prior to the final Agency decision). In addition, the decision to require closure would constitute a final Agency decision and is therefore subject to judicial appeal. The Agency does not believe that disallowing administrative appeals will violate the due process rights of the owner or operator.

3. Notification of Closure

Section 264.112(d)(1) currently requires an owner or operator to notify the Regional Administrator at least 60 days prior to the expected date of closure, defined in § 264.112(d)(2) as no later than 30 days after the final receipt of *hazardous* waste. EPA proposes to add subsection (ii) to §264.112(d)(2) to specify that for units that have delayed closure after the final receipt of hazardous waste, the "expected date of closure" is no later than 30 days after

the final receipt of non-hazardous wastes. Therefore, an owner or operator who has delayed closure after the final receipt of hazardous waste to receive only non-hazardous waste must notify the Regional Administrator at least 60 days prior to the final receipt of non-hazardous waste.

C. Part 270 Permit Modification Requirements

For facilities with RCRA permits, the request to modify the permit to extend the closure period would be considered under the current regulations to be a major modification subject to public notice and comment and procedures in Part 124. The demonstrations discussed earlier must be submitted to the Agency for approval with a request to modify the permit at least 120 days prior to the final receipt of hazardous waste, or within 90 days after the final rule is published in the **Federal Register** as required in § 270.41, whichever is later.

If, subsequent to approval of the permit modifications, an owner or operator changes the types of non-hazardous wastes that are handled in the unit, he must again request a modification to the permit and demonstrate that the addition of these new non-hazardous wastes is also compatible with the hazardous and non-hazardous wastes in the unit and past, current and future operations.

On September 23, 1987, the Agency proposed amendments to the Part 270 procedures for modifying permits. Today's rule proposes a conforming change to the September 23, 1987, proposal to make the procedures for modifying a permit for delayed closure consistent with that scheme. The Agency is proposing to classify an extension to the closure period to receive non-hazardous waste following final receipt of hazardous waste as a Class 2 modification and to add it to Appendix I of § 270.42, "Classification of Permit Modifications." In order to request this Class 2 modification, the owner or operator must submit the demonstrations and changes to facility plans required in § 264.133 (d) and (e) and described in IV.B.1 in this preamble. If these proposed amendments to Part 270 do not become final, an extension of the closure period to receive non-hazardous waste will continue to be classified as a major permit modification.

While it has not proposed changes to Part B application requirements, the Agency wishes to make clear that Part B applications submitted in order to delay closure under today's rule will be required to contain, for the non-hazardous wastes to be received, all of the elements required in a Part B application for a facility continuing to receive hazardous waste. Such information would include closure and post-closure plans revised to account for non-hazardous wastes, revised documentation of financial assurance under §§ 264.143 and 264.145, and a revised ground-water monitoring program. The Agency considers it appropriate to have such information submitted in the Part B application because facilities delaying closure will continue to be considered hazardous waste facilities. This is consistent with the Agency's position that facilities delaying closure must continue to comply with the permitting requirements of Subtitle C.

D. Conforming Changes

The Agency is proposing conforming changes to the interim status standards in Part 265 that parallel the technical requirements in Part 264 for deferring closure to receive only non-hazardous wastes. The interim status requirements are substantially the same as those for permitted units. Today's rule also proposes conforming changes to §§ 264.13 (a) and (b) and 265.13 (a) and (b) and to §§ 264.142(a)(3) and 264.142(a)(4) and 265.142(a)(3) and 265.142(a)(4). These differences are highlighted below.

1. Conforming Changes to Part 265 Interim Status Requirements

a. *Initial Demonstrations.* Proposed § 265.113 (d)(1) requires owners or operators of interim status units, to submit amended Part B applications, or Part B applications if one was not previously required, with the revised facility plans and required demonstrations. Part B applications are required because the Agency does not believe that a facility should be allowed to remain open to receive non-hazardous waste while remaining in interim status. The Agency is particularly concerned that units that do not satisfy the double liner and leachate collection system requirements and remain open under today's proposal be subject to the stricter provisions of Part 264, especially the stricter ground-water protection requirements of Subpart F to sufficiently protect human health and the environment. Plans and demonstrations must be submitted at least 180 days prior to the final receipt of hazardous wastes. This 180-day deadline is consistent with the deadline in § 265.112(d) for notifying the Regional Administrator of closure and submitting the closure plan for review and approval. Owners or operators who already have received their final volume of hazardous wastes or will receive it in the near future will be eligible to delay closure if they submit their Part B application and the required demonstrations no later than 90 days after notice of today's final rule is published in the **Federal Register**.

As discussed above, under today's proposal, facility owners and operators would be required to operate under the full permit requirements of 40 CFR Part 264. However, because the Agency cannot guarantee that a Part B permit will be issued prior to the final receipt of hazardous wastes, the Agency is proposing to allow the owner or operator to remain open after the final receipt of hazardous wastes to receive only non-hazardous wastes prior to issuance of the permit. During this period the owner or operator must comply with all of the applicable requirements in § 265.113 (d) and (e) and continue to conduct operations in accordance with all other applicable Part 265 requirements. If the Agency subsequently denies the permit, the Part 265 closure requirements, including the closure deadlines of § 265.113 (a) and (b), become effective immediately.

We recognize that there may be concern about allowing interim status facilities to delay closure while a decision on a permit application and delay of closure is pending. However, the Agency is convinced that the applicability criteria in §265.113(d) together with the technical requirements in §265.113(e) for delaying closure and other Part 265 requirements are sufficient to preclude any increases in threats to human health and the environment during the permit review period. In the case of surface impoundments that choose to or must remove wastes to delay closure, the required activities are consistent with current Subpart G closure requirements. Therefore, even if the request to delay closure and/or an operating permit is denied, the owner or operator will have begun the closure process by removing the hazardous wastes from the impoundment. In addition, a facility awaiting a determination of a request to delay closure remains subject to all Part 265 requirements and applicable enforcement authorities, including RCRA section 3008(h) corrective action orders.

b. *Corrective Action.* The Agency is proposing slightly different triggers for corrective action requirements for interim status units than for permitted units. For interim status facilities that have not yet established a ground-water protection standard, the Agency is proposing that the corrective action

requirements in § 265.113(e) be triggered by a statistically significant increase in hazardous constituents over background levels or decrease in pH over background levels. The Agency has chosen background as the baseline to measure the presence of a release to ensure that interim status impoundments that do not satisfy liner and leachate collection system requirements and wish to delay closure to receive only non-hazarous wastes remain protective of human health and the environment. This approach is consistent with the current triggers in Part 265, Subpart F for implementing the ground-water quality assessment plan.

Interim status impoundments that do not meet the liner and leachate collection system requirements and do not remove hazardous wastes will be allowed to remain open to receive only non-hazardous waste *if* no statistically significant increase in contamination above background levels (or decrease in pH levels) as specified in accordance with Subpart F has been detected. If background levels are exceeded at any time after the request to defer closure has been granted, the owner or operator of a disposal impoundment that does not satisfy the liner and leachate collection system requirements must initiate closure of the unit in accordance with the approved closure plan. Similarly, impoundments not in compliance with liner and leachate collection system requirements that remove hazardous wastes prior to receiving only non-hazardous wastes are subject to accelerated corrective action requirements consistent with the Part 264 requirements described above. Again, as discussed earlier, these corrective measures requirements are in addition to requirements in Subpart F or those included in a RCRA section 3008(h) corrective action order.

c. *Applicability to New Interim Status Units.* The requirements in today's proposal also apply to owners or operators of units that receive interim status as a result of new regulations (e.g., additional listings of hazardous wastes). For example, HSWA section 3005(j) requires that surface impoundments that receive interim status after November 8, 1984, because of new regulations, such as the promulgation of additional listings or characteristics for the identification of hazardous wastes, must satisfy the MTRs within four years of the promulgation that subjected the unit to RCRA Subtitle C. These owners or operators will be given sufficient notice that they will become subject to Subtitle C requirements; therefore requiring that the Part B application be submitted no later than 180 days prior to the final receipt of hazardous wastes as a condition of delaying closure to receive only non-hazardous waste should not impose an undue burden.

2. Other Conforming Changes to Parts 264 and 265

The Agency is proposing a conforming change to §§ 264.13 (a) and (b) and 265.13 (a) and (b) to require that the waste analysis plan be revised to account for the presence of any non-hazardous wastes managed pursuant to §§ 264.113 (d) and (e) and 265.113 (d) and (e). Today's rule also revises §§ 264.142(a) (3) and (4) and 265.142(a) (3) and (4) to specify that an owner or operator may not account for salvage value or incorporate a zero cost in the closure cost estimate for handling non-hazardous waste at closure, consistent with the current limitations in §§ 264.142 and 265.142 for hazardous wastes.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under RCRA sections 3008, 7003, and 3013, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements and prohibitions apply in authorized States in the interim.

B. Effect of Proposed Rule on State Authorizations

Today's rule proposes standards that would not be effective in authorized States since the requirements would not be imposed pursuant to HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(i). The standards proposed today are less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized States would not be required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above. If the State does modify its program, EPA must approve the modification for the State requirements to become Subtitle C RCRA requirements. States should follow the deadlines of 40 CFR 271.21(e)(2) if they desire to adopt this less stringent requirement.

VI. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being proposed today are designed to reduce the burden of the RCRA regulations and are not likely to result in a significant increase in costs. Thus, this proposal is not a major rule; no Regulatory Impact Analysis has been prepared.

VII. Paperwork Reduction Act

The information collection requirements contained in this rule have

been submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20608, marked: Attention—Desk Officer for EPA. Should EPA promulgate a final rule, the Agency will respond to comments by OMB or the public regarding the information collection provisions of this rule.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 801 *et seq.*), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). The amendments proposed today are more flexible than the existing regulations and thus result in no additional costs. The viability of small entities, thereby, should not be adversely affected.

Accordingly, I certify that this regulation will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: May 27, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed that 40 CFR Chapter I be amended as follows:

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

1. The authority citation for Part 264 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3005 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), 6924, and 6925.

2. In § 264.13 paragraphs (a)(1), (a)(3) introductory text, (a)(3)(i), and (b)(1) are revised to read as follows:

§ 264.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

* * * * *

(3) The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes or non-hazardous wastes if applicable under § 264.113(d) has changed; and

* * * * *

(b) * * *

(1) The parameters for which each hazardous waste or non-hazardous waste if applicable under § 264.113(d) will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

* * * * *

3. In § 264.112, paragraph (d)(2) is revised to read as follows:

§ 264.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) No later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 264.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

4. Section 264.113 is amended by revising paragraphs (a) introductory text, (a)(1)(ii)(A), (b) introductory text, (b)(1)(ii)(A), and (c) and adding (d) and (e) to read as follows:

§ 264.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the owner or operator complies with

paragraphs (d) and (e) of this section; and

* * * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility. The Regional Administrator may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows: (1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and (2) the demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Regional Administrator may allow an owner or operator to receive only non-hazardous wastes in a landfill or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator requests a permit modification in compliance with all applicable requirements in Parts 270 and 124 of this title and in the permit modification request demonstrates that:

(i) The unit has the existing design capacity as indicated on the Part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under this Part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable permit requirements; and

(2) The request to modify the permit includes an amended waste analysis plan, ground-water monitoring and response program, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 264.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The request to modify the permit and the demonstrations referred to in paragraph (d)(1) and (d)(2) of this section are submitted to the Regional Administrator no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit, or no later than 90 days after **Federal Register** notice of this regulation, whichever is later; and

(4) The request to modify the permit is accompanied by the human exposure assessment required under RCRA section 3019, and the Regional Administrator does not determine, based on this information or information from other sources, that the unit poses a substantial risk to human health and the environment; and

(5) The request to modify the permit includes revisions, as appropriate, to affected conditions of the permit to account for the management of only non-hazardous wastes in a unit which previously managed hazardous wastes.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o) (2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the request to modify the permit:

(i) A contingent corrective measures plan, unless a corrective action plan has already been submitted under § 264.99; and

(ii) A plan for demonstrating compliance with one of the options described in paragraphs (e)(2) and (e)(3) of this section; and

(2) Remove all hazardous wastes from the unit by either:

(i) Removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s); or

(ii) Where removal in accordance with paragraph (e)(2)(i) of this section is infeasible or impracticable, displacing at least 95 percent of the liquid and suspended solid hazardous wastes (as measured volumetrically) by flushing with non-hazardous wastes, removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if applicable, and demonstrating that the liquids and suspended solids remaining in the unit do not exhibit a characteristic of hazardous waste identified in Subpart C of Part 261; or

(3) Leave the hazardous wastes in place following the final receipt of hazardous wastes and comply with the requirements in paragraph (e)(8) of this section if a release is detected that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit, or exceeds the facility's ground-water protection standard at the point of compliance, if applicable, as specified under Subpart F of this part.

(4) The activities referred to in paragraph (e)(2) of this section must be completed as follows:

(i) For units meeting the requirements of paragraph (e)(2)(i) of this section, no later than 90 days after the final receipt of hazardous wastes; or

(ii) For units meeting the requirement of paragraph (e)(2)(ii) of this section, the process of displacing and removing the hazardous wastes must begin no later than 15 days after the final receipt of hazardous wastes and be completed no later than 90 days after the final receipt of hazardous wastes.

(iii) The Regional Administrator may approve an extension to the deadlines in paragraph (e)(4)(i) or (ii) of this section if the owner or operator demonstrates that the removal or displacement of hazardous wastes will, of necessity, take longer than the allotted periods to complete and that an extension will not pose a threat to human health and the environment.

(5) If a release that is a statistically significant increase over background values for detection monitoring parameters or constitutents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, has

been detected in accordance with the requirements in Subpart F of this part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(i) of this section, the owner or operator must cease the receipt of all wastes at the unit until corrective action measures in accordance with an approved contingent corrective measures plan required by paragraph (e)(1) of this section have been implemented.

(6) If a release that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, has been detected in accordance with the requirements in Subpart F of this part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(ii) of this section, the owner or operator must cease the receipt of all wastes following the displacement of hazardous wastes as specified in paragraphs (e)(2)(ii) and (e)(4)(ii) of this section until corrective action measures in accordance with the approved contingent corrective measures plan required in paragraph (e)(1) of this section have been implemented.

(7) If a release that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in Subpart F of this part after the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2) of this section, the owner or operator of the unit must implement corrective action measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later. The Regional Administrator may require the owner or operator to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(8) If a release that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, is detected in accordance with the requirements of Subpart F of this part at a surface impoundment subject to the requirements in paragraph (e)(3) of this section, the owner or operator must conduct corrective action in accordance with the requirements in Subpart F of this part and begin closure of the unit no later than 30 days after the detection of the release in accordance with the approved closure plan and the deadlines in paragraphs (a) and (b) of this section.

(9) During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(10) The Regional Administrator may require the owner or operator of a surface impoundment subject to the requirements in paragraph (e)(2) of this section to commence closure of the unit if the owner or operator fails to make substantial progress in implementing corrective action and achieving the facility's ground-water protection standard or background levels if the facility has not yet established a ground-water protection standard.

(11) If the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(10) of this section he shall:

(i) Notify the owner or operator in writing that substantial progress has not been made and he must begin closure in accordance with the deadlines in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Regional Administrator receives no written comments, the decision will become final five days after the close of the comment period. The Regional Administrator will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Regional Administrator receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Regional Administrator determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Regional Administrator under paragraphs (d)(11) (iii) and (iv) of this section are not subject to administrative appeal.

5. In § 264.142, paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 264.142 Cost estimate for closure.

(a) * * *

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), that might have economic value.

* * * * *

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

6. The authority citation for Part 265 continues to read as follows:

Authority: Section 1006, 2002(a), 3004, 3005, and 3015 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), 6924, 6925, and 6935).

7. In § 265.13, paragraphs (a)(1), (a)(3) introductory text, (a)(3)(i), and (b)(1) are revised to read as follows:

§ 265.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores or disposes of any hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

* * * * *

(3) The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the

hazardous wastes or non-hazardous wastes if applicable under § 265.113(d) has changed; and

* * * * *

(b) * * *

(1) The parameters for which each hazardous waste or non-hazardous waste if applicable under § 265.113(d) will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

* * * * *

8. In § 265.112, paragraph (d)(2) is revised to read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 265.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the onwer or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

9. Section 265.113 is amended by revising paragraphs (a) introductory text, (a)(1)(ii)(A), (b) introductory text, (b)(1)(ii)(A), and (c) and adding (d) and (e) to read as follows:

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complied with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Regional Administrator may approve an extension to the closure period if the owner or operator demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows: (1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and (2) the demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Regional Administrator may allow an owner or operator to receive only non-hazardous wastes in a landfill or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator submits an amended Part B application, or a Part B application, if not previously required, and demonstrates that:

(i) The unit has the existing design capacity as indicated on the Part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous waste will not be incompatible with any remaining wastes in the unit or with the facility design and operating requirements of the unit or facility under this Part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

(2) The Part B application includes an amended waste analysis plan, groundwater monitoring and response program, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 265.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The Part B application and the demonstrations referred to in paragraph (d)(1) and (d)(2) of this section are submitted to the Regional Administrator no later than 180 days prior to the date on which the facility owner or operator receives the known final volume of hazardous wastes, or no later than 90 days after **Federal Register** notice of this regulation, whichever is later; and

(4) The Part B application is accompanied by the human exposure assessment required under RCRA section 3019, and the Regional Administrator does not determine, based on this information or information from other sources, that the unit poses a substantial risk to human health and the environment; and

(5) The Part B application is amended, as appropriate, to account for the management of only non-hazardous wastes in a unit which previously managed hazardous wastes.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection systems requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004 (o) (2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the Part B application:

(i) A contingent corrective measures plan; and

(ii) A plan for demonstrating compliance with one of the options described in paragraphs (e)(2) and (e)(3) of this section; and

(2) Remove all hazardous wastes from the unit by either:

(i) Removing all hazardous liguids and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if applicable; or

(ii) Where removal in accordance with paragraph (e)(2)(i) of this section is infeasible or impracticable, displacing at least 95 percent of the liquid and suspended solid hazardous wastes (as measured volumetrically) by flushing with non-hazardous wastes, removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if applicable, and demonstrating that the liquids and suspended solids remaining in the unit do not exhibit a characteristic of hazardous waste identified in Subpart C of Part 261; or

(3) Leave the hazardous wastes in place following the final receipt of hazardous wastes and comply with the requirements in paragraph (e)(8) of this section if a release from the unit is detected that is a statistically significant increase (or decrease in the case of pH) over background levels.

(4) The activities referred to in paragraph (e)(2) of this section must be completed as follows:

(i) For units meeting the requirements of paragraph (e)(2)(i) of this section, no later than 90 days after the final receipt of hazardous wastes; or

(ii) For units meeting the requirement of paragraph (e)(2)(ii) of this section, the process of displacing and removing the hazardous wastes must begin no later than 15 days after the final receipt of hazardous wastes and be completed no later than 90 days after the final receipt of hazardous wastes.

(iii) The Regional Administrator may approve an extension to the deadlines in paragraph (e)(4) (i) or (ii) of this section if the owner or operator demonstrates that the removal or displacement of hazardous wastes will, of necessity, take longer than the allotted periods to complete and that extension will not pose a threat to human health and the environment.

(5) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels has been detected in accordance with the requirements in Subpart F of this Part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(i) of this section, the owner or operator must cease the receipt of all wastes at the unit until corrective measures in accordance with an approved contingent corrective measures plan required by paragraph (e)(1) of this section have been implemented.

(6) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels has been detected in accordance with the requirements in Subpart F of this part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(ii) of this section, the owner or operator must cease the receipt of all wastes following the displacement of hazardous wastes as specified in paragraph (e)(2)(ii) of this section until corrective action measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section have been implemented.

(7) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in accordance with the requirements in Subpart F on this part after the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2) of this section, the owner or operator of the unit must implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later. The Regional Administrator may require the owner or operator to implement corrective measures in less than one year or to cease receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(8) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in accordance with the requirements in Subpart F of this part at a surface impoundment subject to the requirements in paragraph (e)(3) of this section, the owner or operator must conduct corrective action in accordance with the requirements in Subpart F of this part and begin closure of the unit no later than 30 days after the detection of the release in accordance with the approved closure plan and the deadlines in paragraphs (a) and (b) of this section.

(9) During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(10) The Regional Administrator may require the owner or operator of a surface impoundment subject to the requirements in paragraph (e)(2) of this section to commence closure of the unit if the owner or operator fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

(11) If the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(10) of this section he shall

(i) Notify the owner or operator in writing that substantial progress has not been made and he must begin closure in accordance with the deadline in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Regional Administrator receives no written comments, the decision will become final five days after the close of the comment period. The Regional Administrator will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with

the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Regional Administrator receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Regional Administrator determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Regional Administrator under paragraphs (d)(11) (iii) and (iv) of this section are not subject to administrative appeal.

10. In § 265.142, paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 265.142 Cost estimate for closure.

(a) * * *

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), that might have economic value.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

11. The authority citation for Part 270 continues to read as follows:

Authority: Sections 1006, 2002, 3005, 3007, 3019 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986, as amended (42 U.S.C. 6905, 6912, 6925, 6939, and 6794).

§ 270.42 [Amended]

12. In § 270.42, the list of permit modifications in Appendix I.D.1 is amended by adding the following:

* * * * *

Modifications	Class
D. Closure:	
1. Changes to the closure plan: * *	
(g) Extension of the closure period to allow a landfill or surface impoundment unit to receive non-hazardous wastes after final receipt of hazardous wastes under §§ 264.113(d) and (e)	2
* * * * *	

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