ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265 and 270

[FRL-3576-2]

RIN 2050-AB71

Delay of Closure Period for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today amending 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 facilities. Today's final rule allows, under limited circumstances, a landfill, surface impoundment, or land treatment unit to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit. This final rule details the circumstances under which a unit may remain open to receive non-hazardous wastes and describes the conditions applicable to such units..

EFFECTIVE DATE: November 13, 1989.

ADDRESSES: The public docket for this rulemaking is available for public inspection in Room S-201, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket number is F-88-DCPP-FFFFF. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy materials at the cost of $.15 per page. Charges under $15.00 are waived.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-8346 (toll free) or (202) 382-3000 in Washington, DC, or Permits Branch, Office of Solid Waste (OS-341) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4740.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are issued 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 the Resource Conservation and Recovery Act (RCRA) 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 these RCRA requirements. 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 necessary. The subpart G requirements in both of these parts, particularly the closure deadlines found in §§ 264.112, 265.112, 264.113, and 265.113, will be affected by the promulgation of today's final rule.

The requirements of §§ 264.113 and 265.113 were last amended on May 2, 1986 (51 FR 16422). In the May 1986 rulemaking, the Agency made conforming changes to the requirements in §§ 264.113 (a) and (b) and 265.113 (a) and (b) requiring that closure be completed within 180 days after the final receipt of hazardous wastes rather than after the final receipt of wastes (51 FR 16422). 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 legislative history of the Hazardous and Solid Waste Amendments (HSWA) which amended RCRA in 1984 regarding closure of surface impoundments. Further, the litigation contended 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. EPA entered into settlement discussions with the litigants. To date, no settlement of the case has been reached.

On June 6, 1988 (53 FR 20738), the Agency proposed a rule amending the parts 264 and part 265 closure requirements to allow owners and operators of landfills and surface impoundments meeting specific eligibility criteria to delay closure of their facilities to receive non-hazardous waste following the final receipt of hazardous waste. The rule proposed general requirements for surface impoundments and landfills wishing to remain open to receive non-hazardous wastes and additional requirements for surface impoundments that did not meet the part 264 liner and leachate collection system requirements.

The Agency received 24 comment letters in response to the June 6, 1988 proposal. The comments received were filed in Docket #F–88–DCPP–FFFFF and are available for public review. Additionally, the Agency has prepared a summary of these comments and the Agency's response in a document entitled "Response to Comments to June 6, 1988 Proposed Rule to Allow Delay of Closure Following the Final Receipt of Hazardous Wastes (53 FR 20738)." This document is available for public review at the EPA RCRA Docket (Room 2427), 401 M Street, Washington, DC 20460.

In brief, most commenters supported allowing certain hazardous waste management units the opportunity to delay closure to receive only non-hazardous wastes. These commenters felt that the proposal provided owners and operators of these hazardous waste management units with needed flexibility in their management operations. These commenters also agreed with the Agency position that the proposed requirements would provide adequate protection of human health and the environment.

Commenters opposed to the proposal generally objected to its applicability to surface impoundments not satisfying the liner and leachate collection aspects of the minimum technology requirements (MTR). Commenters expressed concern that these units could not be operated in a manner that would be adequately protective of human health and the environment. These commenters also contended that the Agency did not have the authority to allow these units to remain open, since RCRA section 3005(j) required them either to be retrofitted to meet MTR, or to cease the receipt of hazardous waste on November 8, 1988. The Agency has carefully considered the comments received and is today finalizing the proposal with a number of changes which are discussed further in later sections of this preamble.

III. Summary of Today's Rule

Today the Agency is promulgating requirements amending 40 CFR 264.113 and 265.113, that will allow certain landfills, surface impoundments, and land treatment units to be eligible to delay closure to receive only non-hazardous waste after the final receipt of hazardous waste. The Agency believes that these units, including surface impoundments that do not meet the part 264 liner and leachate collection system elements of the minimum technological requirements (MTR) specified by RCRA section 3004(o), but from which hazardous wastes have been removed, can operate in an environmentally protective manner by meeting the requirements set forth in this rule. The requirements promulgated in today's rule specify general conditions applicable to all surface impoundments, landfills and land treatment units delaying closure, with additional conditions imposed on surface impoundments that do not meet part 264 liner and leachate collection system requirements.

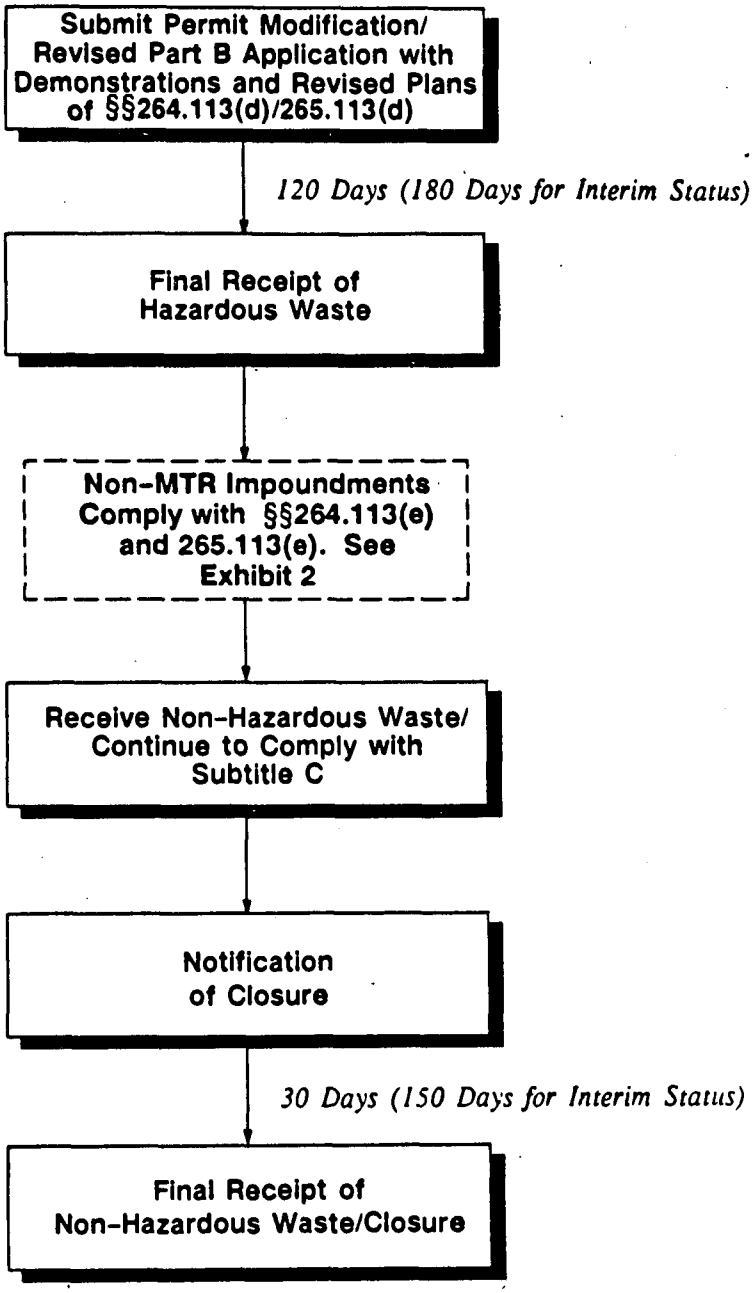
Owners and operators of facilities delaying closure under today's rule will be required to operate under the full permit requirements of 40 CFR part 264 (or part 265 requirements until a permit is issued), including corrective action requirements. In addition, surface impoundments not in compliance with liner and leachate collection system requirements will be required to remove all hazardous waste to the extent practicable. Facilities currently in interim status that meet the requirements of today's rule may delay closure while the permit application is being reviewed.

The general requirements in §§ 264.113(d) and 265.113(d) applicable to all owners and operators wishing to delay closure are being finalized as proposed with a few minor clarifying changes. These requirements are illustrated in Exhibit 1. Owners and operators wishing to delay closure under today's final rule must request a permit modification at least 120 days prior to final receipt of hazardous wastes, or, if the facility is in interim status, submit an amended part B application (or a part B application if one has not been previously submitted) 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 promulgation of today's rule may delay closure if they submit the required demonstrations and permit modification (or amended part B application) within 90 days of today's Federal Register notice. Facilities which lost interim status prior to today's notice are ineligible to delay closure. These units may, of course, submit permit applications, which, if approved, could allow them to receive non-hazardous wastes pursuant to the applicable requirements of today's rule.

BILLING CODE 6560-50-M

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.

S95096-1

BILLING CODE 6560-50-C

The request for a permit modification or the amended part B application must include demonstrations that the unit has the existing design capacity to manage non-hazardous waste, and that the non-hazardous wastes are not incompatible with any hazardous or non-hazardous wastes remaining in the unit. In addition, certain facility information including the waste analysis plan, ground-water monitoring plans, closure and post closure plans and cost estimates, financial assurance demonstrations and the human exposure assessment information required under RCRA section 3019, must be updated as necessary to account for receipt of only non-hazardous waste.

Owners and operators of units remaining open under today's rule must also continue to comply with all applicable part 264 permit requirements (or part 265 requirements until a permit is issued). Units may not remain open to receive only non hazardous wastes if the Regional Administrator determines that continued operation of the unit or facility cannot be conducted in accordance with these requirements ensuring the protection of human health and the environment. Finally, units must be closed in accordance with the approved closure plan and the subpart G regulations applicable to hazardous waste management units, including notification of the Agency in accordance with the deadlines specified in §§ 264.112(d)(1) and 265.112(d)(1).

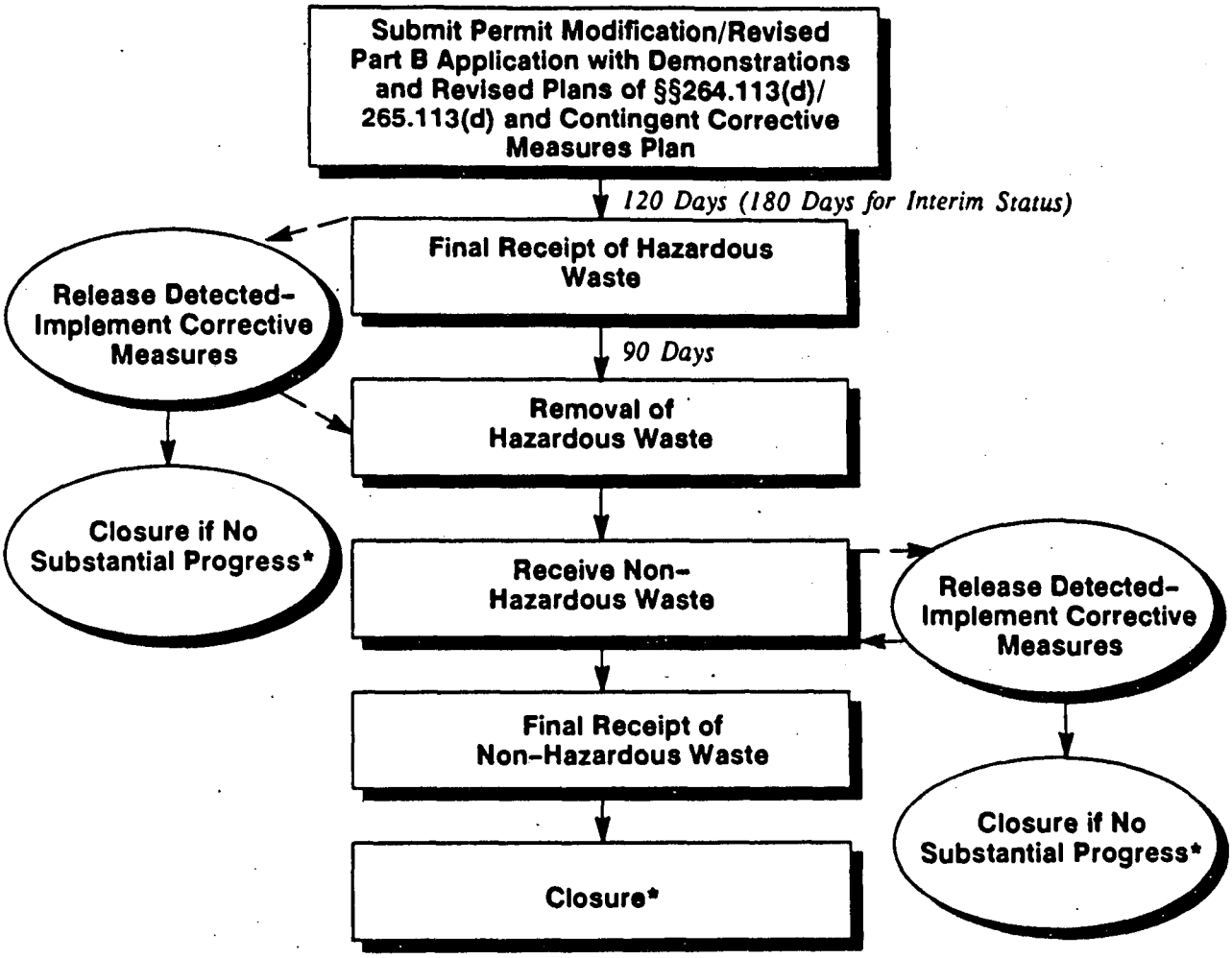
Additionally, the owner or operator must initiate closure under the following circumstances: A request to modify the permit to manage only non-hazardous wastes is denied; the permit is terminated or is revoked at any time; a RCRA permit is denied for interim status facilities; or interim status is otherwise terminated. 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 rule also establishes additional requirements applicable to surface impoundments that do not satisfy the liner and leachate collection system requirements specified under RCRA section 3005(j) or have not received a waiver from these requirements, but wish to delay closure to receive non-hazardous waste. These additional requirements, including removal of hazardous waste, accelerated corrective measures, and strict limitations on continued operations following detection of a release from the unit, will ensure that these units are adequately protective of human health and the environment. The specific requirements are illustrated in Exhibit 2 and summarized briefly below.

BILLING CODE 6560-50-M

Exhibit 2

Surface Impoundment/Waste Removal Alternative



** Unit continues to be subject to corrective action requirements, if applicable.*

BILLING CODE 6560-50-C

Owners and operators of surface impoundments not meeting liner and leachate collection system requirements must prepare and submit a contingent corrective measures plan with their request to modify their permit (or for interim status facilities, with their amended part B application). The plan must include a description of corrective measures that can be implemented quickly if a release is detected and, if waste may continue to be received, a demonstration that continued receipt of wastes following detection of a release will not impede implementation of the corrective measures. (The contents of the plan are discussed in more detail in IV.B.2.a of today's preamble).

Under the final rule, owners and operators of surface impoundments not meeting double liner and leachate collection system requirements and who wish to delay closure must remove all hazardous liquids and remove all sludges from the impoundment to the extent practicable. If a release is detected either prior to or after final receipt of hazardous wastes at a surface impoundment from which hazardous wastes have been removed, corrective measures must be implemented within one year from the date of release. Continued receipt of non-hazardous wastes while corrective measures are being implemented may occur only if the owner or operator already has an approved contingent corrective measures plan (or a full corrective action plan) that accounts for the continued receipt of non-hazardous wastes and demonstrates that such continued receipt of wastes will not impede the progress of the corrective action. If the corrective measures plan has not been approved, receipt of waste must cease until such a corrective measures plan has been approved.

If an owner or operator fails to make substantial progress in conducting corrective action, either by failure to initiate actual remediation or containment activities within the first year and/or subsequently failing to implement actions leading to substantial progress towards achieving the facility's ground-water protection standard (GWPS) or background levels, if applicable, he must initiate closure of the impoundment in accordance with the requirements of subpart G of part 264 or 265. Substantial progress towards achieving the facility's GWPS or background levels will be determined on a case-by-case basis. The achievement of substantial progress will be measured by whether the owner or operator has corrective action measures in place within one year, and has met significant plan milestones or deadlines in the compliance schedule, permit, or enforcement order that establishes timeframes for achieving the facility's GWPS, or background levels. Today's rule also includes administrative procedures providing opportunity for public comment on the Regional Administrator's decision that substantial progress has not been made and that closure of the unit is therefore required.

IV. Section-by-Section Analysis

The following sections of this preamble address the major issues raised by commenters on the proposed rule and present the Agency's response to these major issues and rationale for changes to the proposed rule. The preamble is arranged in a section-by-section sequence for ease of reference. Section A addresses the applicability of the rule. Section B discusses the part 264 technical requirements applicable to permitted facilities. The part 270 procedural requirements applicable to permitting are addressed in section C. Section D discusses the conforming changes to 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 rule is restricted to permitted and interim status landfill, land treatment, and surface impoundment units that: (1) Are in compliance with applicable permit or interim status requirements (except double liner requirements); (2) cease to receive hazardous wastes; and (3) will subsequently receive only non-hazardous waste. The proposed rule did not extend the option to delay closure to land treatment units, but specifically requested comments on whether the option should be available to such units. After considering public comments received, the Agency has decided to allow land treatment units to delay closure if they satisfy the eligibility criteria in § 264.113(d) or § 265.113(d). This change is discussed in greater detail in section IV.A.3. below.

The rule does not extend the option to delay closure to units that lost interim status. Today's rule also does not extend the option to delay closure to manage only non-hazardous wastes to storage or treatment tanks, container storage areas, waste piles, or incinerators. If owners or operators of such units wish to receive non-hazardous wastes after the final receipt of hazardous wastes, they must first comply with the current closure requirements. The Agency believes that the activities necessary to close storage units and incinerators (e.g., waste removal and decontamination) are compatible with the future use of the unit and therefore requiring these units to conduct closure prior to receiving only non-hazardous wastes will not impose an undue burden on owners or operators.

1. Surface Impoundments Not Meeting Liner and Leachate Collection System Requirements

The proposal required surface impoundments not meeting the MTR liner and leachate collection system standards to meet the general conditions applicable to all units (§§ 264.113(d) and 265.113(d)) as well as additional requirements (§§ 264.113(e) and 265.113(e)). The proposed rule (Option 3, § 264.113(e)(3)) allowed impoundments in which wastes remained in place (i.e., disposal impoundments) to delay closure only if they were not leaking at the time of the final receipt of hazardous waste. As described below, the requirements of §§ 264.113(e) and 265.113(e) have been modified in the final rule in response to comments received on the proposal.

Many commenters favored the provision of the proposal allowing non-MTR surface impoundments to delay closure and provided anecdotal information in support of it. Other commenters opposed the proposal, expressing concern that it would adversely impact human health and the environment. Those commenters asserted that the proposed rule would violate the requirements in RCRA section 3005(j) which require that surface impoundments that have not met MTR cease receipt, storage, and treatment of hazardous wastes on November 8, 1988. Commenters further argued that because all hazardous wastes would not be removed from the impoundment (for instance, under one of the options, no hazardous wastes were required to be removed), and because the facility would not cease activities that involve the management of the remaining hazardous wastes, the unit should be considered an active hazardous waste surface impoundment and therefore would be in violation of section 3005(j) of RCRA. These commenters further asserted that the proposal violates RCRA section 1003(a)(5) because the proposal achieves protection of human health and the environment by remediating releases, rather than by preventing releases, which they argued is required by the statute.

One of these commenters also questioned the Agency's technical judgment in allowing hazardous waste to remain in surface impoundments lacking double liners and leak detection systems. The commenter noted that the Agency previously has been unwilling to rely solely on ground-water monitoring and corrective action to detect and cleanup releases, favoring instead a combination of design and operating requirements to minimize the potential for releases. The commenter also pointed out that the Agency had not presented any data with this rulemaking indicating that the Agency now found that ground-water monitoring and corrective action were more effective than it believed in the past. Finally, the commenter expressed concern that placing additional liquid non-hazardous wastes into a surface impoundment containing hazardous wastes could increase the pressure head and, consequently, increase the chances that hazardous constituents from the hazardous wastes would escape into the environment.

The Agency is not persuaded by the commenters' legal arguments based on section 3005(j). The Agency does not believe that the use of the term "storage" in RCRA section 3005(j) bars the continued receipt of non-hazardous wastes by impoundments that may contain hazardous wastes. The statute clearly requires that non-MTR surface impoundments cease receiving hazardous wastes by November 8, 1988, and all non-retrofitted impoundments must comply with this requirement. The statute does not itself require closure of these units. In a colloquy clarifying statutory language, Senators Randolph and Chafee indicated that the intent of the provision was not to require retrofitting for hazardous waste impoundments that receive or store hazardous waste prior to November 8, 1988, but cease to receive hazardous waste after that date, and that requiring such closure would not be necessary if continued waste management in the impoundment were conducted in a manner ensuring continued protection of human health and the environment (130 Cong. Rec. S9182 daily ed. July 25, 1984).

The Agency does, however, agree with the commenters that section 1003(a)(5) establishes the goal of managing hazardous waste properly in the first place, "thereby reducing the need for corrective action at a future date." However, the Agency believes that Congress intended to allow the Agency to determine the type of regulatory controls needed to provide "proper management" for each type of hazardous waste management unit. This provision does not prohibit non-retrofitted surface impoundments from delaying closure to receive non-hazardous wastes. Closure of these units need not be required if the Agency determines that the wastes in the impoundments can still be managed in such a way as to reduce the need for future corrective action.

The Agency has re-evaluated the proposal in light of the technical and policy concerns raised in the comments. Upon reconsideration, the Agency has determined that only those non-retrofitted impoundments that meet the removal requirements described in Option 1 of the proposal will be eligible to delay closure. Surface impoundments from which wastes are not removed will not be permitted to delay closure. Further, flushing of impoundments to achieve only a 95 percent volume displacement is not sufficient under the final rule as evidence of waste removal.

EPA, as noted by the commenters, generally has adopted regulatory requirements which impose both prevention and detection and remediation requirements for land disposal units. This position was first articulated in the Agency's July 26, 1982 rulemaking establishing standards for land disposal facilities (47 FR 32274). The 1982 rule promulgated two sets of standards for landfills, surface impoundments, waste piles, and land treatment units. The design and operating standards were intended to minimize the formation and migration of leachate and thus reduce the likelihood of releases, while the ground-water monitoring and response requirements were promulgated to ensure that releases would be detected and corrective action measures implemented in the event of a release. The Agency reiterated its position on these dual goals of prevention and protection in its May 2, 1986 rule establishing additional closure, post-closure care, and financial responsibility requirements for hazardous waste facilities. In the preamble to the 1986 final rule, the Agency stated that "the hazardous waste regulations incorporate a two-part 'prevention and care' system whose overall goal is to minimize the formation and migration of leachate to the adjacent subsurface soil, ground water, or surface water." (51 FR 16432) The Agency also relied on this position in the May 29, 1987 (52 FR 2218), proposal to extend double liner and leachate collection standards to certain new, replacement, and expansion landfills and surface impoundments not required to meet these standards under section 3004(o).

The Agency also agrees with the commenters that proposed Options 2 and 3 failed to require measures sufficient to prevent releases from impoundments. Consistent with previous policies, EPA is not willing to rely solely on detection and remediation to provide protection for human health and the environment at non-retrofitted impoundments which retain significant amounts of liquid. Under both of these options, particularly Option 3, significant amounts of hazardous liquids would remain in surface impoundments that lack liners and leachate collection systems or have liners that do not meet the standards that EPA would require for new units. EPA shares the commenter's concern that adding additional non-hazardous liquids could increase the pressure level in these impoundments thereby increasing the potential for releases of the remaining hazardous wastes from these impoundments. On re-examination the Agency no longer believes that the enhancements to the remediation process that the Agency had proposed (such as accelerated corrective action) are sufficient to mitigate the possibility that a release may escape early detection and prompt remediation. Consequently, the Agency believes that protection of human health and the environment requires prompt closure of impoundments retaining significant amounts of hazardous waste. Closure will supply necessary "preventative" measures by requiring the owner or operator to either remove all hazardous wastes and waste constituents or to eliminate all free liquids and install an impermeable cap to reduce the potential for future releases of hazardous constituents.

The Agency continues to believe that proposed Option 1 does, however, require sufficient preventative measures to ensure continued protection of human health and the environment. Under this option, the owner or operator must remove all liquid hazardous wastes and remove hazardous sludges to the extent practicable. The Agency believes that the significant reduction in the quantity of waste in the unit will reduce the threat posed by any release to the environment. While some small amount of hazardous sludges may remain, the required removal activity significantly decreases the likelihood that a release of hazardous constituents, leached from the sludge at levels presenting a threat to human health and the environment, will occur.

To further ensure continued environmental protection, the Agency has retained the requirements it proposed to expedite the detection and remediation process. Units delaying closure will be required to receive permits and to operate under part 264 standards including ground-water monitoring standards. These units will therefore be subject to the same ground-water monitoring requirements as units meeting all MTR. Further, to ensure prompt response and remediation in the event of a release, accelerated corrective action and/or closure of units is required.

Surface impoundments not meeting liner and leachate collection systems requirements must submit a contingent corrective measures plan describing interim measures for handling a release if it occurs and promptly implement this plan if a release is detected. Detection of releases will be determined using either background levels or the ground-water protection standard (GWPS) if one has been established. Further, owners and operators will not be allowed to delay implementation of corrective measures while a GWPS is being established.

The Agency therefore continues to believe that the combination of waste removal and stricter detection and remediation requirements of §§ 264.113(e) and 265.113(e) will protect human health and the environment and be consistent with the objectives and specific requirements of RCRA. Accordingly, the Agency is finalizing revised requirements in §§ 264.113(e) and 265.113(e) which allow surface impoundments not meeting liner and leachate collection system requirements to delay closure if hazardous wastes are first removed and other eligibility and operating criteria are met. Section IV.B.2 discusses in more detail how the proposed requirements have been modified in response to comments.

2. Landfills

The proposed rule would allow landfills that meet the general requirements set forth in §§ 264.113(d) and 265.113(d) to delay closure. One commenter opposed allowing landfills not meeting MTR to delay closure. The commenter contended that landfills not meeting MTR would pose risks of release similar to those posed by non-retrofitted surface impoundments.

The Agency has considered the commenter's concerns, but is promulgating the final rule as proposed allowing landfills to delay closure if they meet the requirements in § 264.113(d). Existing landfills are not subject to the provisions of Section 3005(j) of RCRA that require surface impoundments to retrofit or cease receipt of hazardous waste by November 8, 1988. Existing landfills are, however, subject to the requirements of section 3004(o) of RCRA. Under section 3004(o) existing landfills must retrofit to meet MTR or cease receipt of hazardous waste only if they are laterally expanded, or otherwise trigger the replacement or new unit definitions.

The Agency believes that since existing landfills not satisfying MTR may remain in operation to handle hazardous wastes, they should be allowed to delay closure to receive only non-hazardous wastes if they meet the requirements of § 264.113(d) or § 265.113(d), as applicable. The Agency also disagrees with the commenter's view of the risks presented by receipt of non-hazardous waste at landfills. When evaluating a request to delay closure of an existing landfill, the Agency will carefully consider the compatibility of the hazardous and non-hazardous waste to be managed in the landfill in addition to all other requirements in §§ 264.113(d) and 265.113(d). Requiring landfills to comply with §§ 264.113(e) and 265.113(e) would result in units receiving only non-hazardous wastes being subject to more stringent requirements than landfills receiving hazardous wastes. Accordingly, under today's rule, landfills are subject only to the requirements in §§ 264.113(d) and 265.113(d) to delay closure.

3. Land Treatment Units

The proposed rule did not extend the option to delay closure to land treatment units. The Agency did, however, specifically request comment on whether the proposal should be extended to land treatment units.

The majority of commenters on this issue supported extending the option to delay closure to land treatment units. Comments favoring the option pointed out that many land treatment facilities already manage both hazardous and non-hazardous waste streams. Commenters further asserted that land treatment units pose a lower risk to ground water than surface impoundments and landfills because hazardous constituents are degraded and immobilized as part of treatment, and that the destruction efficiency of a land treatment unit may be improved when non-hazardous wastes are combined with hazardous wastes. One commenter who opposed allowing land treatment units to delay closure stated that increased pressure and potential explosive and subsidence hazards could be caused by the acceptance of non-hazardous wastes.

The Agency has considered these comments and has expanded the final rule to allow land treatment units to delay closure if they satisfy the eligibility criteria of §§ 264.113(d) and 265.113(d). The Agency believes that land treatment units can delay closure and operate in a manner that is protective of human health and the environment. All land treatment units that delay closure will continue to be subject to all subtitle C requirements for land treatment units and the requirements of §§ 264.113(d) and 265.113(d) of today's rule. Existing subtitle C regulations require owners and operators of land treatment units to demonstrate that the hazardous constituents in the subtitle C wastes will be completely degraded, transformed or immobilized in the treatment zone. As part of the permit or permit modification (or amended Part B application for interim status facilities) required to delay closure, these owners and operators will be required to demonstrate that receipt of non-hazardous waste will not inhibit the degradation, transformation or immobilization of the hazardous wastes in the treatment zone. These factors, together with the other requirements of §§ 264.113(d) and 265.113(d) will ensure that land treatment units delaying closure are adequately protective of human health and the environment.

4. Other Treatment and Storage Facilities

The proposed rule would not allow storage units (i.e., storage and treatment tanks, container storage areas, or waste piles) or incinerators to delay closure. In the preamble to the proposal, the Agency stated that if these units wanted to delay closure in order to receive only non-hazardous waste, they would first be required to close in compliance with the requirements of subpart G. The requirements for closure of these units involve removal or decontamination of all wastes and waste residues, containers, liners, bases and contaminated soils, equipment and other containment system components (40 CFR 264.178, 264.197, 264.258, 264.351, 265.197, and 265.351). These closure requirements are not incompatible with the reuse of these units for receipt of only non-hazardous waste. Once the unit has been emptied of all hazardous wastes and decontaminated, it could receive non-hazardous waste as a subtitle D facility, without being subject to the stricter provisions of today's rule.

Only one commenter recommended that tanks and container storage areas be allowed to delay closure. The Agency

continues to believe that because the activities which would be necessary to delay closure are so similar to activities required to close these units, prohibiting storage units from delaying closure under today's rule will not impose an undue burden on the owners and operators of these units. Therefore, the final rule is promulgated as proposed and is not applicable to storage and treatment tanks, container storage areas, waste piles and incinerators.

B. Part 264 Standards

The Agency proposed to amend §§ 264.112(d) and 264.113 (a), (b), and (c), and to add new paragraphs (d) and (e) to § 264.113. Sections 264.113 (a) and (b) require a facility owner or operator to treat, dispose, or remove all hazardous wastes within 90 days and to complete closure activities within 180 days of the final receipt of hazardous wastes. Further, § 264.112(d) establishes that the date the owner or operator expects to begin closure, which triggers the notification requirements, is no later than 30 days after the receipt of the last known volume of hazardous wastes. Under §§ 264.113 (a) and (b) and 265.113 (a) and (b), extensions to the closure period may be granted in certain limited circumstances. Today's rule provides 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) and 264.113(c) to address deadlines for closure of units that qualify to delay closure. The changes to § 264.113 being promulgated today supplement existing part 264 standards and provide assurance that public health and the environment will be adequately protected at units delaying closure.

1. General Conditions for Delay of Closure (§ 264.113 (d))

Section 264.113(d) of today's rule establishes the general requirements applicable to all units delaying closure to receive non-hazardous wastes after the final receipt of hazardous wastes. These requirements supplement existing subtitle C requirements. The § 264.113(d) requirements are discussed in turn below.

a. *Demonstrations for Extensions to Closure Deadlines (§ 264.113(d)(1)).* Section 264.113(d)(1) of the proposed rule required owners and operators of facilities wishing to delay closure to demonstrate as part of their permit application or modification that: (1) The unit(s) has adequate existing design capacity to continue to receive waste; (2) there is a reasonable likelihood that non-hazardous wastes will be received in the unit within one year of the final receipt of hazardous waste; (3) non-hazardous wastes received will be compatible with any other wastes remaining in the unit; (4) closure of the unit is incompatible with continued operation of the facility; and (5) the facility will continue to be operated in compliance with all applicable permit or interim status requirements.

The Agency received a number of comments regarding these demonstrations. Most commenters recommended that the required demonstrations be modified or deleted from the final rule. The Agency continues to believe, however, that the demonstrations required in the proposal are necessary to ensure that units delaying closure to receive only non-hazardous waste remain adequately protective of human health and the environment. In many cases, the required demonstrations are the same as those currently required under §§ 264.113(b) and 265.113(b) for units wishing to temporarily suspend hazardous waste management activities. The Agency's rationale for retaining each of the demonstrations is presented below.

(1) *Design Capacity.* One commenter recommended that the option to delay closure not be restricted to a facility's original design capacity. The Agency continues to believe that it is prudent to restrict the option to delay closure to the existing design capacity. In proposing these changes to the closure requirements, the Agency recognized that closure of a unit while the unit has remaining capacity to receive non-hazardous wastes could disrupt facility operations or impose substantial economic burdens on the facility owner or operator. Where existing capacity can be utilized to manage non-hazardous wastes in a manner that remains protective of human health and the environment, extensions to the closure period may be allowed. The Agency believes that it is unwise to allow the expansion of subtitle C units for managing non-hazardous wastes, thus resulting in large units subject to subtitle C. Finally, the Agency does not believe that many owners and operators would want to expand their subtitle C units or facilities simply to receive more non-hazardous waste, since such lateral expansion of surface impoundments and landfills would trigger the liner and leachate collection system requirements of RCRA section 3004(o). The Agency recommends that if additional non-hazardous waste capacity is needed, a facility choose to construct a unit designed to handle non-hazardous wastes in accordance with Subtitle D requirements.

(2) *Receipt of Non-Hazardous Waste Within One Year.* A commenter suggested that the required demonstration that wastes will be received within one year of the final receipt of hazardous waste be documented (e.g., through submission of contracts indicating anticipated receipt of non-hazardous waste) and that the time period within which non-hazardous wastes must be received should be shortened to three months. The Agency does not believe that such changes are necessary. The provision allowing a unit to remain open if it receives additional wastes within one year of the final receipt of hazardous wastes is consistent with the provisions allowing continued receipt of hazardous waste. In implementing §§ 264.112(d)(2) and 265.112(d)(2), the Agency currently determines on a case-by-case basis the documentation that best supports the claim that additional wastes will be received and that sufficient design capacity is remaining. In evaluating these submissions, the Regional Administrator generally takes into account a number of factors including those suggested by the commenter, such as: (1) Unit or facility characteristics, including capacity and operating conditions; (2) demand for the facility; (3) the owner or operator's business plans; and (4) the history of facility operations (OSWER Policy Directive #9476.00-5, January 1987, pp. 3-16 and 3-17). Finally, the eligibility requirements, including the requirements to continue to comply with all permit conditions or interim status standards, if applicable, will ensure that units remaining open following the final receipt of hazardous waste are protective of human health and the environment.

(3) *Compatibility of Wastes.* The Agency received comments on the compatibility demonstration (§§ 264.113(d)(1)(iv) and 265.113(d)(1)(iv)) only with respect to landfill units. Several commenters challenged the Agency's suggestion in the preamble that it would be difficult to demonstrate that municipal solid wastes would be compatible with hazardous wastes remaining in landfill units, and therefore it would be unlikely that receipt of municipal solid wastes would be allowed. The Agency continues to believe that, in most cases, it will be difficult to demonstrate that municipal solid wastes will be compatible with hazardous wastes remaining in a unit delaying closure. Problems which are anticipated include subsidence,

settlement of the cap, or leachate and methane gas production. The Agency acknowledges, however, that some units have been specifically designed to co-manage both hazardous and municipal solid wastes. For these types of units, the Agency agrees with the commenter that it may not be difficult to demonstrate that the continued receipt of non-hazardous wastes will be compatible with the design of the unit and with the hazardous wastes remaining in the unit. In cases where the unit has not been designed specifically to handle hazardous and non-hazardous wastes, however, the Agency still believes that it will be difficult to demonstrate that the addition of non-hazardous wastes will be compatible with the remaining wastes in the unit and with the facility design and operating requirements of part 264. The requirements of §§ 264.113(d)(1)(iv) and 265.113(d)(1)(iv) therefore remain unchanged. These requirements are applicable to all types of units eligible to delay closure.

(4) *Incompatibility of Closure With Continued Operations.* A few commenters expressed confusion about the requirement that owners and operators demonstrate that closure of the unit would be incompatible with continued operation of the facility.

After considering the commenters' concerns, the Agency has decided to retain the requirement that owners and operators of units delaying closure demonstrate that closure of the unit would be incompatible with continued operation of the facility (§ 264.113(d)(1)(iv)). This requirement is consistent with existing requirements for requesting an extension to the deadlines to begin closure for owners or operators wishing to receive additional hazardous wastes, and has not proved to be an implementation concern to date. This demonstration can be supported by submission of information showing the role of the unit in the facility's overall waste management scheme. The practical, rather than economic, disruptions which closure of the unit with remaining capacity would have on facility operations should be evidenced.

b. *Continued Compliance With Subtitle C Requirements.* A few commenters asserted that the Agency does not have the authority to require continued compliance with Subtitle C permitting requirements because units delaying closure would be managing only non-hazardous wastes. One commenter recommended that the Agency not require compliance with both State and local regulations in addition to Subtitle C requirements to avoid duplicate and potentially conflicting requirements. Finally, one commenter suggested that the Agency clarify that surface impoundments not meeting liner and leachate collection system requirements need not comply with the permit requirements for retrofitting.

RCRA provides the Agency ample authority to regulate any units that received hazardous waste after November 19, 1980. Units wishing to delay closure are currently regulated under Subtitle C and remain regulated as long as hazardous constituents from those wastes remain in the units, unless the owner or operator obtains a delisting or satisfies clean closure requirements.

In specifying in the preamble to the proposal that units comply with applicable State and local regulations, the Agency was merely restating existing requirements. Currently, an owner or operator is subject to all applicable State and local regulations in addition to applicable Federal requirements.

Finally, one commenter pointed out that the requirement for surface impoundments not designed to satisfy the MTR liner and leachate collection system requirements to comply with all part 264 permit requirements could cause confusion. The Agency wishes to clarify that the MTR liner and leachate collection requirements are not applicable permit requirements for surface impoundments operating under a § 264.113(e) and § 265.113(e) extension. It should be noted that lateral expansion of units delaying closure pursuant to §§ 264.113(d) and (e) is not allowed. Lateral expansion of such units would trigger the MTR requirements of § 3004(o) as well as constitute a violation of today's regulation.

c. *Changes to Facility Plans (§ 264.113(d)(2)).* Section 264.113(d)(2) proposed that owners and operators submit with their permit modification request, necessary and appropriate changes to the waste analysis plan, ground-water monitoring plan and response plan, closure and post-closure plans and cost estimates, and demonstrations of financial assurance required elsewhere in part 264. These requirements parallel existing requirements that facility plans be revised to reflect substantial changes in the types of hazardous wastes being handled or the hazardous waste management practices employed. Similarly, the Agency believes that to ensure proper management of units receiving non-hazardous wastes, selected plans should be revised to reflect changes in unit operations for managing only non-hazardous wastes.

The Agency received very few comments on the proposed requirement to modify the ground-water monitoring plan, closure and post-closure plans and cost estimates, and financial assurance demonstrations (responses to these comments appear in the Comment Response Document). However, a number of commenters objected to the requirement to revise the waste analysis plan. One commenter stated that modifying the waste analysis plan is unnecessary because waste compatibility already will have been demonstrated under the requirements of § 264.113(d)(1)(iii). In addition, this commenter stated that the Subtitle C waste analysis program cannot be adapted to municipal solid wastes because of the difficulty of obtaining the necessary data. Under Subtitle C, generators of hazardous wastes must prepare a manifest identifying the contents of each shipment of waste. In contrast, generators of municipal solid wastes are not required to compile the data necessary to characterize their wastes. Thus, municipalities and commercial trash collectors would be unable to provide the TSDFs with data on the exact content of municipal solid waste (generally household wastes) which would be necessary to comply with the waste analysis plan requirements.

The Agency continues to believe that revision of the waste analysis plan is necessary and practicable in most cases. Such information will be required to support the compatibility demonstration in § 264.113(d)(1)(iii). The Agency would expect the compatibility demonstration required in § 264.113(d)(1)(iii) to cross-reference the waste analysis plan as evidence that non-hazardous waste streams are compatible with previously managed hazardous wastes.

It should be noted, however, that the final rule requires that the waste analysis plan be revised "as necessary and appropriate" to account for the addition of additional or new non-hazardous waste streams. The Agency acknowledges that in some cases the Subtitle C procedures for conducting physical and chemical waste analyses and the requirements to prepare a waste analysis plan describing these procedures may be difficult to apply to municipal solid wastes. For example, generators of municipal trash (e.g., households) do not have the data necessary to characterize the wastes. In such cases, the Agency may allow the owner or operator to use his own knowledge about the waste streams to

make the required compatibility demonstration (e.g., local ordinances that prohibit certain types of wastes from being disposed in the trash or visual inspections of truckloads). This flexible approach is consistent with current Agency practices.

d. *Exposure Assessment Information.* Section 264.113(d)(4) of the proposed rule would have required owners and operators wishing to delay closure to submit the human exposure assessment required under RCRA section 3019(a) with the request to delay closure. This section further would have required that if the Regional Administrator determined that the unit posed a substantial risk to human health, then the unit would not be eligible to delay closure.

One commenter recommended that the Regional Administrator determine that continued use of the unit to receive only nonhazardous waste would not pose a substantial risk to human health. Another commenter argued that the requirement was stated in excessively vague language and provided no opportunity for administrative appeal. Finally, a third commenter stated that section 3019 information must be submitted only upon submission of a final part B permit application, and that resubmission of the data should not be a condition of delaying closure.

The Agency has considered the commenters' recommendations and agrees that resubmission of the human exposure assessment information required under RCRA section 3019(a) (40 CFR 270.10(j)) may not always be necessary to demonstrate that a unit can operate in a manner protective of human health and the environment. The purpose of the information gathered under the authority of RCRA section 3019 is to assist in the evaluation that a unit delaying closure can continue to operate in a manner protective of human health and the environment. Therefore, the Agency is modifying the final rule to clarify that the information will only be required to be updated "as necessary and appropriate" to account for the receipt of non-hazardous wastes following final receipt of hazardous wastes. The Agency is also including the requirement to submit or revise the § 3019 information with the other plans and information updates required under § 264.113(d)(2) rather than as a separate requirement in § 264.113(d)(4). As a result of this change, proposed § 264.113(d)(4) has been deleted and § 264.113(d)(5) has been renumbered § 264.113(d)(3).

e. *Permit Revisions (§ 264.113(d)(4)).* Under § 264.113(d)(5), the proposed rule required that the permit modification include revisions to the affected conditions of the permit, as appropriate, to account for the management of only non-hazardous waste in the unit delaying closure. No comments were received on this section of the proposal and the Agency is finalizing the requirement as proposed. Because of other changes to the proposal that have resulted in a renumbering of some sections, this section is being promulgated today as § 264.113(d)(3).

2. Additional Requirements for Surface Impoundments that do not Meet Liner and Leachate Collection System Requirements (§ 264.113(e))

The Agency proposed under § 264.113(e) additional requirements applicable to surface impoundments that do not meet MTR liner and leachate collection system requirements. These additional requirements were established to ensure that these units are operated in a manner that is as protective of human health and the environment as surface impoundments in full compliance with MTR.

All surface impoundments not meeting MTR liner and leachate collection system requirements must comply with the requirements of both § 264.113(d) and § 264.113(e). Comments received on the proposed § 264.113(e) requirements and the Agency's final position are discussed below.

It must be noted that these units must continue to comply with section 3005(j) which explicitly prohibits non-retrofitted surface impoundments from receiving hazardous wastes after the November 8, 1988 retrofit deadline. Receipt of some non-hazardous wastes also may not be permitted in these units. Certain non-hazardous liquids (e.g., electroplating wastewaters) generate a listed hazardous sludge. In a June 30, 1988, **Federal Register** notice clarifying the retrofitting requirements, the Agency stated that it interpreted the section 3005(j) requirement that receipt of hazardous waste cease after November 8, 1988 to mean "that no additional hazardous wastes or waste that generates a hazardous sludge shall be placed in the unit (53 FR 24718)." In order to remain in compliance with section 3005(j), therefore, non-retrofitted surface impoundments delaying closure under today's rule will not be permitted to receive a non-hazardous waste if that waste generates a hazardous sludge.

a. *Contingent Corrective Measures Plan (§ 264.113(e)(1)).* In addition to the demonstrations and requirements described in IV.B.1 above, the Agency proposed to require owners or operators of surface impoundments that do not satisfy liner and leachate collection system requirements to include 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. The purpose of the plan is to ensure that corrective action can be implemented quickly if a release is detected. Since the exact extent and type of release will not be known, the contingent corrective measures plan should describe a range of possible remedies for likely release scenarios. The preparation of this plan does not relieve the owner or operator from any existing or future requirements of a corrective action program or schedules of compliance in a RCRA section 3008(h) corrective action order or any other order incorporating corrective action requirements.

The Agency received only three comments on this requirement. One commenter stated that the requirement is "overly burdensome" and duplicative of corrective action provisions in § 264.100, and indicated that since facilities delaying closure will still be subject to the permitting process, a separate mechanism for implementing corrective action is not necessary. A second commenter argued that the amount of detail required for the plan is beyond what could reasonably be known prior to actually having a release. Another commenter questioned whether the corrective measures plan would include "meaningful corrective measures."

The Agency is finalizing the requirement of § 264.113(e)(1)(i) for the contingent corrective measures plan as proposed because of the importance of ensuring that surface impoundments not meeting liner and leachate collection system standards continue to be managed in a manner most protective of human health and the environment. Requiring a contingent corrective measures plan in advance of a detection of a release will ensure prompt implementation of remedial measures to prevent further contamination, contain any existing contamination, and remediate contaminated ground water. In general, the Agency believes that this plan can readily be prepared using the data submitted as part of the Part B application (e.g., types of constituents at the facility, hydrogeologic conditions, location of ground-water monitoring wells, and available remedial technologies). In fact, some States already require a contingent corrective measures plan.

Further, the Agency believes that the measures required in the contingent corrective measures plan will be

"meaningful" and timely. The Agency believes that it is practical to anticipate many of the actions that may be necessary to remediate releases to ground water. The measures outlined in the contingent corrective measures plan will often be the same types of measures required under the full corrective action plan. Among the measures discussed by the Agency in the preamble to the proposed rule that might be included in the plan were extrapolation of future contaminant movement, a discussion of the likely contaminants of concern, and a description of measures that can be installed quickly to address releases of different types of constituents or releases at variable rates, and plumes of different size and depth. In many cases these actions will constitute interim measures, such as alternate water supplies, stabilization and repair of side walls, dikes, and liners, or reduction of head. Such interim measures would prevent and contain releases and complement any longer-term corrective measures that may be required following a detailed evaluation. The plan should also describe in detail the range of corrective measures that might be used, including the equipment and physical components required.

Finally, the owner or operator must address whether continued receipt of wastes would impede the progress of corrective action and establish criteria or milestones to ensure that substantial progress in remediating the release is achieved. As discussed further in section IV.B.2.c.3 of today's preamble, the owner or operator of a non-retrofitted surface impoundment must cease the receipt of waste upon detection of release unless he has an approved contingent corrective measures plan which demonstrates that continued waste receipt will not impede the progress of the required corrective measures.

b. *Alternatives.* Today's final rule requires owners or operators of surface impoundments that do not meet liner and leachate collection system requirements to remove all hazardous liquids and sludges to the extent practicable as a precondition of delaying closure to receive non-hazardous wastes. As part of the demonstrations required in the request to delay closure, an owner or operator must include a plan for complying with this waste removal requirement. Two alternatives originally proposed have not been finalized. The following section summarizes the comments received on the alternatives and describes the Agency's final position.

(1) *Alternative 1—Removal of Hazardous Wastes (§ 264.113(e)(2)).* The proposal offered owners and operators, as a primary alternative, the option to remove all hazardous liquids and sludges from the surface impoundment prior to receipt of non-hazardous waste. This option appears in today's final rule as Section 264.113(e)(2). This section discusses comments received on this option, as well as the applicability of the mixture rule to impoundments removing hazardous wastes.

(a) *Liquid and sludge removal.* Under the first alternative, proposed as § 264.113(e)(2)(i), the Agency proposed that an owner or operator of a surface impoundment remove all hazardous liquids and hazardous sludges, to the extent practicable without damaging the liner, from the impoundment prior to the receipt of non-hazardous waste.[1] In the preamble, the Agency noted that for unlined units (i.e., units with natural clay liners), the hazardous wastes must be removed down to the underlying and adjacent soil. In addition, the proposal specified that, in the event of a release to ground water, the facility would have to comply with the corrective action requirements of proposed § 264.113(e)(5) and discussed in section IV.B.2.c below.

The Agency also proposed that owners or operators choosing this alternative remove hazardous wastes (liquid and sludges) no later than 90 days after the final receipt of hazardous waste. The proposal allowed the Regional Administrator to approve a request for a longer period of time based on need (e.g., due to adverse weather conditions or specific operating practices), and on a demonstration that an extension would not pose a threat to human health and the environment. The deadline and criteria for requesting an extension to the 90-day deadline in the proposal were 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 received one comment on this proposed alternative requesting clarification of whether natural clay-lined units should remove the clay liners along with the sludge. The requirement to remove sludge from unlined units "down to the underlying and adjacent soil" excludes the liner in naturally-clay lined units. Removal need only be completed to the clay. This clarification does not affect the amount of materials that may be required to be removed from the unit at the time of final closure. No other comments were received and the provision is finalized as proposed.

(b) *Relationship to the mixture rule.* In the preamble to the proposed rule, the Agency discussed the applicability of the "mixture rule" in the context of owners or operators who treat wastes in a series of surface impoundments. In that discussion, the Agency stated that in most cases, the mixture rule would not apply because mixing of hazardous sludge with non-hazardous influent would be unlikely. Therefore, a non-retrofitted surface impoundment delaying closure under the proposed rule could discharge into a non-retrofitted downstream surface impoundment, because the discharged wastes would not be considered hazardous. The Agency received several comments on this interpretation of the "mixture rule." (53 FR 20750) While several commenters supported the Agency's interpretation, other commenters argued that this position is inconsistent with previous Agency interpretations. The commenters who disagreed stated that when a non-hazardous waste and a listed hazardous waste are co-mingled and co-managed in the same unit under any circumstances, the entire mixture is considered a listed hazardous waste and must be managed appropriately.

The Agency maintains that the discussion of the mixture rule contained in the preamble to the proposal is consistent with previous Agency actions. The Agency has consistently interpreted the mixture rule *not* to apply where a non-listed waste is discharged to a unit (i.e., surface impoundment) even if that liquid generates a hazardous sludge, unless the sludge is in some way "mixed" with the liquid (e.g., scoured as a result of operations in the unit). If the Agency did not interpret the mixture rule in this manner, there would be no point in carefully limiting listings to include sludges but exclude wastewaters. The alternate mixture rule interpretation suggested by several commenters would make the wastewater hazardous as soon as the listed sludge was generated.

EPA believes that the opportunity for mixing of hazardous sludges and hazardous liquids from impoundments where all hazardous liquids and sludges have been removed to the extent practicable as required by §§ 264.113(e)(2) and 265.113(e)(2) will be minimal. Opportunities for mixing will be further diminished as additional non-

[1] 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 impoundments.

hazardous sludge is generated. Were any mixing to occur, it would be confined to the liquid/sludge interface. Levels of hazardous constituents escaping from the hazardous sludge to the non-hazardous liquid are not likely to pose an appreciable risk to human health and the environment. Should the impoundment be subsequently dredged so that scouring or other physical mixing occurs, the mixture rule would come into effect. (This rationale is discussed further in 46 FR 56582, November 17, 1981).

Once all hazardous liquids and hazardous sludges have been removed to the extent practicable, free liquids from such impoundments may be discharged to non-MTR units because the liquids would not be considered to be hazardous wastes. Additionally, as discussed earlier, to remain in compliance with section 3005(j), non-retrofitted impoundments wishing to delay closure may not receive a non-hazardous waste that generates a hazardous waste or sludge.

(2) *Alternative 2—Flushing Hazardous Wastes.* The proposal offered owners or operators the second option of flushing or displacing liquid hazardous wastes and removing hazardous sludges. For reasons discussed below, the Agency is not finalizing this alternative.

The proposed "flushing" alternative (proposed § 264.113(e)(2)(ii)) would have allowed an owner or operator to delay closure of a surface impoundment subject to § 264.113(e) if he removed the hazardous sludges and also removed the liquid hazardous waste and suspended solids by flushing the unit with non-hazardous influent until 95 percent of the hazardous liquid had been removed. In addition, the owner or operator would have been required to demonstrate that the remaining liquid waste and suspended solids did not exhibit a characteristic of hazardous wastes as defined in subpart C of part 261. Testing for listed hazardous constituents, however, was not required. The Agency intended this alternative to apply primarily to owners or operators of biological treatment impoundments who demonstrated that it would be infeasible or impracticable to drain the impoundment to remove all hazardous wastes.

Comments received on this alternative were varied. Several commenters argued that the displacement alternative was inappropriate for impoundments containing listed hazardous wastes and recommended removal of hazardous wastes to at least delisting levels. Other commenters asserted that the Agency was improperly allowing for dilution of hazardous wastes as a substitute for adequate treatment. Commenters in favor of the displacement alternative stated that the alternative is a reasonable standard and would eventually result in the removal of all hazardous waste in the unit.

The Agency is concerned that many commenters misunderstood the flushing alternative, particularly the relationship of the 95 percent volume displacement requirements and the requirements for delisting of hazardous wastes (40 CFR 260.22). The Agency may have contributed to this confusion by referring to testing for characteristics only and by describing the mixture rule only in terms of the interface between the non-hazardous influent and the sludge remaining in the bottom of the impoundment. If the liquid itself is a listed hazardous waste, the remaining 5 percent volume of that liquid would continue to be hazardous waste. Therefore, if an impoundment retained 5 percent liquid hazardous wastes, all new non-hazardous influent would become hazardous wastes as a result of the "mixture rule," unless the original hazardous waste was listed solely because it exhibited one or more characteristics and the mixture no longer exhibited the characteristic (40 CFR 261.3). Therefore, while the impoundment that removed 95 percent of its liquid could delay closure without retrofitting, if it discharged to another impoundment downstream, the second impoundment would be receiving hazardous wastes and would therefore be subject to the retrofit requirements in RCRA section 3005(j).

Furthermore, in light of the commenters' concerns, the Agency has decided to re-evaluate this option. The Agency is uncertain that the option to delay closure is warranted for any impoundment that retains up to 5 percent liquid hazardous waste. For the reasons discussed above and in section IV.A.1 of this preamble, the Agency has decided to delete this option from the final rule. The Agency points out, however, that owners and operators who remove all liquids under Alternative 1 may use flushing as a removal method. The owner or operator would have to demonstrate the complete removal of hazardous liquids. Tracer studies as described in the proposed Alternative 2 (53 FR 20750), or modeling studies may be used.

(3) *Alternative 3—Leaving Hazardous Wastes In Place.* The third alternative proposed in § 264.113(e)(3) would have allowed owners or operators of impoundments who intend to leave hazardous wastes in place at closure to delay closure under limited circumstances. This option also has not been finalized in today's rule. Because hazardous wastes would not have been removed prior to the receipt of non-hazardous wastes, the Agency proposed more stringent requirements for these impoundments than for impoundments at which hazardous wastes would have been removed. This alternative would have been available only to those units that had not detected a release at or prior to the final receipt of hazardous wastes. In addition, if a release had been detected after the final receipt of hazardous wastes, the owner or operator would have been required to 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 implement the corrective measures specified in the contingent corrective measures plan no later than one year after the release had been detected.

One commenter recommended that impoundments which have not removed hazardous wastes (impoundments using proposed Alternative 3) not be allowed to delay closure. This commenter felt that these impoundments are more likely to leak and would pose an excessive threat to human health and the environment. As discussed in section IV.A.1 above, the Agency is not finalizing this alternative. Upon reconsideration, the Agency has determined that surface impoundments from which hazardous wastes are not removed present a greater threat of release of hazardous constituents. Therefore, these impoundments cannot remain open to receive non-hazardous waste and achieve the Agency's dual goals of release prevention and protection of human health and the environment. The Agency believes that only the closure of these surface impoundments will provide adequate protection.

c. *Corrective Action Requirements (§§ 264.113(e) (4) and (5)).* Under the proposed rule, units that delayed closure would remain subject to all applicable part 264 corrective action requirements. In addition, surface impoundments not meeting the liner and leachate collection system requirements would be subject to more stringent requirements in the event of a release. The following section summarizes the comments received and the Agency's final position on the proposed trigger for corrective action, reliance on ground-water monitoring data to detect releases, and additional corrective action requirements applicable to surface impoundments not meeting liner and leachate collection system requirements.

(1) *Corrective Action Trigger (§§ 264.113(e)(4)).* The Agency proposed in §§ 264.113(e)(5), (6), (7), and (8) that surface impoundments not meeting liner and leachate collection system requirements implement corrective measures (and close, if wastes have been left in place) if contamination is detected. Detection occurs when there is contamination that is statistically greater than (or less than in the case of pH) background levels for detection monitoring parameters or hazardous constituents specified in the permit, or is in excess of the GWPS, if one has been established, at the point of compliance. (For more information on the Agency's final Ground-Water Monitoring Statistical Rule, see October 11, 1988, 53 FR 39720.)

A number of commenters disagreed with these requirements and argued that facilities should be allowed to establish a GWPS before corrective measures are required to be implemented. These commenters contended that the proposed trigger for corrective action (and closure for impoundments that have left waste in place) would be too sensitive and that temporary fluctuations in the levels of hazardous constituents would trigger unnecessary corrective action (or closure). One commenter requested clarification of the manner in which a background level would be established.

After consideration of the commenters' recommendations, the Agency has decided to retain the corrective action trigger as originally proposed. (Because the Agency is not finalizing proposed Alternative 3, the corrective action trigger no longer acts as a closure trigger for surface impoundments that have not removed hazardous wastes as a condition of delaying closure.) However, because the corrective action requirements have been modified somewhat (see section IV.B.2.c.3), these requirements have been renumbered and promulgated in § 264.113(e)(4).

The Agency believes that the trigger for corrective action is a necessary element of today's regulations. The delayed closure regulations will allow non-retrofitted surface impoundments to remain open after November 8, 1988 (as well as those surface impoundments which become subject to section 3005(j)(1) after the date of enactment of HSWA due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 3001), and the requirements must therefore provide sufficient continued protection of health and the environment. The Agency has provided for this protection through strict eligibility and operating criteria and more stringent corrective measures provisions, including requirements for the submission of a contingent corrective measures plan and implementation of corrective action if a release over background levels is detected at units without a GWPS.

The Agency does not believe that allowing units without a GWPS to obtain one before requiring corrective action will provide adequate protection since a delay in remediation of a release that might occur if corrective measures were not implemented until after a GWPS was obtained could pose an additional threat. Modeling data comparing the relative performance of clay liners and synthetic liners satisfying the liner and leachate collection system requirements suggest that a non-retrofitted surface impoundment may have releases that are faster and larger than from a surface impoundment meeting the liner and leachate collection system requirements. Therefore, it is critical that releases from units not meeting liner and leachate collection system requirements be addressed as quickly as possible. The requirements for a contingent corrective measures plan combined with the more sensitive trigger will ensure prompt release containment and remediation.

It should be noted, however, that an owner or operator who has filed a Part B permit application may request a GWPS at any time before or after corrective measures have been initiated. A facility may request and obtain a GWPS in advance of a release during the permit approval process, or at the time that the release is detected. The Regional Administrator, in § 264.91(b), has the authority to include in the facility permit a combination of subpart F monitoring and response programs in order to protect human health and the environment. This provision gives the Regional Administrator the discretion to set a GWPS before a release has occurred. The GWPS can be established at background or maximum contaminant levels, or at alternate concentration limits on a case-by-case basis. Alternate concentration limits set at acceptable health exposure levels using Agency values should not be difficult to establish prior to a release being detected.

If no GWPS has been established, the Agency will continue to require that initial corrective measures be implemented in accordance with the contingent corrective measures plan after a release over background levels is detected. Background levels are to be determined as described in §§ 264.97 and 265.91. The Agency recognizes that in some circumstances a release over background levels may not require extensive corrective measures. If a GWPS is established in accordance with the procedures in § 264.94 during or after interim measures have been implemented, an owner or operator will be allowed to demonstrate that no further corrective action measures are necessary. Finally, it is noted that these requirements are anticipated to be consistent with forthcoming changes to 40 CFR subpart F. The delayed closure provisions may be amended at a later date to account for these new subpart F provisions.

(2) *Other Media.* The proposed rule required that EPA base the initial determination of whether expedited corrective action is required at surface impoundments subject to the requirements of § 264.113(e) on ground-water monitoring data. The unit, however, would remain subject to all corrective action requirements for all media. The Agency requested comments on this approach and whether other options may be appropriate.

One commenter agreed with the proposal and noted that it is consistent with the Agency's approach to all regulated land disposal units. Furthermore, the use of ground-water monitoring data should be adequate to detect most releases to other media. Another commenter, however, asserted that reliance on ground-water monitoring alone is inadequate because results may be affected by poorly placed wells and local hydrologic conditions that control plume migration. This commenter also felt that contamination to media other than ground water may not be expeditiously detected.

The Agency continues to believe that ground-water monitoring is an adequate tool for determining whether the accelerated corrective action requirements of today's rule are necessary for releases to ground water. The provision of § 264.113(e)(5) and (6) has been finalized as proposed. Ground-water monitoring has been traditionally and successfully used to monitor contaminant detection and plume migration. Forthcoming corrective action regulations will address releases to all other media. The provisions in today's rule supplement existing and any future regulation addressing corrective action requirements for all media.

(3) *Additional Corrective Measures Requirements.* The Agency's proposal included additional corrective measures requirements that would apply to surface impoundments not meeting liner

and leachate collection system requirements and which have removed (or will remove) hazardous waste in order to delay closure. The proposed requirements differed, depending on whether a release had been detected before or after the final receipt of hazardous wastes. Under the proposal, units found to be leaking at or prior to the final receipt of hazardous wastes would be required to cease the receipt of all wastes until corrective measures have been implemented (§ 264.113(a)(5) and (6)). Units found to be leaking after the final receipt of hazardous waste could continue to receive non-hazardous waste only if corrective measures were implemented within one year of the detection of a release, and if continued receipt of the non-hazardous waste would not pose a threat to human health or the environment (§ 264.113(e)(7)). The Agency requested comments on whether the requirements should differ depending on the timing of the release, and on the one-year deadline for implementing the corrective measures.

Some argued that the Agency provided no justification for imposing stricter requirements on owners or operators who detected a release at or prior to the final receipt of hazardous waste. Others contended that ceasing receipt of waste until corrective measures are implemented would be unduly disruptive to facility operations. Nearly all comments on this issue recommended that the same corrective action requirements apply in cases of releases detected before and after the final receipt of hazardous waste. Two commenters recommended that all surface impoundments with releases, regardless of when the releases were detected, be required to cease the receipt of wastes until corrective measures are implemented. Another commenter recommended that the Regional Administrator be allowed to grant one-year extensions to the proposed deadline for implementing corrective measures on a case-by-case basis.

The Agency has carefully considered the commenters' suggestions, and has decided to modify the requirements applicable to the continued receipt of wastes after the detection of a release. The final rule under § 264.113(e)(5) allows the owner or operator to continue to receive wastes after detection of a release, regardless of when the release is detected, only in those cases where a contingent corrective measures plan (or full corrective action plan) has been approved. In addition to a description of the corrective measures to be implemented, if receipt of wastes is to continue, the plan must fully account for the impact of receipt of non-hazardous wastes on corrective measures by demonstrating that continued receipt of wastes will not adversely affect the implementation of corrective measures and the achievement of substantial progress in achieving the facility's GWPS. The Agency believes that these effects must be considered before receipt of non-hazardous wastes is allowed. Once EPA has approved the contingent corrective measures plan that demonstrates that continued receipt of non-hazardous waste will not adversely affect the progress of the corrective action, receipt of non-hazardous wastes may resume.

As stated in the preamble to the proposed rule, the Agency continues to believe that temporarily ceasing receipt of wastes until corrective measures have been implemented should not be overly disruptive to facility owners or operators. Many units will have already triggered compliance monitoring and/or be engaged in corrective action under Subpart F. Therefore, in those cases where waste receipt must be halted, there should not be an extensive delay in implementing corrective action and allowing the unit to resume receipt of wastes. The Agency also anticipates that since these units have detected releases, they will receive priority in obtaining approval for corrective action plans.

The Agency is finalizing the one-year deadline for implementing corrective measures under § 264.113(e)(4) as proposed. The Agency believes one year from the time of release detection or plan approval whichever is later, is sufficient time to begin implementing corrective measures. As discussed in the preamble to the proposed rule (53 FR 20752), the Agency intends that actual containment or remediation measures be implemented within one year. The actions required to be accomplished within this one year will be negotiated during the corrective measures approval process. In addition, the Regional Administrator has the option to require implementation of corrective measures earlier than one year after a release is detected if necessary for the protection of human health and the environment. Established procedures for adjusting such permit schedules of compliance will be available. Therefore, specific authority to allow the Regional Administrator to grant extensions is unnecessary and could lead to unacceptable delays in closing a unit should the owner or operator fail to take timely action to initiate the implementation of remedial action.

d. *Evaluating the Progress of Corrective Action (§§ 264.113(e) (5), (6), and (7)).* The proposed rule required owners or operators to demonstrate "substantial progress" in implementing corrective action and achieving the facilities' GWPS or background level if the facility has not yet established a GWPS. If the Regional Administrator determined that an owner or operator had failed to make substantial progress in implementing the required corrective measures, the owner or operator would be required to initiate closure of the leaking unit (§ 264.113(e)(10)). The proposed rule did not define "substantial progress" because the Agency believed that the determination should be made on a case-by-case basis. In the preamble to the proposal, however, the Agency did provide examples of situations that illustrated a failure to make substantial progress. Examples included failure to comply with the requirements of section (e)(5) for implementing corrective measures within one year or subsequent failure to comply with significant deadlines in the approved corrective measures plan, schedule of compliance, the permit, or other enforcement orders establishing timeframes for achieving the facility's GWPS. The Agency also specified that semi-annual corrective action progress reports required under § 264.113(e)(9) would be considered in making the determination, but that compliance with only these procedural or reporting requirements would not alone constitute substantial progress.

The proposed rule also established an accelerated set of procedures for initiating closure under § 264.113(e)(11). The procedures included notification of the owner or operator, public notice of the decision, and a 20-day comment period. These proposed procedures did not allow administrative appeals of final decisions regarding closure.

Several commenters expressed concern that the term "substantial progress" was too vague and subjective. One commenter felt that hearings should be allowed to determine whether substantial progress has been made. Another commenter recommended that the Agency allow administrative appeals of decisions to require closure.

The Agency has considered the commenters' recommendations, but continues to believe that a specific definition of "substantial progress" is both unnecessary and undesirable. Establishing a rigid standard of substantial progress would prevent a Regional Administrator from

considering site-specific factors in the determination of whether progress in corrective action is being made. Because corrective action measures are tailored to specific sites, this lack of flexibility could result in a standard that in some cases is inadequately protective of human health and the environment, and in other cases is unnecessarily burdensome to owners and operators. The Agency believes that its description of actions considered to constitute substantial progress provides adequate guidance to both owners and operators and Regional Administrators. EPA notes that, while commenters were dissatisfied that a definition of substantial progress was not included in the rule, they did not suggest alternative definitions. Therefore, the Agency is finalizing the rule as proposed (with the reporting requirement and substantial progress requirement renumbered as § 264.113(e) (5) and (6)).

Finally, the Agency has retained the expedited procedural requirements in §§ 264.113(e)(11) and 265.113(e)(11) for determining whether substantial progress has been achieved (renumbered as §§ 264.113(e)(7) and 265.113(e)(7) for the final rule). The Agency continues to believe that these procedures afford owners and operators adequate protection of any due process rights and that hearing and administrative appeals are neither appropriate nor required. The objective of the procedures is to reduce delays in initiating closure, while still providing owners and operators and the public with notice and comment opportunities. As discussed elsewhere in today's preamble, the requirement to implement effective corrective measures in the event a release is detected is an essential component of the controls imposed on surface impoundments not meeting the liner and leachate collection system requirements. EPA believes that the harm potentially caused to human health and the environment by impoundments unable to promptly remediate releases outweighs any potential burdens imposed on owners and operators. Furthermore, it must be remembered that owners and operators are not authorized generally under this rule to delay closure; rather the authorization to delay closure is an exception to the general Subpart G requirements and is expressly conditioned upon meeting the substantial progress demonstration when and if applicable. Although this provision is itself self-implementing and need not be accompanied by further notice and comment opportunities, the Agency has afforded such an opportunity through the procedures in §§ 264.113(e)(7) and 265.113(e)(7). The further delay that might result from a hearing provision or administrative appeals cannot be justified in light of the importance of timely response actions. Nor would such additional procedures be likely to present any information for decisionmaking that could not be provided by notice and the opportunity to provide written comment.

In addition, with respect to permitted facilities, receipt of approval for this action and establishment of specific milestones defining "substantial progress" are determined through a permit issuance or modification process. This administrative process includes all procedural protections necessary to meet statutory and Constitutional requirements. Thus, a conditional authorization to delay closure as a permit provision and the automatic expiration for failure to comply with the permit requirement to make substantial progress in remediating releases will have already been subject to notice and opportunities for comment and administrative appeals. Accordingly, further process is unnecessary.

To provide analogous procedural protections for facilities which may still be in interim status at the time of the Regional Administrator's determination, parallel procedures appear in § 265.113(e)(7). As with permitted facilities, the conditional authorization to delay closure is also accompanied by an opportunity for notice and comment. This occurs through the procedures for closure plan approval or modification in § 265.112(d). Accordingly, further procedures such as hearings and administrative appeals are not necessary and have not been added to the final rule.

3. *Notification of Closure (§ 264.112(d)(2)).* The proposed rule amended § 264.112(d)(2) to specify that for units delaying closure, the "expected date of closure" is no later than 30 days after the final receipt of non-hazardous wastes. No comments were received on this proposed change, and therefore the final rule is promulgated as proposed.

C. *Part 270 Permit Modification Requirements (§ 270.42).* The proposed rule designated the request to modify the permit to delay closure to receive non-hazardous wastes after the final receipt of hazardous waste as a Class 2 modification, in accordance with the recently finalized rule establishing three classes of permit modifications (September 28, 1988, 53 FR 37912).

Two commenters recommended that permit modifications to delay closure be considered Class 3 modifications rather than Class 2 modifications. One commenter felt that the time allowed for submitting the request to modify the permit under § 264.113(d), or for submitting a part B or revised part B application under § 265.113(d), is unrealistically short considering the amount of information to be included in the requests. Another commenter suggested that specific criteria be identified as necessary to support a Regional Administrator's denial of a request to delay closure. Another commenter recommended that time be allowed for a facility to construct an alternative waste management unit for closure if the Regional Administrator denies the request to delay closure. Finally, one commenter suggested that an owner or operator be allowed to receive non-hazardous waste during the time the permit modification is being reviewed.

The Agency has taken these comments into consideration but has decided to promulgate the final rule as proposed. Class 2 modifications are defined as modifications in the types and quantities of waste managed under the facility permit, including authorizations to treat or store new wastes that do not require different unit design or management practices (53 FR 37915). Delaying closure to receive only non-hazardous waste does not change the basic purpose and use of the unit but only alters the type of waste being managed (wastes will continue to be regulated under the subtitle C permitting requirements). Furthermore, the Class 2 modification allows the Agency to require that the major permit modification procedures be followed if the proposed change raises significant interest or concern (40 CFR 270.42(b)). Therefore, the Agency believes that classification of the permit modification as Class 2 is adequate. It should be noted that, in those States which have not adopted the new permit modification classification rule, a permit modification to delay closure will be considered a major modification.

The Agency also believes that the amount of time allowed in the proposed rule (§ 264.113(d)(3)) for submitting permit modification information is adequate. These timeframes are consistent with the current timeframes for submitting permitting and closure plan information (40 CFR 270.42(b)). In addition, most changes that must be made to the permit or permit application are not substantial and therefore should not require additional time to complete.

The Agency does not believe that specific criteria need to be established to support the Regional Administrator's

decision to deny a request to delay closure. Therefore, no changes to the final rule have been made. As discussed in section IV.B.2.d of today's preamble, the requirement to close in accordance with an approved closure plan is subject to judicial review. Additionally, facilities must submit an amended part B application or a request for a permit modification. The denial of either is subject to the administrative requirements provided for in 40 CFR Part 124. Finally, for interim status facilities, the extension of the closure period is generally processed together with closure plan approval. The closure plan approval process includes an opportunity for comment by the owner or operator (see § 264.112(a)). Such existing procedures provide the owner or operator with ample opportunity to review the basis for the denial decision.

Furthermore, the Agency does not believe that additional time should be allowed to construct alternative units to handle wastes if the request to delay closure is denied. (The delay of closure option is an exception to general closure requirements and extends closure timeframes only temporarily.) Owners and operators of facilities will have had adequate notice that their units will have to close, and therefore will have had time to plan alternatives in the event that the permit modification is denied.

Finally, the Agency wishes to clarify that non-hazardous waste may be received during the time when a permitted facility's permit modification to delay closure is under review. As discussed in the preamble to the proposed rule, interim status units would be allowed to receive non-hazardous waste while the Agency reviewed the part B application (with certain exceptions for surface impoundments as discussed in section IV.B.2.c). Similarly, it was intended that permitted facilities that are awaiting the Agency's decision on their permit modification to delay closure be allowed to receive non-hazardous waste during this period of Agency review. In either case, facilities must continue to comply with all applicable subtitle C requirements to ensure continued protection of human health and the environment.

D. Conforming Changes

The Agency proposed conforming changes to the interim status standards in part 265 that parallel the technical requirements in part 264 for delaying closure to receive only non-hazardous waste. The interim status requirements are substantially the same as those for permitted units. These requirements have been finalized incorporating changes parallel to those discussed above for permitted units. This section addresses only those comments or regulatory changes unique to the part 265 requirements.

1. Conforming Changes to Part 265 Interim Status Requirements

The sections below describe comments received on the proposed conforming changes to part 265 interim status requirements, including eligibility of interim status facilities to delay closure, ground-water monitoring and corrective action implementation, and eligibility to delay closure of units receiving interim status as a result of new regulations.

a. *Eligibility.* The proposed rule would allow owners or operators of interim status facilities to remain open to receive nonhazardous waste if they meet the requirements of § 265.113 (d) and (e), if applicable, including submission of a part B application or a revised part B application. 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 indefinitely in interim status. During the period prior to receipt of the permit, the owner or operator must comply with applicable requirements in § 265.113 (d) and (e), if applicable, and continue to conduct operations in accordance with all other applicable part 265 requirements. The Agency believes that the criteria in § 265.113(d), combined with the technical and any other requirements of part 265 for delaying closure, are sufficient to preclude any increased threat to human health and the environment during the permit review period. If the permit is denied, the part 265 closure requirements become effective immediately.

One commenter requested clarification of whether interim status surface impoundments that had chosen to close (in lieu of obtaining a permit) would be allowed to delay closure. The Agency would allow such units to delay closure if they meet the criteria of §§ 265.113(d) and 265.113(e), if applicable, including submission of a part B permit application. If the unit is in the process of closing, Agency approval to delay closure would depend on how far along the unit is in the closure process. Since many of the closure activities (e.g., the removal of waste) are compatible with the requirements for delaying closure, requests to delay closure could, in some cases be considered. If the surface impoundment has certified clean closure, and its interim status is subsequently terminated, it could receive non-hazardous waste as a Subtitle D facility following closure and would not need to avail itself of today's rule. However, if it is to be closed with hazardous waste in place and the unit has already been capped, the cap may only be disturbed under the conditions specified in §§ 264.117(c) and 265.117(c). This provision requires that the Regional Administrator find that the disturbance: (1) Is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment; or (2) is necessary to reduce a threat to human health and the environment.

b. *Ground-Water Monitoring and Corrective Action.* The Agency proposed that the corrective action requirements in § 265.113(e) applicable to non-retrofitted surface impoundments be triggered by a statistically significant increase in hazardous constituents over background levels (or decrease in pH levels) for interim status facilities that have not yet established a GWPS. Units not in compliance with liner and leachate collection system requirements are subject to accelerated corrective action requirements consistent with § 264.113(e)(6) requirements.

Several commenters objected to the provisions allowing interim status units to delay closure. These commenters argued that interim status ground-water monitoring requirements do not sufficiently protect human health and the environment because they do not accurately detect hazardous waste releases. These commenters also argued that corrective action provisions for interim status facilities under delayed closure are inadequately protective of human health and the environment because there is no regulatory authority to trigger corrective action.

The Agency believes that the requirements of § 265.113 (d) and (e) in combination with the other applicable part 265 requirements are adequately protective. These provisions require that units in interim status must apply for a permit as a condition of delaying closure, and that upon permit issuance these units will be subject to the stricter part 264 requirements for ground-water monitoring. Additionally, owners or operators of surface impoundments that do not meet MTR liner and leachate collection system requirements who wish to delay closure must comply with corrective action requirements specified in § 265.113(e) even in the absence of a RCRA § 3008(h) order. Further, contingent corrective measures plans

can be incorporated into subsequent section 3008(h) orders if necessary.

c. *Applicability to New Interim Status Units.* The Agency proposed that the option to delay closure be made available to owners or operators of units that receive interim status as a result of new regulations. The Agency indicated in the preamble to the proposed rule that proposed deadlines for submitting revised part B applications would be adequate because these owners or operators would be given sufficient notice that they will become subject to Subtitle C requirements.

One commenter recommended that the delay of closure option be available to owners or operators of units that have become classified as hazardous waste management units as a result of regulatory interpretation by the EPA. As discussed above, this is allowed if the unit meets the requirements of § 265.113 (d) and (e). The rule has therefore been finalized as proposed.

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 Rule on State Authorizations

Today's rule promulgates standards that are not effective in authorized States since the requirements are not 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 promulgated today are less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions promulgated 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 promulgated 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 final rule is not a major rule; no Regulatory Impact Analysis has been prepared.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in the proposed or final rule.

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control Number 2050–0008. Reporting and recordkeeping burden on the public for this collection is estimated at 320 hours for the 4 respondents, with an average of 80 hours per response. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, etc.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR #0807), contact Rick Westlund, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460 (202–382–2745); and Marcus Peacock, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC. 20503.

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 promulgated 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.

Dated: August 2, 1989.

William K. Reilly,

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: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.13 is amended by revising paragraphs (a)(1), (a)(3)(i), and (b)(1) 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, is amended by revising paragraph (d)(2) 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 paragraphs (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 has the capacity to receive 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 has the capacity to receive 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, land treatment, 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, human exposure assessment required under RCRA

section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate, 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 includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The request to modify the permit and the demonstrations referred to in paragraphs (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 the effective date of this rule in the state in which the unit is located, whichever is later.

(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 removing hazardous wastes in compliance with paragraph (e)(2) of this section; and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The Regional Administrator may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(4) If a release that is a statistically significant increase (or decrease in the case of pH) 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, the owner or operator of the unit:

(i) 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;

(ii) May continue to receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Regional Administrator 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.

(5) 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.

(6) The Regional Administrator may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in paragraph (e)(4) of this section, or 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.

(7) If the owner or operator fails to implement corrective measures as required in paragraph (e)(4) of this section, or if the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(6) of this section he shall:

(i) Notify the owner or operator in writing that the owner or operator 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 (e)(7) (iii) and (iv) of this section are not subject to administrative appeal.

4a. A parenthetical is added at the end of the last section in Subpart G of Part 264 to read as follows:

(The information collection requirements in Subpart G are approved by the Office of Management and Budget under control number 2050-0008)

5. Section 264.142 is amended by revising paragraphs (a)(3) and (a)(4) 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: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

7. Section 265.13 is amended by revising paragraphs (a)(1), (a)(3)(i), and (b)(1) 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. Section 265.112 is amended by revising paragraph (d)(2) 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 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 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 paragraphs (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 has the capacity to receive 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 complies 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 has the capacity to receive 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 non-hazardous wastes in a landfill, land treatment, 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 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 interim status requirements; and

(2) The part B application includes an amended waste analysis plan, ground-water monitoring and response program, human exposure assessment required under RCRA section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate 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 is amended, as necessary and appropriate, to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The part B application and the demonstrations referred to in paragraphs (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 owner or operator of the facility receives the known final volume of hazardous wastes, or no later than 90 days after the effective date of this rule in the state in which the unit is located, whichever is later.

(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 part B application:

(i) A contingent corrective measures plan; and

(ii) A plan for removing hazardous wastes in compliance with paragraph (e)(2) of this section; and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The Regional Administrator may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(4) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous oonstituents over background levels is detected in accordance with the requirements in subpart F of this part, the owner or operator of the unit:

(i) 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;

(ii) May receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Regional Administrator 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.

(5) 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.

(6) The Regional Administrator may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in paragraph (e)(4) of this section, or fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

(7) If the owner or operator fails to implement corrective measures as required in paragraph (e)(4) of this section, or if the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(6) of this section he shall:

(i) Notify the owner or operator in writing that the owner or operator 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 (e)(7) (iii) and (iv) of this section are not subject to administrative appeal.

9a. A parenthetical is added at the end of the last section in subpart G of Part 265 to read as follows:

(The information collection requirements in Subpart G are approved by the Office of Management and Budget under control number 2050-0008)

10. In § 265.142 is amended by revising paragraph (a)(3) and (a)(4) 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: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

12. In § 270.42, the list of permit modifications in Appendix I is amended by adding D.1.f. to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

Appendix I to § 270.42—Classification of Permit Modifications

Modifications	Class
* * * * *	
D. * * *	
1. * * *	

Modifications	Class
f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under § 264.113 (d) and (e)	2
* * * * *	

[FR Doc. 89-18499 Filed 8-11-89; 8:45 am]

BILLING CODE 6560-50-M