

40 CFR Parts 148 and 268

[FRL-3641-2]

Land Disposal Restrictions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On August 17, 1988, EPA published regulations promulgating the congressionally-mandated prohibitions on land disposal of certain hazardous wastes listed in 40 CFR 268.10 (First Third wastes). On May 2, 1989, EPA published a rule amending certain of the "No Land Disposal" standards promulgated in the First Third final rule. This notice corrects errors and clarifies the language in the preamble and regulations of the August 17, 1988 final rule, and makes several corrections required by the May 2, 1989 rule.

EFFECTIVE DATE: This rule is effective on September 6, 1989.

ADDRESSES: The OSW docket is located at the following address, and is open from 9:30 to 3:30, Monday through Friday, excluding Federal holidays: EPA RCRA Docket (M-2427)(OS-305), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment by calling (202) 475-9327 to review docket materials. Refer to Docket numbers F-88 LDR9-FFFFF and F-89-LD10-FFFFF when making appointments to review any background documentation for this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost \$0.20 per page. Copies of not easily obtainable references are available for viewing and copying only in the OSW docket.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 382-3000 in the Washington, DC metropolitan area. For technical information contact Wanda LeBleu, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7392.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Amendment

The Agency's on-going review of the clarity and accuracy of the existing hazardous waste regulations has resulted in the need to make a number of corrections and clarifications in today's rule.

Any correspondence regarding these corrections and clarifications should be sent to Wanda LeBleu at the address shown in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

II. Summary of Clarifications and Corrections to the First Thirds Final Rule

1. In the preamble to the final rule (53 FR 31144), third column, fourth line from the top, "provisions of § 268.8." is a typographical error and in today's notice it is corrected to read "prohibitions of § 268.33(f)."

2. Certain issues have arisen regarding the use of a cost test to satisfy the requirement applicable to soft hammer wastes to utilize the best treatment practically available as an alternative to landfill or surface impoundment disposal. RCRA section 3004(g)(6). EPA interpreted this requirement to mandate use of practically available treatment that provides the greatest environmental benefit. Section 268.8(a)(1). In assessing whether treatment is practically available, EPA stated that considerations of cost could be considered, and offered by way of guidance a particular cost ratio (if treatment costs are double or more than the cost of disposal). 53 FR 31182. EPA reemphasizes here, however, as it did in the preamble to the August 17, 1988 rule, that this cost ratio is not a binding rule and therefore does not automatically mean that treatment that costs double the cost of current disposal is not practically available. *Id.* Nor are cost considerations the only ones that are relevant. Other factors that EPA considers are technical feasibility, previous practices of the generator submitting the demonstration and certification, that entity's size and financial status, and other case-specific considerations. *Id.* at 31182-83; *see also* Letter of J. Winston Porter, Assistant Administrator of the Office of Solid Waste and Emergency Response to the Regional Administrators, October 19, 1988 (also detailing that the cost ratio is only one of a number of factors that the Agency will consider).

3. In both the preamble to the final rule (53 FR 31171) and in § 268.43(a), EPA set treatment standards for hazardous waste number K101 wastewaters and low arsenic nonwastewaters, and for K102 wastewaters and low arsenic nonwastewaters. K101 and K102 high arsenic nonwastewaters have no promulgated treatment standards and are prohibited from landfill and surface impoundment disposal under the soft hammer provisions. Section 268.33(a) lists only those wastes for which

treatment standards have been promulgated and, therefore, only K101 wastewaters and low arsenic nonwastewaters and K102 wastewaters and low arsenic nonwastewaters should be included in § 268.33(a). Today's notice corrects these errors.

4. On May 2, 1989, EPA amended the treatment standards for a number of First Third nonwastewaters for which the promulgated treatment standard was no land disposal. 54 FR 18836. The no land disposal standard applies only to wastes generated from the process described in the waste's listing description and disposed after August 17, 1988. EPA rescheduled all other forms of these wastes to the Third Third. *Id.* EPA, however, omitted to cross-reference these revisions in section 268.33(a), the regulation codifying First Third waste prohibitions. Today's correction adds this crossreference.

In addition, EPA rescheduled all K015 and K083 nonwastewaters to the Third Third as part of the May 2, 1989 notice. EPA is thus removing these wastecodes from § 268.33(a).

5. In the preamble to the final rule (53 FR 31145 and 31186), the Agency stated that First Third wastes for which treatment standards or effective dates have not been promulgated, as well as national capacity variance wastes, that are disposed of in a landfill or surface impoundment, must be disposed of in a landfill or surface impoundment unit (as opposed to facility) that is in compliance with the minimum technological requirements of RCRA Section 3004(o). This interpretation of minimum technological requirements was recently upheld in *Mobil Oil v. EPA*, 871 F. 2d 149 (D.C. Cir. 1989). In § 268.5(h)(2), the Agency stated that these restricted wastes must be disposed of in a landfill or surface impoundment unit that meets the minimum technological requirements of parts 264 and 265. The Agency intended that the language of § 268.5(h)(2) apply to all existing landfill and surface impoundment units as well as new, replacement, and lateral expansion units. However, § 268.5(h)(2) (i) and (ii) refer to § 265.301 and § 264.301, respectively, which apply only to new, replacement, and lateral expansion units. Thus, § 268.5(h)(2) can improperly be construed as not applying to existing units. Today's notice clarifies this issue by modifying § 268.5(h)(2) to specify that all landfill and surface impoundment units where these wastes are disposed are within the scope of that section.

6. In the preamble to the final rule (53 FR 31200), the Agency inadvertently stated that commenters and applicants

for site-specific treatability variances should write to the Assistant Administrator for the Office of Solid Waste and Emergency Response. These commenters and applicants should send their materials to the Administrator, or his delegated representative. Today's notice corrects this error.

7. EPA included in the proposed and final regulations an extended discussion of the meaning and ramifications of the respective terms "restricted" and "prohibited" hazardous wastes (53 FR 17620 (May 17, 1988) and 53 FR 31208-09 (August 17, 1988)). This discussion was essentially accurate, but contains several features requiring further clarification. In some cases, clarifying rule changes are necessary to match the preamble language.

In the preamble (53 FR 31208), EPA indicated that restricted wastes are those that are prohibited from land disposal by either statute or regulation, "regardless of whether subcategories of such wastes are subject to a § 268.5 extension, § 268.6 'no migration' exemption, or national capacity variance, any of which makes them currently eligible for land disposal." EPA did not intend to imply that these three enumerated circumstances are the only ones to consider in determining whether a waste is "restricted." Thus, the correct formulation is that any hazardous waste that is exempt from a prohibition on some form of land disposal, but nevertheless subject to at least one type of prohibition, is still "restricted." An example not mentioned in the preamble is a waste going to an underground injection well if such a waste is prohibited from one or more other methods of land disposal. Another example is a soft hammer waste, which is prohibited under § 268.8 from disposal in some landfills and impoundments, but not prohibited from other methods of land disposal (e.g., land treatment units). EPA is consequently amending this

paragraph of the preamble to make this point more clear.

EPA, however, has never intended to regulate certain wastes under the land disposal restriction program, even though the August 17, 1988 preamble technically characterized such wastes as "restricted" hazardous wastes. These wastes are farmers' wastes being disposed of on a farmer's own land, conditionally exempt small quantity generator wastes, and newly listed or identified wastes for which EPA has not promulgated a regulatory land disposal prohibition within six months of the final rule identifying or listing the waste. The regulations are already clear that conditionally exempt small quantity generator wastes and certain farmer wastes are not subject to any provisions of part 268 (see § 261.5 (b), (c), (e), (f), and (g), and § 262.70), and EPA has certainly never suggested that newly identified or listed wastes become subject to part 268 requirements until EPA promulgates regulations prohibiting such wastes from land disposal. EPA is adding clarifying regulatory language today to make this point absolutely clear.

EPA also suggested in the preamble that restricted wastes would invariably be subject to the prohibitions on storage and on dilution (53 FR 31209). Although generally true, this overstates the case for certain wastes that are not subject to or are exempt from a land disposal prohibition, and that are actually disposed using a method allowed by the regulations or statute. Examples are soft hammer wastes not destined for landfill or impoundment disposal, or wastes subject to national capacity variances. As written, both the preamble discussion and the regulations subject these wastes to the dilution and storage prohibitions (through the use of the term "restricted" in section 268.3 and the broad introductory language in § 268.50(a) and a limited number of exceptions in § 268.50(d)). This was not

EPA's intent. The general principle is that the dilution and storage prohibitions apply only if the waste is disposed by a prohibited method of land disposal. There is no reason to prohibit dilution or storage if the waste can be land disposed by a method that is not prohibited. For example, conditionally exempt small quantity generator wastes (as defined by § 261.5) can be diluted or stored for any length of time before being land disposed, because such wastes are not subject to the land disposal prohibitions. The Agency is consequently using this opportunity to clarify the preamble language regarding § 268.3 and correcting the language of § 268.50 to be consistent with this overall principle. (EPA does not believe that the regulatory language of § 268.3 requires any change, because that provision is written essentially in terms of a person's diluting as a means of avoiding a prohibition—which language applies only if there is a prohibition to be avoided. The regulatory language in § 268.3 continues to apply provided it is interpreted in accord with the above paragraph and the paragraph that follows.)

EPA cautions, however, that if a person dilutes a restricted waste which is not subject to a land disposal prohibition when diluted but which becomes subject to a land disposal prohibition before it is land disposed, the § 268.3 dilution prohibition could apply. For example, if generator A dilutes a national capacity variance waste before the expiration of the variance but disposes of it after the variance expires, EPA may consider the dilution to have been for the purpose of avoiding a prohibition and therefore impermissible. The following chart summarizes which restricted wastes are subject to the dilution prohibition and the storage prohibition. It also clarifies which restricted wastes are subject to the waste analysis and tracking requirements.

Waste	Waste analysis and tracking (§ 268.7)	Dilution (§ 268.3)	Storage (§ 268.50)
National capacity variance (Subpart C).....	YES.....	NO*.....	NO
Case-by-case extension (§ 268.5).....	YES.....	NO*.....	NO
No migration exemption (§ 268.6).....	YES.....	NO*.....	NO
Soft hammer wastes:			
a. disposed in landfill or impoundment.....	YES.....	YES.....	NO
b. disposed by another method.....	YES.....	NO*.....	NO
Wastes injected underground where there is a treatment standard applicable to one or more other methods of land disposal.....	YES.....	NO*.....	NO
Wastes treated in § 268.4 impoundments.....	YES.....	YES.....	YES
Conditionally Exempt Small Quantity Generator wastes (§ 261.5).....	NO.....	NO.....	NO
Farmer disposing on own land (§ 262.70).....	NO.....	NO.....	NO
Newly identified or listed wastes for which EPA has not promulgated a treatment standard.....	NO.....	NO.....	NO
Wastes that meet all applicable treatment standards and prohibition levels.....	YES.....	NO.....	NO

YES=subject to regulatory requirement; NO=not subject.

* These wastes are not subject to the dilution prohibition in § 268.3 if they are disposed using a permissible method of land disposal during the period of the variance, extension, or exemption.

8. EPA stated in the preamble to the final regulation that "soft hammer" wastes (*i.e.*, First Third or Second Third wastes for which treatment standards are not established by August 8, 1988 and June 8, 1989, respectively) that are not being disposed in landfills or surface impoundments remain subject to the tracking requirements in § 268.7 (53 FR 31209). EPA had also indicated at proposal that § 268.7 would apply to all soft hammer wastes (53 FR 11765, April 8, 1988). A tracking requirement is necessary for these wastes in order to provide a consistent method of tracking all restricted wastes, and to inform facilities receiving the wastes of other applicable regulatory requirements (*id.*).

The regulatory language codifying these statements, however, could be read as applying only to soft hammer wastes that are destined for disposal in landfills and surface impoundments. See § 268.7(a)(4). This is because § 268.7(a)(4) cross-references § 268.33(f), which in turn cross-references § 268.8, both of which can be read to apply only to soft hammer wastes intended for landfill and surface impoundment disposal. In order to ensure that the regulations more clearly reflect EPA's intent that tracking is required for all soft hammer wastes (as proposed and as discussed in the final preamble), EPA is amending § 268.7(a)(4) to make this requirement clear.

9. Section 268.7(b)(6) of the regulations was added as part of the First Third rule to clarify the certification and notification obligations of a treatment, storage, or disposal facility that sends its prohibited wastes to another treatment facility or storage facility rather than to a land disposal facility. Today's notice reiterates that § 268.7(b)(6) does not relieve treatment facilities of their testing obligations, which are set out in the introductory paragraph of § 268.7(b). Thus, they must continue to test at the frequency specified in their waste analysis plan.

10. A number of commenters found § 268.8 to be confusing; this probably was due to the fact that the provisions covering the certification/demonstration requirements were spread out in several regulatory paragraphs. Today's notice rearranges § 268.8 to consolidate these requirements.

11. In the preamble to the final rule (53 FR 31185), EPA stated that the owner or operator of a TRSF (treatment, recovery, or storage facility) must, only for the initial shipment of a soft hammer waste, send a copy of the generator's

demonstration and certification and the TRSF's certification (if applicable) to the disposal facility receiving the waste or treatment residues. Subsequent shipments generally require only the certifications. Section 268.8(c)(2) does not explicitly state this point. Today's notice revises § 268.8(c)(2) to state that the demonstration requirements only apply to the initial shipment of a soft hammer waste.

However, it should be noted that if there are any changes in the conditions that formed the basis of the demonstration and certification(s), the generator must notify the Regional Administrator of the changes (see § 268.8(b)(1)). EPA indicated in the preamble that the generator would also have to prepare a new demonstration and certification to account for these changed circumstances (52 FR 31185). The TRSF must send this new demonstration, along with the applicable certifications, to the receiving facility along with the initial shipment of the waste after the change in circumstances.

12. In § 268.8(d) of the final rule, "under § 263.33(f)" is a typographical error and should read "under § 268.33(f)". Today's notice corrects this error.

13. In the preamble to the final rule (53 FR 31145), wastewaters are defined as wastes that contain less than 1% total organic carbon (TOC) and less than 1% total suspended solids (TSS). The preamble then goes on to use the terms TSS and total filterable solids interchangeably. These terms are not necessarily the same. TSS corresponds to a test method called the Non-filterable Residues Test (Method No. 160.2, Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020, March, 1983). The term filterable solids refers to a different test method called the Filterable Residues Test. The Agency intended the use of only TSS (and the Non-filterable Residues Test) to determine whether a waste is a wastewater. Today's notice clarifies this ambiguity in the preamble. Section 268.12(b) of the final rule refers only to TSS and does not need to be changed.

14. In § 268.32(f) of the final rule, "if such disposal" is a typographical error and should read "if such unit". Today's notice corrects this error.

15. In the final rule (53 FR 31217), second column, in § 268.33(f), "of this part are not applicable," and "or surface impoundment unless the wastes are the subject of a valid demonstration and

certification pursuant to § 268.8." have typographical errors and should read "of this part have not been promulgated," and "or surface impoundment unless a demonstration and certification has been submitted pursuant to § 268.8.", respectively. Today's notice corrects these errors.

16. Section 268.6(f)(1) indicates that a consequence of detecting migration of hazardous constituents at a unit which has received a no migration variance is that receipt of "restricted" waste at the unit must be suspended. The reference to "restricted" wastes is erroneous, and EPA intended the slightly less broad term "prohibited" waste. (See § 268.6(f)(3), a parallel provision, where EPA used the correct term "prohibited".) Use of the term "restricted" would, for example, prevent the unit from receiving treated soft hammer wastes or wastes that are subject to a type of capacity variance. The Agency did not intend to impose such requirements and is therefore correcting the error.

17. EPA amended § 266.20 to provide that materials that are recycled by being used in a manner constituting disposal would be exempt from subtitle C regulation only if they meet the treatment standards for every prohibited hazardous waste that they contain. 53 FR 31212 and 53 FR 31197-98 (preamble). EPA also stated that fertilizers produced from waste K061 continued to be exempt from subtitle C regulation. *Id.*

In codifying these provisions, however, EPA inadvertently deleted the final sentence of the pre-existing § 266.20, which provided that "[c]ommercial fertilizers produced for the general public's use that use recycled materials also are not presently subject to regulation." It is clear from the preamble (cited above) that the result EPA intended was for all such fertilizers (except those produced from waste K061 and not containing any other hazardous waste) to remain exempt from subtitle C regulation provided that they meet applicable treatment standards for every hazardous waste that they contain. In other words, such fertilizers would be subject to the same regulatory requirements as all other prohibited wastes being used in a manner constituting disposal. EPA consequently is correcting the regulatory language to achieve this result.

EPA also notes that commercial fertilizers that are produced from waste K061 are not subject to the tracking requirements in § 268.7(b)(8) for other wastes that are used in a manner

constituting disposal. EPA meant the reference in § 268.7(b)(8)—“subject to the provisions of § 266.20(b)” —to refer to wastes that are subject to substantive provisions of § 266.20(b), namely those required to meet substantive treatment standards. EPA is amending § 268.7(b)(8) to state that the tracking provision applies to wastes used in a manner constituting disposal that must meet treatment standards.

EPA also is adding a conforming subparagraph (4) to § 268.7(c) to cross-reference the determination that users of waste-derived products used in a manner constituting disposal are not subject to § 268.7 with respect to these wastes (and assuming the wastes meet all applicable treatment standards). See 53 FR 31198, August 17, 1988.

EPA also is changing the inaccurate parenthetical reference in § 268.20(b) to “hazardous waste constituent” as synonymous to “recyclable material” to the correct “hazardous waste.” See § 261.6(a).

18. In § 268.33(g) of the final regulation, EPA indicated, incorrectly, that initial generators could determine whether they are in compliance with applicable first third treatment standards only by testing their waste. In fact, EPA's rules have stated since the inception of the land disposal prohibition program that generators also have the option of determining if the waste meets a treatment standard based on their own knowledge of the waste. Section 268.7(a). EPA is correcting § 268.33(g) to include this option, and to correct the unintended inconsistency with § 268.7(a). (Of course, a generator who also treats is subject to the testing requirements of § 268.7(b).)

III. Rationale for Immediate Effective Date

Today's notice does not create any new regulatory requirements. Rather, it restates and clarifies existing requirements by correcting a number of errors in the August 17, 1988 final rule (53 FR 31138) and the May 2, 1989 rule (54 FR 18836). For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide for an immediate effective date. In addition, there already was full opportunity to comment on all of these issues during the rulemaking so that further comment is unnecessary. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to promulgate today's corrections in final form and that there is good cause under 5 U.S.C. 553(d)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

Finally, EPA notes that although it is not withdrawing any existing regulatory language, all of today's revisions operate prospectively.

IV. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is “major” and, therefore, subject to the requirement of a Regulatory Impact Analysis. Due to the nature of this regulation (technical correction), the amendment is not “major”; therefore, no Regulatory Impact Analysis is required.

List of Subjects

40 CFR Part 148

Environmental protection, Hazardous materials, Imports, Insurance, Labeling, Packaging and containers, Recycling, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Dated: August 29, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator for Solid Waste and Emergency Response.

The following corrections are made in the preamble to SWH-FRL-3420-4, the Hazardous Waste Management System; Land Disposal Restrictions; Final Rule, published in the Federal Register on August 17, 1988 (53 FR 31138):

1. On page 31144, third column, fourth line from the top, “provisions of § 268.8,” should read “prohibitions of § 268.33(f).”

2. On page 31145, third column, 21st line from the top, “(i.e., total filterable solids)” should read “(TSS)”.

3. On page 31145, third column, second paragraph, fifth line, “filterable solids content (i.e., total suspended solids (TSS) levels),” should read “TSS levels”.

4. On page 31145, third column, second paragraph, eighth line and 14th line, “filterable solids” should read “suspended solids”.

5. On page 31145, third column, second paragraph, 11th line, “filtered solids” should read “suspended solids”.

6. On page 31200, second column, 14th line from the bottom, “Assistant Administrator for the Office of Solid Waste and Emergency Response” should read “Administrator, or his designated representative.”

7. On page 31200, second column, 3rd line from the bottom, and third column, 7th line from the top, “Assistant

Administrator (or Regional Administrator, if authority is delegated)” should read “Administrator, or his designated representative.”

8. On page 31208, third column, the second paragraph should read as follows:

“Restricted” wastes are those categories of hazardous wastes that are prohibited from one or more methods of land disposal either by regulation or statute (regardless of whether subcategories of such wastes are subject to a § 268.5 extension, § 268.6 “no migration” exemption, or any other exemption, any of which makes them currently eligible for one or more methods of land disposal). In other words, a hazardous waste is “restricted” no later than the date of the first automatic prohibition established in, or pursuant to, RCRA section 3004 (d), (e), (f), or (g).

The following corrections are made in the rules for SWH-FRL-3420-4, the Hazardous Waste Management System; Land Disposal Restrictions; Final Rule, published in the Federal Register on August 17, 1988 (53 FR 31138):

§ 266.20 [Corrected]

9. On page 31212, first column, § 266.20(b) is revised to read as follows:

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in Subpart D of Part 268 (or applicable prohibition levels in § 268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation provided they meet these same treatment standards or prohibition levels for each recyclable material that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation.”

§ 268.1 [Corrected]

10. In § 268.1(c), the introductory text is revised by changing “prohibited” to “restricted”, §§ 268.1(c)(3) and 268.1(c)(4) are removed, and a new § 268.1(e) is added to read as follows:

(e) The following hazardous wastes are not subject to any provision of part 268:

(1) Waste generated by small quantity generators of less than 100 kilograms of non-acute hazardous waste or less than 1 kilogram of acute hazardous waste per month, as defined in § 261.5 of this chapter;

(2) Waste pesticides that a farmer disposes of pursuant to § 262.70;

(3) Wastes identified or listed as hazardous after November 8, 1984 for which EPA has not promulgated land disposal prohibitions or treatment standards.

§ 268.5 [Corrected]

11. On page 31213, third column, § 268.5(h)(2) is revised to read as follows:

(h) * * *

(2) Such hazardous waste may be disposed in a landfill or surface impoundment only if such unit is in compliance with the technical requirements of the following provisions regardless of whether such unit is existing, new, or a replacement or lateral expansion.

§ 268.6 [Corrected]

12. On page 31213, second column, § 268.6(f)(1) is revised to read as follows: "(1) Immediately suspend receipt of prohibited waste at the unit, and".

§ 268.7 [Corrected]

13. On page 31213, third column, § 268.7(a)(3) is revised to read as follows:

(a) * * *

(3) If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide capacity variance under subpart C), with each shipment of waste he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The notice must include the following information:

* * * * *

§ 268.7 [Corrected]

14. On page 31214, first column, § 268.7(a)(4) is revised to read as follows:

(a) * * *

(4) If a generator determines that he is managing a waste that is subject to the prohibitions under § 268.33(f) (including wastes that are disposed of in disposal units other than landfills or surface impoundments) and is not subject to the prohibitions set forth in § 268.32 of this part, with each shipment of waste the generator must notify the treatment,

storage or disposal facility, in writing, of any applicable prohibitions set forth in § 268.33(f). The notice must include the following information:

* * * * *

§ 268.7 [Corrected]

15. On page 31214, second column, the first sentence of § 268.7(b)(8) is revised to read as follows: "Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 266.20(b) regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (*i.e.*, the recycler) is not required to notify the receiving facility, pursuant to paragraph (b)(4) of this section."

§ 268.7 [Corrected]

16. On page 31214, third column, the following paragraph (c)(4) is added:

(c) * * *

(4) Where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal subject to the provisions of § 266.20(b), the owner or operator is not subject to paragraphs (c)(1)-(3) of this section with respect to such waste.

§ 268.8 [Corrected]

17. On page 31214, third column, and page 31215, first and second columns, § 268.8(a) is revised to read as follows:

(a) * * *

(2) If a generator determines that there is no practically available treatment for his waste, he must fulfill the following specific requirements:

(i) Prior to the initial shipment of waste, the generator must submit a demonstration to the Regional Administrator that includes: a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates, as well as a written discussion of why he was not able to obtain treatment or recovery for that waste. The generator must also provide to the Regional Administrator the following certification:

I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

The generator does not need to wait for Regional Administrator approval of the demonstration/certification before shipment of the waste. However, if the Regional Administrator invalidates the

demonstration/certification for the reasons outlined in § 268.8(b)(2), the generator must immediately cease further shipments of the waste, and immediately inform all facilities that received the waste of such invalidation, and keep records of such communication on-site in his files.

(ii) With the initial shipment of waste, the generator must submit a copy of the demonstration and the certification discussed above in § 268.8(a)(2)(i) to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such a generator must retain on-site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(3) If a generator determines that there are practically available treatments for his waste, he must contract to use the practically available technology that yields the greatest environmental benefit. He must also fulfill the following specific requirements:

(i) The generator must submit to the Regional Administrator, prior to the initial shipment of waste, a demonstration that includes: a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates, as well as a written discussion explaining why the treatment or recovery technology chosen provides the greatest environmental benefit. The generator must also provide to the Regional Administrator the following certification:

I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that I have contracted to treat my waste (or otherwise provide treatment) by the practically available technology which yields the greatest environmental benefit, as indicated in my demonstration. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

The generator does not need to wait for Regional Administrator approval of the demonstration/certification before shipment of the waste.

(ii) With the initial shipment of waste, the generator must submit to the receiving facility a copy of the

demonstration and the certification discussed above in § 268.8(a)(3)(i). With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such a generator must retain on-site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 268.8 [Corrected]

18. On page 31215, second column, § 268.8(b)(1) is revised by adding the following language before the period at the end of the sentence: ", and submit a new demonstration and certification as provided in § 268.8(a) to the receiving facility."

* * * * *

§ 268.8 [Corrected]

19. On page 31215, third column, first paragraph, § 268.8(c)(2) should read:

(c)(2) The owner or operator of a treatment, recovery or storage facility must, for each initial shipment of waste, send a copy of the generator's demonstration (if applicable) and certification under § 268.8(a)(2)(i) or § 268.8(a)(3)(i) and certification under § 268.8(c)(1) (if applicable) to the facility receiving the waste or treatment residues. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged.

§ 268.8 [Corrected]

20. On page 31215, third column, second paragraph, § 268.8(d), "prohibited under § 268.33(f)" should be changed to read "prohibited under § 268.33(f)."

§ 268.32 [Corrected]

21. On page 31216, third column, in § 268.32(f), "such disposal" should be changed to "such unit."

§ 268.33 [Corrected]

22. On page 31217, first column, in § 268.33(a), "K004 (nonwastewater)" should read "K004 wastes specified in § 268.43(a)."

23. On page 31217, first column, in

§ 268.33(a), "K008 (nonwastewaters)" should read "K008 wastes specified in § 268.43(a)."

24. On page 31217, first column, in § 268.33(a), "K015 wastewaters" should be removed.

25. On page 31217, first column, in § 268.33(a), "K021 (nonwastewater)" should read "K021 wastes specified in § 268.43(a)."

26. On page 31217, first column, in § 268.33(a), "K025" should read "K025 nonwastewaters specified in § 268.43(a)."

27. On page 31217, first column, in § 268.33(a), "K083 (nonwastewaters)" should be removed.

28. On page 31217, first column, in § 268.33(a), "K100" should read "K100 nonwastewaters specified in § 268.43(a)."

29. On page 31217, first column, in § 268.33(a), "K101" should read "K101 (wastewater), K101 (nonwastewater, low arsenic subcategory—less than 1% total arsenic)."

30. On page 31217, first column, in § 268.33(a), "K102" should read "K102 (wastewater), K102 (nonwastewater, low arsenic subcategory—less than 1% total arsenic)."

§ 268.33 [Corrected]

31. On page 31217, second column, in § 268.33(f), "are not applicable" is revised to read "have not been promulgated,"; and "unless the wastes are the subject of a valid demonstration and certification pursuant" is revised to read "unless a demonstration and certification have been submitted."

§ 268.33 [Corrected]

32. On page 31217, second column, in § 268.33(g), "extract of the waste" should read "extract of the waste, or the generator may use knowledge of the waste."

§ 268.44 [Corrected]

33. On page 31221, second column, second paragraph, in § 268.44(h), "facility may apply to the Assistant Administrator of the Office of Solid Waste and Emergency Response, or his delegated representative," should read "facility may apply to the Administrator, or his delegated representative,".

§ 268.50 [Corrected]

34. On page 31221, third column, § 268.50(d) is revised to read as follows:

(d) If a generator's waste is exempt from a prohibition on the type of land

disposal utilized for the waste (for example, because of an approved case-by-case extension under § 268.5, an approved § 268.6 petition, or a national capacity variance under subpart C), the prohibition in paragraph (a) of this section does not apply during the period of such exemption.

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40 CFR Part 271

[FRL-3636-1]

North Carolina; Recommencement of Proceedings to Determine Whether To Withdraw Hazardous Waste Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of continuation of hearing to determine whether to withdraw hazardous waste program approval.

SUMMARY: On April 20, 1989 (54 FR 15940), EPA issued a Notice of its intent to hold a hearing to determine whether to withdraw hazardous waste approval of North Carolina's Hazardous Waste Program. A hearing was held during July 18-21, 1989 and July 24-28, 1989, in Raleigh, North Carolina. On August 23, 1989, the presiding Administrative Law Judge provided notice that the hearing would continue beginning Monday, September 18, 1989, at the Radisson Plaza Hotel, 420 Fayetteville Street, Raleigh, North Carolina.

DATES: These proceedings will continue beginning September 18, 1989. A block of rooms has been reserved for those persons needing overnight lodging through September 29, 1989. Reservations must be made by September 6, 1989, at the location listed below. Tenants are responsible for costs involving overnight stay.

ADDRESS: Radisson Plaza Hotel, 420 Fayetteville Street Mall, Raleigh, North Carolina 27601.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30385.

Lee A. DeHihns, III,
Acting Regional Administrator.

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