

## Environmental Protection Agency

40 CFR parts 261, 262, 264, 265, and 270

[FRL-3968-8]

### Identification and Listing of Hazardous Waste; Wood Preserving; Corrections

**AGENCY:** Environmental Protection Agency.

**ACTION:** Technical correction.

**SUMMARY:** The Environmental Protection Agency (EPA) is correcting errors in the hazardous waste regulations that appeared in the *Federal Register* on December 6, 1990 (55 FR 50450). In that rule, EPA promulgated regulations under the Resource Conservation and Recovery Act (RCRA) to add three categories of wastes to the list of hazardous wastes from non-specific sources (40 CFR 261.31). These wastes, designated F032, F034, and F035, are generated from wood preserving processes that use or have previously used chlorophenolic formulations, facilities that use creosote formulations, and facilities that use inorganic preservatives containing arsenic or chromium, respectively. EPA also promulgated standards for permitting an interim status for drip pads used to assist in the collection of treated wood drippage. This notice corrects errors and clarifies language in the preamble and regulations of the December 6, 1990 final rule.

**EFFECTIVE DATE:** July 1, 1991.

#### FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA/Superfund Hotline at (800) 424-9346 (toll-free) or (703) 920-9810 in the Washington, DC metropolitan area. For technical information, contact Mr. Edward L. Freedman, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4770.

#### SUPPLEMENTARY INFORMATION:

##### I. Reasons and Basis for Today's Notice

The Agency has received numerous comments from the regulated community and State agencies identifying typographical errors in the December 6, 1990 final rule, and requesting clarification on certain aspects of the preamble and regulations. Today's notice corrects these errors and responds to other concerns raised by commenters.

## II. Summary of Corrections and Clarifications to the Wood Preserving Wastes Final Rule

Below is a brief explanation of substantive changes to the preamble and regulations in the December 6, 1990 final rule, as well as clarifications of several issues.

**Note:** The corrections discussed below reflect the renumbering of the part 264, subpart W regulations (see part IV below). In addition, the substantive corrections to sections in part 264 listed here have been incorporated in the reprinted text of part 264, subpart W, later in this notice.

1. In the December 6, 1990 final rule, EPA amended section 261.4 by adding paragraph (a)(9). This paragraph excluded from the definition of solid waste, spent wood preserving solutions that have been reclaimed and are reused for their intended purpose. The exclusion applies after the spent preserving solutions are reclaimed. It was the Agency's intent to also exclude wastewaters containing spent preservative, when they are reclaimed and reused at the plant to treat wood. The exclusion would apply whether the waters are applied directly or indirectly to the wood being treated. For example, wastewaters that are reclaimed and then used in a boiler to generate steam that is reused in the process would be excluded, as would waters reused as makeup water in the work tank to dilute concentrated commercial formulations.

The exclusion from the definition of solid waste would take effect after the wastewaters are reclaimed (see § 261.3(c)(2) final sentence, materials normally stop being a waste after they are reclaimed). This is also true of the spent preservatives. EPA is adjusting the language of the exclusion (§ 261.4(a)(9)) to make clear that both spent preserving solutions and wastewater are solid and hazardous wastes until they are reclaimed (normally by filtration), but cease being solid wastes once reclamation is completed if the reclaimed material is used to treat wood.

In addition, the wording of paragraph (a)(9) in § 261.4 is redundant in that it refers to "spent wood preserving solutions that have been used." A "spent material" is defined as a material that has been used. Therefore, for the reasons discussed above, § 261.4, paragraph (a)(9) is being amended today.

EPA has also received questions regarding the status of other wastewaters which are reused beneficially at wood preserving plants but do not come into contact with the treated wood itself. These uses are

addressed by current regulations (40 CFR 261.2), which should be consulted for specific situations. However, under these rules, wastewaters put to direct use normally are not solid wastes, nor are wastewaters that are reused after being reclaimed, provided that the subsequent reuse does not involve placement on the land or combustion. Thus, reclaimed waters used as vacuum pump seal water, or as scrubbing water in an odor scrubber, would not be solid wastes (§ 261.3(c)(2)(i)). Process water that is used directly as cooling tower makeup water, and which is then cooled and reused, also would not normally be a solid waste. (See § 261.2(e)(1)(ii).)

2. The December 6, 1990 final rule added § 261.35, which provides a process by which generators who previously used chlorophenolic preservatives may have the F032 waste code deleted from their wastes if they follow certain equipment cleaning or replacement steps. However, the language in this section does not communicate the options available to the generator in the way the Agency intended. EPA originally intended that a generator of cross-contaminated waste be given three options to follow in order to have the F032 code deleted. These were as follows: (1) Clean equipment; (2) replace equipment; or (e) document that previous cleaning and/or replacement occurred after termination of use of chlorophenolic formulations (55 FR 50457). The way § 261.35 was promulgated, these three options are not clearly set forth. Consequently, § 261.35 is being amended by revising paragraph (b) to clarify the Agency's intent. It is important to note that Method 8290, which is referenced in § 261.35 as the method to use in determining whether equipment is "clean," has not yet been approved and formally incorporated into SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. However, although it has not been so incorporated, Method 8290 is a valid method and it must be used for purposes of compliance with § 261.35. Method 8290 will be part of the Second Update to the Third Edition of SW-846, to be proposed later this summer.

3. The final rule amended § 262.34 by adding a new paragraph (a)(2) and renumbering paragraphs (a)(2) through (a)(4). The final rule did not amend paragraph (d)(4) of § 262.34, however, which requires compliance with paragraphs (a)(2) and (3) of that section. As a result, paragraph (d)(4) no longer refers to the correct paragraphs for compliance with container marking and container/tank labeling requirements. The January 31, 1991

Federal Register (56 FR 3877) amended § 262.34 paragraph (d)(4), but failed to correct the erroneous reference to paragraph (a)(2). For this reason, § 262.34 is amended today by redesignating paragraphs (a)(3) through (a)(5) as (a)(2) through (a)(4) and revising the language in paragraph (a)(1).

4. In the December 6, 1990 final rule, the definition of drip pad states that drip pads are designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system (40 CFR 260.10, 55 FR 50482). However, the applicability of the subpart W drip pad standards refers to facilities that use drip pads to convey treated wood drippage only. This was an error of omission on the part of the Agency. Precipitation and surface water run-on should also be included as materials that may be conveyed using a drip pad subject to subpart W standards, as drip pads are routinely and appropriately used to convey such waters. Therefore, the Agency is amending the applicability sections, 40 CFR 264.570 and 265.440, to include the terms "precipitation" and "surface water run-on." Surface water run-on includes wash waters that may be used for periodic cleaning of the drip pad.

5. Section 264.573, paragraph (b) begins "A drip pad must have:" The comparable language in part 265 (§ 265.443(b)) addresses new and existing drip pads separately and refers to the deadlines for upgrading pads. This language was inadvertently omitted from part 264. Consequently, § 264.573 is being amended to add this language.

6. Section 264.573(b)(2) contains a subsection (ii) that reads "Designed and operated to function without clogging through the scheduled closure of the drip pad." The corresponding language in Part 265 was inadvertently omitted. The Agency intended that both permitted and interim status drip pads be maintained with leakage detection systems that function without clogging. Therefore, § 265.443 is being amended to add this language.

7. Sections 264.573 and 265.443, paragraph (m), set out the procedures to be followed in the event an owner/operator detects a drip pad condition that requires repair. The current language refers to "a condition that could lead to or has caused a release of hazardous waste \* \* \*". The Agency believes this language is overly broad, encompassing many non-threatening drip pad conditions, since almost any condition could eventually "lead to a release." The Agency did not intend for

conditions that merely "could lead" to a release to trigger automatic repairs. Therefore, the language in paragraph (m) in these two sections is being amended to narrow the scope of drip pad conditions requiring action to those situations where the condition has caused or could have caused a release.

It was not the Agency's intent to require reporting to the Regional Administrator for each repair made to a drip pad. It is EPA's concern, however, that owner/operators of drip pads practice preventive maintenance in order to avoid releases of hazardous waste to the environment. If a condition has led to a release of hazardous waste, or there has been a release and a particular condition (e.g., cracks or deterioration) may have caused that release, notifying the RA of the condition and the steps taken to repair it will be required. However, if a condition that could potentially lead to a release in the future is detected (e.g., a hairline crack), no notification is necessary if that condition is not associated with any releases of hazardous waste. In such a case, however, the procedures in paragraph (m) for making repairs in a timely fashion are still applicable.

8. The Agency has been informed that the Subpart W operating standards have been interpreted to require weekly water washing of drip pads (existing § 264.572(i)). This was not EPA's intent. Rather, the Agency requires that a drip pad be cleaned in a manner and frequency sufficient to allow weekly inspections of the pad, as required under existing § 264.573(b). However, such cleaning need not involve water washing. For example, weekly sweeping is sufficient if the pad is clean enough to inspect. EPA also plans to revisit the issue of weekly cleaning in a proposed rule to be published in the near future.

Note: Existing section numbers were used in this discussion for ease of reference. Sections 264.572 and 264.573 will become §§ 264.573 and 264.574, respectively.

9. Some members of the regulated community are interpreting the standards for cleanup of drip pad leakage to require digging up the drip pad in all situations. This is not the case. Pursuant to § 264.573(m)(1)(iii), an owner/operator who detects a drip pad condition that may have caused or has caused a release of hazardous waste must determine how to repair the drip pad and clean up any leakage from below the pad. If the drip pad has a leakage collection system below the pad, or a drainage system leading to a sump, the owner/operator need not dig up the pad. EPA considers a leakage collection or drainage system to satisfy

the requirement for cleanup beneath the pad. However, if the drip pad has no such system, or a leakage collection system fails, resulting in a release of hazardous waste to the environment, then the drip pad must be removed to the extent that underlying contamination can be cleaned up.

10. There is one final issue that requires clarification regarding the listings for wood preserving wastes promulgated on December 6, 1990. Concerns have been raised regarding the generation of waste at shutdown or abandoned wood preserving plants with respect to the new listings. For example, if a cleanup operation is conducted at a closed plant that used preservatives covered by the listings, and this cleanup takes place after the effective date of the listings, the preservative-contaminated soil and materials removed from the site would be regulated as hazardous wastes. Hazardous waste listings under RCRA apply to wastes whose management ceased prior to the effective date of the rule listing or identifying them as hazardous. This is because the material meets the listing description, or is derived from the listed waste, or is contained in environmental media. This does not mean that wastes that have been previously disposed must be exhumed for proper management once a rule listing them as hazardous is promulgated. However, if such wastes are being actively managed (e.g., excavated, stored) after the effective date of a rule identifying them as hazardous, they must be managed in accordance with all applicable listings and any other requirements under RCRA. (For a more detailed discussion of this issue, see the August 17, 1988 Federal Register, 53 FR 31148. The Agency's approach to this issue was upheld by the D.C. Circuit in *Chemical Waste Management v. EPA*, 869 F. 2d 1526 (D.C. Cir. 1989).)

In our example of a cleanup operation at a closed wood preserving plant, the soil and materials removed from the site would "contain" one or more listed hazardous wastes, and therefore, would be regulated as hazardous waste after the effective date of the listings. (See June 19, 1989 letter from EPA to the New York State Department of Environmental Conservation for a discussion of the "contained-in" policy.)

### III. Issues Concerning the Applicability of Subpart W

There has been confusion in the regulated community over several issues concerning the applicability of the subpart W drip pad standards.

Clarifications of these issues are provided in this section. First, the final rule is unclear as to whether the subpart W drip pad standards apply to drip pads used to manage preservative drippage that exhibits a characteristic of hazardous waste, or if they apply only to drip pads managing drippage meeting the F032, F034, or F035 listing descriptions. If an owner/operator of a wood preserving plant is subject to subpart W (i.e., if he uses a drip pad to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system), Subpart W applies, whether the material being conveyed exhibits a hazardous waste characteristic or meets a hazardous waste listing.

A drip pad is not to be used for the management of materials other than drippage, precipitation, or surface water run-on. For example, sludges or spent preservative other than drippage are not to be managed on drip pads. Wash waters applied by the owner/operator for cleaning of the drip pad do fall within the meaning of surface water run-on. Section 262.34 authorizes accumulation of hazardous waste for 90 days or less provided that the waste is placed on drip pads and the generator complies with Subpart W. Because the applicability of Subpart W is limited to drip pads managing treated wood drippage, precipitation, and/or surface water run-on (including wash waters), other types of hazardous waste may not be accumulated on drip pads for purposes of § 262.34. Accumulation in containers or tanks is possible for these other hazardous wastes.

Secondly, questions have been raised regarding the applicability of the subpart W standards to wood preserving plants that hold treated wood in the treatment cylinder until all drippage ceases. The subpart W requirements apply to owners and operators of facilities that use drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Facilities that do not generate drippage in a process or kick-back area are not subject to subpart W.

Another issue regarding the applicability of subpart W involves wastewater treatment systems at wood preserving plants. Some members of the regulated community have interpreted the subpart W standards to require drip pads under wastewater treatment trains downstream of initial collection systems. This was not the Agency's intent. Again, subpart W applies to owners/operators of facilities that use drip pads to convey drippage,

precipitation, and/or surface run-on to a collection system. "Drippage" is defined in the preamble to the final rule (55 FR 50452) as "excess preservative that is kicked back from the wood following treatment." It is at this point, in a process or "kick-back" area, where a subpart W drip pad is used.

#### IV. Renumbering of Sections in Part 264, Subpart W

In the December 6, 1990 final rule, the order of the sections in parts 264 and 265, subpart W does not correspond. The part 265 sections are ordered and numbered correctly. In part 264, the section entitled "Design and installation of new drip pads" should follow § 264.571—Assessment of existing drip pad integrity, as it does in part 265. However, this section on new drip pads was placed at the end of the subpart in part 264, in § 264.575. Today, the Agency is correcting this misplacement by redesignating § 264.575—Design and installation of new drip pads, as § 264.572. As a result, § 264.572 is redesignated as § 264.573; § 264.573 as § 264.574; and § 264.574 as § 264.575. By reordering the sections in part 264, the last numbers of the sections in both parts 264 and 265 will correspond, easing cross-reference between parts and providing a more logical order of regulatory requirements.

For the convenience of the reader, we have printed the entire renumbered part 264, subpart W below, with all the citations corrected to correspond with the renumbered sections. The reader is reminded to cross-reference this revised set of part 264 regulations when reading the preamble to the December 6 final rule, so as not to be confused by preamble references to the old section numbers.

#### V. 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 December 6, 1990 final rule (55 FR 50450). 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.

#### VI. 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.

#### VII. Paperwork Reduction Act

The information collection requirements in the December 6, 1990 final rule were submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. OMB has reviewed the Information Collection Request and has approved the recordkeeping and reporting requirements in the final rule. The OMB authorization number for these requirements is 2050-0115.

#### List of Subjects

##### 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

##### 40 CFR Part 262

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping.

##### 40 CFR Part 264

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

##### 40 CFR Part 265

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

##### 40 CFR Part 270

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

Dated: June 21, 1991.

Don R. Clay,  
Assistant Administrator.

The following corrections are made in the preamble to FRL-3856-7, Identification and Listing of Hazardous Waste; Wood Preserving; Final Rule,

published in the Federal Register on December 6, 1990 (55 FR 50450).

1. On page 50450, in the DATES SECTION, change "§ 270.22 (a), (b), and (c)" to "§ 270.26 (a), (b), and (c)."

2. On page 50455, in the first column, change "§ 265.34" to "§ 262.34."

3. On page 50455, in the third column, second full paragraph, change the sentence "Drip pads must have run-on and run-off control to prevent contamination or surface water \* \* \*" to read "Drip pads must have run-on and run-off control to prevent contamination of surface water \* \* \*"

4. On page 50460, third column, third full paragraph, change "§ 261.4(c)(2)(i)" to "§ 261.4(a)(9)."

The following corrections are made to the rules in FRL-3856-7, Identification and Listing of Hazardous Waste; Wood Preserving; final rule, published in the Federal Register on December 6, 1990 (55 FR 50450).

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939.

6. Section 261.4, paragraph (a)(9) is revised to read as follows:

**§ 261.4 Exclusions.**

(a) \* \* \*

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

\* \* \* \* \*

7. Section 261.35 is amended by revising paragraph (b) to read as follows:

**§ 261.35 Deletion of certain hazardous waste codes following equipment cleaning and replacement.**

\* \* \* \* \*

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservatives.

**(2) Cleaning Requirements.**

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses must be tested in accordance with SW-846, Method 8290.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

\* \* \* \* \*

**PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**

8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

9. Section 262.34 is amended by redesignating paragraphs (a)(3) through (a)(5) as (a)(2) through (a)(4) and

revising paragraph (a)(1) to read as follows:

**§ 262.34 Accumulation time.**

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) in containers and the generator complies with subpart I of 40 CFR part 265; and/or

(ii) in tanks and the generator complies with subpart J of 40 CFR part 265, except § 265.197(c) and § 265.200; and/or

(iii) On drip pads and the generator complies with subpart W of 40 CFR part 265 and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

In addition, such a generator is exempt from all requirements in subparts G and H of 40 CFR part 265, except for § 265.111 and § 265.114.

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR Part 265, with § 265.16, and with 40 CFR 268.7(a)(4).

\* \* \* \* \*

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

10. The authority citation for part 264 continues to read as follows:

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

11. Part 264 is amended by revising subpart W to read as follows:

**Subpart W—Drip Pads**

Sec.

264.570 Applicability

- 264.571 Assessment of existing drip pad integrity.  
 264.572 Design and installation of new drip pads.  
 264.573 Design and operating requirements.  
 264.574 Inspections.  
 264.575 Closure.

### Subpart W—Drip Pads

#### 264.570 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water runoff to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under § 264.573(e) or § 264.573(f), as appropriate.

#### § 264.571 Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 264.570 of this subpart, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.573(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of § 264.573 of this subpart are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.573 of this subpart, except the standards for liners and leak detection systems, specified in § 264.573(b) of this subpart, and must document the age of the drip pad to the extent possible, to document compliance with paragraph (b) of this section.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b) of this subpart, and submit the plan to the Regional Administrator no later than 2

years before the date that all repairs, upgrades, and modifications will be complete. This written plan must describe all changes to be made to the drip pad insufficient detail to document compliance with all the requirements of § 263.573 of this subpart and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent qualified registered professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed within two years of the effective date of this rule, or when the drip has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented, within 8 years of the effective date of this rule, but if the age of the facility is greater than 7 years, all upgrades, repairs and modifications must be completed by the time the facility reaches 15 years of age or by two years after the effective date of this rule, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet all of the requirements of § 264.573 of this subpart after the date upon which all upgrades, repairs and modifications must be completed as established under paragraphs (b)(1) and (2) of this section, the owner or operator may petition the Regional Administrator for an extension of the deadline specified in paragraph (b)(1) or (2) of this section. The Regional Administrator will grant the petition for extension based on a finding that the drip pad meets all of the requirements of § 264.573, except for those for liners and lead detection systems specified in § 264.573(b), and that it will continue to be protective of human health and the environment.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Regional Administrator or State Director, the as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of § 264.573 (m) of this subpart or close the drip pad in accordance with § 264.575 of this subpart.

#### § 264.572 Design and installation of new drip pads.

Owners and operators of drip pads must ensure that the pads are designed, installed, and operated in accordance with all of the applicable requirements of §§ 264.573, 264.574 and 264.575 of this subpart.

#### § 264.573 Design and operating requirements.

(a) Drip pads must: (1) Be constructed of non-earthern materials, excluding wood and non-structurally supported asphalt:

(2) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) Have a curb or berm around the perimeter;

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily perations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

**Note:** EPA will generally consider applicable standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) or the American Society of Testing and Materials (ASTM) in judging the structural integrity requirement of this paragraph.

(b) A new drip pad or an existing drip pad, after the deadline established in § 264.571(b) of this subpart, must have:

(1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact

with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are;

(A) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad;

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad; and

(iii) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

**Note:** See § 264.573(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in § 264.570(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-off that might enter the system.

(f) Unless protected by a structure or cover as described in § 264.570(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent, qualified registered professional engineer certifying that the drip pad design meets the requirements of this section.

(h) Dripping and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly at least once every seven days such that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator must:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs;

(iv) Within 24 hours after discovery of the condition, notify the Regional Administrator of the condition and, within 10 working days, provide written notice to the Regional Administrator with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

(2) The Regional Administrator will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator must notify the Regional Administrator in writing and provide a certification signed by an independent, qualified registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (m)(1)(iv) of this section.

(n) Should a permit be necessary, the Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(o) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

#### § 264.574 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 264.573 of this subpart by an independent qualified, registered professional engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

- (1) Deterioration, malfunctions or improper operation of run-on and run-off control systems;
- (2) The presence of leakage in and proper functioning of leak detection system.
- (3) Deterioration or cracking of the drip pad surface.

Note: See § 264.573(m) for remedial action required if deterioration or leakage is detected.

§ 264.575 Closure.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (§ 264.310). For permitted units, the requirement to have a permit continues throughout the post-closure period. In addition, for the purpose of closure, post-closure, and financial responsibility, such a drip pad is then considered to be landfill, and the owner or operator must meet all of the requirements for landfills specified in subparts G and H of this part.

(c)(1) The owner or operator of an existing drip pad, as defined in § 264.570 of this subpart, that does not comply with the liner requirements of § 264.573(b)(1) must:

- (i) Include in the closure plan for the drip pad under § 264.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this

section in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under § 264.118 of this part for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under §§ 264.112 and 264.144 of this part for closure and post-closure care of a drip pad subject to this paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

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

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

13. Section 265.440 is amended by revising paragraph (a) to read as follows:

§ 265.440 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has generated a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads.

14. Section 265.443 is amended by redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii), and adding paragraph (b)(2)(ii), to read as follows:

§ 265.443 Design and operating requirements.

- (b) \* \* \*
- (2) \* \* \*

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad.

15. Section 265.443 is amended by revising paragraphs (m) introductory text, and (m)(1) introductory text to read as follows:

§ 265.443 Design and operating requirements.

(m) Throughout the active life of the drip pad, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage by the leak detection system), the owner or operator must:

16. Section 265.443(m)(3) is amended by revising the reference "(m)(3)" to read "(m)(1)(iv)".

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

17. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

§ 270.22 [Redesignated as § 270.26]

18. Section 270.22 added on 12-6-90 at 56 FR 50450 is redesignated as § 270.26; the heading is revised to read "Special Part B Information Requirements for Drip Pads"; in paragraph (c) of redesignated § 270.26, revise "§ 264.572" to read "§ 264.573"; in paragraph (c)(14), revise "§ 264.572" to read "§ 264.573"; in paragraph (c)(15), revise "§ 264.571" to read "§ 264.573"; and in paragraph (c)(16), revise "§ 264.573(a)" to read "§ 264.575(a)".

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