

## **Part 122 - The Hazardous Waste Permit Program**

### **Subpart A - General Program Requirements**

- 122.1 Purpose and scope of Part 122.
- 122.2 Definitions.
- 122.3 Noncompliance and program reporting by the Secretary
- 122.4 Effect of a permit.
- 122.5 [Reserved].
- 122.6 References.

### **Subpart B - Permit Application**

- 122.10 General application requirements.
- 122.11 Signatories to permit applications and reports.
- 122.12 Confidentiality of information.
- 122.13 Contents of Part A.
- 122.14 Contents of Part B: General Requirements.
- 122.15 Specific Part B information requirements for containers.
- 122.16 Specific Part B information requirements for tank systems.
- 122.17 Specific Part B information requirements for surface impoundments.
- 122.18 Specific Part B requirements for waste piles.
- 122.19 Specific Part B requirements for incinerators.
- 122.20 Specific Part B requirements for land treatment facilities.
- 122.21 Specific Part B information requirements for landfills.
- 122.22 Specific Part B information requirements for boilers and industrial furnaces burning hazardous waste.
- 122.23 Specific Part B information requirements for miscellaneous units.
- 122.24 Specific Part B information requirements for process vents.
- 122.25 Specific Part B information requirements for equipment.
- 122.26 Specific Part B information requirements for drip pads.
- 122.27 Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers.
- 122.28 Part B information requirements for post-closure permits.
- 122.29 Permit Denial.

### **Subpart C - Permit Conditions**

- 122.30 Conditions applicable to all permits.
- 122.31 Requirements for recording and Reporting of monitoring results.
- 122.32 Establishing permit conditions.
- 122.33 Schedules for compliance.
- 122.34 - 122.39 [Reserved]

### **Subpart D - Changes to Permit**

- 122.40 Transfer of permits
- 122.41 Modification or revocation and reissuance of permits.
- 122.42 Permit modification at the request of the permittee.
- 122.43 Termination of Permits.
- 122.44 - 122.49 [Reserved]

### **Subpart E - Expiration and Continuation of Permits**

- 122.50 Duration of permits.
- 122.51 Continuation of expiring permits.
- 122.52 122.59 [Reserved]

### **Subpart F - Special Forms of Permits**

- 122.60 Permits by rule.

- 122.61 Emergency Administrative Orders.
- 122.62 Hazardous waste incinerator permits.
- 122.63 Permits for land treatment demonstrations using field test or laboratory analysis.
- 122.64 [Reserved].
- 122.65 Research, Development, and Demonstration Permits.
- 122.66 Permits for boilers and industrial furnaces burning hazardous waste.
- 122.67 [Reserved]
- 122.68 Remedial Action Plans (RAPs)
- 122.69 [Reserved]

#### **Subpart G - Interim Status**

- 122.70 Qualifying for Interim Status.
- 122.71 Operation during interim status.
- 122.72 Changes during interim status.
- 122.73 Termination of interim status.
- 122.74 - 122.78 [Reserved]

#### **Subpart H -- Remedial Action Plans (RAPs)**

- 122.79 Why is this subpart written in a special format?
- 122.80 What is a RAP?
- 122.85 When do I need a RAP?
- 122.90 Does my RAP grant me any rights or relieve me of any obligations?
- 122.95 How do I apply for a RAP?
- 122.100 Who must obtain a RAP?
- 122.105 Who must sign the application and any required reports for a RAP?
- 122.110 What must I include in my application for a RAP?
- 122.115 What if I want to keep this information confidential?
- 122.120 To whom must I submit my RAP application?
- 122.125 If I submit my RAP application as part of another document, what must I do?
- 122.130 What is the process for approving or denying my application for a RAP?
- 122.135 What must the Secretary include in a draft RAP?
- 122.140 What else must the Secretary prepare in addition to the draft RAP or notice of intent to deny?
- 122.145 What are the procedures for public comment on the draft RAP or notice of intent to deny?
- 122.150 How will the Secretary make a final decision on my RAP application?
- 122.155 May the decision to approve or deny my RAP application be administratively appealed?
- 122.160 When does my RAP become effective?
- 122.165 When may I begin physical construction of new units permitted under the RAP?
- 122.170 After my RAP is issued, how may it be modified, revoked and reissued, or terminated?
- 122.175 For what reasons may the Secretary choose to modify my final RAP?
- 122.180 For what reasons may the Secretary choose to revoke and reissue my final RAP?
- 122.185 For what reasons may the Secretary choose to terminate my final RAP, or deny my renewal application?
- 122.190 May the decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed?
- 122.195 When will my RAP expire?
- 122.200 How may I renew my RAP if it is expiring?
- 122.205 What happens if I have applied correctly for a RAP renewal but have not received approval by the time my old RAP expires?
- 122.210 What records must I maintain concerning my RAP?
- 122.215 How are time periods in the requirements in this subpart and my RAP computed?
- 122.220 How may I transfer my RAP to a new owner or operator?
- 122.225 What must the State or EPA Region report about noncompliance with RAPs?
- 122.230 May I perform remediation waste management activities under a RAP at a location removed from the area where the remediation wastes originated?

## Subpart A - General Program Requirements

### Section 122.1 Purpose and scope of Part 122.

- (a) Coverage.
  - (1) These permit regulations establish provisions for Delaware's Hazardous Waste Permit Program.
  - (2) The regulations in this part cover basic DNREC permitting requirements, such as application requirements, standard permit conditions, and monitoring and reporting requirements.
- (b) **[Reserved]**
- (c) Scope of the hazardous waste permit requirement. DNREC requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Part 261. The terms "treatment", "storage", "disposal", and "hazardous waste" are defined in Section 122.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to Section 265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under Section 122.1(c)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as required under (c)(7) of this section. If a post-closure permit is required, the permit must address applicable Part 264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of these regulations. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.
  - (1) Specific inclusions. Owners and operators of certain facilities require hazardous waste permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste permits are required for:
    - (i) **[Reserved]**
    - (ii) Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a hazardous waste permit for that waste if they comply with the requirements of Section 122.60(c) (permit-by-rule for POTWs).
    - (iii) Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have a State permit for ocean disposal from the barge or vessel itself if they comply with the requirements of Section 122.60(a) (permit-by-rule for ocean disposal barges and vessels).
  - (2) Specific exclusions. The following persons are among those who are not required to obtain a State hazardous waste permit:
    - (i) Generators who accumulate hazardous waste on-site for less than the time periods and under the conditions provided in Section 262.34.
    - (ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in Section 262.70 of these regulations;
    - (iii) Persons who own or operate facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulations under this part by Section Section 261.4 or 261.5 (small generator exemption).
    - (iv) Owners or operators of totally enclosed treatment facilities as defined in Section 260.10.
    - (v) Owners and operators of elementary neutralization units or wastewater treatment units as defined in Section 260.10.
    - (vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of Section 262.30 at a transfer facility for a period of ten days or less. See also Section 263.12.
    - (vii) Persons adding absorbent material to waste in a container (as defined in Section 260.10 of these regulations) and persons adding waste to absorbent material in a container,

provided that these actions occur at the time waste is first placed in the container; and Section 264.17(b), 264.171, and 264.172 of these regulations are complied with.

(viii) Universal waste handlers and universal waste transporters (as defined in Section 260.10) managing the wastes listed below. These handlers are subject to regulation under Part 273.

(A) Batteries as described in Section 273.2 of these regulations;  
(B) Pesticides as described in Section 273.3 of these regulations;  
(C) Mercury-containing equipment as described in Section 273.4 of these regulations; and

(D) Lamps as described in Section 273.5 of these regulations.

(3) Further exclusions.

(i) A person is not required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;  
(B) An imminent and substantial threat of a discharge of hazardous waste;  
(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(D) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in Section 260.10.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part for those activities.

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(4) Permits for less than an entire facility. DNREC may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Part 265 standards must obtain a post-closure permit unless they can demonstrate to the Secretary that the closure met the standards for closure by removal or decontamination in Section 264.228, 264.280(e), or 264.258, respectively. The demonstration may be made in the following ways:

(i) If the owner/operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that Part 264 closure by removal standards were met. If the Secretary believes that Part 264 standards were met, he/she will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in paragraph (c)(6) of this section.

(ii) If the owner/operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the Secretary for a determination that a post-closure permit is not required because the closure met the applicable Part 264 closure standards.

(A) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under State requirements that met or exceeded the applicable 264 closure-by-removal standard.

(B) The Secretary shall approve or deny the petition according to the procedures outlined in paragraph (c)(6) of this section.

(6) Procedures for closure equivalency determination.

(i) If a facility owner/operator seeks an equivalency demonstration under Section 122.1(c)(5), the Secretary will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Secretary will also, in response to a request or at his/her own discretion, hold a

public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Part 265 closure to a Part 264 closure. The Secretary will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)

(ii) The Secretary will determine whether the Part 265 closure met 264 closure by removal or decontamination requirements within 90 days of its receipt. If the Secretary finds that the closure did not meet the applicable Part 264 standards, he/she will provide the owner/operator with a written statement of the reasons why the closure failed to meet Part 264 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Secretary will review any additional information submitted and make a final determination within 60 days.

(iii) If the Secretary determines that the facility did not close in accordance with Part 264 closure by removal standards, the facility is subject to post-closure permitting requirements.

(7) Enforceable documents for post-closure care. At the discretion of the Secretary, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of Section 265.121. "Enforceable document" means an order, a plan, or other document issued by EPA or by an authorized State under an authority that meets the requirements of 40 CFR, 271.16(e) including, but not limited to, a corrective action order issued by EPA under Section 3008(h) or DNREC under 7 Del.C., Chapter 63, a CERCLA remedial action, or a closure or post-closure plan.

(d) Transporters of listed or characteristic hazardous waste identified in Part 261 of these regulations, or used or waste oil as identified in Parts 263 or 279 of these regulations are required to obtain a transporters permit.

(Amended August 29, 1988; August 10, 1990; June 19, 1992, August 23, 1996, January 1, 1999, July 11, 2002, August 21, 2006 )

## **Section 122.2 Definitions.**

The following definitions apply to Parts 122 and 124. Terms not defined in this section have the meaning given by 7 Del.C., Chapter 63.

**"Administrator"** means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

**"Application"** means the DNREC forms for applying for a permit, including any additions, revisions or modifications to the forms; including any approved modifications or revisions. Application also includes the information required by the Secretary under Section 122.14 - Section 122.29 (contents of the Part B application).

**"Closure"** means the act of securing a Hazardous Waste Management facility pursuant to the requirements of Part 264.

**"Component"** means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

**"Corrective action management unit or CAMU"** means an area within a facility that is designated by the Secretary under Part 264, Subpart S for the purpose of implementing corrective action requirements under Section 264.101 and 7 Del.C., Chapter 63. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

**"CWA"** means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 92-217 and Pub. L. 95-576; 33 USC Section 1251, et seq.

**"Disposal"** means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

**"Disposal facility"** means a facility or part of a facility at which hazardous waste is intentionally placed into or on the land or water, and at which hazardous waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

**"DNREC"** means the Delaware Department of Natural Resources and Environmental Control.

**"Draft permit"** means a document prepared under Section 124.6 indicating the Secretary's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Section 124.5, are types of draft

permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in Section 124.5 is not a "draft permit." A proposed permit is not a draft permit.

**"Elementary neutralization unit"** means a device which:

(a) Is used for neutralizing wastes only because they exhibit the corrosivity characteristic defined in Section 261.22 of these regulations, or are listed in Subpart D of Part 261 of these regulations only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in Section 260.10 of these regulations.

**"Environmental Protection Agency (EPA)"** means the United States Environmental Protection Agency.

**"EPA"** means the United States Environmental Protection Agency.

**"Existing hazardous waste management (HWM) facility"** or existing facility means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(b) (1) A continuous on-site, physical construction program has begun; or

(2) The owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction of the facility to be completed within a reasonable time.

**"Facility or activity"** means any HWM facility or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under 7 Del.C., Chapter 63.

**"Facility mailing list"** means the mailing list for a facility maintained by DNREC in accordance with Section 124.10(c)(1)(iv).

**"Functionally equivalent component"** means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

**"Ground water"** means water below the land surface in a zone of saturation.

**"Hazardous waste"** means a hazardous waste as defined in Section 261.3.

**"Hazardous Waste Management facility (HWM facility)"** means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

**"Injection well"** means a well into which fluids are being injected.

**"In operation"** means a facility which is treating, storing, or disposing of hazardous waste.

**"Manifest"** means the shipping document originated and signed by the generator which contains the information required by Subpart B of Part 262.

**"National Pollutant Discharge Elimination System (NPDES)"** means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Section 307, 402, 318, and 405 of the CWA. The term includes an approved program.

**"New HWM facility"** means a Hazardous Waste Management facility which began operation or for which construction commenced after November 19, 1980.

**"Off-site"** means any site which is not on-site.

**"On-site"** means on the same or geographically contiguous property which may be divided by public or private right(s)-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right(s)-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

**"Owner or operator"** means the owner or operator of any facility or activity subject to regulation under RCRA.

**"Permit"** means an authorization, license, or equivalent control document issued by DNREC to implement the requirements of this part and Part 124. Permit does not include interim status (Subpart G of this part), or any permit which has not yet been the subject of final DNREC action, such as a draft permit or a proposed permit.

**"Permit-by-rule"** means a provision of these regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of Section 122.60.

**"Person"** means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

**"Physical construction"** means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HWM facility to accept hazardous waste.

**"Publicly owned treatment works (POTW)"** means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

**"RCRA"** means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609 and Pub. L. 96-482, 42 USC Section 6901, et seq.)

**"Regional Administrator"** means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

**"Remedial Action Plan (RAP)"** means a special form of hazardous waste permit that a facility owner or operator may obtain instead of a permit issued under Section 122.3 through 122.66, to authorize the treatment, storage or disposal of hazardous remediation waste (as defined in Section 260.10 of these regulations) at a remediation waste management site.

**"Schedule of compliance"** means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with 7 Del.C., Chapter 63 and regulations.

**"SDWA"** means the Safe Drinking Water Act (Pub. L. 95-523, as amended by Pub. L. 95-1900; 42 USC Section 3001, et seq.).

**"Secretary"** means the Secretary of DNREC.

**"Site"** means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

**"Storage"** means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

**"Transfer facility"** means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

**"Transporter"** means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

**"Treatment"** means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such wastes, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

**"UIC"** means the Underground Injection Control Program under Part C of the Safe Drinking Water Act, including an approved program.

**"Underground injection"** means a well injection.

**"Underground source of drinking water (USDW)"** means an aquifer or its portion:

(a) (1) Which supplies any public water system; or  
(2) Which contains a sufficient quantity of ground water to supply a public water system; and

(i) Currently supplies drinking water for human consumption; or

(ii) Contains fewer than 10,000 mg/l total dissolved solids; and

(b) Which is not an exempted aquifer.

**"USDW"** means underground source of drinking water.

**"Wastewater treatment unit"** means a device which:

(a) Is part of a wastewater treatment facility which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act; and

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in Section 261.3 of these regulations, or generates and accumulates a wastewater treatment sludge which is a

hazardous waste as defined in Section 261.3 of these regulations, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 261.3 of these regulations; and

(c) Meets the definition of tank or tank system in Section 260.10 of these regulations.

(Amended August 10, 1990, August 1, 1995, January 1, 1999, June 2, 2000)

### **Section 122.3 Noncompliance and program reporting by the Secretary**

The Secretary shall prepare quarterly and annual reports as detailed below. The Secretary shall submit any reports required under this section to the Regional Administrator. For purposes of this section only, hazardous waste permittees shall include hazardous waste interim status facilities, when appropriate.

(a) Quarterly reports. The Secretary shall submit quarterly narrative reports for major facilities as follows:

(1) Format. The report shall use the following format:

(i) Information on noncompliance for each facility;

(ii) Alphabetize by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first.

(iii) For each entry on the list, include the following information in the following order;

(A) Name, location, and permit number of the noncomplying permittee.

(B) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee.

(C) The date(s) and a brief description of the action(s).

(D) Status of the instance(s) of noncompliance with the data of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) Instances of noncompliance to be reported. Any instances on noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.

(i) Failure to complete construction elements. When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required element of the schedule within 30 days from the date a compliance schedule report is due under the permit.

(ii) Modifications to schedules of compliance. When a schedule of compliance in the permit has been modified under Section 122.41 or Section 122.42 because of the permittee's noncompliance.

(iii) Failure to complete or provide compliance schedule or monitoring reports. When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

(iv) Deficient reports. When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Secretary and thus impede the review of the status of compliance.

(v) Noncompliance with other permit requirements. Noncompliance shall be reported in the following circumstances:

(A) Whenever the permittee has violated a permit requirement (other than reported under paragraph (a)(2)(i) or (ii) of this section), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or migration of fluids into an Underground Source of Drinking Water (USDW).

(B) When the Secretary determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern includes any violation of the same requirement in two consecutive reporting periods and any violation of one or more

requirements in each of four consecutive reporting periods, or migration of fluids into an Underground Source of Drinking Water (USDW).

(C) When the Secretary determines significant permit non-compliance or other significant event has occurred, such as a fire or explosion.

(vi) All other statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under paragraph (a) of this section.

(b) Annual Reports.

(1) Annual noncompliance report. Statistical reports shall be submitted by the Secretary on nonmajor Hazardous Waste permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) In addition to the annual noncompliance report, the Secretary shall prepare a "program report" which contains information (in a manner and form prescribed by the Regional Administrator) on generators and transporters; the permit status of regulated facilities; and summary information on the quantities and types of hazardous wastes generated, transported, stored, treated, and disposed during the preceding year. This summary information shall be reported in a manner and form prescribed by the Administrator and shall be reported according to EPA characteristics and lists of hazardous wastes in Part 261.

(c) Schedule.

(1) For all quarterly reports. On the last working day of May, August, November, and February, the State Secretary shall submit to the Regional Administrator information concerning noncompliance with State permit requirements by major facilities in the State in accordance with the following schedule.

**Quarters Covered By Reports On  
Non Compliance By Major Discharges  
(Date for completion of reports)**

January, February, and March	May 31 <sup>1</sup>
April, May, and June	Aug. 31 <sup>1</sup>
July, August, and September	Nov. 30 <sup>1</sup>
October, November, and December	Feb. 28 <sup>1</sup>

<sup>1</sup> Reports must be made available to the public for inspection and copying on this date.  
(Amended August 21, 1997)

**Section 122.4 Effect of a permit.**

(a) Compliance with a State hazardous waste permit during its term constitutes compliance, for purposes of enforcement, with 7 Del.C., Chapter 63 except for those requirements not included in the permit which:

(1) Become effective by statute;

(2) Are promulgated under Part 268 of these regulations restricting the placement of hazardous wastes in or on the land;

(3) Are promulgated under Part 264 of these regulations regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of Section 122.42 Class 1 permit modifications; or

(4) Are promulgated under Subparts AA, BB, or CC of Part 265 of these regulations limiting air emissions.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

(Amended August 1, 1995, January 1, 1999)

## **Section 122.5 - [Reserved].**

## **Section 122.6 References.**

(a) When used in Part 122 of these regulations, the following publications are incorporated by reference:  
(See 260.11 References)  
(Amended May 8, 1986; August 29, 1988; August 10, 1990; June 19, 1992, July 23, 1996)

### **Subpart B - Permit Application**

## **Section 122.10 General application requirements.**

(a) Permit application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Secretary as described in this section and Section 122.70 through Section 122.73. Persons currently authorized with interim status shall apply for permits when required by the Secretary. Persons covered by hazardous waste permits by rule (Section 122.60) need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in Section 122.61. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in Section 122.65.

(b) Who applies? When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner must also sign the permit application.

(c) Completeness. The Secretary shall not issue a permit before receiving a complete application for a permit except for permits by rule, or emergency permits. An application for a permit is complete when the Secretary receives an application from and any supplemental information which are completed to his satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in paragraph (j) of this section. The Secretary may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.

(d) Information requirement. All applicants for hazardous waste permits shall provide information set forth in Section 122.13 and applicable sections in Section 122.14 - 122.29 to the Secretary, using the application form provided by the Secretary.

(e) Existing HWM facilities and interim status qualifications.

(1) Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under 7 Del.C., Chapter 63 that render the facility subject to the requirement to have a hazardous waste permit must submit Part A of their permit application no later than:

(i) Six months after the date of publication of regulations which first require them to comply with the standards set forth in Part 265 or 266, or

(ii) Thirty days after the date they first become subject to the standards set forth in Part 265 or 266, whichever first occurs.

(iii) For generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987.

(2) The EPA Administrator may by publication in the FEDERAL REGISTER extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit Part A of their permit application if he finds that:

(i) there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application; and

(ii) such confusion is attributed to ambiguities in 40 CFR Parts 260, 261, 265, or 266 regulations.

(3) The DNREC Secretary or EPA Administrator may by compliance order issued under 7 Del.C., Section 6309 or RCRA Section 3008 extend the date by which the owner or operator of an existing hazardous waste management facility must submit Part A of their permit application.

(4) The owner or operator of an existing hazardous waste management facility may be required to submit Part B of their permit application. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit Part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility must submit a Part B permit application in accordance with the dates specified in Section 122.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under this Act that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B application in accordance with the dates specified in Section 122.73.

(5) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status under Part 124.

(6) Notwithstanding the above, any owner or operator of an existing HWM facility must submit a Part B permit application in accordance with the dates specified in Section 122.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under 7 **Del.C.**, Chapter 63 that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B application in accordance with the dates specified in Section 122.73.

(f) New HWM facilities.

(1) Except as provided in paragraph (f)(3) of this section, no person shall begin physical construction of a new HWM facility without having submitted Part A and Part B of the permit application and having received a finally effective hazardous waste permit.

(2) An application for a permit for a new hazardous waste management facility (including both Parts A and Part B) may be filed any time after promulgation of those standards in Part 264, Subpart I et seq. applicable to such facility. Except as provided in paragraph (f)(3) of this section, all applications must be submitted at least 180 days before physical construction is expected to commence.

(3) Notwithstanding paragraph (f)(1) of this section, a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the Administrator and the Secretary if the Administrator approves under Section (6)(e) of the Toxic Substances Control Act and any person owning or operating such a facility may, at any time after construction or operation of such facility has begun, file an application for a hazardous waste permit to incinerate hazardous waste authorizing such facility to incinerate waste identified or listed under 7 **Del.C.**, Chapter 63.

(g) Updating permit applications.

(1) If any owner or operator of a hazardous waste management facility has filed Part A of a permit application and has not yet filed Part B, the owner or operator shall file an amended Part A application:

(i) With the Secretary no later than the effective date of regulatory provisions listing or designating wastes as hazardous if the facility is treating, storing, or disposing of any of those newly listed or designated waste; or

(ii) As necessary to comply with provisions of Section 122.72 for changes during interim status. Revised Part A applications necessary to comply with the provisions of Section 122.72 shall be filed with the Secretary.

(2) The owner or operator of a facility who fails to comply with the updating requirements of paragraph (g)(1) of this section does not receive interim status as to the wastes not covered by duly filed Part A applications.

(h) Reapplications. Any HWM facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Secretary. (The Secretary shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(i) Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under Section 122.10(d), 122.13, 122.14 - 122.21 for a period of at least 3 years from the date the application is signed.

(j) Exposure information.

(1) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

- (i) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;
- (ii) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (i); and
- (iii) The potential magnitude and nature of the human exposure resulting from such releases.

(2) By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required in paragraph (j)(1) of this section.

(k) The Secretary may require a permittee or an applicant to submit information in order to establish permit conditions under Section 122.32(b)(2) and 122.50(d) of these regulations.

(Amended June 19, 1992, August 21, 1997, January 1, 1999)

### **Section 122.11 Signatories to permit applications and reports.**

(a) Applications. All permit applications shall be signed as follows:

- (1) For a corporation; by a principal executive officer of at least the level of vice-president;
- (2) For a partnership or sole proprietorship; by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency; by either a principal executive officer or ranking elected official.

(b) Reports. All reports required by permits and other information requested by the Secretary shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative only if:

- (1) The authorization is made in writing by a person described in paragraph (a) of this section;
- (2) The authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
- (3) The written authorization is submitted to the Secretary.

(c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) (1) Certification. Any person signing a document under paragraph (a) or (b) of this section must make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(2) For remedial action plans (RAPs) under Subpart H of this part, if the operator certifies according to paragraph (d)(1) of this section, then the owner may choose to make the following certification instead of the certification in paragraph (d)(1) of this section:

Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(Amended June 2, 2000)

### **Section 122.12 Confidentiality of information.**

(a) In accordance with 7 Del.C., Section 6304, any information submitted to DNREC pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, DNREC may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 7 Del.C., Section 6304.

(b) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

### **Section 122.13 Contents of Part A.**

Part A of the hazardous waste application shall include the following information:

(a) The activities conducted by the applicant which require it to obtain a permit under Hazardous Waste Regulations.

(b) Name, mailing address, telephone number and location, including latitude and longitude of the facility for which the application is submitted.

(c) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(e) The name, address, and phone number of the owner of the facility.

(f) Whether the facility is located on Indian lands.

(g) An indication of whether the facility is new or existing and whether it is a first or revised application.

(h) For existing facilities,

(1) A scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas; and

(2) Photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(i) A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

(j) A specification of the hazardous wastes listed or designated under Part 261 to be treated, stored, or disposed of at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.

(k) A listing of all permits or construction approvals received or applied for under any of the following programs:

(1) Hazardous Waste Management program under Hazardous Waste Regulations.

(2) UIC program under the SWDA.

(3) NPDES program under the CWA.

(4) Prevention of significant Deterioration (PSD) program under the Clean Air Act.

(5) Nonattainment program under the Clean Air Act.

(6) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(8) Dredge or fill permits under Section 404 of the CWA.

(9) Other relevant environmental permits, including State permits.

(l) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundary.

(m) A brief description of the nature of the business.

(n) For hazardous debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

(Amended August 1, 1995)

## Section 122.14 Contents of Part B: General Requirements.

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in Section Section 122.14-122.29 applicable to the facility. The Part B information requirements presented in Section Section 122.14-122.29 reflect the standards promulgated in Part 264. These information requirements are necessary in order for DNREC to determine compliance with the Part 264 standards. It is recommended that the applicants contact DNREC for information on the format of Part B applications. If owners and operators of HWM facilities can demonstrate that the information prescribed in Part B can not be provided to the extent required, the Secretary may make allowance for submission of such information on a case-by-case basis. Information required in Part B shall be submitted to the Secretary and signed in accordance with requirements in Section 122.11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer. For post-closure permits, only the information specified in Section 122.28 is required in Part B of the permit application.

(b) General information requirements. Include where applicable, as part of the inspection schedule, specific requirements in Section Section 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, and 264.1058.

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Part 264 of these regulations.

(3) A copy of the waste analysis plan required by Section 264.13(b) and, if applicable Section 264.13(c).

(4) A description of the security procedures and equipment required by Section 264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by Section 264.15(b) of this part. Include where applicable, as part of the inspection schedule, specific requirements in Section Section 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1084, 264.1085, 264.1086, and 264.1088 of this part.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of Part 264, Subpart C.

(7) A copy of the contingency plan required by Part 264, Subpart D. Note: Include, where applicable, as part of the contingency plan, specific requirements in Section Section 264.227, 264.255 and 264.200.

(8) A description of procedures, structures, or equipment used at the facility to;

(i) Prevent hazards in unloading operations (for example, ramps, special forklifts);

(ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

(iii) Prevent contamination of water supplies;

(iv) Mitigate effects of equipment failure and power outages;

(v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and

(vi) Prevent releases to atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible waste as required to demonstrate compliance with Section 264.17 including documentation demonstrating compliance with Section 264.17(c).

(10) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals).

(11) Facility location information;

(i) In order to determine the applicability of the seismic standard [Section 264.18(a)] the owner or operator of a new facility must identify the political jurisdiction (e.g., county, township, or election district) in which the facility is proposed to be located.

[Comment: If the county or election district is not listed in Appendix VI of Part 264, no further information is required to demonstrate compliance with Section 264.18(a).]

## DELAWARE HAZARDOUS WASTE REGULATIONS

(2) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Part 264 of these regulations.

(3) A copy of the waste analysis plan required by Section 264.13(b) and, if applicable Section 264.13(c).

(4) A description of the security procedures and equipment required by Section 264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by Section 264.15(b) of this part. Include where applicable, as part of the inspection schedule, specific requirements in Section Section 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1084, 264.1085, 264.1086, and 264.1088 of this part.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of Part 264, Subpart C.

(7) A copy of the contingency plan required by Part 264, Subpart D. Note: Include, where applicable, as part of the contingency plan, specific requirements in Section Section 264.227, 264.255 and 264.200.

(8) A description of procedures, structures, or equipment used at the facility to:

- (i) Prevent hazards in unloading operations (for example, ramps, special forklifts);
- (ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);
- (iii) Prevent contamination of water supplies;
- (iv) Mitigate effects of equipment failure and power outages;
- (v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and
- (vi) Prevent releases to atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible waste as required to demonstrate compliance with Section 264.17 including documentation demonstrating compliance with Section 264.17(c).

(10) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals).

(11) Facility location information;

(i) In order to determine the applicability of the seismic standard [Section 264.18(a)] the owner or operator of a new facility must identify the political jurisdiction (e.g., county, township, or election district) in which the facility is proposed to be located.

[Comment: If the county or election district is not listed in Appendix VI of Part 264, no further information is required to demonstrate compliance with Section 264.18(a).]

(ii) If the facility is proposed to be located in an area listed in Appendix VI of Part 264, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided must be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted must show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3,000 feet of a facility are present; based on data from:

- (1) Published geologic studies;
- (2) Aerial reconnaissance of the area within a five-mile radius from the facility;
- (3) An analysis of aerial photographs covering a 3,000 foot radius of the facility; and
- (4) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

122.14(b)(11)(ii)(A) (begins below)

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

- (1) Published geologic studies,
- (2) Aerial reconnaissance of the area within a five-mile radius from the facility,
- (3) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and
- (4) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 200 feet of the portions of the facility, no faults pass within 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility, data shall be obtained from a subsurface exploration (trenching) of the area with a distance of no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of faults found.

[**Comment:** The Guidance Manual for the Location Standards provides greater detail on the content of each type of seismic investigation and the appropriate conditions under which each approach or a combination of approaches would be used.]

(iii) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year flood plain. This identification must include the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) which must be considered in designing, construction, operating, or maintaining the facility to withstand washout from as 100-year flood.

[**Comment:** Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year flood plain. However, where the FIA map excludes an area (usually areas of the floodplain less than 200 feet in width), the areas must be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator must use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.]

(iv) Owners and operators of facilities located in the 100-year floodplain must provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as consequence of a 100-year flood.

(B) Structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., flood walls, dikes) at the facility and how these will prevent washout.

(C) If applicable, and in lieu of paragraphs (A) and (B) above, a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(1) Timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility.

(2) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulation under Parts 122, 124, 264 and 265 of these regulations.

(1) Timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility.

(2) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulation under Parts 122, 124, 264 and 265 of these regulations.

(3) The planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use.

(4) The potential for accidental discharges of the waste during movement.

(v) Existing facilities NOT in compliance with Section 264.18(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the HWM facility in a safe manner as required to demonstrate compliance with Section 264.16. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in Section 264.16(a)(3).

(13) A copy of the closure plan and, where applicable, the post-closure plan required by Section 264.112, 264.118, and 264.197. Include, where applicable, as part of the plans, specific requirements in Section 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351 and 264.603.

(14) For hazardous waste disposal units that have been closed, documentation that notices required under Section 264.119 have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with Section 264.142 and a copy of the documentation required to demonstrate financial assurance under Section 264.143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with 264.144 plus a copy of the documentation required to demonstrate financial assurance under 264.145. For a new facility, a copy of the required documentation may be submitted may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of Section 264.147. For a new facility, documentation showing the amount of insurance meeting the specification of Section 264.147(a) and, if applicable, Section 264.147(b), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal.

(18) **[Reserved]**

(19) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of HWM facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

- (i) Map scale and date.
- (ii) 100-year floodplain area.
- (iii) Surface waters including intermittent streams.
- (iv) Surrounding land uses (residential, commercial, agricultural, recreational).
- (v) A wind rose (i.e., prevailing wind-speed and direction).
- (vi) Orientation of the map (north arrow).
- (vii) Legal boundaries of the HWM facility site.
- (viii) Access control (fences, gates).
- (ix) Injection and withdrawal wells both on-site and off-site.
- (x) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, process sewerage systems, loading and unloading areas, fire control facilities, etc.)
- (xi) Barriers for drainage or flood control.

(xii) Location of operational units within the HWM facility site, where hazardous waste is (or will be) treated, stored, or disposed (include equipment cleanup areas).

[Note: For large HWM facilities the Department will allow the use of other scales on a case by case basis.]

(20) Applicants may be required to submit such information as may be necessary to enable the Secretary to carry out his duties under other State laws.

(21) For land disposal facilities, if a case-by-case extension has been approved under Section 268.5 or a petition has been approved under Section 268.6, a copy of the notice of approval for the extension or petition is required.

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under Section 124.31(c).

(c) Additional information requirements. The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in Section 264.90(b) of these regulations:

(1) A summary of the ground-water monitoring data obtained during the interim status period under Section 265.90-265.94, where applicable.

(2) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including ground-water flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area).

(3) On the topographic map required under paragraph (b)(19) of this section, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under Section 264.95, the proposed location of ground-water monitoring wells as required under Section 264.97, and, to the extent possible, the information required in paragraph (c)(2) of this section.

(4) A description of any plume of contamination that has entered the ground-water from a regulated unit at the time that the application was submitted that:

(i) Delineates the extent of the plume on the topographic map required under paragraph (b)(19) of this section;

(ii) Identifies the concentration of each Appendix IX, of Part 264 of these regulations, constituent throughout the plume or identifies the maximum concentrations of each Appendix IX constituent in the plume.

(5) Detailed plans and an engineering report describing the proposed ground water monitoring program to be implemented to meet the requirements of Section 264.97.

(6) If the presence of hazardous constituents has not been detected in the ground water at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of Section 264.98. This submission must address the following items specified under Section 264.98:

(i) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;

(ii) A proposed ground-water monitoring system;

(iii) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

(iv) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(7) If the presence of hazardous constituents has been detected in the ground water at the point of compliance at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of Section 264.99. Except as provided in Section 264.98(g)(5), the owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of Section 264.100, unless the owner or operator obtains written authorization in advance from the Secretary to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with Section 264.99, the owner or operator must address the following items:

(i) A description of the wastes previously handled at the facility;

(ii) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(iii) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with Section 264.97 and Section 264.99;

- (iv) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in Section 264.94(a), including a justification for establishing any alternate concentration limits;
- (v) Detailed plans and an engineering report describing the proposed ground-water monitoring system, in accordance with the requirements of Section 264.97; and
- (vi) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(8) If hazardous constituents have been measured in the ground water which exceed the concentration limits established under Section 264.94 Table 1, or if ground water monitoring conducted at the time of permit application under Section 265.90-265.94 at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over background concentrations, the owner or operator must submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of Section 264.100. However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the Secretary that alternate concentration limits will protect human health and the environment after considering the criteria listed in Section 264.94. An owner or operator who is not required to establish a corrective action program for this reason must instead submit sufficient information to establish a compliance monitoring program which meets the requirements of Section 264.99 and paragraph (c)(6) of this section. To demonstrate compliance with Section 264.100, the owner or operator must address, at a minimum, the following items:

- (i) A characterization of the contaminated ground water, including concentrations of hazardous constituents;
- (ii) The concentration limit for each hazardous constituent found in the ground water as set forth in Section 264.94;
- (iii) Detailed plans and an engineering report describing the corrective action to be taken;
- (iv) A description of how the ground-water monitoring program will demonstrate the adequacy of the corrective action; and
- (v) The permit may contain a schedule for submittal of the information required in paragraphs (c)(8)(iii) and (iv) provided the owner or operator obtains written authorization from the Secretary prior to submittal of the complete permit application.

(d) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a permit:

- (i) The location of the unit on the topographic map required under paragraph (b)(19) of this section.
- (ii) Designation of type of unit.
- (iii) General dimensions and structural description (supply any available drawings).
- (iv) When the unit was operated.
- (v) Specifications of all wastes that have been managed at the unit, to the extent available.

(2) The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

(3) The owner/operator must conduct and provide the results of sampling and analysis of groundwater, land surface, and subsurface strata, surface water, or wells, where the Secretary ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.

(Amended June 19, 1992, August 1, 1995, January 1, 1999, August 23, 1999, August 21, 2006)

## **Section 122.15 Specific Part B information requirements for containers.**

Except as otherwise provided in Section 264.170, owners or operators of facilities that store containers of hazardous waste must provide the following additional information:

(a) A description of the containment system to demonstrate compliance with Section 264.175. Show at least the following:

- (1) Basic design parameters, dimensions, and materials of construction.

- (2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.
  - (3) Capacity of the containment system relative to the number and volume of containers to be stored.
  - (4) Provisions for preventing or managing run-on.
  - (5) How accumulated liquids can be analyzed and removed to prevent overflow.
  - (b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with Section 264.175(c), including:
    - (1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and
    - (2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.
  - (c) Sketches, drawings, or data demonstrating compliance with Section 264.176 (location of buffer zone and containers holding ignitable or reactive wastes) and Section 264.177(c) (location of incompatible wastes), where applicable.
  - (d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with Section 264.177(a) and (b), and Section 264.17(b) and (c).
  - (e) Information on air emission control equipment as required in Section 122.27.
- (Amended January 1, 1999)

#### **Section 122.16 Specific Part B information requirements for tank systems.**

Except as otherwise provided in Section 264.190, owners and operators of facilities that use tanks to store or treat hazardous waste must provide the following additional information:

- (a) A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under Section 264.191 and 264.192;
- (b) Dimensions and capacity of each tank;
- (c) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents),
- (d) A diagram of piping, instrumentation, and process flow for each tank system;
- (e) A description of materials and equipment used to provide external corrosion protection, as required under Section 264.192(a)(3)(ii);
- (f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with Section 264.192(b), (c), (d) and (e);
- (g) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of Section 264.193(a), (b), (c), (d), (e), and (f);
- (h) For tank systems for which a variance from requirements of Section 264.193 is sought (as provided by Section 264.193(g));
  - (1) Detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water during the life of the facility, or
  - (2) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment.
- (i) Description of the controls and practices to prevent spills and overflows, as required under Section 264.194(b); and
- (j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of Section 264.198 and 264.199.
- (k) Information on air emission control equipment as required in Section 122.27.

(Amended November 21, 1985; August 29, 1988, January 1, 1999)

#### **Section 122.17 Specific Part B information requirements for surface impoundments.**

Except as otherwise provided in Section 264.220, owners and operators of facilities that store, treat or dispose of hazardous waste in surface impoundments must provide the following additional information:

- (a) A list of the hazardous wastes placed or to be placed in each surface impoundment;
- (b) Detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated and maintained to meet the requirements of Section 264.19, 264.221, 264.222, and 264.223 of these regulations, addressing the following items:

- (1) The liner system (except for an existing portion of a surface impoundment). If an exemption from the requirement for a liner is sought as provided by Section 264.221(b), submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

- (2) The double liner and leak (leachate) detection, collection, and removal system, if the surface impoundment must meet the requirements of Section 264.221(c) of these regulations. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Section 264.221(d), (e), or (f) of these regulations, submit appropriate information;

- (3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

- (4) The construction quality assurance (CQA) plan if required under Section 264.19 of these regulations;

- (5) Proposed action leakage rate, with rationale, if required under Section 264.222 of these regulations, and response action plan, if required under Section 264.223 of these regulations;

- (6) Prevention of overtopping; and

- (7) Structural integrity of dikes;

- (c) A description of how each surface impoundment, including the double liner system, leak detection system, cover system, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of Section 264.226(a), (b), and (d) of these regulations. This information must be included in the inspection plan submitted under Section 122.14(b)(5);

- (d) A certification by a qualified engineer which attests to the structural integrity of each dike, as required under Section 264.226(c). For new units, the owner or operator must submit a statement by a qualified engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications;

- (e) A description of the procedure to be used for removing a surface impoundment from service, as required under Section 264.227(b) and (c). This information should be included in the contingency plan submitted under Section 122.14(b)(7);

- (f) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under Section 264.228(a)(I). For any wastes not to be removed from the unit upon closure, the owner or operator must submit detailed plans and an engineering report describing how Section 264.228(a)(2) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under Section 122.14(b)(13);

- (g) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how Section 264.229 will be complied with;

- (h) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how Section 264.230 will be complied with; and

- (i) A waste management plan for EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027 describing how the surface impoundments is or will be designed, constructed, operated, and maintained to meet the requirements of Section 264.231. This submission must address the following items as specified in Section 264.231:

- (1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

- (2) The attenuative properties of underlying and surrounding soils or other materials;

- (3) The mobilizing properties of other materials co-disposed with these wastes; and

- (4) The effectiveness of additional treatment, design, or monitoring techniques.

- (j) Information on air emission control equipment as required in Section 122.27.

(Amended November 21, 1985; August 29, 1988, August 1, 1995, January 1, 1999)

## Section 122.18 Specific Part B requirements for waste piles.

Except as otherwise provided in Section 264.250, owners and operators of facilities that store or treat hazardous waste in waste piles must provide the following additional information:

- (a) A list of hazardous wastes placed or to be placed in each waste pile;
- (b) If an exemption is sought to Section 264.251 and Subpart F of Part 264 as provided by Section 264.250(c) or Section 264.90(b)(2), an explanation of how the standards of Section 264.250(c) will be complied with or detailed plans and an engineering report describing how the requirements of Section 264.90(b)(2) will be met;
- (c) Detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated and maintained to meet the requirements of Section 264.19, 264.251, 264.252, and 264.53 of these regulations, addressing the following items:
  - (1) (i) The liner system (except for an existing portion of a waste pile), if the waste pile must meet the requirements of Section 264.251(a) of these regulations. If an exemption from the requirement for a liner is sought as provided by Section 264.251(b) of these regulations, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;
  - (ii) The double liner and leak (leachate) detection, collection, and removal system, if the waste pile must meet the requirements of Section 264.251(c) of these regulations. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Section 264.251(d), (e), or (f) of these regulations, submit appropriate information;
  - (iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
  - (iv) The construction quality assurance (CQA) plan if required under Section 264.19 of these regulations;
  - (v) Proposed action leakage rate, with rationale, if required under Section 264.252 of these regulations, and response action plan, if required under Section 264.253 of these regulations;
    - (1) Control of run-on;
    - (2) Control of run-off;
    - (3) Management of collection and holding units associated with run-on and run-off control systems; and
    - (4) Control of wind dispersal of particulate matter, where applicable.
- (d) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of Section 264.254(a), (b) and (c) of these regulations. This information must be included in the inspection plan submitted under Section 122.14(b)(5);
- (e) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;
- (f) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of Section 264.256 will be complied with;
- (g) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how Section 264.257 will be complied with;
- (h) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under Section 264.258(a). For any waste not to be removed from the waste pile upon closure, the owner or operator must submit detailed plans and an engineering report describing how 264.310(a) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under Section 122.14(b)(13);
- (i) A waste management plan for EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027 describing how a waste pile that is not enclosed (as defined in Section 264.250(c)) is or will be designed, constructed, operated, and maintained to meet the requirements of Section 264.259. This submission must address the following items as specified in Section 264.259:
  - (1) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
  - (2) The attenuative properties of underlying and surrounding soils or other materials;

- (3) The mobilizing properties of other materials co-disposed with these wastes; and
  - (4) The effectiveness of additional treatment, design, or monitoring techniques.
- (Amended November 21, 1985; May 8, 1986; August 29, 1988, August 1, 1995)

### **Section 122.19 Specific Part B requirements for incinerators.**

Except as Section 264.340 and 122.19(e) of these regulations provide otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of (a), (b), or (c) of this section.

(a) When seeking an exemption under Section 264.340(b) or (c) of these regulations (ignitable, corrosive, or reactive wastes only):

(1) Documentation that the waste is listed as a hazardous waste in Part 261, Subpart D of these regulations, solely because it is ignitable (Hazard Code 1) or corrosive (Hazard Code C) or both; or

(2) Documentation that the waste is listed as a hazardous waste in Part 261, Subpart D of these regulations solely because it is reactive (Hazard Code R) for characteristics other than those listed in 264.23(a)(4) and (5) of these regulations, and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous waste under Part 261, Subpart C of these regulations; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in Section 264.23(a)(1), (2), (3), (6), (7), or (8) of these regulations, and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with 264.62; or

(c) In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(i) Heat value of the waste in the form and composition in which it will be burned.

(ii) Viscosity (if applicable), or description of physical form of the waste.

(iii) An identification of any hazardous organic constituents listed in Part 261, Appendix VIII, of these regulations, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of these regulations which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section 260.11 of these regulations and Section 122.6, or their equivalent.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section 260.11 of these regulations and Section 122.6.

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in Section 264.343 of these regulations.

(2) A detailed engineering description of the incinerator, including:

(i) Manufacturer's name and model number of incinerator.

(ii) Type of incinerator.

(iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(iv) Description of auxiliary fuel system (type/feed).

(v) Capacity of prime mover.

(vi) Description of automatic waste feed cutoff system(s).

(vii) Stack gas monitoring and pollution control monitoring system.

(viii) Nozzle and burner design.

(ix) Construction materials.

(x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in paragraph (c)(1) of this section. This analysis should specify the POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards in Section 264.343 of these regulations,

(ii) Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement).

(6) The expected incinerator operation information to demonstrate compliance with Section 264.343 and Section 264.345 of these regulations including:

(i) Expected carbon monoxide (CO) level in the stack exhaust gas.

(ii) Waste feed rate.

(iii) Combustion zone temperature.

(iv) Indication of combustion gas velocity.

(v) Expected stack gas volume, flow rate, and temperature.

(vi) Computed residence time for waste in the combustion zone.

(vii) Expected hydrochloric acid removal efficiency.

(viii) Expected fugitive emissions and their control procedures.

(ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Such supplemental information as the Secretary finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, including that submitted in paragraph (c)(1) of this section, sufficient to allow the Secretary to specify as permit Principal Organic Hazardous Constituents (permit POHC's) those constituents for which destruction and removal efficiencies will be required.

(d) The Secretary shall approve a permit application without a trial burn if he finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under Section 264.345 of these regulations) operating conditions that will ensure that the performance standards in Section 264.345 of these regulations) operating conditions that will ensure that the performance standards in Section 264.343 of these regulations will be met by the incinerator.

(3) [Reserved]

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply. Nevertheless, the Secretary may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with Section 122.10(k) and 122.32(b)(2).

(Amended July 23, 1996, January 1, 1999, April 23, 2001)

## **Section 122.20 Specific Part B requirements for land treatment facilities.**

Except as otherwise provided in Section 264.270, owners and operators of facilities that use land treatment to dispose of hazardous waste must provide the following additional information:

(a) A description of plans to conduct a treatment demonstration as required under Section 264.272. The description must include the following information:

(1) The wastes for which the demonstration will be made and the potential hazardous constituents in the waste;

(2) The data sources to be used to make the demonstration (e.g., literature, laboratory data, field data, or operating data);

(3) Any specific laboratory or field test that will be conducted, including

(i) The type of test (e.g., column leaching, degradation);

- (ii) Materials and methods, including analytical procedures;
  - (iii) Expected time for completion;
  - (vi) Characteristics of the unit that will be simulated in the demonstration, concluding treatment zone characteristics, climatic conditions, and operating practices;
- (b) A description of a land treatment program, as required under Section 264.271. This information must be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program must address the following items:
- (1) The wastes to be land treated;
  - (2) Design measures and operating practices necessary to maximize treatment in accordance with Section 264.273(a) including:
    - (i) Waste application method and rate;
    - (ii) Measure to control soil pH;
    - (iii) Enhancement of microbial or chemical reactions;
    - (iv) Control of moisture content;
  - (3) Provisions for unsaturated zone monitoring, including:
    - (i) Sampling equipment, procedures, and frequency;
    - (ii) Procedures for selecting sampling locations;
    - (iii) Analytical procedures;
    - (iv) Chain of custody control;
    - (v) Procedures for establishing background values;
    - (vi) Statistical methods for interpreting results;
    - (vii) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for such selection in Section 264.278(a);
  - (4) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to Section 264.13;
  - (5) The proposed dimensions of the treatment zone;
- (c) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of Section 264.273. This submission must address the following items:
- (1) Control of run-on;
  - (2) Collection and control of run-off;
  - (3) Minimization of run-off of hazardous constituents from the treatment zone;
  - (4) Management of collection and holding facilities associated with run-on and run-off control systems;
  - (5) Periodic inspection of the unit. This information should be included in the inspection plan submitted under Section 122.14(b)(5);
  - (6) Control of wind dispersal of particulate matter, if applicable;
- (d) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under Section 264.276(a) will be conducted including:
- (1) Characteristics of the food-chain crop for which the demonstration will be made;
  - (2) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;
  - (3) Procedures for crop growth, sample collection, sample analysis, and date evaluation;
  - (4) Characteristics of the comparison crop including the location and conditions under which it was or will be grown.
- (e) If food-chain crops are to be grown, and cadmium is present in the land-treated waste, a description of how the requirements of Section 264.276(b) will be complied with;
- (f) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under Section 264.280(a)(8) and Section 264.280(c)(2). This information should be included in the closure plan and, where applicable, the post-closure care plan submitted under Section 122.14(b)(13);
- (g) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of Section 264.281 will be complied with;
- (h) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how Section 264.282 will be complied with.
- (i) A waste management plan for EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained

to meet the requirements of Section 264.283. This submission must address the following items as specified in Section 264.283:

- (1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
- (2) The attenuative properties of underlying and surrounding soils or other materials;
- (3) The mobilizing properties of other materials co-disposed with these wastes; and
- (4) The effectiveness of additional treatment, design, or monitoring techniques.

(Amended November 21, 1985; August 29, 1988)

#### **Section 122.21 Specific Part B information requirements for landfills.**

Except as otherwise provided in Section 264.300, owners and operators of facilities that dispose of hazardous waste in landfills must provide the following additional information:

- (a) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;
- (b) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated and maintained to meet the requirements of Section 264.19, 264.301, 264.302, and 264.303 of these regulations, addressing the following items:
  - (1) (i) The liner system (except for an existing portion of a landfill), if the landfill must meet the requirements of Section 264.301(a) of these regulations. If an exemption from the requirement for a liner is sought as provided by Section 264.301(b) of these regulations, submit detailed plans, and engineering and hydrogeologic reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;
  - (ii) The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of Section 264.301(c) of these regulations. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Section 264.301(d), (e), or (f) of these regulations, submit appropriate information;
  - (iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
  - (iv) The construction quality assurance (CQA) plan if required under Section 264.19 of these regulations;
  - (v) Proposed action leakage rate, with rationale, if required under Section 264.302 of these regulations, and response action plan, if required under Section 264.303 of these regulations.
- (2) Control of run-on;
- (3) Control of run-off;
- (4) Management of collection and holding facilities associated with run-on and run-off control systems; and
- (5) Control of wind dispersal of particulate matter, where applicable;
- (c) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of Section 264.303(a), (b), and (c) of these regulations. This information must be included in the inspection plan submitted under Section 122.14(b)(5);
- (d) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with Section 264.310(a), and a description of how each landfill will be maintained and monitored after closure in accordance with Section 264.310(b). This information should be included in the closure and post-closure plans submitted under Section 122.14(b)(13);
- (e) If ignitable or reactive wastes will be landfilled, an explanation of how Section 264.312 will be complied with;
- (f) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how Section 264.313 will be complied with;
- (g) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of Section 264.314(a) will be complied with;
- (h) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of Section 264.315 or Section 264.326, as applicable, will be complied with;

(i) A waste management plan for EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of Section 264.317. This submission must address the following items as specified in Section 264.317:

- (1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
- (2) The attenuative properties of underlying and surrounding soils or other materials;
- (3) The mobilizing properties of other materials co-disposed with these wastes; and
- (4) The effectiveness of additional treatment, design, or monitoring techniques.

(Amended November 21, 1985; May 8, 1986; August 29, 1988; August 10, 1990, August 1, 1995, August 21, 1997, January 1, 1999)

#### **Section 122.22 Specific Part B information requirements for boilers and industrial furnaces burning hazardous waste.**

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply. Nevertheless, the Secretary may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with Section 122.10(k) and 122.32(b)(2).

(a) Trial burns-

(1) General. Except as provided below, owners and operators that are subject to the standards to control organic emissions provided by Section 266.104 of these regulations, standards to control particulate matter provided by Section 266.105 of these regulations, standards to control metals emissions provided by Section 266.106 of these regulations, or standards to control hydrogen chloride or chlorine gas emissions provided by Section 266.107 of these regulations must conduct a trial burn to demonstrate conformance with those standards and must submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with Section 122.66.

(i) A trial burn to demonstrate conformance with a particular emission standard may be waived under provisions of Section 266.104 through 266.107 of these regulations and paragraphs (a)(2) through (a)(5) of this section; and

(ii) The owner or operator may submit data in lieu of a trial burn, as prescribed in paragraph (a)(6) of this section.

(2) Waiver of trial burn for DRE-

(i) Boilers operated under special operating requirements. When seeking to be permitted under Section 266.104(a)(4) and 266.110 of these regulations that automatically waive the DRE trial burn, the owner or operator of a boiler must submit documentation that the boiler operates under the special operating requirements provided by Section 266.110 of these regulations.

(ii) Boilers and industrial furnaces burning low risk waste. When seeking to be permitted under the provisions for low risk waste provided by Section 266.104(a)(5) and 266.109(a) of these regulations that waive the DRE trial burn, the owner or operator must submit:

(A) Documentation that the device is operated in conformance with the requirements of Section 266.109(a)(1) of these regulations.

(B) Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in Appendix VIII of Part 261 of these regulations, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on analytical techniques specified in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference, see Section 260.11).

(C) Documentation of hazardous waste firing rates and calculations of reasonable, worst-case emission rates of each constituent identified in paragraph (a)(2)(ii)(B) of this section using procedures provided by Section 266.109(a)(2)(ii) of these regulations.

(D) Results of emissions dispersion modeling for emissions identified in paragraphs (a)(2)(ii)(C) of this section using modeling procedures prescribed by Section 266.106(h) of these regulations. The Secretary will review the emission modeling conducted by the applicant to determine conformance with these procedures. The Secretary will either approve the modeling or determine that alternate or supplementary modeling is appropriate.

(E) Documentation that the maximum annual average ground level concentration of each constituent identified in paragraph (a)(2)(ii)(B) of this section quantified in conformance with paragraph (a)(2)(ii)(D) of this section does not exceed the allowable ambient level established in Appendices IV or V of Part 266. The acceptable ambient concentration for emitted constituents for which a specific Reference Air Concentration has not been established in Appendix IV or Risk-Specific Dose has not been established in Appendix V is 0.1 micrograms per cubic meter, as noted in the footnote to Appendix IV.

(3) Waiver of trial burn for metals. When seeking to be permitted under the Tier I (or adjusted Tier I) metals feed rate screening limits provided by Section 266.106 (b) and (e) of these regulations that control metals emissions without requiring a trial burn, the owner or operator must submit:

(i) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(ii) Documentation of the concentration of each metal controlled by Section 266.106 (b) or (e) of these regulations in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;

(i) Documentation of how the applicant will ensure that the Tier I feed rate screening limits provided by Section 266.106 (b) or (e) of these regulations will not be exceeded during the averaging period provided by that paragraph;

(ii) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by Section 266.106 (b)(3) through (b)(5) of these regulations;

(iii) Documentation of compliance with the provisions of Section 266.106(b)(6), if applicable, for facilities with multiple stacks;

(iv) Documentation that the facility does not fail the criteria provided by Section 266.106(b)(7) for eligibility to comply with the screening limits; and

(v) Proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feed stocks.

(4) Waiver of trial burn for particulate matter. When seeking to be permitted under the low risk waste provisions of Section 266.109(b) which waives the particulate standard (and trial burn to demonstrate conformance with the particulate standard), applicants must submit documentation supporting conformance with paragraphs (a)(2)(ii) and (a)(3) of this section.

(5) Waiver of trial burn for HCl and Cl<sub>2</sub>. When seeking to be permitted under the Tier I (or adjusted Tier I) feed rate screening limits for total chloride and chlorine provided by Section 266.107 (b)(1) and (e) of these regulations that control emissions of hydrogen chloride (HCl) and chlorine gas (Cl<sub>2</sub>) without requiring a trial burn, the owner or operator must submit:

(i) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(ii) Documentation of the levels of total chloride and chlorine in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;

(iii) Documentation of how the applicant will ensure that the Tier I (or adjusted Tier I) feed rate screening limits provided by Section 266.107(b)(1) or (e) of these regulations will not be exceeded during the averaging period provided by that paragraph;

(vi) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by Section 266.107(b)(3) of these regulations;

(v) Documentation of compliance with the provisions of Section 266.107(b)(4), if applicable, for facilities with multiple stacks;

(vi) Documentation that the facility does not fail the criteria provided by Section 266.107(b)(3) for eligibility to comply with the screening limits; and

(vii) Proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.

(6) Data in lieu of trial burn. The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance with Section Section 266.104 through 266.107 of these regulations and Section 122.66 by providing the information required by Section 122.66 from previous compliance testing of the device in conformance with Section 266.103 of these regulations, or from

compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by Section 122.66 must be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating information must be provided. The Secretary shall approve a permit application without a trial burn if he finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under Section 266.102 of these regulations) operating conditions that will ensure conformance with Section 266.102(c) of these regulations. In addition, the following information shall be submitted:

- (i) For a waiver from any trial burn:
  - (A) A description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from compliance testing, or operational or trial burns are provided to support the contention that a trial burn is not needed;
  - (B) The design and operating conditions of the boiler or industrial furnace to be used, compared with that for which comparative burn data are available; and
  - (C) Such supplemental information as the Secretary finds necessary to achieve the purposes of this paragraph.

- (ii) For a waiver of the DRE trial burn, the basis for selection of POHCs used in the other trial or operational burns which demonstrate compliance with the DRE performance standard in Section 266.104(a) of these regulations. This analysis should specify the constituents in Appendix VIII, Part 261 of these regulations, that the applicant has identified in the hazardous waste for which a permit is sought, and any differences from the POHCs in the hazardous waste for which burn data are provided.

(b) Alternative HC limit for industrial furnaces with organic matter in raw materials. Owners and operators of industrial furnaces requesting an alternative HC limit under Section 266.104(f) of these regulations shall submit the following information at a minimum:

- (1) Documentation that the furnace is designed and operated to minimize HC emissions from fuels and raw materials;

- (2) Documentation of the proposed baseline flue gas HC (and CO) concentration, including data on HC (and CO) levels during tests when the facility produced normal products under normal operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;

- (3) Test burn protocol to confirm the baseline HC (and CO) level including information on the type and flow rate of all feedstreams, point of introduction of all feedstreams, total organic carbon content (or other appropriate measure of organic content) of all nonfuel feedstreams, and operating conditions that affect combustion of fuel(s) and destruction of hydrocarbon emissions from nonfuel sources;

- (4) Trial burn plan to:

- (i) Demonstrate that flue gas HC (and CO) concentrations when burning hazardous waste do not exceed the baseline HC (and CO) level; and

- (ii) Identify the types and concentrations of organic compounds listed in Appendix VIII, Part 261 of these regulations, that are emitted when burning hazardous waste in conformance with procedures prescribed by the Secretary;

- (5) Implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline HC level and procedures to periodically confirm the baseline HC level; and

- (6) Such other information as the Secretary finds necessary to achieve the purposes of this paragraph.

(c) Alternative metals implementation approach. When seeking to be permitted under an alternative metals implementation approach under Section 266.106(f) of these regulations, the owner or operator must submit documentation specifying how the approach ensures compliance with the metals emissions standards of Section 266.106(c) or (d) and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide such other information that the Secretary finds necessary to achieve the purposes of this paragraph.

(d) Automatic waste feed cutoff system. Owners and operators shall submit information describing the automatic waste feed cutoff system, including any pre-alarm systems that may be used.

(e) Direct transfer. Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in Section 266.111 of these regulations) directly to the boiler

or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by Section 266.111 of these regulations.

(f) Residues. Owners and operators that claim that their residues are excluded from regulation under the provisions of Section 266.112 of these regulations must submit information adequate to demonstrate conformance with those provisions.

(Amended July 26, 1994, April 23, 2001)

#### **Section 122.23 Specific Part B information requirements for miscellaneous units.**

Except as otherwise provided in Section 264.600, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units must provide the following additional information:

- (a) A detailed description of the unit being used or proposed for use, including the following:
  - (1) Physical characteristics, materials of construction, and dimensions of the unit;
  - (2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of Section 264.601 and 264.602; and
  - (3) For disposal units, a detailed description of the plan to comply with the post-closure requirements of Section 264.603.
- (b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of Section 264.601. If the applicant can demonstrate that he does not violate the environmental performance standards of Section 264.601 and the Secretary agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.
- (c) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.
- (d) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.
- (e) Any additional information determined by the Secretary to be necessary for evaluation of compliance of the unit with the environmental performance standards of Section 264.601.

(Amended November 21, 1985; May 8, 1986; August 29, 1988; August 10, 1990)

#### **Section 122.24 Specific Part B information requirements for process vents.**

Except as otherwise provided in Section 264.1, owners and operators of facilities that have process vents to which Subpart AA of Part 264 applies must provide the following additional information:

- (a) For facilities that cannot install a closed-vent system and control device to comply with the provisions of Part 264 Subpart AA on the effective date that the facility becomes subject to the provisions of Part 264 or 265 Subpart AA, an implementation schedule as specified in Section 264.1033(a)(2).
- (b) Documentation of compliance with the process vent standards in Section 264.1032, including:
  - (1) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).
  - (2) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or concentrations) that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.
  - (3) Information and data used to determine whether or not a process vent is subject to the requirements of Section 264.1032.
- (c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of Section 264.1032, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in Section 264.1035(b)(3).

- (d) Documentation of compliance with Section 264.1033, including:
    - (1) A list of all information references and sources used in preparing the documentation.
    - (2) Records, including the dates, of each compliance test required by Section 264.1033(k).
    - (3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in Section 260.11) or other engineering texts acceptable to the Secretary that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Section 264.1035(b)(4)(iii).
    - (4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.
    - (5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless the total organic emission limits of Section 264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent.
- (Amended August 1, 1995)

#### **Section 122.25 Specific Part B information requirements for equipment.**

Except as otherwise provided in Section 264.1, owners and operators of facilities that have equipment to which Subpart BB of Part 264 applies must provide the following additional information:

- (a) For each piece of equipment to which Subpart BB of Part 264 applies:
  - (1) Equipment identification number and hazardous waste management unit identification.
  - (2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).
  - (3) Type of equipment (e.g., a pump or pipeline valve).
  - (4) Percent by weight total organics in the hazardous waste stream at the equipment.
  - (5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).
  - (6) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").
- (b) For facilities that cannot install a closed-vent system and control device to comply with the provisions of Part 264 Subpart BB on the effective date that the facility becomes subject to the provisions of Part 264 or 265 Subpart BB, an implementation schedule as specified in Section 264.1033(a)(2).
- (c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in Section 264.1035(b)(3).
- (d) Documentation that demonstrates compliance with the equipment standards in Section 264.1052 to 264.1059. This documentation shall contain the records required under Section 264.1064. The Secretary may request further documentation before deciding if compliance has been demonstrated.
- (e) Documentation to demonstrate compliance with Section 264.1060 shall include the following information:
  - (1) A list of all information references and sources used in preparing the documentation.
  - (2) Records, including the dates, of each compliance test required by Section 264.1033(j).
  - (3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in Section 260.11) or other engineering texts acceptable to the Secretary that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Section 264.1035(b)(4)(iii).
  - (4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.
  - (5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

(Amended August 1, 1995)

**Section 122.26 Special Part B information requirements for drip pads.**

Except as otherwise provided by Section 264.1 of these regulations, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

- (a) A list of hazardous wastes placed or to be placed on each drip pad.
- (b) If an exemption is sought to Subpart F of Part 264 of these regulations, as provided by Section 264.90 of these regulations, detailed plans and an engineering report describing how the requirements of Section 264.90(b)(2) of these regulations will be met.
- (c) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of Section 264.573 of these regulations, including the as-built drawings and specifications. This submission must address the following items as specified in Section 264.571 of these regulations:
  - (1) The design characteristics of the drip pad;
  - (2) The liner system;
  - (3) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;
  - (4) Practices designed to maintain drip pads;
  - (5) The associated collection system;
  - (6) Control of run-on to the drip pad;
  - (7) Control of run-off from the drip pad;
  - (8) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;
  - (9) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned;
  - (10) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;
  - (11) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and non-pressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;
  - (12) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;
  - (13) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals;
  - (14) A description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of Section 264.573 of these regulations. This information should be included in the inspection plan submitted under Section 122.14(b)(5) of this part;
  - (15) A certification signed by an independent qualified, registered professional engineer, stating that the drip pad design meets the requirements of paragraphs (a) through (f) of Section 264.573 of these regulations; and
  - (16) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under Section 264.575(a) of these regulations. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how Section 264.310 (a) and (b) of these regulations will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under Section 122.14(b)(13).

(Amended November 19, 1993)

**Section 122.27 Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers.**

(a) Except as otherwise provided in Section 264.1, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of Part 264, Subpart CC shall provide the following additional information:

(1) Documentation for each floating roof cover installed on a tank subject to Section 264.1084(d)(1) or Section 264.1084(d)(2) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in Section 264.1084(e)(1) or Section 264.1084(f)(1).

(2) Identification of each container area subject to the requirements of Part 264, Subpart CC and certification by the owner or operator that the requirements of this subpart are met.

(3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of Section 264.1084(d)(5) or Section 264.1086(e)(1)(ii) that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B.

(4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of Section 264.1085(c) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in Section 264.1085(c)(1).

(5) Documentation for each closed-vent system and control device installed in accordance with the requirements of Section 264.1087 that includes design and performance information as specified in Section 122.24 (c) and (d) of this part.

(6) An emission monitoring plan for both Method 21 in 40 CFR Part 60, Appendix A and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

(7) When an owner or operator of a facility subject to Part 265, Subpart CC cannot comply with Part 264, Subpart CC by the date of permit issuance, the schedule of implementation required under Section 265.1082.

**Section 122.28 Part B information requirements for post-closure permits.**

For post-closure permits, the owner or operator is required to submit only the information specified in Section Section 122.14(b)(1), (4), (5), (6), (11), (13), (14), (16), (18) and (19), (c), and (d), unless the Secretary determines that additional information from Section Section 122.14, 122.16, 122.17, 122.18, 122.20, or 122.21 is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in Section 122.1(c)(7).

**Section 122.29 Permit Denial.**

The Secretary may, pursuant to the procedures in Part 124, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

(Amended June 19, 1992)

**Subpart C - Permit Conditions**

**Section 122.30 Conditions applicable to all permits.**

The following conditions apply to all hazardous waste permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) Duty to comply. The permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See Section 122.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of 7 Del.C., Chapter 63 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) Duty to mitigate. In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Secretary, within a reasonable time, any relevant information which the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Secretary, upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the Secretary, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

(1) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by 7 Del.C., Chapter 63, any substances or parameters at any location.

(j) Monitoring and records.

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by Section 264.73(b)(9) of these regulations, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Secretary at any time. The permittee shall maintain records of all ground-water quality and ground-water surface elevations, for the active life of the facility, and for the post-closure care period as well.

(3) Records for monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

- (v) The analytical techniques or methods used; and
  - (vi) The results of such analyses.
- (k) Signatory requirement. All applications, reports, or information submitted to the Secretary shall be signed and certified. (See Section 122.11)
- (l) Reporting requirements.
  - (1) Planned changes. The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility.
  - (2) Anticipated noncompliance. The permittee shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in Section 122.42, until:
    - (i) The permittee has submitted to the Secretary by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and
    - (ii) A
      - (A) The Secretary has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or
      - (B) Within 15 days of the date of submission of the letter in paragraph (l)(2)(i) of this section, the permittee has not received notice from the Secretary of his or her intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.
  - (3) Transfers. This permit is not transferable to any person except after notice to the Secretary. The Secretary may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. (See Section 122.40)
  - (4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
  - (5) Compliance schedules. Reports of compliance or non-compliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
  - (6) Twenty-four hour reporting.
    - (i) The permittee shall report any noncompliance which may endanger health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances, including:
      - (A) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.
      - (B) Any information of a release or discharge of hazardous waste or of a fire or explosion from the HWM facility, which could threaten the environment or human health outside the facility.
    - (ii) The description of the occurrence and its cause shall include:
      - (A) Name, address, and telephone number of the owner or operator;
      - (B) Name, address, and telephone number of the facility;
      - (C) Date, time, and type of incident;
      - (D) Name and quantity of material(s) involved;
      - (E) The extent of injuries, if any;
      - (F) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and
      - (G) Estimated quantity and disposition of recovered material that resulted from the incident.
    - (iii) A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Secretary may waive the five day written notice requirement in favor of a written report within fifteen days.
  - (7) Manifest discrepancy report: If a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee must submit a letter report, including a copy of the manifest, to the Secretary. (See Section 264.72)

(8) Unmanifested waste report: This report must be submitted to the Secretary within 15 days of receipt of unmanifested waste. (See Section 264.76)

(9) Annual report: An annual report must be submitted covering facility activities during the calendar year. (See Section 264.75)

(10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (L)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (L)(6) of this section.

(11) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Secretary, it shall promptly submit such facts or information.

(m) Information repository. The Secretary may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in Section 124.33(b). The information repository will be governed by the provisions in Section 124.33(c) through (f).

(Amended May 8, 1986; August 29, 1988; August 10, 1990, January 1, 1999)

### **Section 122.31 Requirements for recording and Reporting of monitoring results.**

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Part 264 and Part 266. Reporting shall be no less frequent than specified in the above regulations.

(Amended August 10, 1990)

### **Section 122.32 Establishing permit conditions.**

(a) In addition to conditions required in all permits (Section 122.30), the Secretary shall establish conditions, as required on a case-by-case basis, in permits under Section 122.50 (duration of permits), Section 122.33(a) (schedules of compliance) and Section 122.31 (monitoring).

(b) (1) Each Hazardous Waste Permit shall include permit conditions necessary to achieve compliance with 7 Del.C., Chapter 63 and regulations, including each of the applicable requirements specified in Parts 264 and 266 through 268. In satisfying this provision, the Secretary may incorporate applicable requirements of Parts 264 and 266 through 268 directly into the permit or establish other permit conditions that are based on these parts.

(2) Each permit issued under 7 Del.C., Chapter 63 shall contain terms and conditions as the Secretary determines necessary to protect human health and the environment.

(c) For a DNREC issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. For a permit issued by EPA, an applicable requirement is a Federal statutory or regulatory requirement (including any interim final regulation) which takes effect prior to issuance of the permit (except as provided in 40 CFR Section 124.86(c) for RCRA permits being processed under Subpart E or F of 40 CFR Part 124). For DNREC and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Section 122.41.

(d) New or reissued permits, and to the extent allowed under Section 122.41, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section and in Section 122.31.

(e) Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

(Amended May 8, 1986; August 29, 1988; August 10, 1990, August 21, 1997)

### **Section 122.33 Schedules for compliance.**

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Delaware Code and regulations.

(1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible.

(2) Interim dates. Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Secretary in writing, of its compliance or noncompliance with the interim or final requirements.

(b) Alternative schedules of compliance. A hazardous waste permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste and for treatment and storage HWM facilities, closing pursuant to applicable requirements; and for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Secretary may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirement;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Secretary, such as resolution of the board of directors of a corporation.

## **Section 122.34 - 122.39 [Reserved]**

### **Subpart D - Changes to Permit**

#### **Section 122.40 Transfer of permits.**

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under Section 122.40(b) or Section 122.41(b)(2)) to identify the new permittee and incorporate such other requirements as may be necessary under 7 Del.C., Chapter 63.

(b) Changes in the ownership or operation control of a facility may be made as a Class 1 modification with prior written approval of the Secretary in accordance with Section 122.42. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Secretary. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Part 264, Subpart H (Financial Requirements) until the new owner or operator has demonstrated that he or she is complying with the requirements of that subpart. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Secretary by the new owner or operator of compliance with Subpart H, the Secretary shall notify the old owner or operator that he or she no longer needs to comply with Subpart H as of the date of demonstration.

(Amended August 10, 1990)

#### **Section 122.41 Modification or revocation and reissuance of permits.**

When the Secretary receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see Section 122.30), receives a request for revocation and reissuance under Section 124.5 or conducts a review of the permit file), he or she may determine whether one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Secretary may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. (See Section 124.5(c)(2).) If cause does not exist under this section, the Secretary shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Secretary shall approve or deny the request according to the procedures of Section 122.42. Otherwise, a draft permit must be prepared and other procedures in Part 124 followed.

(a) Causes for modification. The following are causes for modification, but not revocation and reissuance, of permits; the following may be causes for revocation and reissuance, as well as modification, when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Secretary has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(3) New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

(4) Compliance schedules. The Secretary determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the Secretary under Section 122.50(d), the Secretary shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Parts 124, 260-266, and 122.

(b) Causes for modification or revocation and reissuance. The following are causes to modify or alternately, revoke and reissue a permit:

(1) Cause exists for termination under Section 122.43, and the Secretary determines that modification or revocation and reissuance is appropriate.

(2) The Secretary has received notification (as required in the permit, see Section 122.40 of a proposed transfer of the permit.

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.  
(Amended May 8, 1986; August 29, 1988; August 10, 1990)

#### **Section 122.42 Permit modification at the request of the permittee.**

##### **(a) Class 1 modifications.**

(1) Except as provided in paragraph (a)(2) of this section, the permittee may put into effect Class 1 modifications listed in Appendix I of this section under the following conditions:

(i) The permittee must notify the Secretary concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notice, the permittee must provide the applicable information required by Section Section 122.13 through 122.21, and Section Section 122.62 and 122.63.

(ii) The permittee must send a notice of the modification to all persons on the facility mailing list, maintained by the Secretary in accordance with Section 124.10(c)(iv), and the appropriate units of State and local government, as specified in Section 124.10(c)(v). This notification must be made within 90 calendar days after the change is put into effect. For the Class I modifications that require prior Secretary approval, the notification must be made within 90 calendar days after the Secretary approves the request.

(iii) Any person may request the Secretary to review, and the Secretary may for cause reject, any Class 1 modification. The Secretary must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I of this section by a footnote may be made only with the prior written approval of the Secretary.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in Section 122.42(b) for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the Secretary of this decision in the notice required in Section 122.42(b)(1).

##### **(b) Class 2 modifications.**

(1) For Class 2 modifications, listed in Appendix I of this section, the permittee must submit a modification request to the Secretary that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 2 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by Section Section 122.13 through 122.21, 122.62, and 122.63.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Secretary and to the appropriate units of State and local government as specified in Section 124.10(c)(v) and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within 7 days before or after the date of submission of the modification request, and the permittee must provide to the Secretary evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, in accordance with Section 122.42(b)(5), and the name and address of a DNREC contact to whom comments must be sent;

(ii) Announcement of the date, time, and place for a public meeting held in accordance with Section 122.42(b)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of a DNREC contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the DNREC contact person."

(3) The permittee must place a copy of the permit modification request and support documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting not earlier than 15 days after the publication of the notice required in paragraph (b)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the DNREC contact identified in the public notice.

(6) (i) No later than 90 days after receipt of the notification request, the Secretary must:  
(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request;

(C) Determine that the modification request must follow the procedures in Section 122.42(c) for Class 3 modifications for the following reasons:

(1) There is significant public concern about the proposed modification; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days, or

(E) Notify the permittee that he or she will decide on the request within the next 30 days.

(ii) If the Secretary notifies the permittee of a 30-day extension of a decision, the Secretary must, no later than 120 days after receipt of the modification request:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request; or

(C) Determine that the modification request must follow the procedures in Section 122.42(c) for Class 3 modifications for the following reasons:

(1) There is significant public concern about the proposed modification; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days;

(iii) If the Secretary fails to make one of the decisions specified in paragraph (b)(6)(ii) of this section by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal DNREC action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Part 265. If the Secretary approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in paragraphs (b)(6)(i), (ii), or (iii) of this section, such action cancels the temporary or automatic authorization.

(iv) (A) In the case of an automatic authorization under paragraph (b)(6)(iii) of this section, or a temporary authorization under paragraph (b)(6)(i)(D) or (ii)(D) of this section, if the Secretary has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(1) The permittee has been authorized temporarily to conduct the activities describe in the permit modification request, and

(2) Unless the Secretary acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(B) If the owner/operator fails to notify the public by the date specified in paragraph (b)(6)(iv)(A) of this section, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(v) Except as provided in paragraph (b)(6)(vii) of this section, if the Secretary does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a Class 3, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under Section 122.41 or Section 122.42. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Part 265.

(vi) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the Secretary must consider all written comments submitted to the DNREC during the public comment period and must respond in writing to all significant comments in his or her decision.

(vii) With the written consent of the permittee, the Secretary may extend indefinitely or for a specified period the time 46-C periods for final approval or denial of a modification request or for reclassifying a modification as a Class 3.

(7) The Secretary may deny or change the terms of a Class 2 permit modification request under paragraphs (b)(6)(i) through (iii) of this section for the following reasons:

- (i) The modification request is incomplete;
- (ii) The requested modification does not comply with the appropriate requirements of Part 264 or other applicable requirements; or
- (iii) The conditions of the modification fail to protect human health and the environment.

(8) The permittee may perform any construction associated with a Class 2 permit modification request beginning 50 days after the submission of the request unless the Secretary establishes a later date for commencing construction and informs the permittee in writing before day 60.

**(c) Class 3 modifications.**

(1) For Class 3 modifications listed in Appendix I of this section, the permittee must submit a modification request to the Secretary that:

- (i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;
- (ii) Identifies that the modification is a Class 3 modification;
- (iii) Explains why the modification is needed; and
- (iv) Provides the applicable information required by Section 122.13 through 122.22, 122.62, 122.63 and 122.66.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Secretary and to the appropriate units of State and local government as specified in Section 124.10(c)(v) and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the Secretary evidence of the mailing and publication. The notice must include:

- (i) Announcement of a 60-day comment period, and a name and address of a DNREC contact to whom comments must be sent;
- (ii) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with Section 122.42(c)(4);
- (iii) Name and telephone number of the permittee's contact person;
- (iv) Name and telephone number of a DNREC contact person;
- (v) Location where copies of the modification request and any supporting documents can be viewed and copied; and
- (vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the DNREC contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting not earlier than 15 days after the publication of the notice required in paragraph (c)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the DNREC contact identified in the notice.

(6) After the conclusion of the 60-day comment period, the Secretary must grant or deny the permit modification request according to the permit modification procedures of Part 124. In addition, the Secretary must consider and respond to all significant written comments received during the 60-day comment period.

**(d) Other modifications.**

(1) In the case of modifications not explicitly listed in Appendix I of this section, the permittee may submit a Class 3 modification request to the DNREC, or he or she may request a determination by the Secretary that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the DNREC with the necessary information to support the requested classification.

(2) The Secretary shall make the determination described in paragraph (d)(1) of this section as promptly as practicable. In determining the appropriate class for a specific modification, the Secretary shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria:

(i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Secretary may require prior approval.

(ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to,

(A) Common variations in the types and quantities of the wastes managed under the facility permit,

(B) Technological advancements, and

(C) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(iii) Class 3 modifications substantially alter the facility or its operation.

**(e) Temporary authorizations.**

(1) Upon request of the permittee, the Secretary may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of not more than 180 days.

(2) (i) The permittee may request a temporary authorization for:

(A) Any Class 2 modification meeting the criteria in paragraph (e)(3)(ii) of this section, and

(B) Any Class 3 modification that meets the criteria in paragraph (3)(ii)(A) or (B) of this section; or that meets the criteria in paragraphs (3)(ii)(C) through (E) of this section and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(ii) The temporary authorization request must include:

(A) A description of the activities to be conducted under the temporary authorization;

(B) An explanation of why the temporary authorization is necessary; and

(C) Sufficient information to ensure compliance with Part 264 standards.

(iii) The permittee must send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the Secretary and to appropriate units of State and local governments as specified in Section 124.10(c)(iv). This notification must be made within seven days of submission of the authorization request.

(3) The Secretary shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Secretary must find:

(i) The authorized activities are in compliance with the standards of Part 264;

(ii) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(A) To facilitate timely implementation of closure or corrective action activities;

(B) To allow treatment or storage in tanks, containers, or in containment buildings in accordance with Part 268;

(C) To prevent disruption of ongoing waste management activities;

(D) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(E) To facilitate other changes to protect human health and the environment.

(4) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(i) The reissued temporary authorization constitutes the Secretary's decision on a Class 2 permit modification in accordance with paragraph (b)(6)(i)(D) or (ii)(D) of this section, or

(ii) The Secretary determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of paragraph (c) of this section are conducted.

**(f) Public notice and appeals of permit modification decisions.**

(1) The Secretary shall notify persons on the facility mailing list and appropriate units of State and local government within 10 days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The Secretary shall also notify such persons within 10 days after an automatic authorization for a Class 2 modification goes into effect under Section 122.42(b)(6)(iii) or (v).

(2) The Secretary's decision to grant or deny a Class 2 or 3 permit modification request under this section may be appealed under the appeal procedures of 7 Del.C., Chapter 63.

(3) An automatic authorization that goes into effect under Section 122.42(b)(6)(iii) or (v) may be appealed under the permit appeal procedures of 7 Del.C., Chapter 63; however, the permittee may continue to conduct the activities pursuant to the automatic authorization until the appeal determination has been made pursuant to 7 Del.C., Chapter 63.

**(g) Newly listed or identified wastes.**

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under Part 261 of these regulations, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if:

(i) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;

(ii) The permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(iii) The permittee is in compliance with the applicable standards of Parts 265 and 266 of these regulations;

(iv) The permittee also submits a complete Class 2 or 3 modification request within 180 days of the effective date of the rule listing or identifying the waste, or subjecting the unit to RCRA Subtitle C management standards;

(v) In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable requirements of Part 265 of these regulations for groundwater monitoring and financial responsibility on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, he or she will lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

**(h) Military hazardous waste munitions treatment and disposal.** The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(1) The facility was in existence as a hazardous waste facility, and the facility was already permitted to handle the waste military munitions, on the date when the waste military munitions became subject to hazardous waste regulatory requirements;

(2) On or before the date when the waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or amend the permit provision restricting the receipt of off-site waste munitions; and

(3) The permittee submits a complete Class 2 modification request within 180 days of the date when the waste military munitions became subject to hazardous waste regulatory requirements.

(i) **Reserved.**

(j) **Combustion facility changes to meet part 63 MACT standards.** The following procedures apply to hazardous waste combustion facility permit modifications requested under Appendix I of this section, section L(9).

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1211 before a permit modification can be requested under this section.

(2) If the Secretary does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Secretary may, at his or her discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.

(Amended July 26, 1994, August 1, 1995, January 1, 1999, August 23, 1999, December 21, 2009)

## Appendix I to Section 122.42 - Classification of Permit Modification

Modifications	Class
<b>A. General Permit Provisions</b>	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance.	1
b. Other changes	2
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the Secretary.	1 <sub>1</sub>
b. Extension of final compliance date.	3
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Secretary.	1 <sub>1</sub>
7. Changes in ownership or operational control of a facility, provided the procedures of Section 122.40(b) are followed.	1 <sub>1</sub>
8. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility).	1 <sub>1</sub>
<b>B. General Facility Standards</b>	
1. Changes to waste sampling or analysis methods:	
a. To conform with agency guidance or regulations.	1
b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis method.	1 <sub>1</sub>
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes.	1 <sub>1</sub>
d. Other changes.	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with agency guidance or regulations.	1
b. Other changes.	2
3. Changes in procedures for maintaining the operating record.	1
4. Changes in frequency or content of inspection schedules.	2
5. Changes in the training plan:	
a. That affect the type or decrease the amount of training given to employees.	2
b. Other changes.	1
6. Contingency plan:	
a. Changes in emergency procedures (i.e., spill or release response procedures).	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.	1
c. Removal of equipment from emergency equipment list.	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.	1
7. Construction quality assurance plan:	
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications.	1
b. Other changes	2
Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.	
<b>C. Ground-Water Protection</b>	
1. Changes to wells:	

a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted ground-water monitoring system.	2
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.	1
2. Changes in ground-water sampling or analysis procedures or monitoring schedule, with prior approval of the Secretary.	1 <sub>1</sub>
3. Changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred, with prior approval of the Secretary.	1 <sub>1</sub>
4. Changes in point of compliance.	2
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):	
a. As specified in the groundwater protection standard.	3
b. As specified in the detection monitoring program.	2
6. Changes to a detection monitoring program as required by Section 264.98(h), unless otherwise specified in this appendix.	2
7. Compliance monitoring program:	
a. Addition of compliance monitoring program as required by Section Section 264.98(g)(4) and 264.99.	3
b. Changes to a compliance monitoring program as required by Section 264.99(j), unless otherwise specified in this appendix.	2
8. Corrective action program:	
a. Addition of a corrective action program as required by Section Section 264.99(h)(2) and 264.100.	3
b. Changes to a corrective action program as required by Section 264.100(h), unless otherwise specified in this appendix.	2
D. Closure	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the Secretary.	1 <sub>1</sub>
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the Secretary.	1 <sub>1</sub>
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the Secretary.	1 <sub>1</sub>
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the Secretary.	1 <sub>1</sub>
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix.	2
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 Section 264.113 (d) and (e).	2
2. Creation of a new landfill unit as part of closure.	3
3. Addition of the following new units to be used temporarily for closure activities:	
a. Surface impoundments.	3
b. Incinerators.	3
c. Waste piles that do not comply with Section 264.250(c).	3
d. Waste piles that comply with Section 264.250(c).	2
e. Tanks or containers (other than specified below).	2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the Secretary.	1 <sub>1</sub>
g. Staging piles	2
E. Post-Closure	
1. Changes in name, address, or phone number of contact in post-closure plan.	1

2. Extension of post-closure care period.	2
3. Reduction in the post-closure care period.	3
4. Changes to the expected year of final closure, where other permit conditions are not changed.	1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure.	2
<b>F. Containers</b>	
1. Modification or addition of container units:	
a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below.	3
b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below.	2
c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in Section 268.8(a)(2)(ii), with prior approval of the Secretary. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1 <sub>1</sub>
2.	
a. Modification of a container unit without increasing the capacity of the unit.	2
b. Addition of a roof to a container unit without alteration of the containment system.	1
3. Storage of different wastes in containers, except as provided in (F)(4) below:	
a. That require additional or different management practices from those authorized in the permit.	3
b. That do not require additional or different management practices from those authorized in the permit.	2
Note: See Section 122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
4. Storage or treatment of different wastes in containers:	
a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in Section 268.8(a)(2)(ii). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1 <sub>1</sub>
b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1 <sub>1</sub>
<b>G. Tanks</b>	
1. a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below.	3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below.	2
c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	2
d. After prior approval of the Secretary, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	1 <sub>1</sub>
e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of	1 <sub>1</sub>

<p>“use of practically available technology that yields the greatest environmental benefit” contained in Section 268.8(a)(2)(ii), with prior approval of the Secretary. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).</p>	
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit.	2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- 10% of the replaced tank provided.	1
-- The capacity difference is no more than 1500 gallons,	
-- The facility's permitted tank capacity is not increased, and	
-- The replacement tank meets the same conditions in the permit.	
4. Modification of a tank management practice.	2
5. Management of different wastes in tanks:	
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in (G)(5)(c) below.	3
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided in (G)(5)(d).	2
c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of “use of practically available technology that yields the greatest environmental benefit” contained in Section 268.8(a)(2)(ii). The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1 <sup>1</sup>
d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
Note: See Section 122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
H. Surface Impoundments	
1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.	3
2. Replacement of a surface impoundment unit.	3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.	2
4. Modification of a surface impoundment management practice.	2
5. Treatment, storage, or disposal of different wastes in surface impoundments:	
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of “use of practically available technology that yields the greatest environmental benefit” contained in Section 269.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in Section 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in Section 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This	1

modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	
6. Modifications of unconstructed units to comply with Section Section 264.221(c), 264.222, 264.223, and 264.226(d)	1 <sub>1</sub>
7. Changes in response action plan:	
a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness.	3
c. Other changes	2
Note: See Section 122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
I. Enclosed Waste Piles. For all waste piles except those complying with Section 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with Section 264.250(c).	
1. Modification or addition of waste pile units:	
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity.	3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity.	2
2. Modification of waste pile unit without increasing the capacity of the unit.	2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.	1
4. Modification of a waste pile management practice.	2
5. Storage or treatment of different wastes in waste piles:	
a. That require additional or different management practices or different design of the unit.	3
b. That do not require additional or different management practices or different design of the unit.	2
6. Conversion of an enclosed waste pile to a containment building unit.	2
Note: See Section 122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
J. Landfills and Unenclosed Waste Piles	
1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.	3
2. Replacement of a landfill.	3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system.	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system.	2
5. Modification of a landfill management practice.	2
6. Landfill different wastes:	
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.	3
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in Section 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in Section 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in Section 268.5(h)(2), and provided further that the landfill has previously received	1

wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	
7. Modifications of unconstructed units to comply with Section 264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304.	1 <sub>1</sub>
8. Changes in response action plan:	
a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness.	3
c. Other changes	2
Note: See Section 122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
K. Land Treatment	
1. Lateral expansion of or other modification of a land treatment unit to increase areal extent.	3
2. Modification of run-on control system.	2
3. Modify run-off control system.	3
4. Other modifications of land treatment unit component specifications or standards required in permit.	2
5. Management of different wastes in land treatment units:	
a. That require a change in permit operating conditions or unit design specifications.	3
b. That do not require a change in permit operating conditions or unit design specifications.	2
Note: See Section 122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
6. Modification of a land treatment unit management practice to:	
a. Increase rate or change method of waste application.	3
b. Decrease rate of waste application.	1
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions.	2
8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops.	3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to Section 264.278(g)(2).	3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements.	3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements.	2
12. Changes in background values for hazardous constituents in soil and soil-pore liquid.	2
13. Changes in sampling, analysis, or statistical procedure.	2
14. Changes in land treatment demonstration program prior to or during the demonstration.	2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the Secretary's prior approval has been received.	1 <sub>1</sub>
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the Secretary.	1 <sub>1</sub>

17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.	3
18. Changes in vegetative cover requirements for closure.	2
L. Incinerators, Boilers, and Industrial Furnaces:	14
1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Secretary will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Secretary will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	2
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl <sub>2</sub> , metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The Secretary will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The Secretary may require a new trial burn to demonstrate compliance with the regulatory performance standards.	2
5. Operating requirements:	
a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The Secretary will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.	3
c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.	2
6. Burning different wastes:	
a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The Secretary will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.	2
Note: See Section 122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
7. Shakedown and trial burn:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the	2

shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.	
b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the Secretary.	<sup>1</sup>
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the Secretary.	<sup>1</sup>
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Secretary.	<sup>1</sup>
8. Substitution of an alternative type of nonhazardous waste fuel that is not specified in the permit.	1
9. Technology changes needed to meet standards under 40 CFR, Part 63 (Subpart EEE -- National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of Section 122.42(j) are followed.	<sup>1</sup>
M. Containment Buildings.	
1. Modification or addition of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity.	3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity.	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.	2
3. Replacement of a containment building with a containment building that meets the same design standards provided:	
a. The unit capacity is not increased.	1
b. The replacement containment building meets the same conditions in the permit.	1
4. Modification of a containment building management practice.	2
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices.	3
b. That do not require additional or different management practices.	2
N. Corrective Action:	
1. Approval of a corrective action management unit pursuant to Section 264.552	3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to Section 264.553.	2
3. Approval of a staging pile or staging pile operating term extension pursuant to Section 264.554.	2

FOOTNOTE: <sup>1</sup>Class 1 modifications requiring prior Agency approval.  
(Amended June 19, 1992; July 26, 1994, August 1, 1995, August 23, 1999, June 2, 2000, April 23, 2001)

### **Section 122.43 Termination of Permits.**

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The Secretary shall follow the applicable procedures in Part 124 in terminating any permit under this section.

### **Section 122.44 - 122.49 [Reserved]**

## **Subpart E - Expiration and Continuation of Permits**

### **Section 122.50 Duration of permits.**

- (a) DNREC permits shall be effective for a fixed term not to exceed 10 years.
  - (b) Except as provided in Section 122.51, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.
  - (c) The Secretary may issue any permit for a duration that is less than the full allowable term under this section.
  - (d) Each permit for a land disposal facility shall be reviewed by the Secretary five years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section 122.41.
- (Amended May 8, 1986; August 10, 1990)

### **Section 122.51 Continuation of expiring permits.**

- (a) The conditions of an expired permit continue in force until the effective date of a new permit if:
  - (1) The permittee has submitted a timely application under Section 122.14 and the applicable sections in 122.15-122.29 which is a complete application for a new permit; and
  - (2) The Secretary through no fault of the permittee, does not issue a new permit with an effective date under Section 124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).
- (b) Effect. Permits continued under this section remain fully effective and enforceable.
- (c) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Secretary may choose to do any or all of the following:
  - (1) Initiate enforcement action based upon the permit which has been continued;
  - (2) Issue a notice of intent to deny the new permit under Section 124.6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;
  - (3) Issue a new permit under Part 124 with appropriate conditions; or
  - (4) Take other actions authorized by these regulations.

### **Section 122.52 - 122.59 [Reserved]**

## **Subpart F - Special Forms of Permits**

### **Section 122.60 Permits by rule.**

Notwithstanding any other provision of this Part or Part 124, the following shall be deemed to have a permit if the conditions listed are met:

- (a) Ocean disposal barges or vessels. The owner or operator of a barge or other vessel accepts hazardous waste for ocean disposal, if the owner or operator:
  - (1) Has a permit for ocean dumping issued under 40 CFR Part 220 (Ocean Dumping, authorized by the Marine Protection, Research and Sanctuaries Act as amended 33 USC Section 1420, et. seq.);
  - (2) Complies with the conditions of that permit; and
  - (3) Complies with the following hazardous waste regulations.
    - (i) Section 264.11, Identification number;
    - (ii) Section 264.71, Use of manifest system;
    - (iii) Section 264.72, Manifest discrepancies;
    - (iv) Section 264.73(a) and (b)(1), Operating record;
    - (v) Section 264.75, Annual report; and
    - (vi) Section 264.76, Unmanifested waste report.
- (b) **[Reserved]**
- (c) Publicly owned treatment works. The owner or operator of a POTW which accepts for treatment hazardous waste, if the owner or operator:
  - (1) has an NPDES permit;

- (2) Complies with the conditions of that permit; and
- (3) Complies with the following regulations:
  - (i) Section 264.11, Identification number;
  - (ii) Section 264.71, Use of manifest system;
  - (iii) Section 264.72, Manifest discrepancies;
  - (iv) Section 264.73(a) and (b)(1), Operating record;
  - (v) Section 264.75, Annual report;
  - (vi) Section 264.76, Unmanifested waste report; and
  - (vii) for NPDES permits issued after November 8, 1984, Section 264.101 of these regulations.

(4) If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

(Amended May 8, 1986; August 29, 1988)

### **Section 122.61 Emergency Administrative Orders.**

(a) Notwithstanding any other provision of this part or Part 124, in the event the Secretary finds an imminent and substantial endangerment to human health or the environment the Secretary may issue a temporary emergency administrative order: (1) to a non-permitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of hazardous waste not covered by an effective permit.

(b) This emergency administrative order:

- (1) May be oral or written. If oral, it shall be followed in five days by a written administrative order;
- (2) Shall not exceed 90 days in duration;
- (3) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;
- (4) May be terminated by the Secretary at any time without process if he or she determines that termination is appropriate to protect human health and the environment;
- (5) Shall be accompanied by a public notice published under Section 124.10(b) including:
  - (i) Name and address of the office granting the emergency authorization;
  - (ii) Name and location of the permitted HWM facility;
  - (iii) A brief description of the wastes involved;
  - (iv) A brief description of the action authorized and reasons for authorizing it; and
  - (v) Duration of the administrative order; and

(6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this part and Part 264.

(Amended January 1, 1999)

### **Section 122.62 Hazardous waste incinerator permits.**

When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply. Nevertheless, the Secretary may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with Section Section 122.10(k) and 122.32(b)(2).

(a) For the purposes of determining operational readiness following completion of physical construction, the Secretary must establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Secretary may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to Section 122.42 of these regulations.

(1) Applicants must submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of Section 264.343 of these regulations during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in Section 264.345 of these regulations.

(2) The Secretary will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Section 264.343 of these regulations based on his engineering judgment.

(b) For the purposes of determining feasibility of compliance with the performance standards of Section 264.343 of these regulations and of determining adequate operating conditions under Section 264.345 of these regulations, the Secretary must establish conditions in the permit for a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants must propose a trial burn plan, prepared under paragraph (b)(2) of this section with a Part B of the permit application.

(2) The trial burn plan must include the following information:

(i) An analysis of each waste or mixture of wastes to be burned which includes:

(A) Heat value of the waste in the form and composition in which it will be burned.

(B) Viscosity (if applicable), or description of the physical form of the waste.

(C) An identification of any hazardous organic constituents listed in Part 261, Appendix VIII of these regulations, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of these regulations which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for the exclusion stated. The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section 260.11 of these regulations and Section 122.6, or other equivalent.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section 260.11 of these regulations and Section 122.6, or their equivalent.

(ii) A detailed engineering description of the incinerator for which the permit is sought including:

(A) Manufacturer's name and model number of incinerator (if available).

(B) Type of incinerator.

(C) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(D) Description of the auxiliary fuel system (type/feed).

(E) Capacity of prime mover.

(F) Description of automatic waste feed cut-off system(s).

(G) Stack gas monitoring and pollution control equipment.

(H) Nozzle and burner design.

(I) Construction materials.

(J) Location and description of temperature, pressure, and flow indicating and control devices.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Secretary's decision under paragraph (b)(5) of this section.

(v) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(vi) A description of, and planned operating conditions for, any emission control equipment which will be used.

(vii) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(viii) Such other information as the Secretary reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (b)(5) of this section.

(3) The Secretary, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph.

(4) Based on the waste analysis data in the trial burn plan, the Secretary will specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the Secretary based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in Part 261, Subpart D, of these regulations, the hazardous waste organic constituent or constituents identified in Appendix VII of that part as the basis for listing.

(5) The Secretary shall approve a trial burn plan if he finds that:

(i) The trial burn is likely to determine whether the incinerator performance standard required by Section 264.343 of these regulations can be met;

(ii) The trial burn itself will not present an imminent hazard to human health or the environment;

(iii) The trial burn will help the Secretary to determine operating requirements to be specified under Section 264.345 of these regulations; and

(iv) The information sought in paragraphs (b)(5)(i) and (ii) of this section cannot reasonably be developed through other means.

(6) The Secretary must send a notice to all persons on the facility mailing list as set forth in Section 124.10(c)(1)(ix) and to the appropriate units of State and local government as set forth in Section 124.10(c)(1)(v) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Secretary has issued such notice.

(i) This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or DNREC.

(ii) This notice must contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the DNREC Solid and Hazardous Waste Management Branch;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(7) During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(i) A quantitative analysis of the trial POHCs in the waste feed to the incinerator.

(ii) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O<sub>2</sub>) and hydrogen chloride (HCl).

(iii) A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs.

(iv) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Section 264.343(a) of these regulations.

(v) If the HCl emission rate exceeds 1.8 kilograms of HCl per hour (4 pounds per hour), a computation of HCl removal efficiency in accordance with Section 262.343(b) of these regulations.

(vi) A computation of particulate emissions, in accordance with Section 264.343(c) of these regulations.

(vii) An identification of sources of fugitive emissions and their means of control.

(viii) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(ix) A continuous measurement of carbon monoxide (CO) in the exhaust gas.  
(x) Such other information as the Secretary may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in Section 264.343 of these regulations and to establish the operating conditions required by Section 264.345 of these regulations as necessary to meet that performance standard.

(8) The applicant must submit to the Secretary a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in paragraph (b)(6). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Secretary.

(9) All data collected during any trial burn must be submitted to the Secretary following the completion of the trial burn.

(10) All submissions required by this paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under Section 122.11.

(11) Based on the results of the trial burn, the Secretary shall set the operating requirements in the final permit according to Section 264.345 of these regulations. The permit may be modified to reflect the extension according to Section 122.42 of these regulations.

(c) For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the Secretary may establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of Section 264.345 of these regulations, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the Secretary.

(1) Applicants must submit a statement, with Part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of Section 264.343 of these regulations, during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters in Section 264.345 of these regulations.

(2) The Secretary will review this statement and any other relevant information submitted with Part B of the permit application and specify those requirements for this period most likely to meet the performance standards of Section 264.343 of these regulations based on his engineering judgment.

(d) For the purpose of determining feasibility of compliance with the performance standards of Section 264.343 of these regulations and of determining adequate operating conditions under Section 264.345 of these regulations, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with Section 122.19(b) and paragraphs (b)(2) through (b)(5) and (b)(7) through (b)(10) of this section or, instead, submit other information as specified in Section 122.19(c). The Secretary must announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of paragraph (b)(6) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of the DNREC Solid and Hazardous Waste Management Branch; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for DNREC approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under Section 122.19(a) are exempt from compliance with Section 264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in paragraph (b)(7) of this section, with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the Secretary to establish a later date for submission of the Part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the Secretary will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

(Amended August 10, 1990; November 19, 1993, July 23, 1996, January 1, 1999, April 23, 2001)

### **Section 122.63 Permits for land treatment demonstrations using field test or laboratory analysis.**

(a) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of Section 264.272 of these regulations, the Secretary may issue a treatment demonstration permit. The permit must contain only those requirements necessary to meet the standards in Section 264.272(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction operation and maintenance of the land treatment unit.

(1) The Secretary may issue a two-phase facility permit if he finds that, based on information submitted in Part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(2) If the Secretary finds that not enough information exists upon which he can establish permit conditions to attempt to provide for compliance with all of the requirements of Subpart M, he must issue a treatment demonstration permit covering only the field test or laboratory analyses.

(b) If the Secretary finds that a phased permit may be issued, he will establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which the Secretary finds may be necessary under Section 264.272(c). The Secretary will include conditions in the second phase of the facility permit to attempt to meet all Subpart M requirements pertaining to unit design, construction, operation, and maintenance. The Secretary will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(1) The first phase of the permit will be effective as provided in Section 124.15(b) of these regulations.

(2) The second phase of the permit will be effective as provided in paragraph (c) of this section.

(c) When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he must submit to the Secretary a certification, signed by a person authorized to sign a permit application or report under Section 122.11, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator must also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Secretary approves a later date.

(d) If the Secretary determines that the results of the field tests or laboratory analyses meet the requirements of Section 264.272 of these regulations, he will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with Part 264, Subpart M, of these regulations, based upon the results of the field tests or laboratory analyses.

(1) This permit modification may proceed under Section 122.42, or otherwise will proceed as a modification under Section 122.41(a)(2). If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.

(2) If no modifications of the second phase of the permit are necessary, the Secretary will give notice of his final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in Section 124.15(b).

(Amended August 10, 1990)

#### **Section 122.64 [Reserved].**

#### **Section 122.65 Research, Development, and Demonstration Permits.**

(a) The Administrator and the Secretary if the Administrator approves may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Parts 264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this section, and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator and the Secretary if the Administrator approves deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and;

(3) Shall include such requirements as the Administrator and the Secretary if the Administrator approves deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the Administrator and the Secretary if the Administrator approves deems necessary regarding testing and providing of information to the Secretary with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permits under this section, the Administrator and the Secretary if the Administrator approves may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Parts 124 and 122 except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

(c) The Administrator and the Secretary if the Administrator approves may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(d) Any permit issued under this section may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

(Amended May 8, 1986)

#### **Section 122.66 Permits for boilers and industrial furnaces burning hazardous waste.**

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with Section Section 122.10(k) and 122.32(b)(2).

(a) General. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of Section 266.103 of these regulations) are subject to paragraphs (b) through (f) of this section. Boilers and industrial furnaces operating under the interim status standards of Section 266.103 of these regulations are subject to paragraph (g) of this section.

(b) Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

(1) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time when burning hazardous waste, the Secretary must establish in the Pretrial Burn Period of the permit conditions, including but not limited to, allowable hazardous waste feed rates and operating conditions. The Secretary may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to Section 122.42.

(i) Applicants must submit a statement, with Part B of the permit application, that suggests the conditions necessary to operate in compliance with the standards of Section Section 266.104 through 266.107 of these regulations during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in Section 266.102(e) of these regulations.

(ii) The Secretary will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Section Section 266.104 through 266.107 of these regulations based on his/her engineering judgment.

(2) Trial burn period. For the duration of the trial burn, the Secretary must establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of Section Section 266.104 through 266.107 of these regulations and determining adequate operating

conditions under Section 266.102(e) of these regulations. Applicants must propose a trial burn plan, prepared under paragraph (c) of this section, to be submitted with Part B of the permit application.

(3) Post-trial burn period.

(i) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Secretary to reflect the trial burn results, the Secretary will establish the operating requirements most likely to ensure compliance with the performance standards of Section 266.104 through 266.107 of these regulations based on his engineering judgment.

(ii) Applicants must submit a statement, with Part B of the application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of Section 266.104 through 266.107 of these regulations. This statement should include, at a minimum, restrictions on the operating requirements provided by Section 266.102(e) of these regulations.

(iii) The Secretary will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Section 266.104 through 266.107 of these regulations based on his/her engineering judgment.

(4) Final permit period. For the final period of operation, the Secretary will develop operating requirements in conformance with Section 266.102(e) of these regulations that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of Section 266.104 through 266.107 of these regulations. Based on the trial burn results, the Secretary shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to Section 122.42.

(c) Requirements for trial burn plans. The trial burn plan must include the following information. The Secretary, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph:

(1) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feed stocks, as fired, that includes:

(i) Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash;

(ii) Viscosity or description of the physical form of the feed stream;

(2) An analysis of each hazardous waste, as fired, including:

(i) An identification of any hazardous organic constituents listed in Appendix VIII, Part 261, of these regulations that are present in the feed stream, except that the applicant need not analyze for constituents listed in Appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section 260.11 of these regulations and Section 122.6, or their equivalent.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section 260.11 of these regulations and Section 122.6, or other equivalent.

(iii) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.

(3) A detailed engineering description of the boiler or industrial furnace, including:

(i) Manufacturer's name and model number of the boiler or industrial furnace;

(ii) Type of boiler or industrial furnace;

(iii) Maximum design capacity in appropriate units;

(iv) Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;

(v) Capacity of hazardous waste feed system;

(vi) Description of automatic hazardous waste feed cutoff system(s);

- (vii) Description of any air pollution control system; and
- (viii) Description of stack gas monitoring and any pollution control monitoring systems.
- (4) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.
- (5) A detailed test schedule for each hazardous waste for which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the Secretary's decision under paragraph (b)(2) of this section.
- (6) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in Section 266.104 through 266.107 of these regulations.
- (7) A description of, and planned operating conditions for, any emission control equipment that will be used.
- (8) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.
- (9) Such other information as the Secretary reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (b)(2) of this section.
- (d) Trial burn procedures.
  - (1) A trial burn must be conducted to demonstrate conformance with the standards of Section 266.104 through 266.107 of these regulations under an approved trial burn plan.
  - (2) The Secretary shall approve a trial burn plan if he/she finds that:
    - (i) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of Section 266.104 through 266.107 of these regulations;
    - (ii) The trial burn itself will not present an imminent hazard to human health and the environment;
    - (iii) The trial burn will help the Secretary to determine operating requirements to be specified under Section 266.102(e) of these regulations; and
    - (iv) The information sought in the trial burn cannot reasonably be developed through other means.
  - (3) The Secretary must send a notice to all persons on the facility mailing list as set forth in Section 124.10(c)(1)(iv) and to the appropriate units of State and local government as set forth in Section 124.10(c)(1)(v) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Secretary has issued such notice.
    - (i) This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or DNREC.
    - (ii) This notice must contain:
      - (A) The name and telephone number of applicant's contact person;
      - (B) The name and telephone number of the DNREC Solid and Hazardous Waste Management Branch;
      - (C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and
      - (D) An expected time period for commencement and completion of the trial burn.
  - (4) The applicant must submit to the Secretary a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in paragraph (c) of this section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Secretary.
  - (5) All data collected during any trial burn must be submitted to the Secretary following completion of the trial burn.
  - (6) All submissions required by this paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under Section 122.11.

(e) Special procedures for DRE trial burns. When a DRE trial burn is required under Section 266.104(a) of these regulations, the Secretary will specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial Principal Organic Hazardous Constituents (POHCs) those compounds for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the Secretary based on information including his/her estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in Part 261, Subpart D of these regulations, the hazardous waste organic constituent(s) identified in Appendix VII of that part as the basis for listing.

(f) Determinations based on trial burn. During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(1) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);

(2) When a DRE trial burn is required under Section 266.104(a) of these regulations:

(i) A quantitative analysis of the trial POHCs in the hazardous waste feed;

(ii) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs; and

(iii) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Section 266.104(a) of these regulations;

(3) When a trial burn for chlorinated dioxins and furans is required under Section 266.104(e) of these regulations, a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;

(4) When a trial burn for particulate matter, metals, or HCl/Cl<sub>2</sub> is required under Section 266.105, 266.106 (c) or (d), or 266.107 (b)(2) or (c) of these regulations, a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl<sub>2</sub>), and computations showing conformance with the applicable emission performance standards;

(5) When a trial burn for DRE, metals, or HCl/Cl<sub>2</sub> is required under Section 266.104(a), 266.106 (c) or (d), or 266.107 (b)(2) or (c) of these regulations, a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

(6) An identification of sources of fugitive emissions and their means of control;

(7) A continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and

(8) Such other information as the Secretary may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in Section 266.104 through 266.107 of these regulations and to establish the operating conditions required by Section 266.102(e) of these regulations as necessary to meet those performance standards.

(g) Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of Section 266.104 through 266.107 of these regulations and of determining adequate operating conditions under Section 266.103 of these regulations, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of Section 266.103 of these regulations must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in Section 122.22(a)(6). The Secretary must announce his or her intention to approve of the trial burn plan in accordance with the timing and distribution requirements of paragraph (d)(3) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of the Solid and Hazardous Waste Management Branch; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the Part B permit application must complete the trial burn and submit the results specified in paragraph (f) of this section with the Part B permit application. If completion of this process conflicts

with the date set for submission of the Part B application, the applicant must contact the Secretary to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn plan with Part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the Secretary.  
(Amended July 26, 1994, July 23, 1996, January 1, 1999, April 23, 2001)

#### **Section 122.67 [Reserved]**

#### **Section 122.68 Remedial Action Plans (RAPs)**

Remedial Action Plans (RAPs) are special forms of permits that are regulated under Subpart H of this part.

#### **Section 122.69 [Reserved]**

### **Subpart G - Interim Status**

#### **Section 122.70 Qualifying for Interim Status.**

(a) Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments under 7 Del.C., Chapter 63 that render the facility subject to the requirement to have a Hazardous Waste permit shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

(1) Complied with the requirements of 7 Del.C., Section Section 6304, 6306, and 6307 pertaining to notification of hazardous waste activity.

[Comment: Some existing facilities may not be required to file a notification under 7 Del.C., Section Section 6304, 6306, and 6307. These facilities may qualify for interim status by meeting paragraph (a)(2) of this section.]

(2) Complied with the requirements of Section 122.10 governing submission of Part A applications;

(b) When DNREC determines on examination or re-examination of a Part A application that it fails to meet the standards of these regulations, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or operator will then be subject to DNREC enforcement for operating without a permit.

(c) Paragraph (a) of this section shall not apply to any facility which has been previously denied a hazardous waste permit or if authority to operate the facility under 7 Del.C., Chapter 63 has been previously terminated.

(Amended May 8, 1986)

#### **Section 122.71 Operation during interim status.**

(a) During the interim status period the facility shall not:

- (1) Treat, store, or dispose of hazardous waste not specified in Part A of the permit application;
- (2) Employ processes not specified in Part A of the permit application; or
- (3) Exceed the design capacities specified in Part A of the permit application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards at Part 265.

#### **Section 122.72 Changes during interim status.**

(a) Except as provided in paragraph (b), the owner or operator of an interim status facility may make the following changes at the facility:

(1) Treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the permit application (and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification) if the owner or operator submits a revised Part A permit application prior to such treatment, storage, or disposal;

(2) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Secretary approves the changes because:

(i) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A permit application prior to such change (along with a justification explaining the need for the change) and the Secretary approves the change because:

(i) The change is necessary to prevent a threat to human health and the environment because of an emergency situation, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(4) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 265, Subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Secretary that he is complying with the requirements of that subpart. The new owner or operator must demonstrate compliance with subpart H requirements within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Secretary by the new owner or operator of compliance with Subpart H, the Secretary shall notify the old owner or operator in writing that he no longer needs to comply with Subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

(5) Changes made in accordance with an interim status corrective action order issued by EPA under RCRA Section 3008(h) or other Federal authority, by 7 Del. C., Chapter 63, or by a court in a judicial action by EPA or by the State of Delaware. Changes under this paragraph are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised Part A permit application on or before the date on which the unit becomes subject to the new requirements.

(b) Except as specifically allowed under this paragraph, changes listed under paragraph (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) Changes made solely for the purposes of complying with the requirements of Section 265.193 for tanks and ancillary equipment.

(2) If necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of Section 3004(o).

(3) Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

(4) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

(5) Changes necessary to comply with an interim status corrective action order issued by EPA under RCRA Section 3008(h) or other Federal authority, by 7 **Del.C.**, Chapter 63, or by a court in a judicial proceeding brought by EPA or by the State of Delaware, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Changes to treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by Part 268 of these regulations or 7 **Del.C.**, Section 6307, provided that such changes are made solely for the purposes of complying with Part 268 of these regulations or 7 **Del.C.**, Section 6307.

(7) Addition of newly regulated units under paragraph (a)(6) of this section.

(8) Changes necessary to comply with standards under 40 CFR, Part 63, Subpart EEE -- National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors. (Amended August 29, 1988; June 19, 1992; July 26, 1994, August 1, 1995, August 21, 1997, August 23, 1999)

### **Section 122.73 Termination of interim status.**

Interim status terminates when:

(a) Final administrative disposition of a permit application, except an application for a remedial action plan (RAP) under Subpart H of this part, is made; or

(b) Interim status is terminated as provided in Section 122.10(e)(3).

(c) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(1) The owner or operator submits a Part B application for a DNREC permit for such facility prior to that date; and

(2) The owner or operator certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(d) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under 7 Del.C., Chapter 63 that render the facility subject to the requirement to have a DNREC permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

(1) Submits a Part B application for a permit for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(2) Certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(e) For owners or operators of any land disposal unit that is granted authority to operate under Section 122.72(a)(1), (2), or (3), on the date 12 months after the effective date of such requirement, unless the owner or operator certifies that such unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) For owners and operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a Part B application for a DNREC permit for an incinerator facility by November 8, 1986.

(g) For owners or operators of any facility (other than a land disposal or an incinerator facility) which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a Part B application for a DNREC permit for the facility by November 8, 1988.

(Amended August 29, 1988; June 19, 1992; July 26, 1994, June 2, 2000)

### **Section 122.74 - 122.78 [Reserved]**

## **Subpart H -- Remedial Action Plans (RAPs)**

### **Section 122.79 Why is this subpart written in a special format?**

This subpart is written in a special format to make it easier to understand the regulatory requirements. Like other Department of Natural Resources and Environmental Control (DNREC) regulations, this establishes enforceable legal requirements. For this Subpart, "I" and "you" refer to the owner/operator.

### **General Information**

### **Section 122.80 What is a RAP?**

(a) A RAP is a special form of hazardous waste permit that you, as an owner or operator, may obtain, instead of a permit issued under Section 122.3 through 122.66, to authorize you to treat, store, or dispose of hazardous remediation waste (as defined in Section 260.10 of these regulations) at a remediation waste management site. A RAP may only be issued for the area of contamination where the

remediation wastes to be managed under the RAP originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under Section 122.230.

(b) The requirements in Section 122.3 through 122.66 do not apply to RAPs unless those requirements for traditional hazardous waste permits are specifically required under Section 122.80 through 122.230. The definitions in Section 122.2 apply to RAPs.

(c) Notwithstanding any other provision of this part or Part 124 of these regulations, any document that meets the requirements in this section constitutes a hazardous waste permit under 7 Del. C., Chapter 63.

(d) A RAP may be:

(1) A stand-alone document that includes only the information and conditions required by this subpart; or

(2) Part (or parts) of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by this subpart.

(e) If you are treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by Federal or State cleanup authorities, your RAP does not affect your obligations under those authorities in any way.

(f) If you receive a RAP at a facility operating under interim status, the RAP does not terminate your interim status.

#### **Section 122.85 When do I need a RAP?**

(a) Whenever you treat, store, or dispose of hazardous remediation wastes in a manner that requires a hazardous waste permit under Section 122.1, you must either obtain:

(1) A hazardous waste permit according to Section 122.3 through 122.66; or

(2) A RAP according to this subpart.

(b) Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under this subpart.

(c) You may obtain a RAP for managing hazardous remediation waste at an already permitted hazardous waste facility. You must have these RAPs approved as a modification to your existing permit according to the requirements of Section 122.41 or Section 122.42 instead of the requirements in this subpart. When you submit an application for such a modification, however, the information requirements in Section 122.42(a)(1)(i), (b)(1)(iv), and (c)(1)(iv) do not apply; instead, you must submit the information required under Section 122.110. When your permit is modified the RAP becomes part of the hazardous waste permit. Therefore when your permit (including the RAP portion) is modified, revoked and reissued, terminated or when it expires, it will be modified according to the applicable requirements in Section 122.40 through 122.42, revoked and reissued according to the applicable requirements in Section 122.41 and 122.43, terminated according to the applicable requirements in Section 122.43, and expire according to the applicable requirements in Section 122.50 and 122.51.

#### **Section 122.90 Does my RAP grant me any rights or relieve me of any obligations?**

The provisions of Section 122.4 apply to RAPs. (Note: The provisions of Section 122.4(a) provide you assurance that, as long as you comply with your RAP, DNREC will consider you in compliance with Delaware Regulations Governing Hazardous Waste, and will not take enforcement actions against you. However, you should be aware of four exceptions to this provision that are listed in Section 122.4.)

#### **Applying for a RAP**

#### **Section 122.95 How do I apply for a RAP?**

To apply for a RAP, you must complete an application, sign it, and submit it to the Secretary according to the requirements in this subpart.

#### **Section 122.100 Who must obtain a RAP?**

When a facility or remediation waste management site is owned by one person, but the treatment, storage or disposal activities are operated by another person, it is the operator's duty to obtain a RAP, except that the owner must also sign the RAP application.

#### **Section 122.105 Who must sign the application and any required reports for a RAP?**

Both the owner and the operator must sign the RAP application and any required reports according to Section 122.11(a), (b), and (c). In the application, both the owner and the operator must also make the certification required under Section 122.11(d)(1). However, the owner may choose the alternative certification under Section 122.11(d)(2) if the operator certifies under Section 122.11(d)(1).

#### **Section 122.110 What must I include in my application for a RAP?**

You must include the following information in your application for a RAP:

- (a) The name, address, and EPA identification number of the remediation waste management site;
- (b) The name, address, and telephone number of the owner and operator;
- (c) The latitude and longitude of the site;
- (d) The United States Geological Survey (USGS) or county map showing the location of the remediation waste management site;
- (e) A scaled drawing of the remediation waste management site showing:
  - (1) The remediation waste management site boundaries;
  - (2) Any significant physical structures; and
  - (3) The boundary of all areas on-site where remediation waste is to be treated, stored or disposed;
- (f) A specification of the hazardous remediation waste to be treated, stored or disposed of at the facility or remediation waste management site. This must include information on:
  - (1) Constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated and/or otherwise managed;
  - (2) An estimate of the quantity of these wastes; and
  - (3) A description of the processes you will use to treat, store, or dispose of this waste including technologies, handling systems, design and operating parameters you will use to treat hazardous remediation wastes before disposing of them according to the LDR standards of Part 268 of these regulations, as applicable;
- (g) Enough information to demonstrate that operations that follow the provisions in your RAP application will ensure compliance with applicable requirements of Parts 264, 266, and 268 of these regulations;
- (h) Such information as may be necessary to enable the Secretary to carry out his duties under other Federal laws as is required for traditional hazardous waste permits under Section 122.14(b)(20);
- (i) Any other information the Secretary decides is necessary for demonstrating compliance with this subpart or for determining any additional RAP conditions that are necessary to protect human health and the environment.

#### **Section 122.115 What if I want to keep this information confidential?**

Seven **Del.C.**, Chapter 63 and the Hazardous Waste Disclosure Regulations allows you to claim as confidential any or all of the information you submit to DNREC under this subpart. You must assert any such claim at the time that you submit your RAP application or other submissions by stamping the words "confidential business information" on each page containing such information. If you do assert a claim at the time you submit the information, DNREC will treat the information according to the procedures in 7 **Del.C.**, Chapter 63 and the Hazardous Waste Disclosure Regulations. If you do not assert a claim at the time you submit the information, DNREC may make the information available to the public without further notice to you. DNREC will deny any requests for confidentiality of your name and/or address.

#### **Section 122.120 To whom must I submit my RAP application?**

You must submit your application for a RAP to the Secretary for approval.

**Section 122.125 If I submit my RAP application as part of another document, what must I do?**

If you submit your application for a RAP as a part of another document, you must clearly identify the components of that document that constitute your RAP application.

**Getting a RAP Approved****Section 122.130 What is the process for approving or denying my application for a RAP?**

(a) If the Secretary tentatively finds that your RAP application includes all of the information required by Section 122.110 and that your proposed remediation waste management activities meet the regulatory standards, the Secretary will make a tentative decision to approve your RAP application. The Secretary will then prepare a draft RAP and provide an opportunity for public comment before making a final decision on your RAP application, according to this subpart.

(b) If the Secretary tentatively finds that your RAP application does not include all of the information required by Section 122.110 or that your proposed remediation waste management activities do not meet the regulatory standards, the Secretary may request additional information from you or ask you to correct deficiencies in your application. If you fail or refuse to provide any additional information the Secretary requests, or to correct any deficiencies in your RAP application, the Secretary may make a tentative decision to deny your RAP application. After making this tentative decision, the Secretary will prepare a notice of intent to deny your RAP application ("notice of intent to deny") and provide an opportunity for public comment before making a final decision on your RAP application, according to the requirements in this Subpart. The Secretary may deny the RAP application either in its entirety or in part.

**Section 122.135 What must the Secretary include in a draft RAP?**

If the Secretary prepares a draft RAP, it must include the:

- (a) Information required under Section 122.110(a) through (f);
- (b) The following terms and conditions:
  - (1) Terms and conditions necessary to ensure that the operating requirements specified in your RAP comply with applicable requirements of Parts 264, 266, and 268 of these regulations (including any recordkeeping and reporting requirements). In satisfying this provision, the Secretary may incorporate, expressly or by reference, applicable requirements of Parts 264, 266, and 268 of these regulations into the RAP or establish site-specific conditions as required or allowed by Parts 264, 266, and 268 of these regulations;
  - (2) Terms and conditions in Section 122.30;
  - (3) Terms and conditions for modifying, revoking and reissuing, and terminating your RAP, as provided in Section 122.170; and
  - (4) Any additional terms or conditions that the Secretary determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and
- (c) If the draft RAP is part of another document, as described in Section 122.80(d)(2), the Secretary must clearly identify the components of that document that constitute the draft RAP.

**Section 122.140 What else must the Secretary prepare in addition to the draft RAP or notice of intent to deny?**

Once the Secretary has prepared the draft RAP or notice of intent to deny, he must then:

- (a) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;
- (b) Compile an administrative record, including:
  - (1) The RAP application, and any supporting data furnished by the applicant;
  - (2) The draft RAP or notice of intent to deny;

(3) The statement of basis and all documents cited therein (material readily available at DNREC or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis); and

(4) Any other documents that support the decision to approve or deny the RAP; and

(c) Make information contained in the administrative record available for review by the public upon request.

**Section 122.145 What are the procedures for public comment on the draft RAP or notice of intent to deny?**

(a) The Secretary must:

(1) Send notice to you of his intention to approve or deny your RAP application, and send you a copy of the statement of basis;

(2) Publish a notice of his intention to approve or deny your RAP application in a major local newspaper of general circulation;

(3) Broadcast his intention to approve or deny your RAP application over a local radio station; and

(4) Send a notice of his intention to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.

(b) The notice required by paragraph (a) of this section must provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within at least 45 days.

(c) The notice required by paragraph (a) of this section must include:

(1) The name and address of the office processing the RAP application;

(2) The name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;

(3) A brief description of the activity the RAP will regulate;

(4) The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;

(5) A brief description of the comment procedures in this section, and any other procedures by which the public may participate in the RAP decision;

(6) If a hearing is scheduled, the date, time, location and purpose of the hearing;

(7) If a hearing is not scheduled, a statement of procedures to request a hearing;

(8) The location of the administrative record, and times when it will be open for public inspection; and

(9) Any additional information the Secretary considers necessary or proper.

(d) If, within the comment period, the Secretary receives written notice of opposition to his intention to approve or deny your RAP application and a request for a hearing, the Secretary must hold an informal public hearing to discuss issues relating to the approval or denial of your RAP application. The Secretary may also determine on his own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Secretary must schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in paragraph (a) of this section. This notice must, at a minimum, include the information required by paragraph (c) of this section and:

(1) Reference to the date of any previous public notices relating to the RAP application;

(2) The date, time and place of the hearing; and

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

**Section 122.150 How will the Secretary make a final decision on my RAP application?**

(a) The Secretary must consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny, and revise your draft RAP based on those comments, as appropriate.

(b) If the Secretary determines that your RAP includes the information and terms and conditions required in Section 122.135, then he will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.

(c) If the Secretary determines that your RAP does not include the information required in Section 122.135, then he will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied.

(d) If the Secretary's final decision is that the tentative decision to deny the RAP application was incorrect, he will withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in this subpart.

(e) When the Secretary issues his final RAP decision, he must refer to the procedures for appealing the decision under Section 122.155.

(f) Before issuing the final RAP decision, the Secretary must compile an administrative record. Material readily available at DNREC or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final RAP must include information in the administrative record for the draft RAP (see Section 122.140(b)) and:

- (1) All comments received during the public comment period;
- (2) Tapes or transcripts of any hearings;
- (3) Any written materials submitted at these hearings;
- (4) The responses to comments;
- (5) Any new material placed in the record since the draft RAP was issued;
- (6) Any other documents supporting the RAP; and
- (7) A copy of the final RAP.

(g) The Secretary must make information contained in the administrative record available for review by the public upon request.

#### **Section 122.155 May the decision to approve or deny my RAP application be administratively appealed?**

(a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Secretary's decision to approve or deny your RAP application pursuant to 7 Del.C., Section 6313. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made pursuant to 7 Del. C., Section 6312. The Secretary will give public notice of any grant of review of RAPs by the DNREC Environmental Appeals Board through the same means used to provide notice under Section 122.145. The notice will include:

- (1) The briefing schedule for the appeal as provided by the Board;
  - (2) A statement that any interested person may file an amicus brief with the Board; and
  - (3) The information specified in Section 122.145(c), as appropriate.
- (b) This appeal is a prerequisite to seeking judicial review of these actions.

#### **Section 122.160 When does my RAP become effective?**

Your RAP becomes effective 30 days after the Secretary notifies you and all commenters that your RAP is approved unless:

- (a) The Secretary specifies a later effective date in his decision;
- (b) You or another person has appealed your RAP under Section 122.155 (if your RAP is appealed, and the request for review is granted under Section 122.155, conditions of your RAP are stayed according to Section 124.16 of these regulations); or
- (c) No commenters requested a change in the draft RAP, in which case the RAP becomes effective immediately when it is issued.

#### **Section 122.165 When may I begin physical construction of new units permitted under the RAP?**

You must not begin physical construction of new units permitted under the RAP for treating, storing or disposing of hazardous remediation waste before receiving a finally effective RAP.

### **How May my RAP be Modified, Revoked and Reissued, or Terminated?**

#### **Section 122.170 After my RAP is issued, how may it be modified, revoked and reissued, or terminated?**

In your RAP, the Secretary must specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of your RAP. These procedures must provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change your management of your remediation waste, or that otherwise merits public review and comment. If your RAP has been incorporated into a traditional hazardous waste permit, as allowed under Section 122.85(c), then the RAP will be modified according to the applicable requirements in Section Section 122.40 through 122.42, revoked and reissued according to the applicable requirements in Section Section 122.41 and 122.43, or terminated according to the applicable requirements of Section 122.43.

#### **Section 122.175 For what reasons may the Secretary choose to modify my final RAP?**

(a) The Secretary may modify your final RAP on his own initiative only if one or more of the following reasons listed in this section exist(s). If one or more of these reasons do not exist, then the Secretary will not modify your final RAP, except at your request. Reasons for modification are:

(1) You made material and substantial alterations or additions to the activity that justify applying different conditions;

(2) The Secretary finds new information that was not available at the time of RAP issuance and would have justified applying different RAP conditions at the time of issuance;

(3) The standards or regulations on which the RAP was based have changed because of new or amended statutes, standards or regulations, or by judicial decision after the RAP was issued;

(4) If your RAP includes any schedules of compliance, the Secretary may find reasons to modify your compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which you as the owner/operator have little or no control and for which there is no reasonably available remedy;

(5) You are not in compliance with conditions of your RAP;

(6) You failed in the application or during the RAP issuance process to disclose fully all relevant facts, or you misrepresented any relevant facts at the time;

(7) The Secretary has determined that the activity authorized by your RAP endangers human health or the environment and can only be remedied by modifying; or

(8) You have notified the Secretary (as required in the RAP under Section 122.30(l)(3)) of a proposed transfer of a RAP.

(b) Notwithstanding any other provision in this section, when the Secretary reviews a RAP for a land disposal facility under Section 122.195, he may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Parts 124, 260 through 266 and 122 of these regulations.

(c) The Secretary will not reevaluate the suitability of the facility location at the time of RAP modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

#### **Section 122.180 For what reasons may the Secretary choose to revoke and reissue my final RAP?**

(a) The Secretary may revoke and reissue your final RAP on his own initiative only if one or more reasons for revocation and reissuance exist(s). If one or more reasons do not exist, then the Secretary will not modify or revoke and reissue your final RAP, except at your request. Reasons for modification or revocation and reissuance are the same as the reasons listed for RAP modifications in Section 122.175(a)(5) through (8) if the Secretary determines that revocation and reissuance of your RAP is appropriate.

(b) The Secretary will not reevaluate the suitability of the facility location at the time of RAP revocation and reissuance, unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

**Section 122.185 For what reasons may the Secretary choose to terminate my final RAP, or deny my renewal application?**

The Secretary may terminate your final RAP on his own initiative, or deny your renewal application for the same reasons as those listed for RAP modifications in Section 122.175(a)(5) through (7) if the Secretary determines that termination of your RAP or denial of your RAP renewal application is appropriate.

**Section 122.190 May the decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed?**

(a) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may appeal the Secretary's decision to approve a modification, revocation and reissuance, or termination of your RAP, according to Section 122.155. Any person who did not file comments or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination, may petition for administrative review only of the changes from the draft to the final RAP decision.

(b) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may informally appeal the Secretary's decision to deny a request for modification, revocation and reissuance, or termination to DNREC's Environmental Appeals Board. Any person who did not file comments, or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination may petition for administrative review only of the changes from the draft to the final RAP decision.

(c) The process for informal appeals of RAPs is as follows:

(1) The person appealing the decision must send a letter to the Environmental Appeals Board. The letter must briefly set forth the relevant facts.

(2) The Environmental Appeals Board has 60 days after receiving the letter to act on it.

(3) If the Environmental Appeals Board does not take action on the letter within 60 days after receiving it, the appeal shall be considered denied.

(d) This informal appeal is a prerequisite to seeking judicial review of these DNREC actions.

**Section 122.195 When will my RAP expire?**

RAPs must be issued for a fixed term, not to exceed 10 years, although they may be renewed upon approval by the Secretary in fixed increments of no more than ten years. In addition, the Secretary must review any RAP for hazardous waste land disposal five years after the date of issuance or reissuance and you or the Secretary must follow the requirements for modifying your RAP as necessary to assure that you continue to comply with currently applicable hazardous waste requirements.

**Section 122.200 How may I renew my RAP if it is expiring?**

If you wish to renew your expiring RAP, you must follow the process for application for and issuance of RAPs in this subpart.

**Section 122.205 What happens if I have applied correctly for a RAP renewal but have not received approval by the time my old RAP expires?**

If you have submitted a timely and complete application for a RAP renewal, but the Secretary, through no fault of yours, has not issued a new RAP with an effective date on or before the expiration date of your previous RAP, your previous RAP conditions continue in force until the effective date of your new RAP or RAP denial.

**Operating Under Your RAP**

#### **Section 122.210 What records must I maintain concerning my RAP?**

You are required to keep records of:

- (a) All data used to complete RAP applications and any supplemental information that you submit for a period of at least 3 years from the date the application is signed; and
- (b) Any operating and/or other records the Secretary requires you to maintain as a condition of your RAP.

#### **Section 122.215 How are time periods in the requirements in this subpart and my RAP computed?**

(a) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event. (For example, if your RAP specifies that you must close a staging pile within 180 days after the operating term for that staging pile expires, and the operating term expires on June 1, then June 2 counts as day one of your 180 days, and you would have to complete closure by November 28.)

(b) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event. (For example, if you are transferring ownership or operational control of your site, and wish to transfer your RAP, the new owner or operator must submit a revised RAP application no later than 90 days before the scheduled change. Therefore, if you plan to change ownership on January 1, the new owner/operator must submit the revised RAP application no later than October 3, so that the 90th day would be December 31.)

(c) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day. (For example, if you wish to appeal the Secretary's decision to modify your RAP, then you must petition the Environmental Appeals Board within 30 days after the Secretary has issued the final RAP decision. If the 30th day falls on Sunday, then you may submit your appeal by the Monday after. If the 30th day falls on July 4th, then you may submit your appeal by July 5th.)

(d) Whenever a party or interested person has the right to or is required to act within a prescribed period after the service of notice or other paper upon him by mail, 3 days must be added to the prescribed term.

(For example, if you wish to appeal the Secretary's decision to modify your RAP, then you must petition the Environmental Appeals Board within 30 days after the Secretary has issued the final RAP decision. However, if the Secretary notifies you of his decision by mail, then you may have 33 days to petition the Environmental Appeals Board.)

#### **Section 122.220 How may I transfer my RAP to a new owner or operator?**

(a) If you wish to transfer your RAP to a new owner or operator, you must follow the requirements specified in your RAP for RAP modification to identify the new owner or operator, and incorporate any other necessary requirements. These modifications do not constitute "significant" modifications for purposes of Section 122.170. The new owner/operator must submit a revised RAP application no later than 90 days before the scheduled change along with a written agreement containing a specific date for transfer of RAP responsibility between you and the new permittees.

(b) When a transfer of ownership or operational control occurs, you as the old owner or operator must comply with the applicable requirements in Part 264, Subpart H (Financial Requirements), of these regulations until the new owner or operator has demonstrated that he is complying with the requirements in that subpart. The new owner or operator must demonstrate compliance with Part 264, Subpart H, of these regulations within six months of the date of the change in ownership or operational control of the facility or remediation waste management site. When the new owner/operator demonstrates compliance with Part 264, Subpart H, of these regulations to the Secretary, the Secretary will notify you that you no longer need to comply with Part 264, Subpart H, of these regulations as of the date of demonstration.

#### **Section 122.225 What must the State or EPA Region report about noncompliance with RAPs?**

The State must report noncompliance with RAPs according to the provisions of Section 122.5.

## **Obtaining a RAP for an Off-Site Location**

### **Section 122.230 May I perform remediation waste management activities under a RAP at a location removed from the area where the remediation wastes originated?**

(a) You may request a RAP for remediation waste management activities at a location removed from the area where the remediation wastes originated if you believe such a location would be more protective than the contaminated area or areas in close proximity.

(b) If the Secretary determines that an alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then the Secretary may approve a RAP for this alternative location.

(c) You must request the RAP, and the Secretary will approve or deny the RAP, according to the procedures and requirements in this subpart.

(d) A RAP for an alternative location must also meet the following requirements, which the Secretary must include in the RAP for such locations:

(1) The RAP for the alternative location must be issued to the person responsible for the cleanup from which the remediation wastes originated;

(2) The RAP is subject to the expanded public participation requirements in Section 124.31, 124.32, and 124.33 of these regulations;

(3) The RAP is subject to the public notice requirements in Section 124.10(c) of these regulations;

(4) The site permitted in the RAP may not be located within 61 meters or 200 feet of a fault which has had displacement in the Holocene time (you must demonstrate compliance with this standard through the requirements in Section 122.14(b)(11)) (See definitions of terms in Section 264.18(a) of these regulations);

Note to paragraph (d)(4): Sites located in political jurisdictions other than those listed in Appendix VI of Part 264 of these regulations, are assumed to be in compliance with this requirement.

### **Section 122.230**

(e) These alternative locations are remediation waste management sites, and retain the following benefits of remediation waste management sites:

(1) Exclusion from facility-wide corrective action under Section 264.101 of these regulations; and

(2) Application of Section 264.1(j) of these regulations in lieu of Part 264, Subparts B, C, and D, of these regulations.