ATTACHMENT

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Environmental Protection Agency

40 CFR Parts 260, 261 et al.
Resource Conservation and Recovery Act Burden Reduction Initiative; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 266, 268, 270, and 271

[RCRA–2001–0039; FRL–8047–3]

RIN 2050–AE50

Resource Conservation and Recovery Act Burden Reduction Initiative

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA), in accordance with the goals of the Paperwork Reduction Act (PRA), is promulgating changes to the regulatory requirements of the Resource Conservation and Recovery Act (RCRA) hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. EPA has estimated that the total annual hour savings under the final rule ranges from 22,000 hours to 37,500 hours per year. The total annual cost savings under the final rule ranges from approximately $2 million to $3 million. This rulemaking will streamline our information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained.

DATES: This final rule is effective on May 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–1999–0031. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA docket is (202) 566–0270.

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SUPPLEMENTARY INFORMATION:

General Information

A. Does This Action Apply to Me?

This rule applies to entities regulated under the Resource Conservation and Recovery Act, including manufacturing, transportation, utilities, the waste treatment industry, and the mineral processing industry. This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility, company, or business is regulated by this action, you should carefully examine 40 CFR parts 260 through 273. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Table of Contents

I. Statutory Authority

The U.S. Environmental Protection Agency (EPA) regulates the generation and management of hazardous waste under 40 CFR parts 260 through 273 using the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 *et seq.*

II. Background, Purpose, and Summary of Today's Action

As part of its hazardous waste regulations, EPA has established recordkeeping and reporting requirements that allow the Agency to enforce and ensure compliance with these regulations. In the Paperwork Reduction Act (PRA) 44 U.S.C. 3501, et seq, Congress directs all federal agencies to become more responsible and publicly accountable for reducing the burden of federal paperwork on the public. "Burden" is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency (44 U.S.C. 3502(2))t

Over the past five years, EPA has continued to assess and evaluate the need for the many recordkeeping and reporting requirements found in the RCRA hazardous waste program. In the course of this effort, we have identified numerous opportunities to eliminate or streamline RCRA requirements, while continuing to fulfill our mission of protecting human health and the environment.

Today's final rule changes a number of the regulatory requirements found in 40 CFR parts 260 through 271. These changes will bring about burden reductions to both the regulated community and the regulators and is a direct result of our consultations with a number of state experts on potential burden reduction ideas, as well as public input through two Notices of Data Availability and a Proposed Rulemaking.[1]

The regulatory changes contained in the Burden Reduction final rule will have no practical impact on the many protections that EPA has established over the years for human health and the environment. At the same time, this rule strives to relieve stakeholders of the burden of nonessential paperwork. The final rule clarifies certain requirements and eliminates or simplifies other requirements. We have eliminated paperwork requirements if they entail information that is obscure, inconsequential, or infrequently submitted to or used by regulators. Note, however, that the final rule does not curtail the right of regulatory agencies to request any information desired. Waste handlers must continue to keep on-site records of their waste management activities and make them available to regulators when requested. As such, the rule does not limit regulators' or the public's ability to learn what is happening at a facility.

To effectively present the large number of regulatory changes we are finalizing, we have divided these changes into ten categories or groups of changes; they are: (1) The amount of time records must be kept; (2) certification by a professional engineer; (3) option to follow the Integrated Contingency Plan Guidance; (4) option to follow the Occupational Safety and Health Administration (OSHA) regulations for emergency training; (5) clarifications and elimination of obsolete regulatory language; (6) elimination of selected recordkeeping and reporting requirements; (7) decreased self-inspection frequency for selected hazardous waste management units; (8) selected changes to the requirements for record retention and submittal of records; (9) changes to the requirements for document submittal; and (10) reduced frequency for report submittals. A summary of the major components of the final rule is presented in Table 1.

The preamble discussion follows the set of categories presented above (see also Table 1, "Summary of the Major Components and a Description of the Regulatory Changes Being Promulgated in Today's Burden Reduction Final Rule"). Within each category, we present the changes we are promulgating, along with a discussion of the comments received and our resolution of the major issues or concerns. At the conclusion of each section, we present comparative tables showing both the current regulatory requirement and the new requirement for the affected group, *i.e.*, generators; permitted hazardous waste treatment, storage, and disposal facilities; and interim status treatment, storage, and disposal facilities. Interim status regulations at 40 CFR Part 265 provide for the continued operation of an existing facility that meets certain conditions until final administrative disposition of the owner and operator permit application is made. Regulations for permit applications are found in 40 CFR part 270 and general standards for permitted facilities are found in 40 CFR part 264.

[1] The Notices of Data Availability were published in the **Federal Register** on June 18, 1999 (64 FR 32859) and October 29, 2003 (68 FR 61662). The Proposed Rulemaking was published in the **Federal Register** on January 17, 2002 (67 FR 2518).

TABLE 1.—SUMMARY OF THE MAJOR COMPONENTS AND A DESCRIPTION OF THE REGULATORY CHANGES BEING PROMULGATED IN TODAY'S BURDEN REDUCTION FINAL RULE

Regulatory change	Description of regulatory change
The amount of time records must be kept	Many of the recordkeeping requirements for treatment, storage and disposal facilities (TSDFs) mandate record retention for the life of the facility. In this final rule, we have reduced the length of time waste handlers must retain certain records on site to three years or five years for hazardous waste combustion units (e.g., operating record requirements at 40 CFR 264.73 and 265.73). We have also increased the record retention time for a selected number of documents for interim status facilities in cases where the notification requirement has been eliminated.
Certification by a professional engineer	Numerous regulations require generators and TSDFs to obtain an independent, qualified, registered, professional engineer's certification, as specified. We have changed certain RCRA certification requirements by taking out the terms "independent" and "registered."
Option to follow the Integrated Contingency Plan Guidance	Large Quantity Generators (LQGs) and TSDFs must have contingency plans to minimize hazards to human health and the environment from fires, explosions, or any unplanned release of hazardous waste to the environment. We have modified our RCRA regulations to indicate that these waste handlers may consider developing one comprehensive contingency plan based on the Integrated Contingency Guidance. This guidance provides a mechanism for consolidating the multiple contingency plans that waste handlers have to prepare to comply with various government regulations.
Option to follow Occuputional Safety and Health Administration (OSHA) regulations for emergency training.	LQGs and TSDFs must train their employees in emergency procedures. We have modified the RCRA regulations to allow waste handlers to have the option of complying with either the RCRA or OSHA requirements for emergency response procedures.
Clarifications and elimination of obsolete regulatory language	We are modifying specified regulatory language by and eliminating obsolete terms and/or rewording language to make it clearer. We are also providing regulatory clarifications to several LDR requirements.
Elimination of selected recordkeeping and reporting requirements	We have eliminated certain recordkeeping and reporting requirements in the RCRA regulations in order to eliminate submission of duplicative information and/or reporting unnecessary burden to waste handlers.
Decreased inspection frequency for hazardous waste management units.	Under many RCRA inspection requirements, we specify a frequency at which waste handlers must inspect their frequency for facility and equipment. We have reduced the self-inspection frequency for hazardous waste tank systems from daily to weekly, under certain conditions. In addition, EPA is allowing facilities in the National Performance Track Program to reduce their inspection frequencies, under certain conditions, up to monthly, on a case-by-case basis, for tank systems, containers, containment buildings, and areas subject to spills.
Selected changes to the requirements for record retention and submittal of records.	We are modifying certain requirements under which waste handlers must keep records on-site and submit these same records to EPA. We are specifying certain records that waste handlers need to keep only on-site.
Changes to the requirements for document submittal	We have eliminated several requirements to reduce the number of documents that are submitted to the Agency document for review.
Reduced frequency for report submittal	We have reduced the submittal frequency of certain documents (e.g., from semi-annual to annual).

III. What Burden Reduction Changes Are We Making?

A. Changes to the Amount of Time Records Must Be Kept

As a precautionary measure in promulgating the hazardous waste requirements in 1980, we mandated the retention of many kinds of records until facility closure, resulting in a tremendous volume of stored paperwork. Our experience in implementing the RCRA program has shown that this retention time is excessive, and a priority item for reduction.

1. We Are Reducing the Retention Time for Certain Information Kept in a Facility's Operating Record

We are changing a number of the operating record requirements under §§ 264.73 and 265.73 to reduce the record retention time to three years. Among other things, we are modifying the retention time limit for records on waste analyses; certain monitoring, testing and analytical data; waste determinations; selected certifications; and notifications.

We believe that these changes establish a more reasonable record retention time than the requirement to keep this information until closure of the facility.[2] The three-year record retention period is sufficient to enable regulators to monitor industry compliance and take enforcement actions as needed. In any event,

[2] Record retention times for all Agency programs vary, but in numerous instances have retention times shorter than the life of the facility. For example, the National Primary Drinking Water Regulations require records retention times of one, five, and twelve years (depending on the record). The National Emission Standards for Hazardous Air Pollutants, Subpart FF—National Emission Standards for Benzene Waste Operations requires a two-year records retention time.

§§ 264.74(b) and 265.74(b) require the retention period of any records to be extended automatically during the course of any unresolved enforcement action regarding the facility, or as requested by the Administrator.

We are not modifying the retention limit for records that contain the following information: (1) Description and quantity of each hazardous waste received and what was done with it; (2) location of each hazardous waste; (3) closure estimates; or (4) quantities of waste placed in land disposal units under an extension to the effective date of any land disposal restriction. The retention of this information is necessary to ensure protection of human health and the environment through the life of the facility, and until closure of the facility.

We believe that these changes will not affect the government's or the public's ability to know what is happening at a hazardous waste facility because a basic set of compliance information will still be available in the facility's records. The Agency will have access to the facility's operating record, which will contain many of the documents previously submitted to the Agency. Although the public does not generally have access to the facility's operating record, the Agency Director can require permitted facilities to establish and maintain a publicly accessible information repository at any time (see § 270.30 (m)). Similarly, facilities that are applying for permits may be required to establish and maintain an information repository. (See 124.33.)

In today's rule, we are also amending the regulatory language proposed for maintaining these records. In the proposed rule, we used the language, "maintain for three years after entry into the operating record." A commenter pointed out that some records, such as laboratory analytical results, stand alone in the laboratory records and are not actually "entered into the operating record." We recognize that this is an important distinction and are changing the regulatory language from the proposal to say "maintain for three years" instead of "maintain for three years after entry into the operating record." Also, a commenter pointed out that since monitoring and ground-water clean up is a multi-year or multi-decade task, these records should be kept until closure of the facilities. We agree, and are changing § 264.73(b)(6) and § 265.73(b)(6) accordingly.

We also received comments stating that we should not reduce our record retention requirements, because any particular record might be useful at some future point. This could be said of any requirement. In the Paperwork Reduction Act, Congress instructed us to set a higher standard for imposing an information collection requirement. We believe that information must have a demonstrable value. Based on our experience, we believe that we have identified those records that have the greatest potential impact on the protection of human health and the environment. Such records must be maintained until closure of the facility.

We also received questions in response to the proposed rule asking whether facilities must keep existing records, once generated and stored, until the date that was initially established for their disposal, even though we are changing that date with this rule. It would be burdensome for facilities to have two different sets of recordkeeping requirements, and difficult for EPA and the states to enforce a phase-out of recordkeeping. Therefore, we believe it is appropriate to maintain consistency and retain records until the date established by today's rule (or if the date is unchanged by this rule, to the original date (i.e., until closure of the facility)). Therefore, facilities may dispose of existing records consistent with today's rule, once the retention date established by today's rule becomes effective.

2. We Are Increasing the Retention Time for Certain Information Kept in an Interim Status Facility's Operating Record

In response to comments received, EPA is amending § 265.73(b)(6) and creating a new § 265.73(b)(15) to require retention in the operating record until closure of the facility, the ground-water quality assessment plans required under § 265.90 and § 265.93(d)(2), and ground-water quality assessment reports required under § 265.93(d)(5). Under today's rule, these plans are no longer required to be submitted to the Regional Administrator. Accordingly, EPA has decided that, in order to ensure protection of health and the environment, these records need to be available and, therefore, has amended the regulation to require that the information be maintained in the operating record until closure of the facility. EPA believes today's changes would result in no more burden to facility owners or operators for storage, since it is likely that any report submitted to the Agency would also be kept on-site by the facility. In other words, there would be no increase in burden over what is already being done.

3. We Are Establishing a Five-Year Record Retention Time for Information Kept on the Operation of Incinerators, Boilers, and Industrial Furnaces

Owners and/or operators of boilers and industrial furnaces (BIFs) are subject to compliance-related recordkeeping regulations. For example, BIFs must conduct emission tests to demonstrate compliance with the RCRA emission standards (such as certification of compliance tests), performance tests for their continuous emissions monitors, and retain these test reports on-site until closure of the facility. As a result of the emissions tests, BIFs also establish enforceable operating limits that must be achieved on a daily basis (such as hourly rolling average feed rate limits). BIFs are also required to record the daily operating data in their operating record for compliance purposes and make them available for inspection.

In the October 29, 2003 NODA (68 FR 61662), we solicited comment on amending the current record retention requirement for incinerator monitoring, testing and analytical data, from "for the life of the facility" to three years. We took this action because we had overlooked incinerators in the original proposal and maintain that their record retention requirements should be consistent with those for BIFs. This change for incinerators was supported by a majority of the commenters; however, some pointed out that the recordkeeping requirements for incinerators and BIFs should be consistent with those that the Agency promulgated on October 12, 2005 (70 FR 59402) for incinerators and the majority of BIFs under the Clean Air Act (CAA).[3]

We agree with these commenters and have decided for reasons of consistency with the CAA requirements, to finalize a five year record retention time for incinerators and BIFs. We are also promulgating the five year record retention time for BIFs (such as sulfur recovery furnaces) that will not be subject to the recently promulgated MACT standards.

One commenter that opposed any change to the record retention time stated that incinerators should keep all their data points for the life of the facility. The commenter asserted that the only information that a state inspector has to use during a violation are the data on the incinerator's parametric monitoring. They argued

[3] The Clean Air Act requires the Agency to develop rules to reduce Hazardous Air Pollutant emissions. The rules require the application of strict air emission controls based on performance of best technologies, the overall approach usually being referred to as maximum achievable control technology, or MACT.

that, in no case, should record retention be reduced if there are outstanding enforcement, non-compliance or legal issues pending.

For reasons cited earlier, we believe that modifying the record retention period for incinerators and BIFs to five years is appropriate. Regarding the commenter's point that records should be retained if there is an outstanding enforcement, non-compliance or legal action pending, the regulations already provide for this and nothing in today's rule would amend this provision. See §§ 264.74 and 265.74 which state:

> The record retention period for all records required under this part is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Administrator.

The following tables show the new retention times by facility for selected records. We have also included the recordkeeping requirements found in: (1) Section 264.73, Operating record; (2) Section 264.347, Monitoring and inspections; (3) Section 265.73, Operating record; (4) Section 266.102(e)(10), Permit standards for burners; and (5) Section 266.103(d) and (k), Interim status standards for burners.

TABLE 2.—REVISED RECORD RETENTION TIMES FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Record summary	Current retention time New retention time as amended by the burden reduction rule
264.73(b)(1)	Description and quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage or disposal at the facility.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(2)	The location of each hazardous waste within the facility and the quantity at each location.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(3)	Records and results of waste analyses and waste determinations.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(4)	Summary reports and details of all incidents that require implementing the contingency plan.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(5)	Records and results of inspections	Maintain for three years. No change in requirement.
264.73(b)(6)	Monitoring, testing, or analytical data corrective action	Maintain until closure of the facility. Maintain for three years, except for records and results pertaining to ground-water monitoring and cleanup, which must be maintained until closure of the facility.
264.73(b)(7)	For off-site facilities, notices to generators as specified in § 264.12(b).	Maintain until closure of the facility. Maintain for three years.
264.73(b)(8)	All closure cost estimates for disposal facilities, all post-closure cost estimates.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(9)	Waste minimization certification	Maintain until closure of the facility. Maintain for three years.
264.73(b)(10)	Records of the quantities and date of placement for each shipment of hazardous waste place in land disposal units under an extension to the effective date of any land disposal restriction granted.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(11)	For off-site treatment facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(12)	For on-site treatment facility, notices and certifications	Maintain until closure of the facility. Maintain for three years.
264.73(b)(13)	For off-site land disposal facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(14)	For on-site land disposal facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(15)	For off-site storage facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(16)	For on-site storage facility, notices and certifications	Maintain until closure of the facility. Maintain for three years.
264.73(b)(17)	Records required under § 264.1(j)(13)	Maintain until closure of the facility. Maintain for three years.
264.73(b)(18)	Monitoring, testing or analytical data where required by § 264.347.	Maintain until closure of the facility. Maintain for five years.
264.73(b)(19)	Certification as required by § 264.196(f)	No specified requirement. Maintain until closure of the facility.
264.347(d)	For incinerators: monitoring and inspection data	Maintain until closure of the facility. Maintain for five years.
266.102(e)(10)	For burners: recordkeeping	Maintain until closure of the facility. Maintain for five years.

TABLE 3.—REVISED RECORD RETENTION TIMES FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Summary record	Current retention time New retention time as amended by the burden reduction rule
265.73(b)(1)	Description and quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage or disposal at the facility.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(2)	The location of each hazardous waste within the facility and the quantity at each location.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(3)	Records and results of waste analyses and waste determinations.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(4)	Summary reports and details of all incidents that require implementing the contingency plan.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(5)	Records and results of inspections	Maintain for three years. No change in regulatory requirement.
265.73(b)(6)	Monitoring, testing, or analytical data and corrective action.	Maintain until closure of the facility. Maintain for three years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills which must be maintained until closure of the facility.
265.73(b)(7)	All closure cost estimates for disposal facilities, all post-closure cost estimates.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(8)	Records of the quantities and date of placement for each shipment of the hazardous waste place in land disposal units under an extension to the effective date of any land disposal restriction granted.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(9)	For off-site treatment facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(10)	For on-site treatment facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(11)	For off-site land disposal facility, notices and certifications from the generator.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(12)	For on-site land disposal facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(13)	For off-site storage facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(14)	For on-site storage facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(15)	Monitoring, testing, or analytical data, and corrective action where required by §§265.90, 265.93(d)(2), and 265.93(d)(5) of this part and certifications as required by §265.196(f).	Maintain until closure of the facility. No change in regulatory requirement.
266.103(d)	*Periodic Recertifications.* The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.	Every three years. Every five years.
266.103(k)	Interim status standards for burners: recordkeeping.	Maintain until closure of the facility. Maintain for five years.

B. Changes to the Professional Engineer Certification Requirements

Throughout the RCRA regulations, there are various requirements for the services of an independent, qualified, registered, professional engineer to certify the effectiveness of the design and operation of various hazardous waste management units. We proposed to add Certified Hazardous Materials Managers (CHMMs) as professionals qualified to make selected certifications. This proposed change was a result of comments received on our June 18, 1999 NODA (64 FR 32859). In response to this proposal, the Agency received significant comment, primarily requesting that we expand the category of persons allowed to provide the various certifications. Commenters argued that we were being arbitrary in proposing to allow only two professional disciplines (i.e., CHMMs and professional engineers) to certify hazardous waste management operations. Conversely, professional engineers strongly opposed the proposed change in the regulatory requirements. They suggested that

CHMMs were not qualified to certify the design, construction, and structural integrity of hazardous waste management units.

In addition, numerous states opposed the change on the grounds that their state laws allow only licensed engineers to make these certifications. State comments also pointed out that state licensing boards can investigate complaints of negligence or incompetence, on the part of professional engineers, and may impose fines and other disciplinary actions such as cease-and-desist orders or license revocation. According to commenters, similar controls do not exist for other professions. This personal liability of the professional engineer is one of the reasons why state commenters supported the idea that RCRA certifications should only be done by licensed professional engineers.

Other commenters suggested that, rather than deciding which professions are qualified to make certifications, we should establish an environmental professional performance standard based on membership in a recognized professional organization. In response to these comments, we solicited comment in our October 29, 2003 NODA to allow professionals accredited by organizations meeting the American Society for Testing and Materials (ASTM) E1929–98, Standard Practice for the Assessment of Certification Programs for Environmental Engineers: Accreditation Criteria to conduct a limited number of certifications, including: (1) Section 264.573(a)(4)(ii)(g), Drip Pads, Design and operating requirements; (2) Section 265.443(a)(4)(ii)(g), Drip Pads, Design and operating requirements; (3) Section 264.574(a), Drip Pads, Inspections; (4) Section 265.444(a), Drip Pads, Inspections; and (5) Section 266.111(e)(2), Boilers and Industrial Furnaces, Direct transfer equipment—requirements prior to meeting secondary containment requirements.[4]

Comments to the change described in the NODA were mixed. Some commenters supported this change in qualifications for selected certifications, while a number of states and professional organizations still strongly opposed allowing anyone other than a professional engineer to perform these certifications. While the Agency believes that added flexibility to the RCRA regulations is a goal worth pursuing, in this case, we are persuaded by the arguments presented by states with regard to these certifications and are not going forward with these changes at this time. Certifications for drip pads involve certifying engineering designs, drawings, plans and other engineering details, involving structural and hydraulic and other functions. As such, we believe that while there may be professionals other than professional engineers qualified to make these certifications, it is imperative that the goals of human health and the environmental protection are maintained. In reviewing the comments, we are not convinced that all environmental professionals certified by the ASTM standard would be qualified to perform these engineering evaluations. To this end, we are not going forward with allowing the changes to the drip pad certification requirements that would allow environmental professionals recognized by a certification program that is compliant with ASTM E–1929–98 Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria.

Although the Agency was not persuaded that ASTM board certified environmental professionals, including CHMMs, should be allowed to make the required RCRA certifications that were the subject of this rulemaking, the Agency wants to make it clear that facilities are still permitted to utilize qualified professionals who may not be professional engineers in performing the analyses that underlie these certifications. Facilities can potentially lower their costs by utilizing the flexibility to employ others as part of the certification requirement. For example, as part of the closure and post closure requirements, some CHMMs may be qualified to make certain determinations associated with these certifications to determine whether operations at the site will minimize hazards.

The Agency is sympathetic to the large number of comments by the CHMMs and other environmental professionals about unnecessary restrictions in the marketplace. However, EPA is retaining the professional engineering certification, in part, to allay state concerns about the need to monitor and control the activities of personnel that are now subject to state licensure control. Given, however, additional experience by the Agency with the utilization of other environmental professionals, EPA may re-examine this issue in the future.[5]

1. We Are Removing the "Independent" and "Registered" Requirements for Selected Certifications

Some commenters to the proposed rule suggested that we change the certification requirements by amending the qualifications required for the certification from "independent, qualified, registered, professional engineer" to "qualified professional engineer." That is, the commenters suggested it was not necessary for the professional engineer to be independent or registered. Commenters argued that the term "qualified professional engineer" retains the most important components of the requirement: (1) That the engineer be *qualified* to perform the task; and (2) that she or he be a professional engineer (following a code of ethics and the potential of losing his/her license for negligence).

In the October 29, 2003 NODA (68 FR 61662), EPA also solicited comment on changing the qualifications for who can certify the design, operation and closure of specific hazardous waste management units from "independent, qualified, registered, professional engineer" to "qualified professional engineer." We solicited comment on eliminating the requirement that the certifier be "independent," reasoning that we could rely on the professional standards of the certifier to ensure accurate certifications. This could potentially save expenses for companies with in-house engineers, since they would not have to hire outside consultants. State commenters strongly argued that the word "independent" should be retained because an independent review and certification avoids any potential of conflict of interest. Commenters stated that an employee of a facility would more likely have a biased approach to review and certification, and that state agencies would have less confidence in the accuracy and quality of review and

[4] After publication of the October 29, 2003 NODA, (see 68 FR 61662), EPA determined that the certification required by § 266.111(e)(2) had to be made by August 21, 1992. As such the Agency is not pursuing a change to this requirement in today's rulemaking, obviously because the date has passed.

[5] For example, in the All Appropriate Inquiries (AAI) rule published on November 1, 2005, (70 CFR 66070) EPA sets standards for CERCLA liability protection by establishing criteria that prospective property owners must use in the inquiries they conduct into the previous ownership, uses, and environmental conditions of a property prior to acquiring the property. The AAI rule differs from the RCRA burden reduction rule in that AAI does not in any way require the environmental professional to render any judgment or opinion regarding RCRA or CERCLA compliance or liability. AAI requirements include research activities and a site investigation similar to a Phase I environmental site assessment. It does not include compliance evaluation or an assessment of engineering or technical requirements (which may inherently require the expertise of an engineer or geologist).

certification. Furthermore, the commenters argued that the public would have reduced confidence in the accuracy and meaning of the engineering review and certification if it was conducted by an employee of the facility. The public would more likely suspect a conflict of interest and demand a more rigorous review by state agencies. Commenters also noted that a similar change, regarding whether to retain the term "independent" for professional engineers certifying closure, was proposed by EPA on March 19, 1985 (50 FR 11074). After receiving public comment, a final rule was issued on May 2,1986 with the term "independent" retained. In the preamble to the May 2, 1986 final rule, we stated that, because certification of final closure is the final step in the closure process and triggers the release of the owner or operator from financial responsibility requirements for closure and third party liability coverage requirements, we believed that the certification should be made by a person who is least subject to pressures to certify to the adequacy of a closure that, in fact, is not in accordance with the approved closure plan. Commenters also noted that in the October 9, 1991 **Federal Register**, EPA addressed concerns regarding proposed language that would have allowed a "qualified party" to perform closure and post closure certification. In that FR notice, we stated on page 51103:

> The Agency agrees with commenters that objective closure and post-closure certifications are essential for avoiding any potential conflicts of interest and ensuring protection of human health and the environment and that more specific requirements concerning the qualification of the certifying party are necessary to ensure the adequacy of the certification. We, therefore, are requiring in this final rule that certifications be obtained from independent, registered, professional engineers (i.e., registered professional engineers not in the employ of the owner or operator), consistent with requirements under subtitle C and other federally mandated certification programs (e.g., Clean Water Act grants).

Upon further analysis and reflection, we have decided to delete the independent qualification for certification made by a professional engineer. EPA continues to believe that this proposed modification retains the most important requirements: That the engineer is *qualified* to perform the task and is a professional engineer (i.e., licensed to practice engineering under the title Professional Engineer.) We believe that a professional engineer, regardless of whether he/she is independent is able to give fair and technical review because of the programs established by the state licensing boards. It is not clear to us that an in-house engineer faces a greater economic temptation than an independent engineer seeking to cultivate an ongoing relationship with a client. This is a central mission of state licensing boards. If certifications are provided when the facts do not warrant certification, the professional engineer is subject to penalties, including the loss of license and the possibility of fines. Furthermore, we are convinced that the change to the certification requirements will allow facilities to reduce burden without compromising environmental safety by using in-house expertise. Professional engineers employed by a facility are more familiar with its own particular situation and are in a position to provide more on-site review and oversight of the activity being certified.

We also solicited comment on removing the term "registered," explaining that based on our understanding of the term "registered" (one who is licensed by a state) the terms "registered," "licensed" and "professional" mean the same thing in the case of certifying the design, operation and closure of hazardous waste management units. Thus, using the terms "registered" and "professional" when defining the qualification of an engineer, in this context, is redundant. While the majority of the comments supported the change, agreeing that the term "registered" appears to be redundant and could be removed, several commenters were opposed to making the change. These commenters argued that the word "registered" is necessary to prevent confusion in the field, particularly among generators, that a license or registration is required. The Agency is unconvinced by this argument and maintains that the use of "registered" and "professional" as qualifications for engineers making these certifications is redundant and should be simplified.

As a final matter, we unintentionally failed to identify eight additional certification requirements that are part of this regulatory change, i.e., each contains one or a combination of the terms: independent, registered and/or professional when describing the qualifications of the engineer. These certifications include: (1) Section 264.193(h)(4)(i)(2), Tank Systems, Containment and detection of releases; (2) Section 265.193(h)(5)(i)(2), Tank Systems, Containment and detection of releases; (3) Section 264.554(c)(2), Staging Piles; (4) Section 264.1101(c)(2), Containment Buildings, Design and operating standards; (5) Section 265.1101(c)(2), Containment Buildings, Design and operating standards; (6) Section 270.14(a), Permit Application, Content of part B. General requirements; (7) Section 270.17(d) Permit Application, Specific part B information requirements for surface impoundments; and (8) Section 270.26(c)(15), Permit Application, Special part B information requirements for drip pads. EPA believes today's changes provide consistency to the certification requirements, i.e., removing the terms independent and registered. As such, we are finalizing these eight additional certification changes.

2. We Are Also Changing the Closure and Post-Closure Certification Requirements

In the October 29, 2003 NODA (68 FR 61662), we also solicited comment on amending the qualifications for selected closure and post-closure certifications to "qualified professional engineer." These certifications included: (1) Section 264.115, Closure and Post-Closure, Certification of closure; (2) Section 265.115, Closure and Post-Closure, Certification of closure; (3) Section 264.120, Closure and Post-Closure, Certification of completion of post-closure care; (4) Section 265.120, Closure and Post-Closure, Certification of completion of post-closure care; and (5) Section 264.280(b), Land Treatment, Closure and post-closure care.

During the development of today's final rule, we discovered that we incorrectly stated the required qualifications for engineers providing the closure and post-closure certifications, and we failed to identify one additional certification, § 265.280(e) Land Treatment, Closure and post-closure care, and six cross-reference citations to the original closure and post-closure certifications. These cross-references are: (1) Section 264.143(i), Financial Assurance for Closure, Release of the owner or operator from the requirements of this section; (2) Section 265.143(h), Financial Assurance for Closure, Release of the owner or operator from the requirements of this section; (3) Section 264.145(i), Financial Assurance for Post-Closure, Release of the owner or operator from the requirements of this section; (4) Section 265.145(h), Financial Assurance for Post-Closure, Release of the owner or operator from the requirements of this section; (5) Section 264.147(e), Liability Requirements, Period of coverage; and (6) Section 265.147(e), Liability Requirements, Period of coverage.

We incorrectly stated, in both the proposed rule and the October 29, 2003

NODA (68 FR 61662), the regulatory requirements for these certifications. In both these notices, we stated that the regulatory language for closure and post-closure certifications require an "independent, qualified, registered, professional engineer" to make the certifications. This is incorrect. The regulatory language for these certifications does not include the word "qualified;" the certifications language states that the certification must be made by an "independent, registered, professional engineer." Hence our proposed regulatory change to "qualified professional engineer" for these certifications was inaccurate and inconsistent with our other proposed certification requirements. In our view, this error was minor and does not change our position regarding the redundancy of using both "registered" and "professional," when defining the necessary certification qualifications. This error also does not change our position that all certifications should be conducted by a "qualified professional engineer" i.e., one that is qualified to perform the task and is a professional engineer (licensed/registered by the state and following a code of ethics and the potential of losing his/her license for negligence). As such, we are today amending all the closure and post-closure certification requirements to require qualified professional engineers to certify closure and post-closure.

Tables 4 and 5 identify the certifications that we are amending in today's rule for permitted and interim status treatment, storage and disposal facilities as needing a qualified (as in "qualified to perform the task") professional engineer.[6]

TABLE 4.—PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES NEEDING RCRA CERTIFICATIONS BY A QUALIFIED PROFESSIONAL ENGINEER

CFR section	New RCRA certification requirement (i.e., dropping "registered")
264.115	Closure and Post-Closure. Certification of closure.
264.120	Closure and Post-Closure. Certification of completion of post-closure care.
264.143(i)	Financial Assurance for Closure. Release of the owner or operator from the requirements of this section.
264.145(i)	Financial Assurance for Post-Closure. Release of the owner or operator from the requirements of this section.
264.147(e)	Liability Requirements. Period of coverage.
264.191(a), (b)(5)(ii)	Tank Systems. Assessment of existing tank system's integrity.
264.192(a), (b)	Tank Systems. Design and installation of new tank systems or components.
264.193(h)(4)(i)(2)	Tank Systems. Containment and detection of releases.
264.196(f)	Tank systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.
264.280(b)	Land Treatment. Closure and post closure care.
264.554(c)(2)	Staging Piles.
264.571(a),(b),(c)	Drip Pads. Assessment of existing drip pad integrity.
264.573(a)(4)(ii)	Drip Pads. Design and Operating Requirements.
264.573(g)	Drip Pads. Design and Operating Requirements.
264.574(a)	Drip Pads. Inspections.
264.1101(c)(2)	Containment Buildings. Design and operating standards.
270.14(a)	Permit Application. Content of part B. General requirements.
270.16(a)	Permit Application. Specific part B information requirements for tank systems.
270.26(c)(15)	Permit Application. Specific part B information requirements for drip pads.

TABLE 5.—INTERIM STATUS TREATMENT, STORAGE AND DISPOSAL FACILITIES NEEDING RCRA CERTIFICATIONS BY A QUALIFIED PROFESSIONAL ENGINEER

CFR section	New RCRA certification requirement (i.e., dropping "registered")
265.115	Closure and Post-Closure. Certification of closure.
265.120	Closure and Post-Closure. Certification of completion of post-closure care.
265.143(h)	Financial Assurance for Closure. Release of the owner or operator from the requirements of this section.
265.145(h)	Financial Assurance for Post-Closure. Release of the owner or operator from the requirements of this section.
265.147(e)	Liability Requirements. Period of coverage.
265.191(a), (b)(5)(ii)	Tank Systems. Assessment of existing tank system's integrity.
265.192(a), (b)	Tank Systems. Design and installation of new tank systems or components.
265.193(h)(5)(i)(2)	Tank Systems. Containment and detection of releases.
265.196(f)	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.
265.280(e)	Land Treatment. Closure and post closure care.
265.441(a), (b),(c)	Drip Pads. Assessment of existing drip pad integrity.
265.443(a)(4)(ii)	Drip Pads. Design and Operating Requirements.
265.443(g)	Drip Pads. Design and Operating Requirements.
265.444(a)	Drip Pads. Inspections.
265.1101(c)(2)	Containment Buildings. Design and operating standards.
270.14(a)	Permit Application. Content of part B. General requirements.
270.16(a)	Permit Application. Specific part B information requirements for tank systems.
270.26(c)(15)	Permit Application. Special part B information requirements for drip pads.

[6] In §§ 264.192(b) and 265.192(b), certifications may also be done by an independent, qualified installation inspector. Similarly, in § 264.280(b), this certification may be done by an independent, qualified soil scientist, in lieu of a qualified professional engineer.

C. Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities Have an Option of Following the Integrated Contingency Plan Guidance

We are amending §§ 264.52(b) and 265.52(b) of the RCRA regulations to provide owners and operators of hazardous waste treatment, storage, and disposal facilities the option of developing one contingency plan. EPA recommends that the plan be based on the integrated contingency plan guidance.[7] This guidance provides an excellent set of considerations for consolidating the multiple contingency plans that facilities have to prepare to comply with various government regulations. The use of a single plan per facility will eliminate the confusion for facilities that must decide which of the contingency plans is applicable to a particular emergency. In addition, a single plan will provide "first responders" (e.g., firemen) with a mechanism for complying with multiple regulatory requirements. The adoption of a standard plan should ease the burden of coordination with local emergency planning committees.

Today's rule clarifies our regulations (see §§ 264.52 and 265.52) by specifically authorizing combined plans, as well as clarifying that when modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

D. Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities Have an Option To Follow the RCRA or the Occupational Safety and Health Administration (OSHA) Standards for Emergency Response Training

We are revising §§ 264.16 and 265.16 to eliminate redundant emergency response training requirements under OSHA and RCRA regulations while still ensuring protectiveness.

EPA and the Occupational Safety and Health Administration (OSHA) have both promulgated regulations addressing worker activities and training at hazardous waste management facilities. While EPA's hazardous waste regulations focus on facility operations, worker training, OSHA focuses on worker safety. Both agencies require worker training.

While we were conducting our own review of potential overlaps between EPA and OSHA regulations, the Government Accountability Office[8] published in October 2000 a study on the issue. GAO suggested that the overlap in emergency training requirements diminishes the efficiency of the facility and creates unnecessary compliance costs. The GAO study pointed out that OSHA's regulations have specific training requirements for RCRA-permitted facilities to teach hazardous waste workers how to respond to emergencies under 29 CFR 1910.120(p). With the support of the GAO findings, EPA proposed to eliminate the RCRA emergency response training requirements in favor of the OSHA requirements.

While we received comments in support of the proposal, other commenters expressed particular concern that two of the RCRA emergency response training requirements are not covered in OSHA's requirements. (1) understanding key parameters for automatic waste feed cut-off systems; and (2) how to respond to ground-water contamination incidents. These commenters believe that the deletion of these two requirements would endanger the environment and human health in the area of RCRA facilities, in that adhering only to the OSHA requirements would mean that workers would not be trained in these areas.

This, however, is not EPA's intention. The final rule has been written to ensure that RCRA facilities are not required to provide separate training. We also note that facilities exempted from RCRA emergency response training would still have to comply with §§ 264.16(a)(1) and 265.16(a)(1), which state: "Facility personnel must successfully complete a program of classroom instruction or on-the-job-training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part."

OSHA's 29 CFR 1910.120 regulations require that employees understand and be able to perform the standard operating procedures that are part of their daily work. OSHA's 29 CFR 1910.38 Emergency Action Plan requirements include mandated training in procedures to be followed by employees who operate critical plant operations (such as responding to ground-water contamination incidents) during a spill or other emergency.

Other commenters opposed the proposal because OSHA's 29 CFR 1910 requirements are not as comprehensive as the RCRA requirements regarding the universe of facilities. Specifically, they stated that OSHA's regulations are not required for all hazardous waste generators (e.g., conditionally exempt small quantity generators under § 261.5 and small quantity generators under § 262.34) and certain treatment, storage, disposal facilities (e.g., municipal, state and federal owned and operated facilities.) We agree, and facilities not subject to OSHA training requirements would have to comply with the RCRA training requirements.

To ensure that all facilities are covered and that there are no gaps in the emergency response training requirements, we are providing flexibility by allowing facilities to eliminate redundant emergency response training requirements under RCRA and OSHA requirements (as opposed to the proposed rule's approach of requiring facilities to follow only the OSHA regulations). For example, if a facility can meet all of the RCRA emergency response training requirements through an OSHA training course, we would consider the facility in compliance with the regulation. On the other hand, if a facility cannot meet the emergency response training requirements through an OSHA training course, then it would be incumbent upon that facility to address any gaps (for example, if OSHA did not include automatic waste feed cut-off training, there would not be a problem as long as appropriate training occurs, such as combustor staff receives this training as part of its RCRA training.) Facilities not subject to OSHA training requirements would have to comply with the RCRA training requirements. We believe that this is a reasonable accommodation for all facilities.

Generators and owners/operators of treatment, storage, and disposal facilities should work with the appropriate permitting and/or enforcement authority to ensure that the approach they take in developing an emergency response training program is in compliance with the requirements of §§ 264.16 and 265.16.

[7] In 1996, EPA, in conjunction with the Department of Transportation, the Department of the Interior, and the Department of Labor, issued the Integrated Contingency Plan Guidance. This guidance provides a mechanism for consolidating the multiple contingency plans that facilities have to prepare to comply with various government regulations. Owners and operators of hazardous waste facilities can develop one contingency plan based on this Guidance. The Integrated Contingency Plan can be found at 61 FR 28641, June 5, 1996 or on the Internet at *http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/serc-lepc-publications.htm.*

[8] Formerly the United States General Accounting Office.

E. We Are Clarifying Selected Requirements Under RCRA's Land Disposal Restrictions and Eliminating Obsolete Regulatory Language

1. We Are Clarifying the Regulatory Language on the Land Disposal Restrictions Generator Waste Determination

We proposed eliminating § 268.7(a)(1) that requires, among other things, that generators conduct a waste determination for purposes of complying with the Land Disposal Restrictions (LDRs). Section 268.7(a)(1) requires generators to determine if hazardous waste must be treated prior to land disposal. This determination can be made either through testing or using the generator's knowledge of the waste's properties and constituents. We suggested that a combination of two other requirements provided the same safeguards as § 268.7(a)(1), making it redundant. First, a determination of whether a waste is hazardous is required by 40 CFR 262.11, which says that generators of solid waste must determine whether a waste is hazardous. Second, § 264.13(a)(1) requires treatment, storage, and disposal facilities (TSDFs) to perform a general waste analysis to determine "all of the information which must be known to treat, store, or dispose of the waste in accordance with this Part and Part 268 of this chapter". We suggested that these other determinations are sufficient to assure that a waste is properly characterized for achieving compliance with the LDRs.

Some commenters supported deleting this waste analysis requirement, stating, generally, that they supported the Agency's efforts to reduce redundant testing requirements. We agree with these comments with respect to reducing redundant testing requirements and are adding a cross reference in § 268.7(a)(1) to § 262.11, in order to clarify that these two generator waste analysis functions can be performed concurrently, thus avoiding redundant waste analysis.

Commenters who opposed deleting the generator LDR waste analysis requirement, however, were persuasive in their argument that the deletion of § 268.7(a)(1) would not really result in burden reduction. Rather, it would merely shift the burden from the generator to the TSDF. While TSDFs have a separate LDR waste analysis requirement under § 264.13(a)(1), they often rely—at least in part—on determinations or information provided by the generator.

Commenters further asserted that if TSDFs have to assume full responsibility for the LDR waste analysis requirement, it would be more expensive overall, because generators can use their knowledge of the waste in determining how LDRs apply to a waste, while the TSDF would not have that background and would have to perform much more extensive waste analysis.

We agree with these comments, and have determined that we need to maintain the LDR generator waste analysis requirement of § 268.7(a)(1). Thus, today's rule, rather than eliminating paragraph § 268.7(a)(1), amends paragraph § 268.7(a)(1), to avoid duplication and clarify that the two generator waste analysis functions can be performed concurrently. However, in order to provide maximum flexibility to generators, we also are clarifying that if a generator does not want to determine, based on waste analysis or knowledge of the waste, whether the waste must be treated, he may assume that he is subject to the full array of LDR requirements. The generator then must send the waste to a RCRA-permitted hazardous waste treatment facility where the treatment facility must make the determination when the waste has met the treatment standards of LDR (possibly even upon receipt as generated.) A conforming change is also being made to the notification in § 268.7(a)(2) for such cases.

2. We Are Clarifying the Regulatory Language on the Land Disposal Restrictions Characteristic Waste Determination Requirement

We proposed to eliminate the separate waste analysis requirement (§ 268.9(a)) for generators of characteristic hazardous wastes under the land disposal restrictions, in order to parallel the proposed changes to § 268.7(a)(1) that are discussed above.

Some commenters supported deleting this waste analysis requirement, stating, generally, that they supported the Agency's efforts to reduce redundant testing requirements. We agree with these comments with respect to reducing redundant testing requirements and are adding a cross reference in § 268.9(a) to § 262.11, in order to clarify that these two generator waste analysis functions can be performed concurrently, thus avoiding redundant waste analysis.

Commenters who opposed deleting the generator LDR waste analysis requirement, however, were persuasive in their argument that the deletion of § 268.9(a) would not really result in burden reduction. Rather, it would merely shift the burden from the generator to the TSDF. While TSDFs have a separate LDR waste analysis requirement under § 264.13(a)(1), they often rely—at least in part—on determinations or information provided by the generator. Commenters further asserted that if TSDFs have to assume full responsibility for the LDR waste analysis requirement, it would be more expensive overall, because generators can use their knowledge of the waste in determining how LDRs apply to a waste, while the TSDF would not have that background and would have to perform much more extensive waste analysis. We agree with these comments, and have determined that we need to maintain the LDR generator waste analysis requirement of § 268.9(a). Thus, today's rule, rather than eliminating paragraph § 268.9(a), amends paragraph § 268.9(a), to avoid duplication and clarify that the two generator waste analysis functions can be performed concurrently.

3. We Are Removing Obsolete Regulatory Language

We are deleting seventeen RCRA requirements because they are no longer applicable or have an expiration date that has passed. Except as noted below, we received no negative comments on these proposed changes.

In the proposed rule, we suggested amending §§ 264.193(a) and 265.193(a), arguing that the language was obsolete. However, the proposal inadvertently deleted paragraphs (1) and (5) of §§ 264.193(a) and 265.193(a). These paragraphs specify what tanks are required to have secondary containment, and in the case of tanks managing newly regulated waste, how soon secondary containment must be provided. We are correcting this mistake by finalizing the deletion of only §§ 264.193 (a)(2),(3), and (4) and 265.193(a)(2), (3), and (4) and clarifying the requirements in §§ 264.193(a)(5) and 265.193(a)(5). Tables 6, 7, and 8 summarize the changes being finalized today.

TABLE 6.—REGULATORY CLARIFICATION BEING MADE FOR LAND DISPOSAL RESTRICTIONS TESTING, TRACKING, AND RECORDKEEPING REQUIREMENTS FOR GENERATORS, TREATERS, AND DISPOSAL FACILITIES

CFR section	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
268.7(a)(1)	(a) Requirements for generators: (1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in §268.40, §268.45, or §268.49. This determination can be made in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods of Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as referenced in §260.11 of this chapter, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in §268.40, and are described in detail in §268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contamination with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of §268.9 of this part in addition to any applicable requirements in this section. (a) Requirements for generators: (1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in §268.40, §268.45, or §268.49. This determination can be made concurrently with the hazardous waste determination required in §262.11 of this chapter, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods of Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, incorporated by reference (see §260.11 of this chapter), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of §264.13 of this chapter and §268.7(b) of this part.) In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in §268.40, and are described in detail in §268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of §268.9 of this part in addition to any applicable requirements in this section.
268.7(a)(2)	If the waste or contaminated soil does not meet the treatment standards: With the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in 268.7(a)(4). No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file. If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in 268.7(a)(4). (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.") No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.
268.9(a)	(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (Part 261, Subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (Part 261, Subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of §268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at §268.2(i)) in the characteristic waste.

TABLE 6.—REGULATORY CLARIFICATION BEING MADE FOR LAND DISPOSAL RESTRICTIONS TESTING, TRACKING, AND RECORDKEEPING REQUIREMENTS FOR GENERATORS, TREATERS, AND DISPOSAL FACILITIES—Continued

CFR section	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
	(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. This determination may be made concurrently with the hazardous waste determination required in § 262.11 of this chapter. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (Part 261, Subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (Part 261, Subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

TABLE 7.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory requirement as amended by the Burden Reduction Rule
264.193(a)(2)	Tank Systems: Containment and detection of releases.	For all existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987. Section 264.193(a)(2) is being deleted.
264.193(a)(3)	Tank Systems: Containment and detection of releases.	For those existing tank systems of known and documented age, within two years after January 12, 1987 or when the tank system has reached 15 years of age, whichever comes later. Section 264.193(a)(3) is being deleted.
264.193(a)(4)	Tank Systems: Containment and detection of releases.	For those existing tank systems for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later. Section 264.193(a)(4) is being deleted.
264.251(c)	Waste Piles: Design and operating requirements.	The owner or operator of each new waste pile unit on which construction operating commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in section 260.10 under "existing facility". The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.
264.314(a)	Land fills: Special requirements for bulk and containerized liquids.	Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985. Section 264.314(a) is being deleted.
264.314(b)	Landfills: Special requirements for bulk and containerized liquids.	Effective May 8, 1995, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.
264.314(f)	Land Fills: Special requirements for bulk and containerized liquids.	Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that: The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:
264.1100	Containment Buildings. Applicability.	The requirements of ths subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. These provisions will become effective on February 18, 1993, although owner or operator may notify the Regional Administrator of his intent to be bound by this subpart at an earlier time. The owner or operator is not subject to the definition of land disposal in RCRA § 3004(k) provided that the unit: The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA § 3004(k) provided that the unit:

TABLE 7.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory requirement as amended by the Burden Reduction Rule
264.1101(c)(2)	Containment Buildings. Design and Operating Standards.	Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. Obtain and keep on-site a certification by a qualified professional engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

TABLE 8.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory requirement as amended by the Burden Reduction Rule
265.193(a)(2)	Tank Systems: Containment and detection of releases.	For all existing tank systems used to and store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987. Section 265.193(a)(2) is being deleted.
265.193(a)(3)	Tank Systems: Containment and detection of releases.	For those existing tank systems of known and documentable age, within two years after January 12, 1987, or when the tank system has reached 15 years of age, whichever comes later. Section 265.193(a)(3) is being deleted.
265.193(a)(4)	Tank Systems: Containment and detection of releases.	For those existing tank systems for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later. Section 265.193(a)(4) is being deleted.
265.314(a)	Land Fills: Special requirements for bulk and containerized liquids.	Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985. Section 265.314(a) is being deleted.
265.314(b)	Land Fills: Special requirements for bulk and containerized liquids.	Effective May 8, 1995, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.
265.314(g)	Land Fills: Special requirements for bulk and containerized liquids.	Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that: The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:
265.1100	Containment Buildings. Applicability.	The requirements of ths subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. These provisions will become effective on February 18, 1993, although owner or operator may notify the Regional Administrator of his intent to be bound by this subpart at an earlier time. The owner or operator is not subject to the definition of land disposal in RCRA § 3004(k) provided that the unit: The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA § 3004(k) provided that the unit:
265.1101(c)(2)	Containment Buildings. Design and Operating Standards.	Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. Obtain and keep on-site a certification by a qualified professional engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

TABLE 8.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory requirement as amended by the Burden Reduction Rule
265.221(a)	Surface Impoundments: Design and operating requirements.	The owner or operator of each new surface impoundment unit on which construction commences after January operating 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with §264.221(c), unless exempted under §264.221 (d), (e), or (f) of this chapter. "Construction commences" is as defined in §260.10 under "existing facility". The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of an existing surface impoundment unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with §264.221(c), unless exempted under §264.221(d), (e), or (f) of this chapter.
265.301(a)	Land Fills: Design and operating requirements.	The owner or operator of each new and operating landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with §264.301 (d), (e), or (f) of this chapter. "Construction commences" is as defined in §260.10 under "existing facility." The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal system, in accordance with §264.301 (d), (e), or (f) of this chapter.

F. We Are Eliminating Selected Recordkeeping and Reporting Requirements That We Believe Provide Duplicative Information to EPA

1. We Are Eliminating the Requirement for Facilities To Notify That They Are in Compliance After a Release

We received comments that both supported and opposed the elimination of the notifications required by §§ 264.56(i) and 265.56(i). These notifications require the facility owner or operator to notify the Regional Administrator and appropriate state and local authorities after an emergency action has taken place, and that the facility is in compliance with §§ 264.56(h) and 265.56(h), respectively. Sections 264.56(h) and 265.56(h) require the facility emergency coordinator to ensure that no wastes that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed, and that emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed. Several commenters generally supported the elimination of these notification provisions. Other commenters were opposed to eliminating these provisions because they thought that it was prudent for the regulatory agency to receive notification that a facility was ready to again manage hazardous waste after emergency measures were implemented and releases were cleaned up.

We have decided to finalize the elimination of this notification provision. The Regional Administrator and appropriate state and local authorities will still be getting a report 15 days after the emergency incident (as required in §§ 264.56(j) and 265.56(j)). This report will specify the details of the incident that required implementation of the contingency plan. In most cases, the incident is likely to be relatively minor, and operations may even be ready for resumption with the 15 days. The actions to be taken (*i.e.*, not handling incompatible waste and cleaning emergency equipment) are straightforward and it is not clear what value a simple notification would add. On the other hand, in major incidents the state would likely send personnel on-site and would be in a position to ensure that an appropriate response was taken before operations resumed. Therefore, we have decided to eliminate this notification requirement.

2. We Are Eliminating the Requirement for Facilities To Notify of Their Intent To Burn F020, F021, F022, F023, F026, and F027 Wastes

We proposed to eliminate the notification of intent to burn hazardous dioxin/furan wastes listed as F020, F021, F022, F023, F026 and F027. We viewed this as an unnecessary requirement because the facility is already permitted to burn these wastes, and there are already regulatory standards governing how the waste is burned.

Commenters generally supported our proposed change. Therefore, we are removing the notification requirement.

We inadvertently proposed to remove the entire paragraph (a)(2) of § 264.343. We are merely removing the last sentence that referred to the notification of intent to burn listed dioxin/furan wastes.

3. We Are Eliminating the Requirement for Facilities To Notify if They Employ or Discontinue Use of the Alternative Valve Standard

The regulations in Subpart BB of RCRA deal with air emission standards for equipment leaks. They apply to owners and operators of facilities that treat, store, or dispose of hazardous waste with equipment that contains or

contacts hazardous waste with organic concentrations of at least 10 percent by weight. We proposed to eliminate the requirement for submitting notifications to the Regional Administrator with regard to the implementation of the alternative standards for valves in gas/vapor service or in light liquid service. Under the current regulations in §§ 264.1061(b)(1), (d) and 265.1061(b)(1) and (d), if an owner or operator decides to either: (1) Implement the alternative standard or (2) discontinue the use of the alternative standard, a written notification must be sent to the Regional Administrator. In the proposed rule, we stated that these notifications were an unnecessary requirement because §§ 264.1061(b)(2) and 265.1061(b)(2) require performance tests to be conducted (upon designation, annually, and as requested by the Regional Administrator) and their results kept on site once a decision is made to use the alternative valve standard. Several commenters disagreed with our position and suggested that facilities need to notify regulators when they elect to use alternative standards. Commenters further stated that without knowledge of the specification that facilities are using, regulators may not be able to effectively administer the standards and that this information may be required for regulators to address various permitting, compliance and enforcement actions at the facility. We remain unconvinced that these notifications are an essential element in our regulatory compliance regime. While we understand the commenters concerns, we believe that sufficient information and data will be available to the regulatory authority to monitor compliance with an alternative standard without these notifications.

4. We Are Eliminating the Requirement for Facilities To Notify if They Are Using Alternative Valve Work Practices

We proposed to eliminate the requirement to submit a notification to the Regional Administrator before implementing one of the alternative work practices specified in §§ 264.1062(b)(2) and (3) and 265.1062(b)(2) and (3). Under the current regulations, an owner or operator may elect to comply with one of two alternative work practices specified in the regulations. These alternatives are: (1) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods (*i.e.*, monitor for leaks once every six months) for the valves; or (2) after five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may be begin to skip three of the quarterly leak detection periods (*i.e.*, monitor for leaks once every year) for the valves.

The majority of the commenters agreed with the proposal. One commenter, however, argued that some technical review by the Agency should be warranted to approve this alternative standard. Upon review of the comment, we are unconvinced that the implementation of this alternative work practice needs technical review or oversight by the regulated authority. The alternative work practices described in the regulations are straightforward and the results of the leak detection periods will be maintained in the facility files as required under the recordkeeping requirements found in § 264.1064. Therefore, we are eliminating the need for these notifications.

TABLE 9.—RECORDKEEPING AND REPORTING REQUIREMENTS BEING DELETED FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL, FACILITIES

CFR section	Regulatory requirement
Deletion to 264.56	Contingency Plan and Emergency Procedures. Emergency Procedures.
264.56(i)	Notify Regional Administrator that facility is in compliance with § 265.56(h) (which requires that no waste that may be incompatible with the released material will be treated, stored, or disposed until cleanup is completed, and emergency equipment is made ready for use again) before resuming operations.
Deletion to 264.343	Incinerators. Performance standards.
264.343(a)(2)	Submit notification of intent to burn hazardous wastes F020, F021, F022, F023, F026, and F027.
Deletions to 264.1061	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
264.1061(b)(1)	Submit notification to implement the alternative valve standard
264.1061(d)	Submit notification to discontinue the alternative valve standard.
Deletion to 264.1062	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service; skip period leak detection and repair.
264.1062(a)(2)	Submit notification to implement alternative work practices for valves.

TABLE 10.—RECORDKEEPING AND REPORTING REQUIREMENTS BEING DELETED FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement
Deletion to 265.56	Contingency Plan and Emergency Procedures. Emergency Procedures.
265.56(i)	Notify Regional Administrator that facility is in compliance with § 265.56(h) (which requires that no waste that may be incompatible with the released material will be treated, stored, or disposed until cleanup is completed, and emergency equipment is made ready for use again) before resuming operations.
Deletions to 265.1061	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
265.1061(b)(1)	Submit notification to implement the alternative valve standard.
265.1061(d)	Submit notification to discontinue the alternative valve standard.
Deletion to 265.1062	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service; skip period leak detection and repair.
265.1062(a)(2)	Submit notification to implement alternative work practices for valves.

G. We Are Permitting Decreased Inspection Frequency for Certain Hazardous Waste Management Units

RCRA regulations require generators and treatment, storage and disposal facilities to self-inspect their facilities to ensure that they are in compliance. The regulations include both facility-wide and unit- and equipment-specific inspection standards. Some of RCRA's regulations specify the inspection frequency.

Self-inspections are a vital component of an effective regulatory system. We recognize however, that the frequency of inspections has been a concern, and that in most cases (particularly where alternative approaches are employed) facilities are able to carry out formal inspections less frequently without sacrificing human health and environmental protection.

The Agency proposed a reduction in tank self-inspection frequency from daily to weekly for large quantity generator tanks and treatment, storage and disposal facilities. We also solicited comment on allowing further reduced inspection frequencies, on a case-by-case basis (as approved by the Regional Administrator or the state Director, as the context requires, or an authorized representative), for containers, containment buildings, and tanks. However, this proposal required that these inspections occur at least monthly. In proposing these changes, we suggested that decreased inspection frequencies should be based on factors such as: (1) A demonstrated commitment by facility management to sound environmental practices; (2) achievement of good management practices over the history of the facility—that is, having a record of sustained compliance with environmental laws and permit requirements; (3) a demonstrated commitment to continued environmental improvement; (4) a demonstrated commitment to public outreach and performance reporting; (5) the installation of automatic monitoring devices at the facility; and (6) the risk posed by the waste managed in the unit.

Many commenters supported the change from a daily to weekly inspection frequency for tanks. Commenters pointed out that the integrity and safety of hazardous waste tanks would not be compromised by reducing the daily inspection requirement to a weekly frequency. Several other commenters pointed out that hazardous waste storage tanks, which have secondary containment, are even more protectively designed than process tanks which handle the same chemicals. Other commenters, however, did not support any decrease in inspection frequency because of concerns that if inspection frequencies were decreased, the amount of time between a leak and its discovery would increase.

With regard to extending even further the inspection frequency, to at least once each month on a case-by-case basis, we received comments from the states expressing concern over the added administrative burden in implementing case-by-case changes to inspection frequencies.

Based on the comments from the proposed rule, we reconsidered whether to make case-by-case reduced inspections available to all generators because of the burden it might impose on authorized states to evaluate compliance with the criteria. In the October 29, 2003 NODA (68 FR 61662), we proposed reduced inspection frequencies, granted on a case-by-case basis, only for members of the National Environmental Performance Track Program, stating that, at a minimum, we believe that providing relief is appropriate for companies that are demonstrated "good performers." [9]

In the NODA, we also clarified that the reduced inspection frequency for tanks was intended to apply not just to the tanks, but to the complete tank systems, which include piping, pumps, valves and other associated equipment, also known as ancillary equipment (see §§ 264.193(f) and 265.193(f)). We also asked for comment on expanding the change to include tanks, not only at large quantity generator sites, but small quantity generator sites as well (see § 265.201(c)). Furthermore, we solicited comment on extending the reduced inspection frequencies, granted on a case-by-case basis, to areas subject to spills (see §§ 264.15(b)(4) and 265.15(b)(4)). We solicited comment on whether to grant this relief only to members of the National Environmental Performance Track Program in that we believe the risk from this change would be minimal at facilities that have met the requirements to be accepted into this program.

1. We Are Establishing Weekly Inspections for Certain Hazardous Waste Tank Systems at Permitted and Interim Status Facilities and at Large Quantity Generator Sites

We are changing the self-inspection frequencies for tank systems from daily to weekly at permitted and interim status treatment, storage and disposal facilities, as well as for large quantity generator (LQG) tank systems that are operated under certain conditions. Changing inspections for small quantity generator (SQG) tanks is discussed in section III.G.2 of this preamble. Tank system, as defined in § 260.10, means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system. The requirements for permitted, interim status, and LQG tank systems appear in §§ 264 and 265, subpart J. Daily inspections enable tank systems, subject to subpart J, to comply with the §§ 264.193(c) and 265.193(c) requirements to detect leaks and spills within 24 hours.

Our rule reduces inspections for: (1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and (2) the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). Reduced inspections will be allowed when either of two conditions are met: (1) Tank owners and operators employ leak detection equipment; or (2) in the absence of leak detection equipment, tank owners and operators employ established workplace practices that ensure that when any leaks or spills occur, they will be promptly identified, and promptly remediated. Owners and operators choosing one of these options to reduce inspection frequencies should document the option selected in their operating record. If the option selected is "established workplace practices," the owner and/or operator should document those practices in the facility's operating record.

Leak detection equipment must meet the respective requirements of §§ 264.193(c)(3) and 265.193(c)(3). It should be designed to alert facility personnel promptly to the presence of any leaks or spills (e.g., alarm systems) so that emergency and/or remedial action can be taken. (The existing subpart J tank regulations require secondary containment systems to be

[9] The National Environmental Performance Track Program is a voluntary EPA program that recognizes and rewards private and public facilities that demonstrate strong environmental performance beyond current requirements. The program is based on the premise that government should complement its existing programs and regulations with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing cost and spurring innovation. For more information and a closer look at the activities and accomplishments of Performance Track members to date, as well as member's goals for future achievements, please refer to the program Web site at *http://www.epa.gov/performancetrack*.

designed and operated to detect releases within 24 hours.) Leak detection systems were described in the proposed rule (67 FR 2527). But, while subpart J requires releases to be detected within 24 hours, the regulations do not specify the method of leak detection systems that must be used. For example, some facilities use daily visual inspections as a method of leak detection for their aboveground tanks, which is an acceptable practice. However, under the current tank system regulations, absent daily visual inspections, leak detection equipment that promptly notifies facility personnel of leaks or spills, must be used.

In the absence of leak detection equipment, established workplace practices must ensure that when any leaks or spills occur, they will be promptly identified and promptly remediated in compliance with §§ 264.193(c)(3) and (4) and 265.193(c)(3) and (4). When we say "established workplace practices," we mean practices that are documented and that describe how the facility is operated. (An example of established workplace practices could be the presence of an Environmental Management System that includes plans and practices to ensure that any releases are promptly identified, contained, and cleaned up.) Established workplace practices will most likely be put in place in situations, like that described by a state commenter, where aboveground tanks without leak detection exist and daily visual monitoring is the most common method of leak detection used. In cases such as these, lacking leak detection equipment, owners or operators would need to use workplace practices to identify releases, if they choose to reduce their inspection frequency.

A number of commenters noted that reducing inspection frequencies of §§ 264.195 and 265.195 should only be done if secondary containment is equipped with leak detection that notifies response personnel if releases occur. We partially agree with the commenters; however, as noted earlier, the rule also allows the facility operator to institute work practices to ensure prompt detection of a release. For example, if the tank system is in an area frequented by employees, where releases will be immediately obvious, all employees might be trained to watch for releases and report them. In other situations, an employee might be assigned to check secondary containment on a daily basis without conducting a full tank system "inspection."

We received several comments from industry that the current daily inspection requirements are a large burden for the regulated community, and that weekly inspections would provide welcome relief. One commenter noted that the majority of printers that have tanks for collecting hazardous waste have small tanks and they are generally located indoors. Any release from the tank would be detected almost immediately and the extension of mandatory inspection frequency would greatly reduce the administrative burden associated with using these types of collection tanks. In this case, the facility might not have leak detection equipment, but standard work practices might require all employees to notify appropriate facility personnel if they observe a release from the tanks. Given the nature of the facility described by the commenter, this would likely constitute a work practice sufficient to ensure prompt detection of a release. Conversely, we also received other industry comments suggesting that while they liked the flexibility of the reduced inspections, they offered that they probably would not reduce their own inspection frequency.

A state commenter argued that a basic principle of RCRA is prevention, including preventing a major release from a waste management unit and that the proposed rule appears primarily guided by a desire to project an image of providing a "burden reduction" for the regulated community, while disregarding prevention mechanisms. The commenter further stated that the chance of a release occurring and going undetected is greatly increased by allowing for weekly inspections of tank systems. The commenter believes the current requirement for daily inspections of tank systems provides a reasonable means to detect and minimize release of hazardous waste in a timely manner and the commenter further stated that the requirement for daily inspection of tank systems has not been a significant burden on the regulated community. We question this commenter's conclusion. By requiring owners and operators who wish to change the self-inspection frequencies for tanks, to use either leak detection or work place practices, we believe it is unlikely that releases from tanks will go undetected. The use of either leak detection systems or established workplace practices should assure that releases are promptly detected, and that the appropriate personnel are notified so that releases can be stopped and cleaned up. According to § 264.196, upon detection of a leak, either through the leak detection system or visual observation, the owner or operator of the tank system must immediately stop the flow of hazardous waste, determine and rectify the cause of the leak, remove the waste, and contain releases to the environment.

It is important to note that we are not changing the existing requirement, found in § 264.195(a)(2) and § 265.195(a)(3)), that data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) must be inspected at least once each operating day to ensure that the tank system is being operated according to its design. We believe that this requirement is necessary in order to ensure compliance with § 264.193(c) and § 265.193(c), which require the detection of leaks and spills within 24 hours. In addition, keeping this requirement supports the new reduced inspection requirements that we are putting in place today, by providing further information about any releases that may occur.

As a final matter, several commenters to the proposed rule suggested changing the inspection frequencies for ancillary equipment, specifically citing §§ 264.193(f) and 265.193(f). (These requirements specify that ancillary equipment must have secondary containment, except in four instances, each involving daily visual inspections for leaks.) While most commenters provided little information to support making the change, one commenter did argue that if the proposed changes to §§ 264.195 and 265.195 were finalized, the existing provisions in §§ 264.193(f) and 265.193(f), if not also changed, would be inconsistent.

As background, the October 29, 2003 NODA requested comment on expanding the proposed rule to include ancillary equipment at LQG and SQG sites. The NODA referenced the regulations at §§ 264.193(f) and 265.193(f), suggesting making the change would be consistent with our intent, as discussed in the proposed rule. Because today's rule changes the inspection frequencies for tank systems provided with secondary containment, where leak detection equipment or workplace practices are used, as discussed previously, any ancillary equipment associated with such tank systems would, therefore, be eligible for reduced inspections.

We considered allowing ancillary equipment without secondary containment, as described at §§ 264.193(f)(1)–(4) and 265.193(f)(1)–(4), to be visually inspected weekly instead of daily. While most of the commenters supported this change,

upon further analysis we now conclude that expanding the rule to include ancillary equipment without secondary containment is not consistent with how the final rule addresses reduced inspection frequency for tank systems. The proposed rule discussed reducing inspection frequencies for tanks and tank systems because of, among other reasons, the presence of secondary containment. Allowing ancillary equipment without secondary containment to change from daily visual inspections to weekly visual inspections would not be consistent with our approach. We are including regulatory language in §§ 264.194(d) and 265.195(c) to say that ancillary equipment that is not provided with secondary containment, as described in §§ 264.193(f)(1)–(4), must be inspected at least once each operating day.

We would like to note that there are instances where tanks and tanks systems are located within buildings, and where the building itself provides secondary containment. In cases where ancillary equipment is located inside a building that has been determined to provide secondary containment, and either leak detection systems or established workplace practices exist to identify leaks and spills, then the regulatory criteria are met and that ancillary equipment may be inspected weekly. For example, in a case where ancillary equipment inside a building does not have double walls or leak detection, this ancillary equipment would still be eligible for weekly inspections if the building serves as secondary containment, and if the area is frequented by employees whereby releases will be immediately obvious and the employees will promptly identify and remediate leaks and spills.

In cases involving buildings serving as secondary containment, authorized states necessarily have the ultimate authority to make the determination that secondary containment requirements are met (taking into account all relevant site-specific considerations).

2. We Are Establishing Weekly Inspections for SQG Hazardous Waste Tank Systems With Secondary Containment

While the previous discussion addressed changes in the inspection frequency for certain tank systems at permitted and interim status facilities, and LQG sites, today's rule also changes the inspection frequency for certain tank systems at SQG sites. The requirements for SQG tanks are found in 40 CFR 265.201(b).[10]

Under the current regulations, generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must inspect at least once each operating day, if applicable; (1) discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems); (2) data gathered from monitoring equipment (*e.g.*, pressure and temperature gauges); and (3) the level of waste in the tank. In addition, at least weekly, generators must also inspect: (1) The construction materials of the tank to detect corrosion or leaking of fixtures or seams; and (2) the construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

While § 265.201 does not require SQGs to be equipped with secondary containment, nor leak detection, under today's rule, SQG tank system owners and operators who wish to reduce their inspection frequency may do so if these tank systems are provided with secondary containment with either leak detection equipment or established workplace practices that ensure prompt detection of releases, as described above for other tank systems. Owners and operators choosing one of these options to reduce inspection frequencies should document the option selected in their operating record. If the option selected is "established workplace practices," the owner and/or operator should document those practices in the facility's operating record.

In the proposal, we received comments suggesting that we expand the proposed reduction in tank self-inspection frequency to include tanks located at small quantity generator sites (see § 265.201(c)) and ancillary equipment (see § 265.193(f)[11]). This change would affect only three of the five SQG inspection requirements: for discharge control equipment (§ 265.201(c)(1)); data gathered from monitoring equipment (§ 265.201(c)(2)); and monitoring the level of waste in the tank (§ 265.201(c)(3)), since the last two inspection requirements (§§ 265.201(c)(4) and (c)(5)) are already done on a weekly basis. We stated in the NODA that changing these inspection frequencies would be consistent with our intent to establish weekly inspections for all tank systems.

One state commenter argued that tanks can and frequently do fail abruptly and with little or no warning, losing most or all of their contents in a very short period of time and if the rule were promulgated as proposed, it might be a week or longer before leaks of any size were discovered and remediation begun. The commenter further reasoned that for those tanks without secondary containment (e.g., SQGs), waiting such a long time for remediation efforts may lead to extensive environmental damage. We acknowledge the commenter's concerns and support the rapid remediation of leaks; we believe that the controls we are promulgating today will adequately prevent such an occurrence, even for SQGs.

One commenter did state that, although he did not object to allowing small quantity generators reduced tank inspection frequencies, he noted that reducing inspection frequencies will not provide any additional reduction in the recordkeeping/reporting burden for small quantity generators who are not subject to §§ 264.15 and 265.15 and are not required to maintain a schedule or a record of inspections. We agree that § 265.201 does not require SQGs to record inspections. Burden reduction would come from the time saved (person-hours) from reduced inspections.

Several states were not in favor of reduced inspection frequency for small quantity generators. One commenter stated that EPA has not provided any data that suggest that the reduced frequency of tank inspections is as protective as the intent of the current standard which as stated in 51 FR 25454, July 14, 1986 is to "* * * enable the detection of releases or potential

[10] The requirements for SQG tanks were finalized on March 24, 1986 (51 FR 10146), and with the July 14, 1986 final tank regulations (51 FR 25422), codified at § 265.201. Discussion in the March 1986 rule explains how the SQG requirements were developed, as distinct from the requirements for tanks at LQG sites. The rule states: "Congress anticipated reducing administrative requirements, such as reporting and recordkeeping, as a means to reduce impacts on the 100–1000 kg/mo generators. Thus, EPA proposed to relieve these generators of some Part 262 standards that are administrative in nature, while retaining all existing technical standards. The relief was only provided to generators who accumulate on-site for the statutorily prescribed periods, because, given that the amount of waste accumulated would necessarily be limited, the relative risk from releases of such waste would be less than that from the unlimited amounts of waste accumulated by off-site facilities." (51 FR 10149).

[11] While the Agency solicited comment on reducing the inspection frequency for ancillary equipment for SQGs, the referenced regulation, § 265.193(f) does not apply to tank systems at SQG sites, only the requirements found in § 265.201(c) apply to SQG tank systems. Therefore, the Agency is not pursuing changes to § 265.193(f) that would affect SQGs. As discussed above, the regulatory changes we are making today apply to SQG tank systems, which include ancillary equipment.

releases at the earliest possible time." Another commenter further argued that reduced tank inspection frequency should not be afforded to small quantity generators unless their tank systems are upgraded to meet additional standards and that currently SQGs only have to inspect their tank systems for proper operations controls daily. SQGs are not required to do any type of additional leak detection, except for the weekly requirements already in place. Since SQGs are not required to provide secondary containment, the operating day inspections assist in protecting from a release or potential release. Other commenters argued that if SQGs wish to receive this reduced inspection frequency, they should comply with the same secondary containment requirements as large quantity generators and install an automated leak detection equipment that alerts a person designated to respond. We agree, in part, with the commenters. SQG tanks historically have less stringent requirements than LQGs, permitted, and interim status tanks. But, while existing SQG tanks are not required to have secondary containment, in order to enjoy reduced inspection frequencies under today's rule, tanks must have secondary containment with leak detection, or have secondary containment and workplace practices in use that promptly identify leaks and spills.

3. We Are Allowing Members of the National Environmental Performance Track Program To Apply for an Adjustment to the Frequency of Inspections for Certain Hazardous Waste Units and Areas

In addition to allowing a change in the inspection frequency for selected tank systems, we also proposed to allow on a case-by-case basis, less frequent self-inspections for tank systems, container storage areas, and containment buildings. Under our current regulations, container storage areas and containment buildings must be inspected weekly. (See §§ 264.174, 265.174, 264.1101(c)(4), and 265.1101(c)(4).)

Based on comments received on the proposal, we reconsidered whether to make such a change available to all generators because of the burden it would impose on authorized states to evaluate compliance with the criteria. As stated in the October 29, 2003 NODA (68 FR 61662), we believe that providing relief is appropriate for companies that are demonstrated "good performers" and we solicited comment on limiting this provision to member companies of the National Environmental Performance Track Program, as well as extending reduced inspection frequencies, granted on a case-by-case basis, to areas subject to spills (see § 264.15(b)(4)).

In today's rule we are finalizing this provision—the ability to file a case-by-case application for further reduced self-inspection frequencies—to facilities that are members of the National Environmental Performance Track Program. Performance Track member facilities are provided the opportunity to reduce self-inspections of tank systems, containers, containment buildings, and areas subject to spills to a frequency of at least once each month.

Performance Track members must apply to the regulatory agency for approval before implementing a reduced inspection frequency schedule.[12] The Performance Track facility must submit an application to the regulatory authority identifying itself as a member of the National Environmental Performance Track Program and request a reduction in self inspection frequency. For those members that are also permitted treatment, storage and disposal facilities, the application must be in the form of a Class 1 permit modification with prior approval. The Performance Track member facility must request reduced inspections, for no less than once each month, for any of the waste management units identified in today's rule (including tank systems, containers, containment buildings, and areas subject to spills). (Only one application per Performance Track member facility is required.) After the application is received, the Director has 60 days to approve or deny the application, in writing. The Director also may choose to extend this 60 day deadline, if more time is needed to review the application (e.g., in the case where an on-site inspection is needed or a more in-depth analysis of the application is warranted.) If the application is approved, the notification will identify the management units approved for reduced frequency of inspections, as well as the time interval between inspections (at a minimum of one inspection each month.) This notice must be placed in the facility's operating record.

The Performance Track member facility should consider the application approved after 60 days if the Director does not: (1) Deny the application, in writing; or (2) notify, in writing, the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in their application and keep a copy of the application in the facility's operating record.

It is expected that Performance Track facilities would have an EMS providing sufficient oversight to prevent and detect leaks and spills. In addition, facilities that applied for Performance Track would have conducted an Environmental Management System (EMS) Independent Assessment.[13] The assessment must determine whether the facility regularly monitors and measures its key operations that can have a significant impact on the environment, and records this information. Therefore, through the use of EMSs and workplace practices, we would expect Performance Track facilities to be able to prevent and detect leaks and spills. Providing Performance Track member facilities with the option for reduced inspection frequencies does not mean we are reducing the requirements for the owner or operator to detect leaks and spills; providing reduced inspection for Performance Track member facilities acknowledges that these facilities have established controls and procedures to prevent releases and to respond promptly if and when they occur. The Agency believes it is important to recognize the difference in the need for oversight of facilities that are top environmental performers which have developed comprehensive environmental management systems and who have a track record of effective self-oversight.

Any Performance Track member facility that discontinues its membership in Performance Track or is terminated from the program must immediately notify the Director, in writing of its change in status (i.e., they are no longer a Performance Track member facility). These facilities must revert back to the "non-Performance

[12] In the proposed rule (67 FR at 2527), the Agency made reference to a commenter's suggestion that inspection frequency changes should be self-implementing. The example given by the commenter outlined an option where an inspection schedule should be deemed approved if EPA does not specifically deny the request in writing within 30 days. At that time, we stated that one of our principle objectives for this burden reduction change, was to ensure that the regulatory agencies made the decision to decrease inspection frequencies and as such, we were not considering self-implementing alternatives. While we still maintain that regulatory agencies should make these decisions on a case-by-case basis, upon further consideration, we believe it is also important to streamline the application process by establishing a timetable for application/permit modification review.

[13] For more information on the Independent Assessment Criteria for EMSs, see *http://www.epa.gov/performancetrack/ind_assessment.htm.*

Track member" inspection frequency within seven calendar days. The facility must place in their operating record a dated copy of this notification. In cases where the Performance Track member is a permitted TSDF, the Agency is requiring that the permit modification to allow the reduced inspection frequency contain a "sunset" clause, in case the facility's membership in Performance Track ends. If written without a "sunset" clause, an approved permit modification allowing a reduced inspection frequency could otherwise "shield" the facility from violation if it ceases to be a Performance Track member. Therefore, we are requiring that the Class 1 modification request contain specific language stating that the reduced frequency is for as long as the facility remains a Performance Track member. The language must say that if the facility ceases to be a Performance Track member facility, it must revert to the "non-Performance Track" inspection frequency within seven calendar days after membership in Performance Track ends.

Sections a. through d. below discuss in more detail the Agency's basis for decisions on inspection frequency for areas subject to spills, containers, tank systems, and containment buildings at Performance Track member facilities.

a. *Performance Track: Reduced Inspection Frequency for Areas Subject to Spills.* The general inspection requirements of §§ 264.15 and 265.14, require that areas subject to spills, such as loading and unloading areas, must be inspected daily, while in use. These inspections are to identify malfunctions and deterioration, operator errors, and discharges which may be causing—or be leading to—(1) a release of hazardous waste constituents to the environment, or (2) a threat to human health. In response to a comment in the 2002 proposal, the October 29, 2003 NODA (68 FR 61662) considered reducing inspection frequencies, granted on a case-by-case basis, for areas subject to spills. We also solicited comment on whether to grant this relief only to Performance Track member facilities, stating that the risk from this change is minimal at facilities that have met the requirements to be accepted into the Performance Track Program. We received two comments on this issue; one commenter supported the proposal, and one did not . The commenter that opposed the proposal provided no explanation or justification for its position. The supporting commenter stated that activities that may cause spills "usually allow for the spills to be easily detected and quickly cleaned up. More frequent inspections are unlikely to result in quicker spill detection."

In general, we do not believe that such a change to the regulation is appropriate for all facilities, for the reasons laid out above. However, we believe the risk from this change is minimal at facilities that have met the requirements to be accepted into the National Environmental Performance Track Program. Therefore, we have decided to extend inspection frequencies for no less than once each month, at areas subject to spills, but only for facilities that are members of the National Environmental Performance Track Program that have received prior approval from the regulatory agency.

b. *Performance Track: Reduced Inspection Frequency for Containers.* Sections 264.174 and 265.174 require owners or operators to inspect, at least weekly, areas where containers holding hazardous waste are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. We proposed to allow case-by-case decreased inspection frequencies for containers.

The October 29, 2003 NODA (68 FR 61662) addressed comments received on the 2002 proposal. Based on the comments from the proposal, the NODA reconsidered whether to make case-by-case reduced self-inspections available to all generators because of the burden it might impose on authorized states to evaluate compliance with the criteria. That is, making such a change available to all generators would likely impose a substantial burden on the states or EPA in order to evaluate whether an applicant facility met the criteria. Such a burden is clearly in opposition to the intent of today's rule. Finally, the Agency stated clearly that "at a minimum, we believe that providing relief is appropriate for companies that are demonstrated good performers." (68 FR 61665.)

The Agency received comments on this issue that supported the application of this provision to Performance Track members. Other comments stated that this provision should be made available to all facilities with a demonstrated record of good compliance, with some type of demonstrated top performance, or by meeting the proposed criteria.

The Agency considered all comments received on this issue and has decided to finalize a reduced self-inspection requirement to §§ 264.174 and 265.174 available only to members of the National Environmental Performance Track Program. The reason for this decision is that case-by-case determinations for all hazardous waste facilities would significantly increase the burden associated with providing this benefit to all facilities. Performance Track member facilities may apply to their regulatory agency for a reduction in self-inspection frequency, for no less thanonce each month, for containers and for areas where containers holding hazardous waste are stored.

c. *Performance Track: Reduced Inspection Frequency for Tank Systems.* Today, we are changing the self-inspection frequencies for tank systems from daily to no less than once each month for tank systems, granted on a case-by-case basis, for members of the National Environmental Performance Track Program when operating under certain conditions.[14] This includes Performance Track member facilities that are either permitted TSDFs, interim status TSDFs, large quantity generators (LQGs), and/or small quantity generators (SQGs).

Today's rule allows Performance Track member facilities to apply to the regulatory agency for reduced tank system self-inspection frequency, of no less than once each month when either of two conditions are met: (1) When tank owners and operators employ leak detection equipment, or (2) when in the absence of leak detection equipment, owners and operators of tank systems employ workplace practices that ensure that when any leaks or spills occur, they will be promptly identified and remediated. Performance Track member facilities choosing one of these options to reduce inspection frequencies, should identify the option selected as part of its application to the regulatory agency.

Small quantity generator (SQG) tank systems are subject to separate requirements, found in 40 CFR 265.201. Today's rulemaking also allows National Environmental Performance Track members to apply to the regulatory agency for reduced self-inspection frequencies for SQG tank systems under § 265.201(b) when they meet either one of the two conditions described above.

d. *Performance Track: Reduced Inspection Frequency for Containment*

[14] As previously discussed, we intended to include a broad applicability for tank systems in our proposed rule; however, the proposal did not clearly address the point. We clarified in the October 29, 2003 NODA (68 FR 61662) that the proposal was meant to apply not just to the tanks, but to the complete tank systems (i.e., ancillary equipment). Complete tank systems were defined as including piping, pumps, valves and other associated equipment. Commenters were generally supportive of this change. Therefore, we are applying this provision to complete tank systems, except to ancillary equipment without secondary containment as described at §§ 264.193(f)(1)–(4) and 265.193(f)(1)–(4).

Buildings. We proposed to allow case-by-case decreased inspection frequencies for containment buildings. As stated generally above, the intent was to offer this provision only to the safest and best performing facilities. In the October 29, 2003 NODA (68 FR 61662), we solicited comment on whether to limit the reduced inspection frequency for containment buildings to member facilities of the National Environmental Performance Track Program. Again, for the same reasons stated above, we decided to limit §§ 264.1101 and 265.1101 to Performance Track member facilities.

TABLE 11.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT PERMITTED HAZARDOUS WASTE FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
260.10	Hazardous Waste Management System: Definitions.	No regulatory definition currently exists. Performance Track member facility means a facility which has been accepted by EPA for membership in the National Environmental Performance Track Program and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.
264.15(b)(4)	General Facility Standards: General Inspection Requirements.	The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that may inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable.
264.15(b)(5)	General Facility Standards: General Inspection Requirements.	No regulatory language currently exists. Performance Track member facilities that choose to reduce their inspection frequency must: (i) Submit a request for a Class I permit modification with prior approval to the Director. The modification request must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. The modification request must also specify, in writing, that the reduced inspection frequency will apply for as long as the facility is a Performance Track member facility, and that within seven calendar days of ceasing to be a Performance Track member, the facility will revert to the non-Performance Track inspection frequency. Inspections must be conducted at least once each month. (ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the request is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) deny the application; or (2) notify the Performance Track member facility of an extension to the 60 day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its request for a Class I permit modification and keep a copy of the application in the facility's operating record. (iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in the operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.
264.174	Use and Management of Containers: Inspections.	At least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers, and for deterioration of containers and the containment system caused by corrosion or other factors.

TABLE 11.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT PERMITTED HAZARDOUS WASTE FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
		At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures described in § 264.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused corrosion or other factors.
264.195	Tank Systems: Inspections	(b) The owner or operator must inspect at least once each operating day: (1) Above ground portions of the tank system, if any to detect corrosion or releases of waste: (2) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). [**Note:** Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.]
		(b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; (c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day: (1) Above ground portions of the tank system, if any to detect corrosion or releases of waste: (2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wetspots, dead vegetation). (d) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility. (e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5). (f) Ancillary equipment that is not provided with secondary containment, as described in § 264.193(f)(1)–(4), must be inspected at least once each operating day. [**Note:** Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.]
264.1101(c)(4)	Containment Buildings: Design and Operating Standards.	Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.
		Inspect and record in the facility's operating record, at least once every seven days, except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5) of this part.

TABLE 12.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT INTERIM STATUS FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
260.10	Hazardous Waste Management System: Definitions.	No regulatory definition currently exists. Performance Track member facility means a facility that has been accepted by EPA for membership in the National Environmental Performance Track Program and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.
265.15(b)(4)	General Facility Standards: General Inspection Requirements.	The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058 and 265.1084 through 265.1090 of this part, where applicable. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058 and 265.1084 through 265.1090 of this part, where applicable.
265.15(b)(5)	General Facility Standards: General Inspection Requirements..	No regulatory language currently exists. Performance Track member facilities that choose to reduce their inspection frequency must: (i) Submit an application to the Director. The application must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. Inspections must be conducted at least once each month. (ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the application is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) deny the application; or (2) notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and keep a copy of the application in the facility's operating record. (iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in the operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calender days.
265.174	Use and Management of Containers: Inspections.	The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. At least weekly, the owner or operator must inspect areas where containers are stored, except Performance Track member facilities, that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.
265.195	Tank Systems: Inspections.	(a) The owner or operator must inspect, where present, at least once each operating day: (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (2) Above ground portions of the tank system, if any to detect corrosion or releases of waste; (3) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

TABLE 12.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT INTERIM STATUS FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
		(4) The construction materials and the area immediately surrounding the externally accessible portion of the tanks system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). **Note:** Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release. (a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design. (b) Except as noted under paragraph (c) of this section, the owner or operator must inspect at least once each operating day: (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). (c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (b)(1)–(3) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility. (d) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5). (e) Ancillary equipment that is not provided with secondary containment, as described in § 265.193(f)(1)–(4), must be inspected at least once each operating day. **Note:** Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.
265.1101(c)(4)	Containment Buildings: Design and Operating Standards.	Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. Inspect and record in the facility's operating record, at least once every seven days, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

TABLE 13.—DECREASED INSPECTION FREQUENCIES FOR SMALL QUANTITY GENERATOR HAZARDOUS WASTE MANAGEMENT UNITS

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
265.201(c)	Tank Systems: Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks.	(c) Generators of between 100 and 1,000 kg/mo of hazardous waste in tanks must inspect, where present: (1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order; (2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day, to ensure that the tank is being operated according to its design;

TABLE 13.—DECREASED INSPECTION FREQUENCIES FOR SMALL QUANTITY GENERATOR HAZARDOUS WASTE MANAGEMENT UNITS—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
		(3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3); (4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and (5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). (c) Except as noted in paragraph (d) of this section, generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks must inspect, where present: (1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order; (2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day, to ensure that the tank is being operated according to its design; (3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3); (4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and (5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). (d) Generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (c)(1)–(5) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility. (e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

H. We Are Making Selected Changes to the Requirements for Record Retention and Submittal of Records

EPA is modifying certain requirements for hazardous waste handlers who keep records on site and submit these same records to EPA. We will now require waste handlers only to keep these selected records on site.

EPA believes that many of the various notices required do not add much in protection and some are simply redundant. We believe that reporting to EPA on the majority of the day-to-day functions of a facility does not need to occur. Because a basic set of compliance information will still be kept in the facility's operating record, we believe the regulatory agency has an ample opportunity for effective oversight.

1. We Are Removing the Requirement To Submit a One-Time Notification for Recycled Wood Wastewaters and Spent Wood-Preserving Solutions and Clarifying an Unintentional Elimination Made in the Proposal

Currently under 40 CFR 261.4(a)(9), spent wood preserving solutions and wastewaters from wood preserving processes are excluded from classification as a solid waste if they are reclaimed and reused for their original intended purpose, and if five conditions specified in subparagraphs (iii)(A) through (iii)(E) are met. Paragraph (E) required that the plant owner or operator submit a one-time notification that the plant intends to claim the exclusion.[15] Paragraph (E) also requires the owner or operator to maintain a copy of the notification on-site for no less than three years. Finally, paragraph (E) explains that the exclusion applies only so long as the plant meets all of the conditions, and sets forth procedures for what to do to retain the exclusion if the facility goes out of compliance with a condition.

The proposed rule (see 67 FR 2521) was to reduce the burden on wood preservers/treaters by eliminating the requirement to submit the one-time notification. The proposal stated that the requirement is unnecessary and has limited use for regulators. However, the change to the regulations specified in the regulatory text of the proposal unintentionally eliminated the entire paragraph (E) of 40 CFR 261.4(a)(9),(iii)

[15] The four other conditions found in 40 CFR 261.4(a)(9)(iii)(A)–(D) are: (A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose; (B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both; (C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise be determined to prevent such releases; and (D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standard in part 265, subpart W of this chapter, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste.

thus eliminating the one-time notification requirement and also eliminating the two other requirements in that paragraph: (1) The requirement to maintain the notification on-site for three years, and (2) the implementation discussion for compliance with the conditions.

Three state commenters did not agree with the proposal. These commenters argued that the notification is useful for identifying facilities that are claiming the exclusion, identifying potential problems before they occur, allowing the regulating agency to verify compliance, and workload planning. Several state commenters, however, agreed with the proposal to eliminate the requirement to submit the notification. Based on their comments, these commenters appeared to understand that only the requirement to submit the one-time notification was proposed for elimination. None mentioned the requirement to retain the notification on-site or the compliance implementation procedures.

While we understand the concern of some of the commenters, we still do not believe that arguments put forth were sufficient to change the proposed approach. We believe that the submittal of this notification is unnecessary because the facilities are engaged in limited activities to return materials to their intended use in the wood treating industry. Many comparable activities occur without notification, including direct reuse of the same material. These activities will occur at generator sites subject to EPA or state inspection (and in some case at treatment, storage, and disposal facilities), so EPA or the state will have an opportunity to review the activity. Note that in the final change to the regulatory text, we are only eliminating the requirement to submit the one-time notification; we are not eliminating the requirement to keep the document on-site, or the discussion of compliance implementation procedures.

2. We Are Eliminating the Requirement for Interim Status Facilities To Submit Specific Ground-Water Monitoring Plans and Ground-Water Assessment Reports

In today's final rule, we are reducing some of the burden on interim status facilities by eliminating the need to submit specific ground-water monitoring plans and ground-water assessment reports to the Regional Administrator. These reports include: (1) Plans for an alternative ground-water monitoring system under § 265.90(d)(1) that are implemented when the owner or operator assumes (or knows) that ground-water monitoring of indicator parameters in accordance with §§ 265.91 and 265.92 would show statistically significant increases when evaluated under § 265.93(b); (2) records of the analyses and evaluations specified in the plan under § 265.93(d)(2); and (3) ground-water quality assessment reports required under § 265.93(d)(5). These plans are not being eliminated, but are to be placed in the facility's operating record until closure of the facility. We consider today's changes to be a common sense approach to reducing burden at regulated facilities without compromising environmental protection.

Numerous states objected to these proposed changes to the interim status reporting and recordkeeping requirements, asserting that the regulatory agency should continue to receive a copy of these reports to assess the effectiveness and appropriateness of the ground-water monitoring system. Other states asserted that EPA's approach places an undue burden on the regulatory authority and makes it difficult for states to fully evaluate ground water across the state.

We believe that self-implementing ground-water monitoring plans for interim status facilities can be protective of human health and the environment; we disagree with the assertion that our rationale places a burden on the regulating authority. These reports must be kept in the facility's operating record until closure of the facility and will be available for inspection when the state or EPA visits the facility. Nothing in today's rulemaking prevents the regulating authority from requesting reports from interim status facilities for ground-water quality assessment or indicator parameter concentrations.

EPA is retaining many requirements for interim status facilities. For example, we are not changing the ground-water reporting requirements of §§ 265.93(c)(1), (d)(1), (e) and (f) and 265.94(a)(2)(i), (ii) and (iii), that deal with submitting notifications of increased indicator parameter concentrations and the development and submittal of: (1) Ground-water quality assessment reports; (2) preparation and submittal of quarterly reports on drinking water suitability parameters; indicator parameter concentrations and evaluations; and (3) ground-water surface elevations. Stakeholders have convinced us of the importance of this information. Without the knowledge of the status of the facility ground-water monitoring system, it may be difficult for regulators to conduct effective inspections, address compliance issues, and address enforcement issues regarding the ground water at interim status facilities.

3. We Are Eliminating the Requirement for Interim Status Surface Impoundments, Waste Piles, and Landfills To Submit a Response Action Plan

Response action plans are generated by the owner or operator of a specified hazardous waste management unit (e.g., surface impoundment, waste pile, and/or landfill), and document actions to be taken if the action leakage rate in the unit's leak detection system has been exceeded.[16] These actions are listed in §§ 265.223, 265.259 and 265.303.[17] The Agency proposed eliminating the need to submit to the Regional Administrator response action plans for interim status surface impoundments, waste piles, and landfills. We are eliminating the submission of the response action plan to the Regional Administrator. The facility must still prepare and retain these plans on-site.

Several state commenters agreed with the proposal; however, several others did not. One commenter argued that a release from a land-based unit is a significant noncompliance and could pose serious impacts to the people and the environment, and it is important for the facility to have a clear plan in advance to respond to releases. Because of the importance of controlling these releases, it is appropriate for the response action plan to be submitted to EPA or the state permit agency. While we agree with the commenter that any release from a land-based unit is a serious matter, and that controlling these releases is of the utmost importance, we are not convinced that these plans need to be submitted to the regulatory agency. EPA is retaining all requirements to submit notices to the regulatory authority when an action leakage rate is exceeded (see §§ 265.224(b)(2) and (6); 265.259(b)(2) and (6); and 265.303(b)(2) and (6)); we

[16] The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate must include an adequate margin of safety to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

[17] In the CFR there are two sections identified as § 265.223, the first titled "Containment system" and the second titled "Response actions". In today's rule we are redesignating § 265.223 titled "Response actions" as § 265.224.

believe that the need to submit the response action plan which merely reiterates these requirements is an overly burdensome requirement that can be removed.

4. We Are Eliminating the Requirement for Facilities To Submit a Tank System Certification of Completion of Major Repairs

We are amending the requirement for submitting to the Regional Administrator a certification of completion of major repairs to a tank system by an independent, qualified, professional engineer. This certification need only be kept on-site in the operating record through the intended life of the system. This change will eliminate the submission of duplicative information to the regulatory authority. Sections 264.196(d) and 265.196(d) already require that certain notifications be submitted that include descriptions of response actions taken or planned.

Several commenters did not support the proposed change, noting that submission of the certification helps to ensure that the regulatory authority is made aware of any potentially significant repairs that were conducted. One commenter argued that the elimination of these notices or notations in the operating record will adversely affect oversight. Another commenter argued that, while supportive of the proposed change, the certification of major repairs must be kept with the facility record, and be available for review by regulatory inspectors. We believe that information provided by the certification of major repairs is already provided through the notification mechanisms described in §§ 264.196(d) and 265.196(d), which require notification when releases occur, and a description of response actions taken or planned. While we are not eliminating the certification, we are requiring the certification be kept on site in the operating record, and we are requiring the certification be signed by a qualified professional engineer.

5. We Are Eliminating the Requirement for a Recycler To Submit a Notification and Certification

Under 40 CFR 268.7(b)(3), a treatment facility must send a one-time notice to the receiving land disposal facility with the initial shipment of waste or contaminated soil. Also, in § 268.7(b)(4), the treatment facility must submit a one-time certification with the initial shipment of waste or contaminated soil to the land disposal facility.

Under § 268.7(b)(6), however, if the wastes are recyclable materials used in a manner constituting disposal, the owner or operator of the treatment facility (i.e., the recycler) is not required to send the one-time (b)(3) notice to the receiving facility. For each shipment, however, the owner or operator of the treatment facility (i.e., recycler) must submit a (b)(4) certification and a notice with the information listed in (b)(3) to the Regional Administrator. These notifications and certifications are to assure and document that treatment standards are being met. The preamble to the proposed rule described a proposal that would reduce burden on the regulated industry by eliminating the requirement to send the notifications and certifications to EPA, and instead require that the treatment facility (i.e., recycler) place these documents in its on-site files.

Five commenters, including three states, agreed that notifying the regulatory agency is not necessary as long as the information is maintained at the facility. Only one commenter did not support the elimination of the requirement. This commenter argued that it is important to track hazardous wastes used in the manufacture of fertilizers because it believes there are problems with compliance in this industry. It believes that notification to the regulatory agency allows such tracking. We, however, do not agree with this commenter, for the reasons presented below.

Based on the majority of comments received, we are amending § 268.7(b)(6) to eliminate the requirement to submit notifications and certifications to EPA, and instead require that the information be placed in the treating/recycling facility's on-site files. All but one commenter confirmed that maintaining these records on-site provides sufficient documentation of waste treatment in these cases. We also point out that regulating agencies have a great deal of information about these facilities already since, in most cases, they would be permitted facilities. Retaining these notices on-site does not eliminate the regulating agency's knowledge of the existence of the facility. We also note that if a state has concerns about compliance in a particular use constituting disposal industry in their state, they may choose to be more stringent than the federal program, and choose to retain these notifications.

It should be noted that the preamble to the proposal incorrectly indicated that the current regulations only require one-time notifications and certifications for these materials. This is not accurate. As discussed earlier, the existing regulations actually require that certifications and notifications be sent to the regulating agency with each shipment. One commenter suggested that we change the requirement so that these notifications and certifications are only required to be prepared once and maintained in the facility's records, unless there are changes to the treatment process. The commenter pointed out that it would greatly reduce the burden for the facility if they were only required to prepare these documents once, and then again any time the treatment process changes. We agree with this commenter's point. As long as these notifications and certifications are required to be maintained in the facility's files and be available for inspection, there is no reason for the facility to prepare and maintain multiple copies for each shipment. The information will be available for inspection at all times. Whereas the proposal did address the burden of sending notifications and certifications to the regulatory agency, it did not address the burden associated with the requirement to send those documents with each waste shipment. This final rule corrects that omission. Thus, this final rule only requires facilities (i.e., recyclers) to prepare and maintain notifications and certifications with the initial shipment of waste, and then to prepare new documentation only if the waste, the treatment process, or the receiving facility changes.

6. We Are Eliminating the Requirement to Submit an LDR Notification and Certification

Under § 268.9(d), once a characteristic waste is treated so it is no longer characteristic, a one-time notification and certification of this fact have to be placed in the generator's or treater's files, and also sent to EPA or the authorized state. We proposed to eliminate the requirement to submit the notification to EPA or the authorized state (the notification and certification would continue to be required to be kept in the facility's files).

Almost all commenters supported the proposal to delete the one-time requirement that the § 268.9(d) notification and certification be sent to EPA or the authorized state. This is because the notification and the certification must be placed in the on-site files and would thus be available for inspection. However, a few commenters opposed the deletion of these submittals, stating that this information is valuable. While we agree that the information is valuable, we do not believe that submitting these documents to the regulatory agency is necessary to protect human health and the environment. For a number of years, other LDR notifications and

certifications have not been required to be submitted to the regulatory agency, but are available for inspection in the facility's on-site files. Therefore, we believe that this system of recordkeeping is sufficient and are deleting the notification and certification submission requirement as proposed.

TABLE 14.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
264.196(f)	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.	Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with §270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Regional Administrator within seven days after returning the tank system to use. Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified professional engineer in accordance with §270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.[18]

[18] The reader is referred to Section III. B. of today's preamble for a discussion of the change from "independent, qualified, registered, professional" to "qualified professional engineer".

TABLE 15.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
265.90(d)(1)	Ground-Water Monitoring. Applicability.	Within one year after the effective date of these regulations, submit to the Regional Administrator a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of §265.93(d)(3), for an alternate ground-water monitoring system. Within one year after the effective date of these regulations, develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of §265.93(d)(3), for an alternate ground-water monitoring system. This plan is to be placed in the facility's operating record and maintained until closure of the facility.
265.90(d)(3)	Ground-Water Monitoring. Applicability.	Prepare and submit a written report in accordance with §265.93(d)(5). Prepare a report in accordance with §265.93(d)(5) and place it in the facility's operating record and maintain until closure of the facility.
265.93(d)(2)	Ground-Water Monitoring. Preparation, evaluation, and response.	Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop and submit to the Regional Administrator a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. This plan must be placed in the facility operating record and be maintained until closure of the facility.
265.93(d)(5)	Ground-Water Monitoring. Preparation, evaluation, and response.	The owner or operator must make his first determination under paragraph (d)(4) of this section, as soon as technically feasible, and, within 15 days after that determination, submit to the Regional Administrator a written report containing an assessment of the ground-water quality. The owner or operator must make his first determination under paragraph (d)(4) of this section as soon as technically feasible, and prepare a report containing an assessment of the ground-water quality. This report must be placed in the facility operating record and be maintained until closure of the facility.

TABLE 15.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
265.196(f)	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.	Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (*e.g.*, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with §270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Regional Administrator within seven days after returning the tank system to use. Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (*e.g.*, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified professional engineer in accordance with §270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record until closure of the facility.[19]
265.223(a)	Surface Impoundments. Response actions.	The owner or operator of surface impoundment units subject to §265.221(a) must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under §265.222. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section. (Now §265.224(a)) The owner or operator of surface impoundment units subject to §265.221(a) must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.
265.259(a)	Waste Piles. Response actions	The owner or operator of waste pile units subject to §265.254 must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under §265.255. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the action specified in paragraph (b) of this section. The owner or operator of waste pile units subject to §265.254 must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.
265.303(a)	Landfills. Response actions	The owner or operator of landfill units subject to §265.301(a) must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under §265.302. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the action specified in paragraph (b) of this section. The owner or operator of landfill units subject to §265.301(a) must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

[19] The reader is referred to today's preamble for a discussion of the change from "independent, qualified, registered, professional engineer" to "qualified professional engineer." We are also requiring that this certification be retained in the operating record until closure of the facility.

TABLE 16.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR HAZARDOUS WASTE GENERATORS

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
261.4(a)(9)(iii)(E)	General. Exclusions. Materials which are not solid wastes.	Prior to operating pursuant to this exclusion, the plant owner or operator submits to the appropriate Regional Administrator or state Director a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving wastewater and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Regional Administrator or state Director for reinstatement The Regional Administrator or state Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur. Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Regional Administrator or state Director for reinstatement. The Regional Administrator or state Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.
268.7(b)(6)	Land Disposal Restrictions. Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.	Where the wastes are recyclable materials used in a manner constituting disposal subject to the and provisions of §268.20(b) regarding requirements for treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) is not required to notify the receiving facility, pursuant to paragraph (b)(3) of this section. With each shipment of such wastes, the owner or operator of the recycling facility must submit a certification described in paragraph (b)(4) of this section, and a notice which includes the information listed in paragraph (b)(3) of this section (except the manifest number) to the Regional Administrator, or his delegated representative. The recycling facility also must keep records of the name and location of each entity receiving the hazardous waste-derived product. Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of §266.20(b)[20] of this chapter regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on-site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.
268.9(d)	Land Disposal Restrictions. Special rules regarding wastes that exhibit a characteristic.	Wastes that exhibit a characteristic are also subject to §268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generators or treaters files and sent to the EPA region or authorized state. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31. Wastes that exhibit a characteristic are also subject to §268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

[20] In the previous regulatory language, the citation referred to §268.20(b), however, this was an error. In today's rule, we are correcting this error by referring to the correct citation which is §266.20(b).

I. We Are Making Selected Changes to the Requirements for Document Submittal

1. We Are Streamlining the Procedure for Obtaining a Variance From Classification as a Solid Waste

A regulatory agency may grant a variance from classification as a solid waste for materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated. The regulation lists eight criteria that are to be used in determining if the request for a variance is to be granted. One of the criteria is a requirement to demonstrate the prevalence of the practice on an industry-wide basis.

The proposed rule described a proposal to eliminate the requirement that applicants for this variance submit information on the prevalence of the practice on an industry-wide basis. The Agency found that this information was less important in making the decision than the other factors and could be difficult for a facility to provide.

Four commenters agreed with the proposal to eliminate the requirement. One pointed out the difficulty of obtaining such information, particularly in the batch and speciality chemical industry. Three states also supported eliminating the requirement. Three other commenters opposed eliminating the requirement, arguing that the information is important in determining whether the reclamation process is an essential part of the production process.

While the Agency believes that this information can be useful in some cases, we also believe that such industry-wide information about these practices is not critical in demonstrating or determining that reclamation is an essential part of production. We believe that a successful demonstration can be made without this information. We also acknowledge that this information may be very difficult, and in some cases, impossible for one company to obtain. We are, therefore, eliminating the requirement in § 260.31(b)(2) that applicants provide industry-wide information.

2. We Are Streamlining the Requirements for Treatability Study Reports for Testing Facilities

Treatability studies are studies at laboratories and testing facilities in which hazardous waste is tested to evaluate the effectiveness of a treatment process. (See definition in 40 CFR 260.) Facilities conducting treatability studies are excluded from the standard hazardous waste management requirements if they comply with certain requirements described in § 261.4(f). Paragraph (9) requires the facility to submit to the regulatory agency an annual report that includes: (1) An estimate of the number of studies and the amount of waste expected to be used in treatability studies during the current year; and (2) information on the treatability studies conducted during the previous year.

We proposed to reduce burden by eliminating the requirement to submit an estimate of the number of treatability studies and amount of waste expected to be used in treatability studies in the upcoming year. The proposal explained that the requirement is duplicative because the same information is submitted in the annual report at a later date. However, the change to the regulations specified in the regulatory text of the proposal unintentionally eliminated the entire paragraph (9) of § 261.4(f), thus proposing to eliminate both the requirement to submit estimates for the current year, as well as information for the previous year.

The majority of commenters (seven) supported elimination of the estimates. They did so with the apparent understanding that only the requirement to provide estimates for the coming year was to be eliminated, and that the requirement to submit information for the previous year would remain in place. Most agreed with the proposal to eliminate the estimates based on the rationale in the preamble that the information would be provided at a later date. Two commenters did point out that eliminating all of § 261.4(f)(9) also eliminates the requirement for providing any report, including the submittal of information from the previous year.

We agree with commenters that the estimate of upcoming activities are unnecessary since the same information will be provided later in the annual report, and the information provided on past activities will be more accurate than estimates of the future. We are, therefore, eliminating the requirement in § 261.4(f)(9) to submit estimates of the number of studies and the amount of waste to be used in treatability studies for the current year, but are retaining the requirement for preparing and submitting an annual report providing information for the previous year.

3. We Are Streamlining the Requirements for Ground-Water Monitoring

As previously discussed in the October 29, 2003 NODA (68 FR 61662), hazardous waste treatment, storage, and disposal facilities must implement ground-water monitoring as a condition for receiving a RCRA permit. EPA requires a phased approach to ground-water monitoring (detection monitoring, compliance monitoring, corrective action). Ground-water monitoring systems must consist of a sufficient number of wells, properly located and constructed, and capable of ensuring that the ground-water impacts of a treatment, storage, or disposal unit can be determined. Sampling and analysis procedures must also be capable of determining both background quality of ground water and quality at the point of compliance.

If hazardous constituents are detected in ground water, more detailed monitoring may be required. In this case, a facility would need additional wells, sampling, and analysis to determine the extent and rate of contaminant migration, to determine if the ground-water protection standard is violated, and to indicate the need for, or effectiveness of, corrective action.

Detection monitoring is the first phase of ground-water monitoring, and is designed to detect a change in ground-water quality in wells surrounding a regulated unit. A potential release from the unit, or impacts from activities up gradient of the unit, may cause this change. For detection monitoring, ground-water monitoring wells are installed up-gradient of the unit and at the point of compliance. Facilities then monitor for each indicator parameter or hazardous constituent specified in the permit.

Compliance monitoring occurs when hazardous waste constituents are detected down-gradient of the unit. The permitting authority will establish hazardous constituent standards for facilities undergoing compliance monitoring.

The third phase of ground-water monitoring, corrective action, is required when hazardous constituents exceed the ground-water protection standards at the point of compliance. Once this has occurred, the owner or operator must remedy the situation by removing the hazardous constituents or treating them in place.

We are modifying the § 264.99(g) requirement that facilities performing compliance monitoring conduct an annual 40 CFR Part 264 Appendix IX (the ground-water monitoring chemical list) analysis of all monitoring wells. We are allowing, on a case-by-case basis, as authorized by a permit authority, sampling from a subset of the wells. Appendix IX analyses are costly at large facilities, and analyzing all wells does not necessarily contribute to protection of human health and the environment. This is especially the case if there are

multiple units and wells at a facility, and only one unit shows signs of contamination.

In addition, monitoring for constituents that are not likely to be found at a site is wasteful and does not increase the protection of monitoring programs. We, therefore, are also modifying § 264.98(g)(2) to give the Regional Administrator discretion on a case-by-case basis to allow sampling for a subset of the Appendix IX constituents. While this change was proposed for § 264.98(c), upon re-evaluation, we decided it is more appropriate to amend § 264.98(g)(2) and leave § 264.98(c) unchanged. Decisions on what constituents must be sampled will be based on the regulatory agencies' judgment of what amount of sampling supports the protection of human health and the environment, as well as the level of knowledge of what contaminants could be present at a site. As a commenter pointed out, this subsection prior to today did not require that all samples must be analyzed for every chemical parameter and hazardous constituent listed in Appendix IX. Today's rule eliminates ambiguity by specifically confirming that sampling for a site-specific subset of constituents is allowable.

Based on a comment we received, we also are revising § 264.98(d) to allow for alternative sampling procedures as provided in § 264.97(g)(2). Under § 264.98(d), a facility must collect at least four samples from each well at least semi-annually. This provision has resulted in sites being required to sample four times within a single monitoring event, despite the contradiction with § 264.97(g)(2) which allows for an alternate sampling procedure. To reduce some of the burden related to this sampling and reporting, we are removing the last sentence from § 264.98(d) (requiring a facility to collect at least four samples from each well at least semi-annually). We are also eliminating the last sentence in § 264.99(f) (requiring a facility to collect at least four samples from each well at least semi-annually). These changes will prevent § 264.98(d) and § 264.99(f) from unintentionally trumping the flexibility granted by § 264.97(g)(2).

Finally, based on another comment received, we are also changing the re-sampling requirements in § 264.98(g)(3) and § 264.99(g) from "may resample within one month" to "may resample within one month or at an alternative site-specific time frame approved by the Administrator." This change allows for sampling to be based on site-specific hydrogeologic conditions. It also can be burdensome for facilities to resample wells within 30 days, because this time frame can allow, in some circumstances, insufficient time to evaluate the original data set, perform quality assurance evaluations, and re-mobilize the sampling team.

TABLE 17.—CHANGES TO THE REQUIREMENTS FOR DOCUMENT SUBMITTAL FOR VARIANCES FROM CLASSIFICATION AS A SOLID WASTE AND FOR TESTING FACILITIES REGARDING TREATABILITY STUDY REPORTS

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
260.31(b)(2)	Rulemaking Petitions. Standards and criteria for variances from classification as a solid waste.	The prevalence of the practice on an industry-wide basis. Section 260.31(b)(2) has been deleted from the regulatory text.
261.4(f)(9)	General. Exclusions. Samples undergoing treatability studies at laboratories and testing facilities.	The facility prepares and submits a report to the Regional Administrator, or state Director (if located in an authorized state), by March 15 of each year that estimates the number of studies at studies and the amount of waste laboratories and expected to be used in treatability testing studies during the current year, and facilities. includes the following information for the previous calendar year: The facility prepares and submits a report to the Regional Administrator, or state Director (if located in an authorized state), by March 15 of each year, that includes the following information for the previous calendar year:

TABLE 18.—CHANGES TO THE REQUIREMENTS FOR DOCUMENT SUBMITTAL FOR PERMITTED TREATMENT, STORAGE AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
264.98(d)	Releases from Solid Waste Management Units. Detection monitoring program.	The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (a) of this section in accordance with § 264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during detection monitoring. The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit conditions under paragraph (a) of this section in accordance with § 264.97(g).
264.98(g)(2)	Releases from Solid Waste Management Units. Detection monitoring program.	Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix IX of part 264 are present, and if so, in what concentration.

TABLE 18.—CHANGES TO THE REQUIREMENTS FOR DOCUMENT SUBMITTAL FOR PERMITTED TREATMENT, STORAGE AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
		Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix IX of part 264 are present, and if so, in what concentration. However, the Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents.
264.98(g)(3)	Releases from Solid Waste Management Units. Detection monitoring program.	For any appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to paragraph (g)(2) of this section, the hazardous constituents found during this initial appendix IX analysis will form the basis for compliance monitoring. For any appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Administrator and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial appendix IX analysis will form the basis for compliance monitoring.
264.99(f)	Releases from Solid Waste Management Units. Compliance monitoring program.	The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with §264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during the compliance period of the facility. The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with §264.97(g).
264.99(g)	Releases from Solid Waste Management Units. Compliance monitoring program.	The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in appendix IX of part 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so at what concentrations, pursuant to procedures in §264.98(f). If the owner or operator finds appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis and add them to the monitoring list. Annually, the owner or operator must determine whether additional hazardous constituents from appendix IX of this 264, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in §264.98(f). To accomplish this, the owner or operator must consult with the Regional Administrator to determine on a case-by-case basis: (1) Which sample collection event during the year will involve enhanced sampling; (2) the number of monitoring wells at the compliance point to undergo enhanced sampling; (3) the number of samples to be collected from each of these monitoring wells; and, (4) the specific constituents from Appendix IX of this 264 for which these samples must be analyzed. If the enhanced sampling event indicates that appendix IX constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Regional Administrator, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

J. We Are Making Selected Changes to the Requirements for Semi-Annual Reports to Annual Reports

1. We Are Changing the Requirement for a Semi-Annual Report Detailing the Effectiveness of the Corrective Action Program

Section 264.100(g) requires the owner or operator of a permitted facility to report in writing to the Regional Administrator on the effectiveness of the corrective action program. These reports must be submitted semi-annually. We are now requiring an annual report instead of a semi-annual report. While this change was not in the proposed rule, it was identified in the comments received and was discussed in the October 29, 2003 NODA (68 FR 61668). It is a change that conforms to the change we are making to § 264.113(e)(5) and was supported by a majority of the commenters.

2. We Are Changing the Requirement for a Semi-Annual Report Describing the Progress of the Corrective Action Program

We proposed lengthening the reporting frequency for corrective action effectiveness reports required by §§ 264.113(e)(5) and 265.113(e)(5). These reports are currently required to be submitted semi-annually and include a description of the progress of the corrective action program, all ground-water monitoring data, and an evaluation of the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action. We received comments, mainly from the states, on this proposed regulatory change. Several states suggested giving the regulatory agency the flexibility of establishing report submittals on a case-by-case basis. Other states suggested the reports be submitted at least annually. Still another state suggested that the semi-annual submittal of reports is preferred because it allows the state to identify inadequate monitoring systems earlier, which in turn, could save the facilities needless ground-water monitoring expenses.

After reviewing the comments submitted, we have decided to promulgate the changes as proposed. Ground-water cleanup is generally a multi-year effort. Thus, we believe that annual submittal of these reports will not jeopardize the protection of human health and the environment.

TABLE 19.—REDUCED FREQUENCY FOR SUBMITTAL OF REPORTS FOR PERMITTED TREATMENT, STORAGE AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language / New regulatory language as amended by the Burden Reduction Rule
264.100(g)	Releases from Solid Waste Management Units. Corrective action program.	The owner or operator must report in writing to the Regional Administrator on the effectiveness of the corrective action program. The owner or operator must submit these reports semi-annually. The owner or operator must report in writing to the Regional Administrator on the effectiveness of the corrective action program. The owner or operator must submit these reports annually.
264.113(e)(5)	Closure and Post-Closure. Closure; time allowed for closure.	During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action. During the period of corrective action, the owner or operator shall provide annual reports to the Regional Administrator describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

TABLE 20.—REDUCED FREQUENCY FOR SUBMITTAL OF REPORTS FOR INTERIM STATUS TREATMENT, STORAGE AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language / New regulatory language as amended by the Burden Reduction Rule
265.113(e)(5)	Closure and Post-Closure. Closure; time allowed for closure.	During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action. During the period of corrective action, the owner or operator shall provide annual reports to the Regional Administrator describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

IV. What Regulatory Requirements Will Remain in the CFR?

Commenters opposed a number of the burden reduction changes that we either proposed or noticed in our October 29, 2003 NODA. After thorough analysis of the comments, and in consultation with state representatives, we have decided (at least for the present time) to retain these regulatory requirements. Stakeholders persuaded us that these changes could delete important recordkeeping and reporting requirements that were necessary in order to protect human health and the environment. Stakeholders, particularly the states, also provided arguments as to

the importance of retaining their oversight role when dealing with leaks and spills of hazardous waste. Table 21—Regulatory Requirements That Will Remain in the CFR, identifies those proposed regulatory sections that we are not promulgating in today's rule.

For information on what commenters said regarding particular provisions and the Agency's response, the reader is referred to the following document, Response to Comments Background Document that can be found in the rulemaking docket.

TABLE 21.—REGULATORY REQUIREMENTS THAT WILL REMAIN IN THE CFR

CFR section	Regulatory requirement
261.38	Lists of Hazardous Wastes. Comparable/syngas fuel exclusion.
261.38(c)(1)(i)(A)	Submit a one-time comparable/syngas fuel notice to the permitting agency.
264/5.16	General Facility Standards. Personnel training.
264/5.16(d)(1)	Record the job title.
264/5.16(d)(2)	Record job description.
264/5.16(d)(3)	Record type and amount of training employees will be provided.
264.90	Releases From Solid Waste Management Units. Applicability.
264.90(a)(2)	Comply with the requirements of 264.101 with exceptions for surface impoundments, waste piles, land treatment unit, or landfills.
264/5.98	Releases From Solid Waste Management Units. Detection monitoring program.
264.98(c)	Conduct and maintain ground-water monitoring.
264.98(g)(1)	Prepare and submit a notification of contamination.
264.98(g)(5)(ii)	Prepare and submit an engineering feasibility plan for corrective action.
264.98(g)(6)(i)–(ii)	Prepare and submit a notification of intent to make a demonstration.
264.99	Releases From Solid Waste Management Units. Compliance monitoring program.
264.99(h)(1)	Prepare and submit a notification of exceeded concentration limits.
264.99(i)(1)–(2)	Prepare and submit a notification of intent to make a demonstration.
264/5.174	Use and Management of Containers. Inspections.
264/5.174	Inspect containers weekly.
264/5.193	Tank Systems. Leak detection systems for tanks.
264.193(c)(3)	Demonstration.
264.193 (c)(4)	Demonstration.
264/5.193(e)(3)(iii)	Demonstrate to EPA that technology and site conditions do not allow detection of release within 24 hours.
264/5.193(g)	Variance from leak detection systems for tanks.
264/5.193(h)	Variance from leak detection systems for tanks.
264.196	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-to use tank systems.
264.196(d)(1)	Notify EPA of release.
264.196(d)(2)	Notify EPA of release.
264.196(d)(3)	Submit report describing release.
264/5.223	Surface Impoundments. Response actions.
264/5.223(b)(1)	Notify EPA in writing if flow rate exceeds Action Leakage Rate for any sump within 7 days.
264/5.223(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
264/5.223(b)(6)	Compile and submit information to EPA each month the Action Leakage Rate is exceeded.
264.253	Waste Piles. Response actions.
264.253(b)(1)	Notify EPA in writing of the exceedence within 7 days of the determination.
264.253(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determining leakage.
264.253(b)(6)	Compile and submit information to the EPA each month that the Action Leakage Rate is exceeded.
264.278	Land Treatment. Unsaturated zone monitoring.
264.278(g)(1)	Prepare and submit a notice of statistically significant increases in hazardous constituents below treatment zone.
264.278(h)(1)–(2)	Prepare and submit a notice of intent to make a demonstration that other sources or error led to increases below treatment zone.
264.304	Landfills. Response actions.
264.304(b)(1)	Notify EPA if Action Leakage Rate is exceeded within 7 days of determination.
264.304(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
264.304(b)(6)	Submit information to EPA each month the Action Leakage Rate is exceeded.
264.573	Drip Pads. Design and operating standards.
264.573(m)(1)(iv)	Notify EPA in writing of release.
264.573(m)(2)	Regional Administrator will make a determination and will notify owner/operator of the determination.
264.573(m)(3)	Notify EPA and certify completion of repairs.
264.1036	Air Emission Standards for Process Vents. Reporting requirements.
264.1036(a)	Notify EPA semi-annually of exceedences.
264.1065	Air Emission Standards for Equipment Leaks. Reporting requirements.
264.1065(a)	Notify EPA semi-annually of exceedences.
264/5.1101	Containment Buildings. Design and operating standards.
265.1101(c)(2)	Certify by qualified professional engineer.
264/5.1101(c)(3)(i)(D)	Notify EPA in writing of release.
264/5.1101(c)(3)(ii)–(iii)	Notify EPA and verify in writing that the cleanup and repairs have been completed after a release.
264/5.1101(c)(4)	Inspection frequency.
265.1(b)	Purpose, scope, and applicability.
265.93	Ground-Water Monitoring. Preparation, evaluation, and response.
265.93(c)(1)	Notify of increased indicator parameter concentrations.
265.93(d)(1)	Notify of increased indicator parameter concentrations.
265.93(e)	Any ground-water assessment to satisfy the requirements of § 265.93(d)(4) which is initiated prior to final closure must be completed and reported in accordance with § 265.93(d)(5).

TABLE 21.—REGULATORY REQUIREMENTS THAT WILL REMAIN IN THE CFR—Continued

CFR section	Regulatory requirement
265.93(f)	Evaluate data and if §265.91(a) are not satisfied, immediately modify the number, location, or depth of the monitoring wells.
265.94	Ground-Water Monitoring. Recordkeeping and reporting.
265.94(a)(2)(i)	Prepare and submit a quarterly report of concentrations of values of the drinking water suitability parameters.
265.94(a)(2)(ii)	Prepare and submit a report on indicator parameter concentrations and evaluations.
265.94(a)(2)(iii)	Prepare and submit a report on ground-water surface elevations.
265.94(b)(2)	Prepare and submit a report on the results of the ground-water quality assessment program.
265.259	Waste Piles. Response actions.
265.259(b)(1)	Notify EPA in writing within 7 days of determination.
265.259(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
265.259(b)(6)	Submit information to EPA each month that the Action Leakage Rate is exceeded.
265.276	Land Treatment. Food-chain crops.
265.276(a)	Submit notification for food-chain crops at land treatment facility.
265.303	Landfills. Response actions.
265.303(b)(1)	Notify EPA if Action Leakage Rate is exceeded within 7 days of determination.
265.303(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
265.303(b)(6)	Submit information to EPA each month the Action Leakage Rate is exceeded.
265.443	Drip Pads. Design and operating requirements.
265.443(m)(1)(iv)(2)	Notify EPA of release and provide written notice of procedures and schedule for cleanup.
265.443(m)(2)	Regional Administrator will make a determination and notify the owner/operator of the determination.
265.443(m)(3)	Notify Regional Administrator and certify completion of repairs.
266.103	Hazardous Waste Burned in Boilers and Industrial Furnaces. Interim status standards for burners.
266.103(b)(2)(ii)(D)	Certification of pre-compliance.
268.7	Land Disposal Restrictions. General. Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.
268.7(a)(6)	Requirement to keep in the facility's files all supporting data and waste analysis data for "knowledge of the waste" determinations and for testing determinations.
268.7(d)(1)	Requirement to submit to the regulatory authority one-time notifications that hazardous debris is excluded form the definition of hazardous waste.
270.17(d)	Permit Application. Specific part B information requirements for surface impoundments.

V. We Will Implement This Rule Via the Class I Permit Modification Process Without Prior Approval

Several comments on the proposed rule pointed out that implementing many of the changes in the proposal would require a Class 2 Permit modification for facilities with permits (see the following Web site for information about Permit modifications: *http://www.epa.gov/epaoswer/hotline/training/perm.pdf*). Obtaining a Class 2 Permit modification requires a substantial effort on the part of a regulated facility, which is contrary to the intent of today's rule. We believe the changes in this rule will provide no significant risk to human health or the environment, and thus, we prefer that these changes become effective as quickly as possible so that the paperwork reduction benefits from the rule can be realized.

Therefore, in our October 29, 2003 NODA, we requested comment on allowing permitted facilities to use the Class 1 permit modification procedure, with prior Agency approval, to implement the changes arising from this rulemaking. We also requested comment on whether the Class 1 permit modifications should be without prior Agency approval.

States represented by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) requested that we use the Class 1 permit modification procedure with prior Agency approval. They expressed an interest in retaining oversight in the implementation of our burden reductions. After weighing this interest against the interest in achieving savings as soon as possible, we have decided in favor of not delaying the benefits of this rule. This is based on our judgment that, in general, the risks associated with these changes are negligible. We will allow the changes in today's rule to be implemented as Class 1 permit modifications without prior approval, except for a permit modification for reduced inspection frequency for Performance Track member facilities which will be implemented as a Class 1 permit modification with prior approval. To implement this approach, we are adding regulatory language and an entry to the permit modification classification table in Appendix I to 270.42, denoting modifications pursuant to the burden reduction rule. However, we wish to point out that, unless state law prevents it, states can be more stringent than the EPA rules if there are specific concerns with the consequences of these changes in any state. All states also can use the omnibus authority of RCRA Section 3005(c) for specific facilities where they believe there is risk due to site-specific circumstances not identified in our rulemaking process. This will allow states to retain oversight where they choose to do so.

VI. How Will Today's Regulatory Changes Be Administered and Enforced in the States?

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR Part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal

requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Authorization of States for Today's Rule

Today's rule affects many aspects of the RCRA program and is promulgated pursuant to both HSWA and non-HSWA statutory authority. Today's rule amends a number of provisions in the RCRA regulations which were promulgated pursuant to HSWA. These provisions include, among others, the land disposal restrictions and the regulation of air emissions from hazardous waste facilities, which were promulgated pursuant to authority in sections 3004(m) and (o) respectively, of RCRA. Therefore, the Agency is adding the rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the statutory authority that was added by HSWA.

Other sections of today's rule are being promulgated pursuant to non-HSWA authority. All of the HSWA and non-HSWA requirements in today's rulemaking are equivalent to, or less stringent than, the existing provisions in the Federal regulations which they would amend. Authorized states are required to modify their program only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent or reduce the scope of the Federal program, states are not required to modify their program. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the Federal program. Therefore, states are not required to adopt and seek authorization for this rulemaking. EPA will implement this rulemaking only in those states which are not authorized for the RCRA program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that is amended today.

Nevertheless, this rule will provide significant benefits to EPA, states, and the regulated community, without compromising human health or environmental protection. Because this rulemaking will not become effective in authorized states until they have adopted and are authorized for it, we strongly encourage states to amend their programs and seek authorization for today's rule. EPA will try to act promptly on any such requests for authorization.

VII. Statutory and Executive Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is significant and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Although this rule clarifies inconsistencies in the regulations and decreases burden, it is still considered a significant regulatory action under the terms of Executive Order 12866 since it addresses one of the President's priorities of reducing burden.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule is promulgating changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden certain requirements impose on the States, EPA, and the regulated community. EPA estimates that the reporting and recordkeeping hour burden reduction for this rule ranges from 22,000 hours to 37,500 hours. EPA also estimates that the reporting and recordkeeping cost burden reduction for this rule ranges from approximately $2 million to $3 million. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR parts 260, 261, 264, 265, 266, 268, 270, and 271, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The burden reduction resulting from this rulemaking will affect the following seven existing Information Collection Requests (ICRs): OMB control number 2050–0033, Facility Groundwater Monitoring Requirements, EPA ICR number 0959.12; OMB control number 2050–0035, Hazardous Waste Generator Standards, EPA ICR number 0820.09; OMB control number 2050–0050, Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types, EPA ICR number 1572.06; OMB control number 2050–0053, Identification, Listing and Rulemaking Petitions, EPA ICR number 1189.14; OMB control number 2050–0073, Boilers and Industrial Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements and Part B Permit Application and Modifications Requirements, EPA ICR number 1361.10; OMB control number 2050–0085, Land Disposal Restrictions, EPA ICR number 1442.18; OMB control number 2050–0120, General Hazardous Waste Facility Standards, EPA ICR number 1571.07. A copy of these OMB approved Information Collection Requests (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop,

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the final rule on small entities, a "small entity" is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The final rule is specifically intended to reduce, not increase, the paperwork and related burdens of the RCRA hazardous waste program. For businesses in general, including all small businesses, the regulatory changes will reduce the labor time and other costs of preparing, keeping records of, and submitting reports to the Agency. The final rule, for example, reduces the frequency by which businesses must conduct specified recordkeeping and reporting activities (*e.g.*, decreased inspection frequency for hazardous waste tanks from daily to weekly). It also eliminates certain recordkeeping and reporting requirements altogether, *i.e.*, in cases where the documents are little used by the public or regulators. In addition, the rule eliminates redundancies between the RCRA regulations and other regulatory programs (*e.g.*, RCRA and OSHA requirements for personnel training), thereby streamlining facilities' compliance activities. Finally, the rule provides increased flexibility in how waste handlers may comply with the regulations (*e.g.*, establishment of decreased inspection frequencies for facilities in the National Performance Track Program). We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA must prepare a written statement for rules with Federal mandates that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments; enabling officials of affected small governments to provide meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates; and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule does not contain a federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector, in any one year. In addition, the rule contains no regulatory requirements for small governments. Thus, the final rule is not subject to the requirements of Sections 202, 203, and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications." As defined in Executive Order 13132, "policies that have Federalism implications" include regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

The final rule does not have federalism implications. It will not have

substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it will not impose any requirements on states or any other level of government. As explained above, the final rule eliminates or relaxes many of the paperwork requirements in the regulations. Because these changes are equivalent to or less stringent than the existing federal program, states will not be required to adopt and seek authorization for them. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." As defined in Executive Order 13175, "policies that have Tribal implications" include regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The final rule does not have tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175. As explained above, the final rule eliminates or relaxes many of the paperwork requirements in the regulations. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 applies to any rule that may: (1) Be "economically significant'under Executive Order 12866 (*i.e.*, a rulemaking that has an annual effect on the economy of $100 million or more or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities), and (2) concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the final rule is not subject to Executive Order 13045 because it is not an "economically significant" rule as defined by Executive Order 12866. EPA also expects the rule does not have a disproportionate effect on children's health. The basic reason for this finding is that the rule modifies or eliminates paperwork requirements that were deemed unnecessary or infrequently used by regulators. However, the rule preserves the technical requirements underlying these paperwork requirements. In addition, regulators continue to have access to all facility paperwork held on site, should the need arise.

In addition, EPA has reduced the inspection frequency of tank systems from each operating day to at least weekly, provided that the tank systems have full secondary containment with leak detection equipment or established workplace practices that will alert facility personnel. SQG tank systems are required to have secondary containment with leak detection equipment or established workplace practices to adopt the weekly inspections.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires EPA to prepare and submit a Statement of Energy Effects to OMB for those matters identified as significant energy actions. As defined in Executive Order 13211, a "significant energy action" is any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that: (1) Is a significant regulatory action under Executive Order 12866 or any successor order and *is* likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by OMB as a significant energy action.

The final rule does not involve the supply, distribution, or use of energy. Thus, Executive Order 13211 does not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures) that are developed or adopted by voluntary consensus standards bodies. The NTTAA also directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Under Executive Order 12898, as well as through EPA's April 1995 "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agency Report" and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the U.S. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

EPA has considered the impacts of the final rule on low-income populations and minority populations and concluded that there are no disproportionately high impacts under the rule. The basic reason for this finding is that the rule modifies or eliminates paperwork requirements that were deemed unnecessary or infrequently used by regulators. However, the rule preserves the technical requirements underlying these paperwork requirements. In addition, regulators continue to have access to all facility paperwork held on site, should the need arise.

In addition, EPA has reduced the inspection frequency of tank systems from each operating day to at least weekly, provided that the tank systems have full secondary containment with leak detection equipment or workplace practices that will alert facility personnel.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 4, 2006.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste Reporting and recordkeeping requirements.

40 CFR Part 261

Excluded hazardous waste, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

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

40 CFR Part 265

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

40 CFR Part 266

Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

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

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 15, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

■ 2. Section 260.10 is amended by adding in alphabetical order the definition of "Performance Track member facility" to read as follows:

§ 260.10 Definitions.

* * * * *

Performance Track member facility means a facility that has been accepted by EPA for membership in the National Environmental Performance Track Program and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.

* * * * *

Subpart C—Rulemaking Petitions

§ 260.31 [Amended]

■ 3. Section 260.31 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

■ 5. Section 261.4 is amended by revising paragraphs (a)(9)(iii)(E) and (f)(9) introductory text to read as follows:

§ 261.4 Exclusions.

(a) * * *

(9) * * *

(iii) * * *

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Regional Administrator or state Director for reinstatement. The Regional Administrator or state Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

* * * * *

(f) * * *

(9) The facility prepares and submits a report to the Regional Administrator, or state Director (if located in an authorized state), by March 15 of each year, that includes the following information for the previous calendar year:

* * * * *

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

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

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

Subpart B—General Facility Standards

■ 7. Section 264.15 is amended by revising paragraph (b)(4) (the comment to paragraph (b)(4) is unchanged), and adding paragraph (b)(5) to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable.

* * * * *

(5) Performance Track member facilities that choose to reduce their inspection frequency must:

(i) Submit a request for a Class I permit modification with prior approval to the Director. The modification request must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. The modification request must also specify, in writing, that the reduced inspection frequency will apply for as long as the facility is a Performance Track member facility, and that within seven calendar days of ceasing to be a Performance Track member, the facility will revert to the non-Performance Track inspection frequency. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the request is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: deny the application; or notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its request for a Class 1 permit modification and keep a copy of the application in the facility's operating record.

(iii) Any Performance Track member facility that discontinues their membership or is terminated from the program must immediately notify the Director of their change in status. The facility must place in its operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.

* * * * *

■ 8. Section 264.16 is amended by adding new paragraph (a)(4) to read as follows:

§ 264.16 Personnel training.

(a)(1) * * *

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

* * * * *

Subpart D—Contingency Plan and Emergency Procedures

■ 9. Section 264.52 is amended by revising paragraph (b) to read as follows:

§ 264.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

* * * * *

§ 264.56 [Amended]

■ 10. Section 264.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 11. Section 264.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2) (the comment to (b)(2) remains unchanged), (b)(6), (b)(8), and (b)(10), and by adding paragraphs (b)(18) and (b)(19) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by appendix I of this part. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility.

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252–264.254, 264.276, 264.278, 264.280, 264.302–264.304, 264.309, 264.602, 264.1034(c)–264.1034(f), 264.1035, 264.1063(d)–264.1063(i), 264.1064, and 264.1082 through 264.1090 of this part. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup which must be maintained in the operating record until closure of the facility.

* * * * *

(8) All closure cost estimates under § 264.142, and for disposal facilities, all post-closure cost estimates under § 264.144 of this part. This information must be maintained in the operating record until closure of the facility.

* * * * *

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, a petition pursuant to § 268.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. This information must be maintained in the operating record until closure of the facility.

* * * * *

(18) Monitoring, testing or analytical data where required by § 264.347 must be maintained in the operating record for five years.

(19) Certifications as required by § 264.196(f) must be maintained in the operating record until closure of the facility.

Subpart F—Releases From Solid Waste Management Units

■ 12. Section 264.98 is amended by revising paragraphs (d), (g)(2), and (g)(3) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(d) The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit conditions under paragraph (a) of this section in accordance with § 264.97(g).

* * * * *

(g) * * *

(2) Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix IX of this part are present, and if so, in what concentration. However, the Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents.

(3) For any appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Administrator and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial appendix IX analysis will form the basis for compliance monitoring.

* * * * *

■ 13. Section 264.99 is amended by revising paragraphs (f) and (g) to read as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(f) The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g).

(g) Annually, the owner or operator must determine whether additional hazardous constituents from Appendix IX of this part, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). To accomplish this, the owner or operator must consult with the Regional Administrator to determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from Appendix IX of this part for which these samples must be analyzed. If the enhanced sampling event indicates that Appendix IX constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Regional Administrator, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

* * * * *

■ 14. Section 264.100 is amended by revising paragraph (g) to read as follows:

§ 264.100 Corrective action program.

* * * * *

(g) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the corrective action program. The owner or operator must submit these reports annually.

* * * * *

Subpart G—Closure and Post-Closure

■ 15. Section 264.113 is amended by revising paragraph (e)(5) to read as follows:

§ 264.113 Closure; time allowed for closure.

* * * * *

(e) * * *

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

* * * * *

■ 16. Section 264.115 is revised to read as follows:

§ 264.115 Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan.. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for closure under § 264.143(i).

■ 17. Section 264.120 is revised to read as follows:

§ 264.120 Certification of completion of post-closure care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with

the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).

Subpart H—Financial Requirements

■ 18. Section 264.143 is amended by revising paragraph (i) to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

■ 19. Section 264.145 is amended by revising paragraph (i) to read as follows:

§ 264.145 Financial assurance for post-closure care.

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Regional Administrator will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

■ 20. Section 264.147 is amended by revising paragraph (e) to read as follows:

§ 264.147 Liability requirements.

* * * * *

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

* * * * *

Subpart I—Use and Management of Containers

■ 21. Section 264.174 is revised to read as follows:

§ 264.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures identified in § 264.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

[Comment: See §§ 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.]

Subpart J—Tank Systems

■ 22. Section 264.191 is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

§ 264.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 264.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with § 270.11(d) of this chapter, that attests to the tank system's integrity by January 12, 1988.

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter, that addresses cracks, leaks, corrosion, and erosion.

* * * * *

■ 23. Section 264.192 is amended by revising paragraph (a) introductory text and paragraph (b) introductory text to read as follows:

§ 264.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain and submit to the Regional Administrator, at time of submittal of part B information, a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with § 270.11(d) of this chapter, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Regional Administrator to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified, installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tanks systems or components, must inspect the system for the presence of any of the following items:

* * * * *

■ 24. Section 264.193 is amended by:

■ a. Removing paragraphs (a)(2) through (a)(4);

■ b. Redesignating (a)(5) as (a)(2);

■ c. Revising paragraphs (a)(1), newly designated (a)(2), and (i)(2) to read as follows:

§ 264.193 Containment and detection of releases.

(a) * * *

(1) For all new and existing tank systems or components, prior to their being put into service.

(2) For tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

* * * * *

(h) * * *

(4) * * *

(i) * * *

(2) For other than non-enterable underground tanks, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or develop a schedule and procedure for an assessment of the overall condition of the tank system by a qualified Professional Engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

* * * * *

■ 25. Section 264.195 is amended by:

■ a. Revising paragraph (b) (the note to paragraph (b) is unchanged);

■ b. Redesignating existing paragraphs (c) and (d), as paragraphs (g) and (h), respectively;

■ c. Adding new paragraphs (c) through (f), to read as follows:

§ 264.195 Inspections.

* * * * *

(b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

* * * * *

(c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day:

(1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

(2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).

(f) Ancillary equipment that is not provided with secondary containment, as described in § 264.193(f)(1) through (4), must be inspected at least once each operating day.

* * * * *

■ 26. Section 264.196 is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(f) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.

* * * * *

Subpart L—Waste Piles

■ 27. Section 264.251 is amended by revising the introductory text to paragraph (c) to read as follows:

§ 264.251 Design and operating requirements.

* * * * *

(c) The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.

* * * * *

Subpart M—Land Treatment

■ 28. Section 264.280 is amended by revising paragraph (b) to read as follows:

§ 264.280 Closure and post-closure care.

* * * * *

(b) For the purpose of complying with § 264.115 of this chapter, when closure is completed the owner or operator may submit to the Regional Administrator certification by an independent, qualified soil scientist, in lieu of a qualified Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

* * * * *

Subpart N—Landfills

■ 29. Section 264.314 is amended by:

■ a. Removing paragraph (a);

■ b. Redesignating paragraphs (b) through (f) as paragraphs (a) through (e); and,

■ c. Revising newly designated paragraphs (a) and newly designated paragraph (e) introductory text to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(e) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:

* * * * *

Subpart O—Incinerators

■ 30. Section 264.343 is amended by revising paragraph (a)(2) to read as follows:

§ 264.343 Performance standards.

* * * * *

(a)(1) * * *

(2) An incinerator burning hazardous wastes FO20, FO21, FO22, FO23, FO26,

or FO27 must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated (under § 264.342) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in § 264.343(a)(1).

* * * * *

■ 31. Section 264.347 is amended by revising paragraph (d) to read as follows:

§ 264.347 Monitoring and inspections.

* * * * *

(d) This monitoring and inspection data must be recorded and the records must be placed in the operating record required by § 264.73 of this part and maintained in the operating record for five years.

Subpart S—Special Provisions for Cleanup

■ 32. Section 264.554 is amended by revising paragraph (c)(2) to read as follows:

§ 264.554 Staging piles.

* * * * *

(c) * * *

(2) Certification by a qualified Professional Engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

* * * * *

Subpart W—Drip Pads

■ 33. Section 264.571 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 264.571 Assessment of existing drip pad integrity.

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

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b) and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 264.573. The plan must be reviewed and certified by a qualified Professional Engineer.

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

* * * * *

■ 34. Section 264.573 is amended by revising paragraphs (a)(4)(ii) and (g) to read as follows:

§ 264.573 Design and operating requirements.

(a) * * *

(4) * * *

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

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

* * * * *

■ 35. Section 264.574 is amended by revising paragraph (a) to read as follows:

§ 264.574 Inspections.

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

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

§ 264.1061 [Amended]

■ 36. Section 264.1061 is amended by:

■ a. Removing paragraphs (b)(1) and (d); and,

■ b. Redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

§ 264.1062 [Amended]

■ 37. Section 264.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

Subpart DD—Containment Buildings

■ 38. Section 264.1100 is amended by revising the introductory text to read as follows:

§ 264.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

■ 39. Section 264.1101 is amended by revising paragraphs (c)(2) and (c)(4) to read as follows:

§ 264.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

* * * * *

(4) Inspect and record in the facility's operating record, at least once every

seven days, except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).

* * * * *

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

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

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart B—General Facility Standards

■ 41. Section 265.15 is amended by revising paragraph (b)(4) and adding paragraph (b)(5) to read as follows:

§ 265.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058, and 265.1084 through 265.1090, where applicable.

(5) Performance Track member facilities that choose to reduce inspection frequencies must:

(i) Submit an application to the Director. The application must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the application is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) Deny the application; or (2) notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility's operating record.

(iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in its operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.

* * * * *

■ 42. Section 265.16 is amended by adding new paragraph (a)(4) to read as follows:

§ 265.16 Personnel training.

(a) * * *

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

* * * * *

Subpart D—Contingency Plans and Emergency Procedures

■ 43. Section 265.52 is amended by revising paragraph (b) to read as follows:

§ 265.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with Part 112 of this chapter, or Part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

* * * * *

§ 265.56 [Amended]

■ 44. Section 265.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 45. Section 265.73 is amended by revising the introductory text to paragraph (b), (b)(1), (b)(2) (the comment to paragraph (b)(2) is unchanged), (b)(6) (the comment to paragraph (b)(6) is unchanged), (b)(7), and (b)(8) and adding a new (b)(15) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted below:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I to part 265. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and by §§ 265.19, 265.94, 265.191, 265.193, 265.195, 265.224, 265.226, 265.255, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302, 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265. 265.1063(i), 265.1064, and 265.1083 through 265.1090. Maintain in

the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility.

* * * * *

(7) All closure cost estimates under § 265.142 and, for disposal facilities, all post-closure cost estimates under § 265.144 must be maintained in the operating record until closure of the facility.

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, monitoring data required pursuant to a petition under § 268.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(15) Monitoring, testing or analytical data, and corrective action where required by §§ 265.90, 265.93(d)(2), and 265.93(d)(5), and the certification as required by § 265.196(f) must be maintained in the operating record until closure of the facility.

Subpart F—Ground-Water Monitoring

■ 46. Section 265.90 is amended by revising paragraphs (d)(1) and (d)(3) to read as follows:

§ 265.90 Applicability.

* * * * *

(d) * * *

(1) Within one year after the effective date of these regulations, develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system. This plan is to be placed in the facility's operating record and maintained until closure of the facility.

* * * * *

(3) Prepare a report in accordance with § 265.93(d)(5) and place it in the facility's operating record and maintain until closure of the facility.

* * * * *

■ 47. Section 265.93 is amended by revising paragraphs (d)(2) and (d)(5) to read as follows:

§ 265.93 Preparation, evaluation, and response.

* * * * *

(d)(1) * * *

(2) Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. This plan must be placed in the facility operating record and be maintained until closure of the facility.

* * * * *

(5) The owner or operator must make his first determination under paragraph (d)(4) of this section, as soon as technically feasible, and prepare a report containing an assessment of ground-water quality. This report must be placed in the facility operating record and be maintained until closure of the facility.

* * * * *

Subpart G—Closure and Post-Closure

■ 48. Section 265.113 is amended by revising paragraph (e)(5) to read as follows:

§ 265.113 Closure; time allowed for closure.

* * * * *

(e) * * *

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

* * * * *

■ 49. Section 265.115 is revised to read as follows:

§ 265.115 Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for closure under § 265.143(h).

■ 50. Section 265.120 is revised to read as follows:

§ 265.120 Certification of completion of post-closure care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

Subpart H—Financial Requirements

■ 51. Section 265.143 is amended by revising paragraph (h) to read as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

■ 52. Section 265.145 is amended by revising paragraph (h) to read as follows:

§ 265.145 Financial assurance for post-closure care.

* * * * *

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving

certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required to maintain financial assurance for post-closure care of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

■ 53. Section 265.147 is amended by revising paragraph (e) to read as follows:

§ 265.147 Liability requirements.

* * * * *

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

* * * * *

Subpart I—Use and Management of Containers

■ 54. Section 265.174 is revised to read as follows:

§ 265.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

[Comment: See § 265.171 for remedial action required if deterioration or leaks are detected.]

Subpart J—Tank Systems

■ 55. Section 265.191 is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

§ 265.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter, that attests to the tank system's integrity by January 12, 1988.

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described above, or an internal inspection and/or other tank integrity examination certified by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter that addresses cracks, leaks, corrosion, and erosion.

* * * * *

■ 56. Section 265.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 265.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tank systems, must inspect the system or component for the presence of any of the following items:

* * * * *

■ 56. Section 265.193 is amended by:

■ a. Removing paragraphs (a)(2) through (a)(4);

■ b. Redesignating (a)(5) as (a)(2);

■ c. Revising paragraphs (a)(1), newly designated (a)(2) and (i)(2) (the note to (i)(2) is unchanged) to read as follows.

§ 265.193 Containment and detection of releases.

(a) * * *

(1) For all new and existing tank systems or components, prior to their being put into service.

(2) For tank systems that store or treat materials that become hazardous wastes, within 2 years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

* * * * *

(i) * * *

(2) For other than non-enterable underground tanks, and for all ancillary equipment, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or an internal inspection or other tank integrity examination by a qualified Professional Engineer that addresses cracks, leaks, and corrosion or erosion at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tanks surfaces to be assessed.

* * * * *

■ 58. Section 265.195 is amended by:

■ a. Revising paragraph (a) (the note to paragraph (a) is unchanged);

■ b. Redesignating existing paragraphs (b) and (c), as paragraphs (f) and (g), respectively; and,

■ c. Adding new paragraphs (b) through (e).

§ 265.195 Inspections.

(a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

* * * * *

(b) Except as noted under the paragraph (c) of this section, the owner or operator must inspect at least once each operating day:

(1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass

systems, and drainage systems) to ensure that it is in good working order;

(2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (b)(1) through (3) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(d) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

(e) Ancillary equipment that is not provided with secondary containment, as described in § 265.193(f)(1) through (4), must be inspected at least once each operating day.

* * * * *

■ 59. Section 265.196 is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(f) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified Professional Engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification is to be placed in the operating record and maintained until closure of the facility.

* * * * *

■ 60. Section 265.201 is amended by:

■ a. Revising the paragraph (c) introductory text;

■ b. Redesignating paragraph (d) through (f), as paragraphs (f) through (h), respectively; and,

■ c. Adding new paragraphs (d) and (e).

§ 265.201 Special requirements for generators of between 100 and 1,000 kg/mo. that accumulate hazardous waste in tanks.

* * * * *

(c) Except as noted in paragraph (d) of this section, generators who accumulate between 100 and 1,000 kg/mo of hazardous in tanks must inspect, where present:

* * * * *

(d) Generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (c)(1) through (5) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

* * * * *

Subpart K—Surface Impoundments

■ 61. Section 265.221 is amended by revising paragraph (a) to read as follows:

§ 265.221 Design and operating requirements.

(a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of an existing surface impoundment unit must install two or more liners, and a leachate collection and removal system above and between the liners, and operate the leachate collection and removal system, in accordance with § 264.221(c), unless exempted under § 264.221(d), (e), or (f) of this Chapter.

* * * * *

§ 265.223 [Redesignated as § 265.224]

■ 62. Section 265.223 titled "Response actions" is redesignated as § 265.224 and the newly designated § 265.224 is amended by revising paragraph (a) to read as follows:

§ 265.224 Response actions.

(a) The owner or operator of surface impoundment units subject to § 265.221(a) must develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

* * * * *

Subpart L—Waste Piles

■ 63. Section 265.259 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 265.259 Response actions.

(a) The owner or operator of waste pile units subject to § 265.254 must develop and keep on-site until closure of the facility a response action plan.

* * *

* * * * *

Subpart M—Land Treatment

■ 64. Section 265.280 is amended by revising paragraph (e) to read as follows:

§ 265.280 Closure and post-closure.

* * * * *

(e) For the purpose of complying with § 265.115, when closure is completed the owner or operator may submit to the Regional Administrator certification both by the owner or operator and by an independent, qualified soil scientist, in lieu of a qualified Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

* * * * *

Subpart N—Landfills

■ 65. Section 265.301 is amended by revising paragraph (a) to read as follows:

§ 265.301 Design and operating requirements.

(a) The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal system, in accordance with § 264.301(d), (e), or (f) of this chapter.

* * * * *

■ 66. Section 265.303 is amended by revising paragraph (a) to read as follows:

§ 265.303 Response actions.

(a) The owner or operator of landfill units subject to § 265.301(a) must develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

* * * * *

■ 67. Section 265.314 is amended by:
■ a. Removing paragraph (a);
■ b. Redesignating paragraphs (b) through (g) as paragraphs (a) through (f); and,
■ c. Revising newly designated paragraph (a), and the introductory text of newly designated paragraph (f) to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(f) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator or the Regional Administrator determines that:

* * * * *

Subpart W—Drip Pads

■ 68. Section 265.441 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 265.441 Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 265.440, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 265.443(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 265.443 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 265.443, except the standards for liners and leak detection systems, specified in § 265.443(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b), and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 265.443. The plan must be reviewed and certified by a qualified Professional Engineer.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Regional Administrator or state Director, the as-built drawings for the drip pad together with a certification by a qualified Professional Engineer attesting that the drip pad conforms to the drawings.

* * * * *

■ 69. Section 265.443 is amended by revising paragraphs (a)(4)(ii) and (g) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4)(i) * * *

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

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

* * * * *

■ 70. Section 265.444 is amended by revising paragraph (a) to read as follows:

§ 265.444 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 265.443 by a qualified Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

§ 265.1061 [Amended]

■ 71. Section 265.1061 is amended by removing paragraphs (b)(1) and (d), and redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

§ 265.1062 [Amended]

■ 72. Section 265.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

Subpart DD—Containment Buildings

■ 73. Section 265.1100 is amended by revising the introductory text to read as follows:

§ 265.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

■ 74. Section 265.1101 is amended revising paragraphs (c)(2) and (c)(4) to read as follows:

§ 265.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

* * * * *

(4) Inspect and record in the facility's operating record at least once every seven days, except for Performance Track member facilities, that must inspect up to once each month, upon approval of the director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building

to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 75. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

■ 76. Section 266.102 is amended by revising paragraph (e)(10) to read as follows:

§ 266.102 Permit standards for burners.

* * * * *

(e) * * *

(10) *Recordkeeping.* The owner or operator must maintain in the operating record of the facility all information and data required by this section for five years.

* * * * *

■ 77. Section 266.103 is amended by revising paragraphs (d) and (k) to read as follows:

§ 266.103 Interim status standards for burners.

* * * * *

(d) *Periodic Recertifications.* The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.

* * * * *

(k) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section for five years.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

■ 78. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

■ 79. Section 268.7 is amended by revising paragraphs (a)(1), (a)(2), and (b)(6) to read as follows:

§ 268.7 Testing, tracking and recordkeeping requirements for generators, treaters, and disposal facilities.

(a) *Requirements for generators:* (1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, 268.45, or § 268.49. This determination can be made concurrently with the hazardous waste determination required in § 262.11 of this chapter, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods of Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, (incorporated by reference, see § 260.11 of this chapter), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of § 264.13 of this chapter and paragraph (b) of this section. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this part in addition to any applicable requirements in this section.

(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.") No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.

* * * * *

(b) * * *

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 266.20(b) of this chapter regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (*i.e.*, the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.

* * * * *

■ 80. Section 268.9 is amended by revising paragraphs (a) and (d) introductory text to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. This determination may be made concurrently with the hazardous waste determination required in § 262.11 of this chapter. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (40 CFR part

261, subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (40 CFR part 261, subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

* * * * *

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

* * * * *

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

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

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

■ 82. Section 270.14 is amended by revising paragraph (a) to read as follows:

§ 270.14 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 §§ 0.14 through 270.29 applicable to the facility. The part B information requirements presented in §§ 270.14 through 270.29 reflect the standards promulgated in 40 CFR part 264. These information requirements are necessary in order for EPA to determine compliance with the part 264 standards. 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 Director may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Director and signed in accordance with the requirements in § 270.11. Certain technical data, such as design drawings and specification, and engineering studies shall be certified by a qualified Professional Engineer. For post-closure permits, only the information specified in § 270.28 is required in part B of the permit application.

* * * * *

■ 83. Section 270.16 is amended by revising paragraph (a) to read as follows:

§ 270.16 Specific part B information requirements for tank systems.

* * * * *

(a) A written assessment that is reviewed and certified by a qualified Professional Engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 264.191 and 264.192 of this chapter;

* * * * *

■ 84. Section 270.26 is amended by revising paragraph (c)(15) to read as follows:

§ 270.26 Special part B information requirements for drip pads.

* * * * *

(c) * * *

(15) A certification signed by a qualified Professional Engineer, stating that the drip pad design meets the requirements of paragraphs (a) through(f) § 264.573 of this chapter.

* * * * *

Subpart D—Changes to Permits

■ 85. Section 270.42 is amended by adding new paragraph (l) and by adding new entry O to the table in Appendix I to § 270.42. to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(l) *Performance Track member facilities.* The following procedures apply to Performance Track member facilities that request a permit modification under Appendix I of this section, section O(1).

(1) Performance Track member facilities must have complied with the requirements of § 264.15(b)(5) in order to request a permit modification under this section.

(2) The Performance Track member facility should consider the application approved if the Director does not: deny the application, in writing; or notify the Performance Track member facility, in writing, of an extension to the 60-day deadline within 60 days of receiving the request. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility's operating record.

* * * * *

Appendix 1 To § 270.42—Classification of Permit Modification

Modifications	Class
* * * * * * *	
O. Burden Reduction	
1. Approval of reduced inspection frequency for Performance Track member facilities for:	
a. Tanks systems pursuant to § 264.195	[1] 1
b. Containers pursuant to § 264.174	[1] 1
c. Containment buildings pursuant to § 264.1101(c)(4)	[1] 1
d. Areas subject to spills pursuant to § 264.15(b)(4)	[1] 1
2. Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to § 264.52(b)	1
3. Changes to recordkeeping and reporting requirements pursuant to: §§ 264.56(i), 264.343(a)(2), 264.1061(b)(1),(d), 264.1062(a)(2), 264.196(f), 264.100(g), and 264.113(e)(5)	1
4. Changes to inspection frequency for tank systems pursuant to § 264.195(b)	1
5. Changes to detection and compliance monitoring program pursuant to §§ 264.98(d), (g)(2), and (g)(3), 264.99(f), and (g)	1

[1] Class 1 modifications requiring prior Agency approval.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 86. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

■ 87. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
*	*	*	*
May 4, 2006	Office of Solid Waste Burden Reduction Project	[Insert FR page numbers]	May 4, 2006.
*	*	*	*

[FR Doc. 06–2690 Filed 4–3–06; 8:45 am]
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