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Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

§ 263.31 Discharge clean up.

A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by Federal, State, or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

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AUTHORITY: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6927, 6928(h), and 6974.

SOURCE: 45 FR 33221, May 19, 1980, unless otherwise noted.

Subpart A—General

§ 264.1 Purpose, scope and applicability.

(a) The purpose of this part is to establish minimum national standards which define the acceptable management of hazardous waste.

(b) The standards in this part apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this part or part 261 of this chapter.

(c) The requirements of this part apply to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act only to the extent they are included in a RCRA permit by rule granted to such a person under part 270 of this chapter.

[*Comment:* These part 264 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea.]

(d) The requirements of this part apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by § 144.14 of this chapter.

[*Comment:* These part 264 regulations do apply to the above-ground treatment or storage of hazardous waste before it is injected underground.]

(e) The requirements of this part apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under part 270 of this chapter.

(f) The requirements of this part do not apply to a person who treats, stores, or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under subpart A of part 271 of this chapter, or in a State authorized under subpart B of part 271 of this chapter for the component or components of Phase II interim authorization which correspond to the person's treatment, storage or disposal processes; except that this part will apply:

(1) As stated in paragraph (d) of this section, if the authorized State RCRA program does not cover disposal of hazardous waste by means of underground injection; and

(2) To a person who treats, stores or disposes of hazardous waste in a State authorized under subpart A of part 271 of this chapter, at a facility which was not covered by standards under this part when the State obtained authorization, and for which EPA promulgates standards under this part after the State is authorized. This paragraph will only apply until the State is authorized to permit such facilities under subpart A of part 271 of this chapter.

(3) To a person who treats, stores, or disposes of hazardous waste in a State which is authorized under subpart A or B of part 271 of this chapter if the State has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. The requirements and prohibitions that are applicable until a State receives authorization to carry them out include all Federal program requirements identified in § 271.1(j).

(g) The requirements of this part do not apply to:

(1) The owner or operator of a facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the only hazardous

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waste the facility treats, stores, or disposes of is excluded from regulation under this part by §261.5 of this chapter;

(2) The owner or operator of a facility managing recyclable materials described in §261.6 (a)(2), (3), and (4) of this chapter (except to the extent they are referred to in part 279 or subparts C, D, F, or G of part 266 of this chapter).

(3) A generator accumulating waste on-site in compliance with §262.34 of this chapter;

(4) A farmer disposing of waste pesticides from his own use in compliance with §262.70 of this chapter; or

(5) The owner or operator of a totally enclosed treatment facility, as defined in §260.10.

(6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §260.10 of this chapter, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in §268.40 of this chapter, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in §264.17(b).

(7) [Reserved]

(8)(i) Except as provided in paragraph (g)(8)(ii) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10.

(ii) An owner or operator of a facility otherwise regulated by this part must comply with all applicable requirements of subparts C and D.

(iii) Any person who is covered by paragraph (g)(8)(i) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part and parts 122 through 124 of this chapter for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(9) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR 262.30 at a transfer facility for a period of ten days or less.

(10) The addition of absorbent material to waste in a container (as defined in §260.10 of this chapter) or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and §§264.17(b), 264.171, and 264.172 are complied with.

(11) Universal waste handlers and universal waste transporters (as defined in 40 CFR 260.10) handling the wastes listed below. These handlers are subject to regulation under 40 CFR part 273, when handling the below listed universal wastes.

(i) Batteries as described in 40 CFR 273.2;

(ii) Pesticides as described in §273.3 of this chapter;

(iii) Thermostats as described in §273.4 of this chapter; and

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(iv) Lamps as described in § 273.5 of this chapter.

(12) A New York State Utility central collection facility consolidating hazardous waste in accordance with 40 CFR 262.90.

(h) The requirements of this part apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in part 268.

(i) Section 266.205 of this chapter identifies when the requirements of this part apply to the storage of military munitions classified as solid waste under § 266.202 of this chapter. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 40 CFR parts 260 through 270.

(j) The requirements of subparts B, C, and D of this part and § 264.101 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Subparts B, C, and D of this part, and § 264.101 do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of subparts B, C, and D of this part, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Administrator using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store or dispose of the waste according to this part and part 268 of this chapter, and must be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Director that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of this part;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of this part, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under subparts I through O and subpart X of this part, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of § 264.18(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all

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surface impoundments, waste piles and landfill units that are required to comply with §§ 264.221(c) and (d), 264.251(c) and (d), and 264.301(c) and (d) at the remediation waste management site, according to the requirements of § 264.19;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in paragraphs (j)(2) through (j)(6) and (j)(9) through (j)(10) of this section; and

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(13) Maintain records documenting compliance with paragraphs (j)(1) through (j)(12) of this section.

[45 FR 33221, May 19, 1980, as amended at 45 FR 76075, Nov. 17, 1980; 45 FR 86968, Dec. 31, 1980; 46 FR 27480, May 20, 1981; 47 FR 8306, Feb. 25, 1982; 47 FR 32384, July 26, 1982; 48 FR 2511, Jan. 19, 1983; 48 FR 14294, Apr. 1, 1983; 50 FR 665, Jan. 4, 1985; 50 FR 28746, July 15, 1985; 52 FR 21016, June 4, 1987; 53 FR 27165, July 19, 1988; 58 FR 26424, May 3, 1993; 58 FR 29884, May 24, 1993; 59 FR 48042, Sept. 19, 1994; 60 FR 25542, May 11, 1995; 62 FR 6651, Feb. 12, 1997; 63 FR 65938, Nov. 30, 1998; 64 FR 36487, July 6, 1999; 64 FR 37638, July 12, 1999]

§ 264.2 [Reserved]

§ 264.3 Relationship to interim status standards.

A facility owner or operator who has fully complied with the requirements for interim status—as defined in section 3005(e) of RCRA and regulations under § 270.70 of this chapter—must comply with the regulations specified in part 265 of this chapter in lieu of the regulations in this part, until final administrative disposition of his permit application is made, except as provided under 40 CFR part 264 subpart S.

[*Comment:* As stated in section 3005(a) of RCRA, after the effective date of regulations under that section, i.e., parts 270 and 124 of this chapter, the treatment, storage, or disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility which meets certain conditions until final administrative disposition of the owner's or operator's permit application is made.]

[45 FR 33221, May 19, 1980, as amended at 48 FR 14294, Apr. 1, 1983; 58 FR 8683, Feb. 16, 1993]

§ 264.4 Imminent hazard action.

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to section 7003 of RCRA.

Subpart B—General Facility Standards

§ 264.10 Applicability.

(a) The regulations in this subpart apply to owners and operators of all hazardous waste facilities, except as