

## § 268.2

## 40 CFR Ch. I (7–1–09 Edition)

of section 307 of the Clean Water Act; or

(iii) The wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in § 268.37(a); and

(iv) The wastes no longer exhibit a prohibited characteristic at the point of land disposal (i.e., placement in a surface impoundment).

(d) The requirements of this part shall not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

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

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

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

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

(4) *De minimis* losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.

(f) Universal waste handlers and universal waste transporters (as defined in

40 CFR 260.10) are exempt from 40 CFR 268.7 and 268.50 for the hazardous wastes listed below. These handlers are subject to regulation under 40 CFR part 273.

(1) Batteries as described in 40 CFR 273.2;

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

(3) Mercury-containing equipment as described in § 273.4 of this chapter; and

(4) Lamps as described in 40 CFR 273.5.

[51 FR 40638, Nov. 7, 1986; 52 FR 21016, June 4, 1987, as amended at 53 FR 27165, July 19, 1988; 53 FR 31212, Aug. 17, 1988; 54 FR 36970, Sept. 6, 1989; 55 FR 22686, June 1, 1990; 58 FR 29884, May 24, 1993; 59 FR 48043, Sept. 19, 1994; 60 FR 25542, May 11, 1995; 61 FR 15663, Apr. 8, 1996; 61 FR 33682, June 28, 1996; 62 FR 26019, May 12, 1997; 64 FR 36488, July 6, 1999; 70 FR 45520, Aug. 5, 2005]

### § 268.2 Definitions applicable in this part.

When used in this part the following terms have the meanings given below:

(a) *Halogenated organic compounds* or *HOCs* means those compounds having a carbon-halogen bond which are listed under appendix III to this part.

(b) *Hazardous constituent* or *constituents* means those constituents listed in appendix VIII to part 261 of this chapter.

(c) *Land disposal* means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

(d) *Nonwastewaters* are wastes that do not meet the criteria for wastewaters in paragraph (f) of this section.

(e) *Polychlorinated biphenyls* or *PCBs* are halogenated organic compounds defined in accordance with 40 CFR 761.3.

(f) *Wastewaters* are wastes that contain less than 1% by weight total organic carbon (TOC) and less than 1% by weight total suspended solids (TSS).

(g) *Debris* means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal

matter; or natural geologic material. However, the following materials are not debris: any material for which a specific treatment standard is provided in Subpart D, Part 268, namely lead acid batteries, cadmium batteries, and radioactive lead solids; process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by § 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(h) *Hazardous debris* means debris that contains a hazardous waste listed in subpart D of part 261 of this chapter, or that exhibits a characteristic of hazardous waste identified in subpart C of part 261 of this chapter. Any deliberate mixing of prohibited hazardous waste with debris that changes its treatment classification (i.e., from waste to hazardous debris) is not allowed under the dilution prohibition in § 268.3.

(i) *Underlying hazardous constituent* means any constituent listed in § 268.48, Table UTS—Universal Treatment Standards, except fluoride, selenium, sulfides, vanadium, and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste at a concentration above the constituent-specific UTS treatment standards.

(j) *Inorganic metal-bearing waste* is one for which EPA has established treatment standards for metal hazardous constituents, and which does not otherwise contain significant organic or cyanide content as described in § 268.3(c)(1), and is specifically listed in appendix XI of this part.

(k) *Soil* means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles as classified by the U.S. Natural Resources Conservation Service, or a mixture of such materials with liquids, sludges or solids which is inseparable by simple mechanical removal processes and is made up

primarily of soil by volume based on visual inspection. Any deliberate mixing of prohibited hazardous waste with soil that changes its treatment classification (i.e., from waste to contaminated soil) is not allowed under the dilution prohibition in § 268.3.

[55 FR 22686, June 1, 1990, as amended at 56 FR 3877, Jan. 31, 1991; 57 FR 37270, Aug. 18, 1992; 58 FR 8685, Feb. 16, 1993; 58 FR 29884, May 24, 1993; 59 FR 48043, Sept. 19, 1994; 60 FR 244, Jan. 3, 1995; 61 FR 15597, 15662, Apr. 8, 1996; 61 FR 33682, June 28, 1996; 63 FR 28639, May 26, 1998; 63 FR 65940, Nov. 30, 1998; 64 FR 25414, May 11, 1999; 71 FR 40278, July 14, 2006]

#### § 268.3 Dilution prohibited as a substitute for treatment.

(a) Except as provided in paragraph (b) of this section, no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with subpart D of this part, to circumvent the effective date of a prohibition in subpart C of this part, to otherwise avoid a prohibition in subpart C of this part, or to circumvent a land disposal prohibition imposed by RCRA section 3004.

(b) Dilution of wastes that are hazardous only because they exhibit a characteristic in treatment systems which include land-based units which treat wastes subsequently discharged to a water of the United States pursuant to a permit issued under section 402 of the Clean Water Act (CWA), or which treat wastes in a CWA-equivalent treatment system, or which treat wastes for the purposes of pretreatment requirements under section 307 of the CWA is not impermissible dilution for purposes of this section unless a method other than DEACT has been specified in § 268.40 as the treatment standard, or unless the waste is a D003 reactive cyanide wastewater or nonwastewater.

(c) Combustion of the hazardous waste codes listed in Appendix XI of this part is prohibited, unless the waste, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, can be demonstrated to comply