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Subpart A—General

§ 265.1 Purpose, scope, and applicability.

(a) The purpose of this part is to establish minimum national standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until

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post-closure responsibilities are fulfilled.

(b) Except as provided in § 265.1080(b), the standards of this part, and of 40 CFR 264.552, 264.553, and 264.554, apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under section 3005(e) of RCRA and § 270.10 of this chapter until either a permit is issued under section 3005 of RCRA or until applicable part 265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by section 3010(a) of RCRA and/or failed to file Part A of the permit application as required by 40 CFR 270.10 (e) and (g). These standards apply to all treatment, storage and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this part or part 261 of this chapter.

[*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 and 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 that meets certain conditions, until final administrative disposition of the owner's and operator's permit application is made.]

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

(1) A person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act;

[*Comment:* These part 265 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, as provided in paragraph (b) of this section.]

(2) [Reserved]

(3) The owner or operator of a POTW which treats, stores, or disposes of hazardous waste;

[*Comment:* The owner or operator of a facility under paragraphs (c)(1) through (3) of this section is subject to the requirements of part

264 of this chapter to the extent they are included in a permit by rule granted to such a person under part 122 of this chapter, or are required by § 144.14 of this chapter.]

(4) A person who treats, stores, or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under subpart A or B of part 271 of this chapter, except that the requirements of this part will continue to apply:

(i) If the authorized State RCRA program does not cover disposal of hazardous waste by means of underground injection; or

(ii) To a person who treats, stores, or disposes of hazardous waste in a State 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 Act 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);

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

(6) 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, F, G, or H of part 266 of this chapter).

(7) A generator accumulating waste on-site in compliance with § 262.34 of this chapter, except to the extent the requirements are included in § 262.34 of this chapter;

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

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

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined

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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 § 265.17(b).

(11)(i) Except as provided in paragraph (c)(11)(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 a 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 (c)(11)(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 mani-

fest. 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.

(12) 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.

(13) The addition of absorbent material to waste in a container (as defined in § 260.10 of this chapter) or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and §§ 265.17(b), 265.171, and 265.172 are complied with.

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

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

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

(d) The following hazardous wastes must not be managed at facilities subject to regulation under this part.

(1) EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, or FO27 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) The waste is stored in tanks or containers;

(iii) The waste is stored or treated in waste piles that meet the requirements of § 264.250(c) as well as all other applicable requirements of subpart L of this part;

(iv) The waste is burned in incinerators that are certified pursuant to the standards and procedures in §265.352; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in §265.383.

(e) The requirements of this part apply to owners or operators of all facilities which treat, store or dispose of hazardous waste referred to in 40 CFR part 268, and the 40 CFR part 268 standards are considered material conditions or requirements of the part 265 interim status standards.

(f) 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.

[45 FR 33232, May 19, 1980]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §265.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

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§ 265.4 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

§ 265.10 Applicability.

The regulations in this subpart apply to owners and operators of all hazardous waste facilities, except as §265.1 provides otherwise.

§ 265.11 Identification number.

Every facility owner or operator must apply to EPA for an EPA identification number in accordance with the EPA notification procedures (45 FR 12746).

§ 265.12 Required notices.

(a)(1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Regional Administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

(b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this part and part 270 of this chapter. (Also see §270.72 of this chapter.)

[Comment: An owner's or operator's failure to notify the new owner or operator of the requirements of this part in no way relieves