

Introduction to
Permits and Interim Status
(40 CFR Part 270)

PERMITS AND INTERIM STATUS

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1. INTRODUCTION

Owners and operators of facilities that treat, store, or dispose of hazardous waste must obtain an operating permit, as required by Subtitle C of the Resource Conservation and Recovery Act (RCRA). Permits are an essential part of the RCRA Subtitle C hazardous waste program. They define the conditions and requirements that apply to treatment, storage, and disposal facilities (TSDFs), ensuring that hazardous waste is handled safely and in a controlled manner. This training module presents an overview of the RCRA permitting process and the requirements that apply to TSDFs operating under interim status until a permit is issued. The regulations governing the permitting process are found in 40 CFR Parts 124 and 270.

When you have completed this module, you will be able to describe the RCRA permitting process. Specifically, you will be able to:

- list the types of waste management activities that require a permit
- define "existing hazardous waste facility" and "new hazardous waste facility"
- identify the CFR sections relevant to Part A and Part B permit application requirements and briefly describe the difference between the two parts
- outline the steps in the permitting process from interim status to receipt of a permit
- cite the CFR sections pertaining to permit duration and modifications
- identify the differences among permit modification classes
- list the special forms of permits
- list the types of facilities that may qualify for a permit-by-rule
- state the eligibility requirements for interim status and the conditions for termination of interim status
- list the conditions for changes during interim status
- ♦ describe various regulatory developments and current EPA initiatives to improve the permitting program.

Use this list of objectives to check your knowledge of this topic after you complete the training session.

2. REGULATORY SUMMARY

RCRA §3005 authorizes and creates the foundation for issuing RCRA permits to TSDFs. The regulations implementing this statutory section are found in Part 270. Permits are issued by EPA, authorized states, or both. In this module, "EPA" should be read to include both EPA Regional Offices and states authorized for purposes of granting permits. Permits give owners and operators of TSDFs legal authority to treat, store, or dispose of hazardous waste. A RCRA permit is site-specific and can cover one or more units. The operating requirements for TSDFs are found in Parts 264, 265, and 266. Parts 264 and 266 apply to facilities that have received permits. Facilities that have not yet received a permit to operate must comply with the self-implementing interim status standards of Part 265. The administrative procedures that apply to the permitting process, including procedures for issuing, modifying, revoking, reissuing, or terminating permits, are found in Part 124.

2.1 APPLICABILITY

A RCRA permit is required for facilities conducting treatment, storage, and/or disposal of hazardous waste. A permit defines operating requirements and various provisions specific to the needs of the permit applicant depending on the treatment, storage, or disposal activities being conducted at the facility.

Certain hazardous waste treatment, storage, or disposal activities and facilities do not require a permit. The following discussion addresses the activities that do not require a permit and specific exclusions from permit requirements.

SPECIFIC EXCLUSIONS FROM PERMIT REQUIREMENTS

In a few narrowly defined cases, a facility that would otherwise be considered to be treating, storing, or disposing of hazardous waste is not required to obtain a RCRA permit. These exceptions are listed in §270.1(c)(2) and include:

- generators who accumulate hazardous waste on site for less than the time periods provided in §262.34
- farmers who dispose of pesticide hazardous waste from their own use as provided in §262.70
- persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded by §261.4 or §261.5
- owners and operators of totally enclosed treatment facilities as defined in §260.10
- owners and operators of elementary neutralization units or wastewater treatment units as defined in §260.10

- transporters storing manifested shipments of hazardous waste in containers meeting the requirements of §262.30 at a transfer facility for a period of 10 days or less
- persons adding absorbent material to hazardous waste in a container (as defined in §260.10) and persons adding waste to absorbent material in a container (provided that these actions occur at the time the waste is first placed in the container and comply with §§264.17(b), 264.171, and 264.172)
- universal waste handlers and transporters managing wastes subject to regulation under Part 273
- owners and operators performing treatment or containment activities taken during immediate response to a discharge of a hazardous waste, an imminent and substantial threat of a discharge of a hazardous waste, or a discharge of a material which when discharged becomes a hazardous waste.

For more details about TSDFs, see the module entitled Introduction to Treatment, Storage, and Disposal Facilities.

2.2 PERMITTING PROCESS

A permit establishes the site-specific administrative and technical standards to which a TSDF must adhere in order to legally manage hazardous waste. A lengthy permit application and review process ensures that each site receives specific analysis concerning hazardous waste management at that location.

PERMIT APPLICATION

Owners and operators of facilities that fall under the permitting regulations are required to submit a comprehensive permit application covering all aspects of the design, operation, and maintenance of the facility. The application provides EPA valuable information which will ensure compliance with Subtitle C regulations through the development of a facility-specific permit. Permits are written to address the specific geography of the facility, the types of hazardous waste management units, and the specific wastestreams that will be managed at the facility. The permit application consists of two parts, Part A and Part B.

Part A

Part A of the permit application is submitted on a designated form, Form 8700-23. The basic Part A information requirements are presented in §270.13.

Examples of Part A information include:

- activities conducted by the applicant that require the owner/operator to obtain a permit under RCRA
- name, mailing address, and location of the facility

- up to four North American Industry Classification System (NAICS) codes that best describe facility activities
- descriptions of the processes to be used for treating, storing, and/or disposing of hazardous waste and the design capacity of these items or units
- identification of the hazardous wastes to be managed at the facility
- list of all permits received or applied for under other regulatory programs
- topographic map of the facility.

Part B

Part B information is submitted in narrative form. It includes general information requirements for all hazardous waste management facilities, as well as unit-specific information. The Part B information requirements presented in §§270.14 through 270.27 reflect the standards promulgated in Parts 264 and 266. Section 270.14(b) lists the general information requirements that all hazardous waste management facilities must submit in Part B of the permit application, including:

- general description of the facility
- chemical and physical analyses of the wastes to be handled at the facility
- copy of the waste analysis plan
- description of the security procedures and copy of the inspection schedule
- copy of the contingency plan
- description of procedures, structures, or equipment used at the facility to prevent releases to the environment
- description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible waste
- facility location information such as proximity to a seismic area or a 100-year floodplain.

Owners and operators are required to provide information regarding the placement of hazardous waste and any resultant releases (§270.14(c) and (d)). These regulations are designed to prevent or remediate releases into the environment from land-based hazardous waste management units and solid waste management units (SWMUs). This information is then used as part of the corrective action process. Details of this process are provided in the module entitled RCRA Corrective Action.

Owners and operators must also submit unit-specific information for each hazardous waste management unit at the facility. Sections 270.15 through 270.27 correspond to Part 264, Subparts I through X, AA, BB, CC, and DD, as well as Part 266, Subpart H. For example, if a TSDF manages hazardous waste in containers, the owner and operator must provide a description of the container storage containment design and sketches to demonstrate compliance with the 50-foot buffer zone requirement (§264.176). Owners and operators may be required to submit additional information pursuant to §270.10(k) for the purpose of establishing permit conditions under the omnibus provision in RCRA §3005(c)(3) (§§270.32(b)(2) and 270.50(d)). The omnibus provision allows the Agency to establish conditions not specified in Part 264 or 266 in a permit that are necessary to protect human health and the environment.

TIME FRAME FOR PERMIT APPLICATION SUBMISSION

Owners and operators of facilities who wish to begin managing hazardous waste for the first time (i.e., new hazardous waste management facilities) must receive a RCRA permit before the facility is allowed to treat, store, or dispose of hazardous waste. Owners and operators of new hazardous waste management facilities must submit Parts A and B of the permit application at least 180 days before physical construction of the facility is expected to commence (§270.1(b)). However, it typically takes several years for EPA to issue a permit. Owners and operators should apply for a permit early in their planning process because physical construction cannot commence until the permit is issued (§270.10(f)).

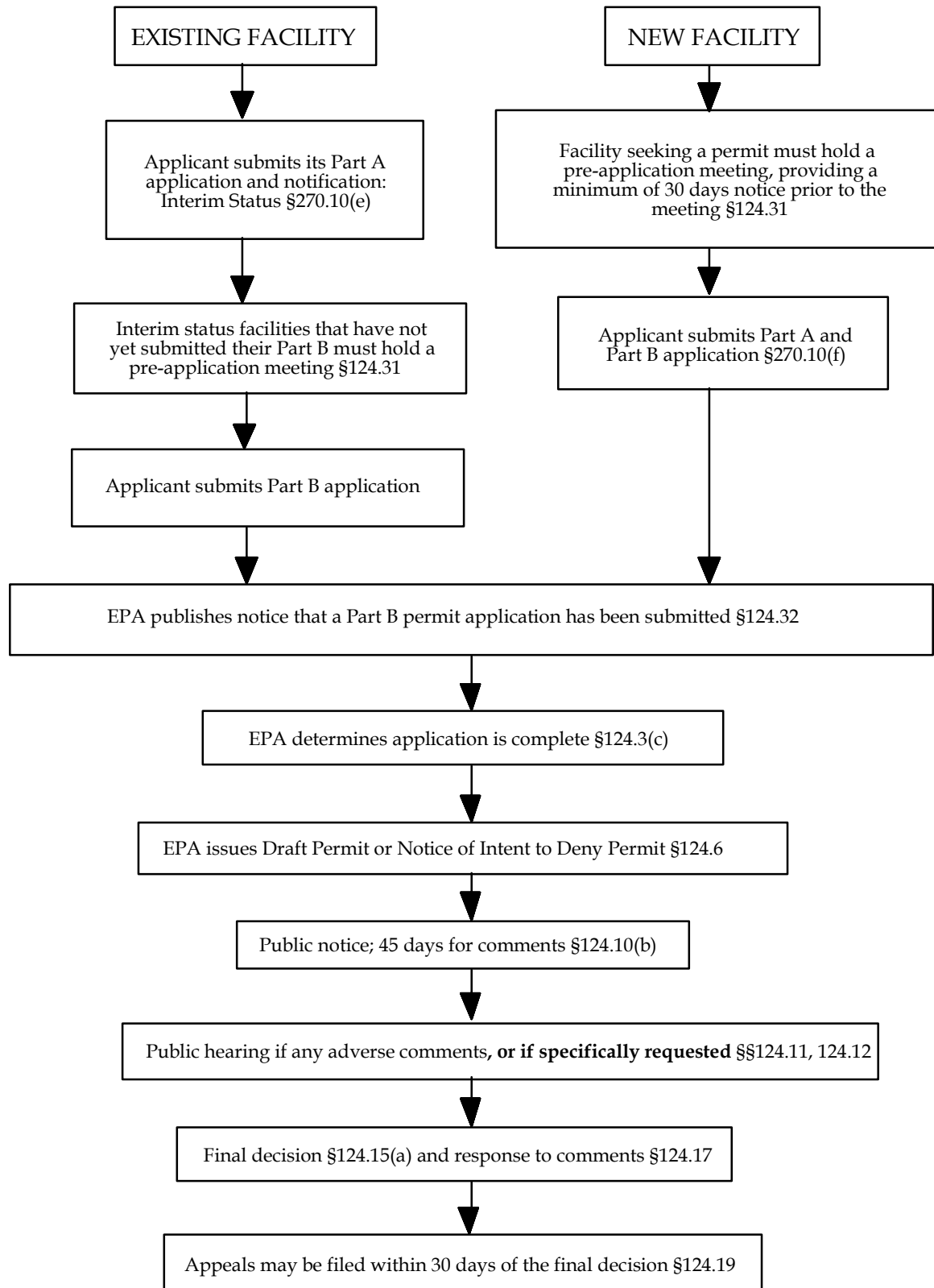
PERMIT APPLICATION PROCEDURES

EPA has the authority to issue or deny permits subject to the permit application process (Figure 1). Members of the public and other interested parties can contribute valuable information and ideas that improve the quality of both agency decisions and permit applications. EPA believes that public participation is a vital component of the permitting process. The regulations governing the administrative procedures for permitting, including public participation, are found in Part 124.

PUBLIC PARTICIPATION

EPA has integrated public involvement in all stages of the permitting process, including the pre-application meeting, public comment and response periods, and public hearings. Through all of these steps, the public can engage facility owners and operators and regulators in a dialogue to become educated about the facility and express their concerns. EPA also encourages public participation activities that occur outside the formal permitting process. Citizens can contact environmental, public interest, and civic and community groups that have an interest in the facility and become involved in their activities. The permit applicant may also create informal opportunities for public input and dialogue.

Figure 1
MAJOR STEPS IN THE PERMIT PROCESS



PRE-APPLICATION MEETING

The public participation provisions require prospective applicants to hold an informal public meeting before submitting a RCRA permit application. The permit applicant should select a meeting time, date, and location that are convenient to the public. The permit applicant must provide notice of the pre-application meeting at least 30 days prior to the meeting in a manner that is likely to reach all members of the affected community. The applicant must advertise the meeting in the newspaper, through a broadcast announcement, and on a sign posted at or near the property. At the meeting, the owner and operator must describe the facility in a level of detail that is practical at the time of the meeting to give the public enough information to understand the facility operations and potential impacts to human health and the environment. The permit applicant must submit with the permit application, details of the meeting and a list of all attendees, which is used as the facility mailing list. Upon receipt of the permit application, EPA must send a notice to everyone on the facility mailing list specifying where the public can examine the application.

THE DRAFT PERMIT, PUBLIC COMMENT PERIOD, AND PUBLIC HEARING

Once EPA has received a complete permit application, they will decide whether to issue a draft permit or a notice of intent to deny. In either case, they must notify the public of their decision and announce the opening of a minimum 45-day public comment period. EPA must print the notice in a local paper, broadcast the notice over a local radio station, and send a copy to the mailing list recipients and relevant agencies. EPA must also prepare a fact sheet or statement of basis regarding its decision. The fact sheet must explain the factual, legal, methodological, and policy issues considered in making the decision to issue or deny the permit.

Any person may request a public hearing during the comment period. EPA must hold a hearing if someone submits a written notice of opposition to the draft permit and a request for a hearing, or if the public demonstrates a significant degree of interest in the draft permit. EPA may also hold a public hearing at its own discretion. The Agency must notify the public at least 30 days prior to the hearing.

The comment period on the draft permit allows public submission of written concerns and suggestions to EPA. EPA must consider all comments when making the final decision. Furthermore, the Agency must describe and respond to all significant comments raised during the comment period.

After the public comment period closes, EPA will review and evaluate all comments and issue a final permit decision. The Agency must send a notice of decision to the facility owner and operator and any person who submitted comments or requested notice on the final permit decision.

In certain instances, RCRA permits can be the subject of intense debate. The public participation requirements allow EPA to require a facility owner and operator to set up an information repository at any time during the permitting process or the life of the permit. The repository will hold all information and documents that EPA decides are necessary to adequately inform and educate the public. EPA intended to use the information repository requirement

sparingly on a case-by-case basis when a significant amount of public concern has surfaced or where the community has unique information needs (60 FR 63417, 63425; December 11, 1995).

UNIT AND FACILITY PERMITS

EPA may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all units at the facility (§§270.1(c)(4) and 270.29). This means that a facility may be permitted on a unit-specific basis, rather than as a whole facility.

PERMIT-AS-A-SHIELD

Compliance with a RCRA permit during its term is considered compliance, for purposes of RCRA enforcement, with Subtitle C of RCRA (§270.4(a)). This provision means that an owner and operator complies with the requirements specified in the permit, rather than with the corresponding regulations as promulgated in Parts 264 and 266. This is referred to as the "permit-as-a-shield" provision. A permittee must still comply with requirements that are imposed by the statute itself, the land disposal restrictions promulgated under Part 268, and the liner and leak detection requirements for certain land disposal units (57 FR 3462; January 29, 1992). In addition, the definition of permit-as-a-shield was amended to require facilities to comply with Subparts AA, BB, and CC of Part 265 (59 FR 62952; December 6, 1994).

2.3 PERMIT CONDITIONS

Part 270, Subpart C, defines the conditions that apply to all RCRA permits. These conditions are either incorporated expressly into the permit or are included by regulatory citations. Section 270.30 lists the conditions that apply to all RCRA permits:

- The permittee must comply with all conditions of the permit, except when an emergency permit issued under §270.61 authorizes noncompliance.
- The permittee must reapply if he or she is to continue a regulated activity after the existing permit expires.
- The permittee may not use as a defense in an enforcement action that the only way to maintain compliance with the permit was to halt or reduce the permitted activity.
- The permittee must take all reasonable steps to minimize adverse impacts on human health and the environment.
- The permittee must ensure proper operation and maintenance of the facility.
- The permit may be modified, revoked and reissued, or terminated for cause.
- The permit does not convey any property rights to the permittee.
- The permittee must provide any relevant information requested.

- The permittee must allow the facility to be inspected.
- The permittee must conduct appropriate sampling procedures, and retain results of all monitoring.
- The permittee must comply with the reporting requirements of §270.30(l).
- The permittee, when required by EPA, must establish and maintain an information repository that contains all documents, reports, and data important for public understanding.
- The permittee must sign and certify applications, reports, or information submitted.

The Agency can also establish conditions not specified in Part 264 or 266 through use of the omnibus authority (RCRA §3005(c)(3)).

COMPLIANCE SCHEDULES

EPA can issue permits to interim status facilities that will not initially be in compliance with the Part 264 standards through the use of schedules of compliance. In general, compliance schedules in permits should be used to allow the construction or installation of equipment that is not required under Part 265, but is required to comply with Part 264. Compliance schedules must be specific, enforceable, allow for public notice and comment, and allow the applicant additional time only where it is legitimately needed. The schedules should include design and construction specifications, interim milestones, and a date for completion. For facilities that must conduct corrective action, EPA is required to develop schedules of compliance where the cleanup cannot be completed prior to permit issuance (§264.101(b)).

2.4 CHANGES TO PERMITS

Part 270, Subpart D, establishes the steps necessary to make changes to a permit. The procedures for making changes to a permit will vary depending on whether EPA or the owner/operator is initiating the change. The three basic situations for changing a permit after issuance are:

- permit modification at the request of the permittee
- permit modification at the request of EPA
 - modification of the permit
 - revocation and reissuance of the permit
- termination of the permit.

The procedures for each of these actions are discussed below.

FACILITY-INITIATED PERMIT MODIFICATIONS

Section 270.42 contains the regulations that apply to the modification of a permit at the request of the permittee. There are three classifications of permit modifications — Classes 1, 2, and 3 — that correspond to the degree the permit will be modified. Appendix I to §270.42, entitled Classification of Permit Modification, describes the type of permit modification necessary to change a permit provision when there is a transfer of a permit (i.e., change in ownership) or the permittee requests a permit modification. For all modifications, the permittee submits information to EPA that describes the exact change to be made to the permit conditions, identifies whether the modification is Class 1, 2, or 3, and provides the applicable permit application information. Class 1 and 2 modifications do not substantially alter existing permit conditions or significantly affect the overall operation of a facility. Class 1 covers routine changes, such as changing typographical errors, upgrading plans and records maintained by the facility, or replacing equipment. Class 2 modifications address common operating changes needed to maintain a facility's ability to manage a waste safely or to conform with new regulatory requirements. Class 3 changes cover major modifications that substantially alter the facility or its operations, such as significantly increasing the facility's capacity to treat, store, or dispose of hazardous waste.

Prior approval of the Agency is not required for most Class 1 modifications, although an asterisk in the Appendix I table indicates a Class 1 change that does require prior Agency approval (see §270.42(a)). For both Class 2 and Class 3 modifications, prior Agency approval is required, and a procedure similar to the permitting process is followed.

For a modification not explicitly listed in Appendix I, the permittee may submit a Class 3 modification or request a determination by EPA that the modification be reviewed and approved as a Class 1 or 2 modification (§270.42(d)).

According to §270.42(g), fully permitted facilities managing newly regulated hazardous wastes or hazardous wastes in newly regulated units must submit a Class 1 modification by the date on which the waste or unit becomes subject to the new requirements. The permittee must also be in compliance with the applicable standards of Parts 265 and 266. If a Class 2 or 3 modification is required, the permittee must also submit a complete permit modification request within 180 days after the effective date of the rule that subjected the waste or unit to Subtitle C regulation. Finally, for all land disposal units that are newly regulated, the permittee must certify that the unit is in compliance with all applicable requirements of Part 265 for groundwater monitoring and financial responsibility 12 months after the effective date of the rule.

Public Participation

As with the initial permit process, permit modifications can raise public concerns that must be addressed through public participation. Public participation responsibilities and activities vary depending on who initiated the modification and the degree to which the modification changes the facility permit. When a modification is proposed, only the permit conditions subject to modification are reopened for public comment.

The only public involvement requirement for Class 1 modifications is that within 90 days of implementing a change the facility must send a notice to all parties on the facility mailing list. Class 2 modifications involve public notice in a local newspaper, a 60-day comment period, and a public meeting held no earlier than 15 days into the comment period and no later than 15 days before it ends. At any time during the Class 2 procedures, EPA may reclassify the request as a Class 3 modification if there is significant public concern or if EPA determines the modification is too complex for the Class 2 procedures. Class 3 modifications are subject to all public participation provisions, including the pre-application meeting requirement.

AGENCY-INITIATED PERMIT MODIFICATIONS

There are two types of EPA-initiated changes to permits: permit modification or revocation and reissuance of a permit (§270.41). When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and can be revised, and the permit is reissued for a new term. The Agency may modify a permit, or revoke and reissue if the permittee agrees, for the following reasons: if there have been alterations or additions to the facility; there is new information that was not available at the time of permit issuance; new statutory or regulatory requirements were promulgated; or the Agency has cause to initiate a compliance schedule under §270.33. The Agency may also modify a land disposal facility's permit during the permit's five-year review. EPA may either modify a permit or revoke and reissue a permit if cause for termination of the permit exists pursuant to §270.43 or if the permit is transferred (§270.41(b)).

TERMINATION OF PERMITS

EPA can terminate a permit during its term or deny a permit renewal application if any of the following causes occur (§270.43):

- noncompliance by the permittee with any condition of the permit
- failure to disclose all relevant facts or misrepresentation of any relevant facts
- determination that a permitted activity endangers human health and the environment.

EPA must follow the applicable Part 124 administrative procedures or state procedures when terminating a permit.

EXPIRATION AND CONTINUATION OF PERMITS

Part 270, Subpart E, specifies the requirements for the duration of permits and the conditions under which an expiring permit can continue. RCRA permits are effective for a fixed term that is not to exceed 10 years (§270.50(a)). EPA, however, can issue a permit for less than the allowable term. Section 270.50(d) requires EPA to review permits for land disposal facilities five years after the date of permit issue or reissue.

Section 270.51 lists the conditions under which EPA can extend an expiring or expired permit. An expired permit can be continued when the permittee has submitted a timely application for a

new permit before the expiration date of the previous permit, provided the delay of the reissue was through no fault of the permittee. Permits that are continued remain fully effective and enforceable (§270.51(b)).

2.5 POST-CLOSURE PERMITS

Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to §265.115) after January 26, 1983, must receive post-closure permits, unless the owner and operator demonstrates closure by removal and decontamination as provided under §270.1(c)(5) and (6). Additionally, a post-closure permit is not required if the owner and operator obtain an enforceable document in lieu of a post-closure permit under §270.1(c)(7). The denial of a permit for the active life of a hazardous waste management facility does not affect the requirement to obtain a post-closure permit under this section. If a post-closure permit is required, the permit must address applicable Part 264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements.

On October 22, 1998, EPA established information submission requirements for post-closure permits at §270.28 (63 FR 56710). Prior to this rule, the information submission requirements of Part 270 did not differentiate between operating permits and post-closure permits. EPA recognized that certain aspects of the Part 270 information are important for ensuring proper post-closure care, while others are generally less relevant. As a result, an owner and operator seeking a post-closure permit must only submit the information required under §270.28, unless otherwise specified by EPA. The specific items required in post-closure permit applications are as follows:

- a general description of the facility
- a description of security procedures and equipment
- a copy of the general inspection schedule
- justification for any request for waiver of preparedness and prevention requirements
- facility location information
- a copy of the post-closure plan
- documentation that required post-closure notices have been filed
- the post-closure cost estimate for the facility
- proof of financial assurance
- a topographic map
- information regarding protection of groundwater
- information regarding SWMUs at the facility.

Owners and operators who obtain an enforceable document in lieu of a post-closure permit also have to submit only the information required by §270.28, unless otherwise specified by EPA (§265.121(a)(1)).

ENFORCEABLE DOCUMENTS IN LIEU OF POST-CLOSURE PERMITS

If an alternative enforcement mechanism is used in lieu of a post-closure permit, the regulated units must still meet the same substantive requirements that apply to units receiving post-closure permits. Specifically, the enforceable document must impose the requirements for submission of information relevant to closing facilities that need permits only for post-closure care (§265.121(a)(1)); Part 264, Subpart F, requirements for groundwater monitoring and corrective action for releases to groundwater (§265.121(a)(3)); and facility-wide corrective action requirements for releases from SWMUs under §264.101 (§265.121(a)(2)). The requirements relating to the maintenance of the closed unit and financial responsibility need not be addressed in the enforceable document. Rather, the relevant portions of Part 265, Subparts G and H will continue to apply.

The term enforceable document includes federal enforcement orders issued under RCRA §§3008(a) and 3008(h), post-closure plans issued by EPA which are enforceable under §3008(a), orders issued under CERCLA §106, and decision documents describing Fund-financed response actions under CERCLA §104.

The use of an enforceable document provides opportunities for public participation that differ from those established in the permit issuance procedures. The new procedures reflect the Agency's efforts to provide as much public participation as possible, but also represent the awareness that most of the alternate mechanisms used to address corrective action will be enforcement orders.

EPA did not establish detailed procedural requirements, including minimum comment period times, for public involvement associated with the use of enforceable documents. EPA used this approach because it did not wish to restrict existing state or federal approaches that have proven to be successful.

When using an enforceable document, EPA requires that meaningful opportunity for public involvement occurs at three key stages: when EPA first becomes involved in the cleanup process as a regulatory or enforcement matter, when EPA is ready to approve a remedy for the site, and when EPA is ready to decide that remedial action is complete at the site. The Agency does not limit public involvement to these stages of cleanup; rather, it encourages early, open, and continuous public participation as is provided by the permitting process.

EPA requires that all public involvement be meaningful. Meaningful public participation is achieved when all impacted parties have ample time to participate in the facility cleanup decisions and have adequate access to information. Meaningful public participation may require bilingual notifications or publication of legal notices in city or community newspapers. EPA recommends that parties responsible for involving the public update the community regularly on the progress made at cleaning up the facility through community meetings or the use of electronic bulletin board systems.

EPA can delay or waive the public participation requirements when using an enforceable document in lieu of a permit if even a short delay in the implementation of the remedy would adversely affect human health and the environment.

2.6 SPECIAL FORMS OF RCRA PERMITS

Part 270, Subpart F, contains the regulations that apply to special forms of permits. Special forms of permits under Subpart F include: permits-by-rule; emergency permits; permits for land treatment demonstrations; interim permits for underground injection control (UIC) wells; research, development, and demonstration (RD&D) permits; and hazardous waste combustion permits. See the module entitled Hazardous Waste Combustion for a discussion on the permitting of hazardous waste combustion units.

PERMITS-BY-RULE

Certain types of facilities managing hazardous waste may qualify for a RCRA permit without submitting a permit application. This is known as "permit-by-rule." Having a permit-by-rule means that by following certain portions of the regulations promulgated under other environmental statutes and a portion of the RCRA regulations, a facility is deemed to have the equivalent of a RCRA permit. The owner and operator must follow the conditions listed in §270.60 for a permit-by-rule. Permits-by-rule are available for:

- ocean disposal vessels and barges
- UIC wells
- publicly owned treatment works (POTW).

In all three of these cases, specific provisions of other environmental regulatory programs must be met in order to operate under a permit-by-rule. Ocean disposal vessels and barges must have a permit issued under Part 220, underground injection wells must have a permit issued under Part 144 or 145, and POTWs must have a National Pollution Discharge Elimination System (NPDES) permit under Part 122.

EMERGENCY PERMITS

Pursuant to §270.61, emergency permits are temporarily issued when EPA determines that a situation presents an imminent and substantial endangerment to human health or the environment. These permits may be issued to a nonpermitted facility to allow treatment, storage, or disposal of hazardous waste, or to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit. The duration of an emergency permit cannot exceed 90 days.

PERMITS FOR LAND TREATMENT DEMONSTRATIONS

Before a land treatment facility can obtain a final permit, the owner and operator must demonstrate that hazardous constituents in a waste can be completely degraded, transformed, or immobilized in the treatment zone (§264.272). The purpose of land treatment demonstrations using field tests or laboratory analyses is to allow an owner and operator to meet the treatment demonstration requirements in §264.272 so that a final permit may be obtained. The land treatment demonstration permit may be issued as a treatment or a disposal permit. It may cover only the field tests or laboratory analyses, or it may also include conditions pertaining to unit design, construction, operation, and maintenance.

UIC WELLS

Pursuant to §270.64, EPA may issue an interim UIC permit to any owner and operator of Class I injection wells injecting hazardous waste in a state in which no UIC program has been approved or promulgated. The term of the permit is limited to two years. Owners and operators of Class I injection wells must also follow applicable requirements of the Safe Drinking Water Act (SDWA).

RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS

Section 270.65 contains special permitting requirements for RD&D permits for hazardous waste treatment facilities using innovative and experimental treatment technologies for which no standards exist in Part 264 or 265. These permits are issued for a period of up to one year, and may be renewed up to three times, with each renewal not exceeding one year.

REMEDIAL ACTION PLANS (RAPs)

In §270.68, EPA refers to the requirements in Part 270, Subpart H, for a special form of RCRA permit called a remedial action plan or RAP. A RAP is a permit that can be obtained instead of a traditional permit issued pursuant to §§270.3 through 270.66. This type of permit authorizes owners and operators to treat, store, or dispose of hazardous remediation waste at a remediation waste management site. A RAP may be a stand-alone document or may be submitted as part of another document such as remedy decision documents utilized in the cleanup process.

RAPs cannot be used for treatment activities that use combustion of remediation waste at the remediation waste site. Also, permitted facilities may use the RAP format for remediation activities; however, the RAP is incorporated into the facility's permit as a permit modification.

2.7 INTERIM STATUS REQUIREMENTS

EPA recognized that it would be impossible for the Agency and authorized states to issue permits to all hazardous waste management facilities before the RCRA Subtitle C program became effective in November 1980. In RCRA §3005(e), Congress established provisions to treat certain facilities as though they had been issued a permit until final administrative action was taken on their permit applications. This statutory grant of a permit is referred to as "interim status." Interim status regulations are found in Part 270, Subpart G, and Part 265.

QUALIFYING FOR INTERIM STATUS

Hazardous waste management facilities that are already operating on the effective date of the statutory or regulatory amendments that cause the facility or unit to become subject to regulation are considered to be existing facilities. Existing facilities satisfy the requirement to apply for a permit by submitting only Part A of the permit application (§270.1(b)). The timely submission of a RCRA §3010 notification (EPA Form 8700-12) and Part A of the permit application qualifies owners and operators of existing facilities for interim status.

Land disposal facilities qualifying for interim status must submit Part B of the permit application and certify compliance with all applicable groundwater monitoring and financial responsibility requirements within 12 months of the date the facility first becomes subject to regulation (§270.73(d)). Other types of facilities qualifying for interim status should submit the Part B permit application in accordance with §270.73(c) through (g) or when requested by EPA. EPA must give at least six months notice when requesting a Part B permit application (§270.10(e)(4)). Applicants may submit Part B of the permit application voluntarily at any time. An interim status facility must comply with Part 265 and the conditions described in its Part A until the final permit determination is made (§270.71).

CHANGES DURING INTERIM STATUS

The owner and operator of an interim status facility must follow the procedures in §270.72 in order to make any changes to the facility. Section 270.72(a)(1) through (6) establishes the types of changes that can be made, as well as the criteria under which the changes may occur. An interim status facility may make the following changes, provided the owner and operator submits a revised Part A that includes justification for the proposed changes before they are made:

- manage hazardous wastes not specified in the Part A
- increase design capacity
- change or add processes
- change the owner and operator
- make changes to comply with a §3008(h) corrective action order
- add newly regulated units.

Reconstruction

Section 270.72(b) placed certain limitations on the extent of any changes that can be made under §270.72(a). Changes to an interim status facility may not be made if they amount to reconstruction of the facility. Reconstruction is defined as occurring when:

$$\frac{\text{Capital Investment in changes to the facility}}{\text{Capital Cost of a comparable new facility}} > 50\%$$

Any changes to an interim status facility that require a capital expenditure exceeding 50 percent of the cost of construction of a comparable new facility is considered reconstruction.

Exceptions

In certain circumstances, EPA has exempted interim status changes from the reconstruction prohibition. The Agency promulgated two exemptions prior to March 1989:

- changes necessary to comply with the land disposal restrictions
- changes necessary to comply with hazardous waste tank regulations.

In the March 7, 1989, Federal Register, EPA added the following exemptions from the reconstruction limit (54 FR 9596):

- changes that EPA determines are necessary to comply with federal, state, or local requirements
- changes that are necessary to allow a facility to continue to manage newly listed or identified wastes
- changes made during closure in accordance with an approved closure plan
- changes made to comply with an interim status corrective action order
- addition of newly regulated units (e.g., boilers or industrial furnaces).

In addition, on June 19, 1998, EPA added changes necessary to comply with the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors under 40 CFR Part 63, Subpart EEE, as an activity reconstruction limit exemption (63 FR 33782).

All of these exemptions from the reconstruction limit are still considered changes during interim status and require the facility to submit a revised Part A.

LOSS OF INTERIM STATUS

Pursuant to §270.73, interim status is terminated when EPA makes a final determination on Part B of the permit application (i.e., issue or denial) or when the facility fails to furnish Part B of the permit application on time or in full (§270.10(e)(5)).

Due to the small number of permits issued for interim status facilities prior to passage of the Hazardous and Solid Waste Amendments (HSWA) in 1984, Congress implemented a statutory timetable for submission of Part B permit applications. Those facilities that failed to meet this "call-in deadline" lost their interim status and had to close. These deadlines are found in §270.73(c) through (g) and include submittal of a Part B and demonstration of compliance with the groundwater monitoring and financial assurance requirements. The only facilities not covered by the HSWA-mandated schedule are facilities that became newly regulated as a result of a statutory or regulatory change after November 8, 1984 (other than land disposal facilities). These facilities are required to submit their Part B when requested by EPA (at least six months notice must be given).

EPA has also clarified that interim status facilities that have clean closed retain interim status until a final decision is made on the facility's Part B application (63 FR 56710, 56716; October 22, 1998). Issuance of an enforceable document in lieu of a post-closure permit also does not terminate interim status.

3. SPECIAL ISSUES

Mobile treatment units (MTUs) are designed to move from facility to facility treating waste on site. These units must comply with the applicable unit standards for interim status (Part 265 or 266) or permitted facilities (Part 264 or 266). RCRA permits are site-specific; thus, a MTU alone (i.e., the unit itself) cannot receive a permit (or interim status) but must be permitted (or receive interim status) for use at each location.

MTUs, like other treatment units, may qualify for an exemption from permitting requirements. If a MTU meets the requirements for a wastewater treatment unit, elementary neutralization unit, generator accumulation tank, or any other RCRA permit exemption, the facility would not be required to obtain a permit for that unit.

4. REGULATORY DEVELOPMENTS

In order to improve the permitting process, EPA continues to develop ways to increase the efficiency and effectiveness of environmental permitting programs.

4.1 STANDARDIZED PERMITS

The RCRA Standardized Permit final rule was published in the Federal Register in Fall 2005. The rule standardizes the federal hazardous waste permitting process by simplifying certain administrative procedures, and the permit renewal and modification processes. The new streamlined system is expected to reduce paperwork and save states and industry more than \$3 million a year while maintaining stringent hazardous waste management requirements.

Facilities that are eligible to apply for a standardized permit include: RCRA treatment, storage, and disposal facilities (TSDFs) that generate and then store or non-thermally treat hazardous waste on site in tanks, containers, or containment buildings; and TSDFs that receive hazardous waste generated off site by a facility under the same ownership as the receiving facility, and then manage that waste in tanks, containers, or containment buildings.

4.2 PERMITTING CEMENT KILN DUST FACILITIES

On August 20, 1999, EPA proposed management standards for cement kiln dust (CKD) designed to protect groundwater and control releases of fugitive dust (64 FR 45632). EPA proposed to modify the requirements in Part 270 by adding regulations (i.e., proposed §270.69) specific to the permitting of cement manufacturing facilities that manage CKD. Only those facilities that do not comply with the proposed CKD management standards will be required to obtain a CKD permit pursuant to §270.69. A CKD permit will require a facility to comply with the proposed CKD standards and any additional requirements specified by EPA that are necessary to protect human health and the environment. However, permits issued pursuant to §270.69 are different from other Part 270 permits because they do not impose facility-wide corrective action, and EPA can modify or waive the permit application and issuance requirements in Parts 124 and 270, except for the public participation procedures.

4.3 BURDEN REDUCTION INITIATIVE

On January 17, 2002, EPA proposed to reduce the recordkeeping and reporting burden imposed by RCRA on the states, the public, and the regulated community to meet the federal government-wide goal established by the Paperwork Reduction Act (PRA) (67 FR 2518). The PRA establishes a federal government-wide goal of reducing burden 40 percent from the total burden imposed annually on September 30, 1995. If finalized, the Burden Reduction Initiative will reduce the reporting requirements for generators and TSDFs by eliminating or modifying non-essential paperwork.

EPA proposes to reduce the self-inspection frequency for hazardous waste tanks from daily to weekly and to eliminate the RCRA overlap with Occupational Safety and Health Administration (OSHA) training requirements. Additionally, EPA proposes to change the land disposal restriction (LDR) paperwork requirements by eliminating the need for generators to conduct the waste determination required in §268.7(a)(1) and eliminating the need for treatment and recycling facilities to send notifications and certifications required in §268.7(b)(6) to EPA, provided the information is kept in facility records.

4.4 E-PERMITTING PROJECT

EPA is examining e-Permitting, or electronic permitting, for the RCRA program. The e-Permitting Project will improve the effectiveness and efficiency of the RCRA permitting program by assisting states that are investing in e-Permitting systems, working with states to pilot RCRA e-Permitting approaches, developing RCRA e-Permitting tools, and facilitating the sharing of permit information with the public. This project covers permitting activities from providing guidance and preparing applications to issuing permits and compliance reporting. As part of the project, EPA will be evaluating existing state e-Permitting systems to better understand system capabilities. They will also be talking to state permit applicants and software vendors to get input on parts of the RCRA permitting process (e.g., permit modifications) that might best lend themselves to electronic processing.

RCRA regulated entities will be able to request a RCRA EPA identification number for new facilities or supply revisions to their Notification of Regulated Waste Activity submissions through EPA's Central Data Exchange (CDX) Web site. Additionally, EPA is evaluating the use of CDX to allow facilities to file their RCRA Part A permit applications. Numerous benefits could come from e-Permitting, such as: reduced paperwork, improved public participation, improved efficiency, better permit status tracking, improved compliance reporting, better data accuracy, improved technical assistance, and a more transparent permitting process.