Exemption from 40 CFR Part 264 Requirements for People Engaged in the Immediate Phase of a Spill Response
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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

June 15, 1989

Ms. Elizabeth M. Powell
Moore & Van Allen
One Hannover Square
Suite 1700
Post Office Box 26507
Raleigh, North Carolina

Dear Ms. Powell:

I am writing in answer to your letter of May 4, 1989, in which you raised several questions concerning the applicability of RCRA to certain situations involving remediation of contamination at a facility. The following response addresses the questions which you have posed:

I. "Is 40 CFR 265.1(c)(11)(iii) applicable to remediation at the facility to require compliance with Part 265 and Parts 122-124, where no treatment, storage, or disposal activities are 'continued or initiated' in such remediation?"

Section 265.1 defines the applicability of "interim status" regulations to facilities which treat, store or dispose of hazardous wastes. Section 265.1(c)(11)(i) provides an exemption from this requirement for "...a person engaged in treatment or containment activities during immediate response...to (A) A discharge of hazardous waste; (B) An imminent and substantial threat of a discharge of a hazardous waste; or (C) A discharge of a material which, when discharged, becomes a hazardous waste."
This exemption from certain interim status requirements is intended to allow owner/operators to respond to a hazardous waste spill or discharge in a timely manner, without having to comply with procedural and/or technical requirements that could inhibit such response measures, and which may otherwise be inappropriate for such immediate or emergency-type situations. An essentially identical provision is found in the Part 264 regulations (Section 264.1(g)(2)).

An exception to this exemption is found in Section 265.1(c)(11)(iii). This is intended to limit the scope of the exception only to those hazardous waste management activities directly associated with an immediate response to a discharge. (See 53 FR 34085, September 2, 1988). Thus, for example, an owner/operator responding to a discharge might excavate soil contaminated with the spilled hazardous waste and store it temporarily in containers prior to the removal of the material off-site. The container storage area would not be subject to technical interim status standards.

However, if treatment or containment activity were to be continued or initiated after the immediate response is complete, the person performing these activities can no longer take advantage of the Section 265.1(c)(11)(i) exemption and must comply with Part 265 requirements governing treatment, storage, or disposal activities.

It should be understood that Section 265.1(c)(11) applies only to situations involving an immediate response to discharges for hazardous wastes. To the extent that such an immediate response action has not occurred and is not occurring at the facility in question, none of the provisions of this subsection would apply.

II. "Is the presence of soil and groundwater contamination at a facility, standing alone, a sufficient basis upon which a state agency can make a finding that disposal of hazardous waste took place at that facility, thereby resulting in a characterization of that facility as a 'disposal facility' subject to RCRA operational and permitting requirements relevant for TSD facilities?"

II. Past releases of hazardous waste which have occurred any time after November 19, 1980 may constitute "disposal" as defined by RCRA Section 1004. Thus, such releases could constitute a
violation of RCRA (disposal of hazardous waste without a permit under RCRA 3005 or 3006) which could be actionable under RCRA Section 3008(a). Since the situation you described might involve the disposal of hazardous wastes, and since RCRA Section 3005 requires that a person obtain a Subtitle C permit for the treatment, storage, or disposal of hazardous waste, in some cases it may be appropriate to require the owner/operator to obtain a permit for the facility in order to impose Part 264 standards for the disposal unit (i.e., a landfill). Since the facility you describe is no longer an operating facility, the State might decide that a post-closure permit would likely be the appropriate permit mechanism when a permit is required.

III. "Does EPA Office of Solid Waste policy require an entity to prepare, submit and receive approval for a Part B permit and/or post closure permit, where the facility is no longer operational, shows no intention to be operational, and where the present property owner has made clear its intention to voluntarily remediate the soil and groundwater contamination at the property to the specifications of the state agency?"

III. As explained above, the requirement to obtain a RCRA permit for a facility, based on the facts you have presented, is within the authority of EPA or a State, if the State has been authorized for RCRA. The decision as to whether and when this authority may be exercised is at the discretion of the implementing agency; in the case of an authorized State, such decisions would be made according to State program policy.

Finally, it is important to keep in mind that the discussion found in this response contains EPA's interpretations of Federal regulations; authorized States may rely upon State interpretations of State regulatory provisions which may differ from those of the EPA.

I hope that this response has adequately addressed your inquiry. Should you require any further assistance, please contact David Fagan at (202) 382-4497.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste
Mr. Fred Hansen  
Director  
Department of Environmental Quality  
522 S.W. Fifth Avenue, Box 1760  
Portland, Oregon 97207  

Dear Mr. Hansen:

Thank you for your August 21, 1986, letter regarding accidental spills of listed or characteristic hazardous wastes. Enclosed is the Agency's response to the eight questions and issues that you raised. Please note that we have referred one of your questions to the Superfund Office and will forward a response to you. I hope this clarifies the Environmental Protection Agency's regulation of spills and spill cleanups.

If I can be of further assistance, please let me know.

Sincerely,
1. Accidental spills of listed or characteristic hazardous wastes which are cleaned up within a reasonably short time.

The Resource Conservation and Recovery Act (RCRA) regulations in 40 CFR Parts 264 and 265 Subparts C and D require immediate actions to minimize hazards to human health and the environment from any unplanned, sudden or non-sudden releases of hazardous waste or hazardous constituents. Sections 264.1(g)(8) and 265.1(c)(11) provide a regulatory exemption from interim status and permitting standards for treatment and containment activities hazardous waste discharges and imminent and substantial threats of discharges (under 260.10 the term discharge includes both accidental and deliberate spills). The effect of this exemption is to promote hazardous waste discharge prevention and control by relieving persons engaged in immediate response to discharges and serious threats of discharges from time consuming requirements.

Under the exemption, treatment, storage and disposal facilities regulated under RCRA must continue to meet the applicable requirements of Subparts C and D of Parts 264 and 265. Treatment and containment activities conducted after the initial response period are subject to interim status and permitting standards. A facility may qualify for an emergency permit under 270.61 for such treatment and containment activities occurring after the immediate response period.

Accidental spills should be addressed immediately and in accordance with the facility's contingency plan. Sections 264.51 and 265.51 require owner/operators of treatment, storage and disposal facilities to have a contingency plan describing actions facility personnel must take in response to any unplanned sudden or non-sudden releases. Under section 262.34(a)(4), generators are also required to have such contingency plans as a condition of obtaining a permit exemption for 90 day on-site accumulation. Generators are subject to interim status and permitting requirements for treatment and
containment activities conducted after the accumulation period.

2. Accidental spills not cleaned up within reasonably short time.

As stated above, treatment and containment activities conducted after the initial response period are subject to permitting and interim status requirements. In addition, if cleanup activities do not begin promptly, the spill is considered a land disposal site subject to permitting requirements.

The Environmental Protection Agency (EPA) has not established a definition of what constitutes an immediate response to a spill situation. The time frames and extent of immediate response must be judged by persons responding to discharges on an individual basis. Extended responses which are not judged to be immediate in nature may result in: (1) a modification to the facility's contingency plan; (2) an enforcement action for an inadequate contingency plan or permit violation; or (3) enforcement action for illegal disposal.


As explained in the response to question #1, 264.1(g)(8) and 265.1(c)(11) provide a regulatory exemption from interim status and permitting standards for treatment activities conducted in immediate response to discharges or threats of discharges.

4. Transportation spills cleaned up within a reasonably short time.

263.30 requires the transporter to take appropriate, immediate action to protect human health and the environment. Under 263.30(b), an authorized official may authorize removal of the spill by transporters without an EPA ID number or manifest in an emergency. When an emergency no longer exists, all applicable requirements of the RCRA regulations once again apply to all of the transporter's activities. The Department of Transportation has also issued rules regarding spills occurring during transport.

5. Transportation spills not cleaned up within a reasonably short time.

As discussed above, EPA has not established a definition of
what constitutes an immediate response to a spill situation. The
timeframes and extent of immediate response must be judged by
persons responding to discharges on an individual basis. Extended
responses which are not judged to be immediate in nature may be
subject to enforcement action for illegal disposal.

1. When does a spill become a Superfund candidate versus
cleanup under RCRA?

Question has been referred to our Superfund Office for
response.

2. When does a spill become a facility as defined in RCRA?

As discussed above, if cleanup activities do not begin promptly,
the spill is considered a land disposal site subject to permitting
requirements. In addition, spill areas where hazardous waste is
treated, disposed or stored past the immediate response phase
are subject to all applicable interim status and permitting
standards for hazardous waste management facilities receiving
waste under 11/19/80 as outlined in Parts 264, 265 and 122.

3. Are there any situations where the cleanup standards
are different than background?

RCRA regulations do not specifically identify a level of clean-up
required in spill situations. Under 263.31, a transporter must
clean up any hazardous waste discharge so that the discharge no
longer presents a hazard to human health and the environment.
Under the emergency procedures provisions of 264.51 and 265.51,
generators, treatment, storage and disposal facilities must take
those actions, as outlined in the contingency plan, necessary to
minimize hazards to human health and the environment.
obtaining a RCRA permit. Because such areas are intimately tied to the manufacturing process itself, such a delay might in effect create a prohibition of redesign and reconstruction of these manufacturing units.

Although the Agency does not adopt this procedure lightly, the circumstances indicate that the use of interim final promulgation is appropriate. As one court has noted "[t]he question is not whether a delay would do real harm. "U.S. Steel Corp. v. EPA, 595 F.2d 207, 214 (5th Cir. 1979). EPA believes that the effect of delaying promulgation of this amendment would cause substantial, and unnecessary, hardship on a large number of manufacturing operations. In this situation, the use of advance notice and comment procedures would be contrary to the public interest and therefore good cause exists for adopting this amendment in interim final form. See 5 U.S.C. § 553(b)(B)."

VII. Request for Comments

The Agency invites comments on all aspects of this amendment to the regulation and on all the issues discussed in this preamble. The Agency has recently requested comments of one aspect of § 262.34, its applicability to product storage tanks. 45 CFR 79234 [October 30, 1980]. The Agency will consider all comments received on § 262.34 prior to promulgating this rule in final form. EPA desires to formulate sound and sensible regulations concerning the proper handling of hazardous waste. The requirements of § 262.34 are an important aspect of this broader concern, and, if commenters have suggestions on ways to improve this regulation, the Agency would be receptive to their suggestions.

VIII. Regulatory Impacts

The effect of this amendment is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. This is achieved by removing accumulation areas of generators who send accumulated wastes to off-site disposal facilities from full regulation as storage facilities. The Agency is unable to estimate these cost and impact reductions because it does not have an estimate of the number of such areas that otherwise would be fully regulated. For the reasons already discussed, notwithstanding these cost and impact reductions, the Agency believes that human health and environmental protection will not be reduced by this action.
immediately contain and treat spills of hazardous wastes and materials which, when spilled, become hazardous waste. This action also adds a definition of spill in §§ 260.10 and 122.3.

DATES: Effective date: These amendments become effective on November 19, 1980.

Comment Date: The Agency will accept comments on these amendments until January 19, 1981.

ADDRESS: Comments on these amendments should be addressed to the Docket Clerk (Docket 3004, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FURTHER INFORMATION CONTACT: For general information, contact Amy Mills, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. For information on implementation, contact Region I, Dennis Hueber, Chief, Radiation, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5777.

Region II, Dr. Ernest Regna, Chief, Solid Waste Branch, 20 Federal Plaza, New York, New York 10007, (212) 264-0504/5.


Region IV, James Scarrbough, Chief, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 881-8018.


Region VI, R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75220, (214) 767-2045.

Region VII, Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 547-3907.

Region VIII, Lawrence F. Gazda, Chief, Waste Management Branch, 1650 Lincoln Street, Denver, Colorado 80203, (303) 637-2221.


Region X, Kenneth D. Feigern, Chief, Waste Management Branch, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1500.

SUPPLEMENTARY INFORMATION:

I. Introduction

In May of 1980, EPA promulgated regulations implementing Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"). These regulations, among other things, identify and list hazardous wastes (Part 261), establish standards for generators and transporters of hazardous waste (Parts 262 and 263), and set standards and permit requirements for owners and operators of facilities that treat, store or dispose of hazardous waste (Parts 264 and 265 and Part 122 and 124). 40 FR 33086 (May 19, 1980). These regulations are designed to ensure the proper handling and management of hazardous wastes from their generation through their ultimate disposition.

Because wastes may be produced, handled and disposed of in a large number of ways, the regulations necessarily are cast in broad terms. A generator is anyone whose act or process produces a hazardous waste or whose act or process first causes a hazardous waste to become subject to regulation. Section 260.10(a), 40 FR 70224 (October 30, 1980). The act or process may be the manufacture of goods or materials, service operations such as cleaning with chemical solvents listed in § 261.33, or the disposal of commercial chemical products listed § 261.33. Storage is defined as "the holding of hazardous waste for a temporary period . . . .", and treatment as "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume." Section 260.10(a).

This action concerns how the regulations apply to hazardous wastes that are created by spills of hazardous waste or materials which, when spilled, become hazardous waste. For reasons discussed below, the word "spill" is defined in the amendments published today as the "accidental spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste or material which, when spilled, becomes hazardous waste into or upon any land or water." This definition obviously covers spills of those hazardous waste listed in §§ 261.31 and 261.32 and those solid wastes that exhibit any of the characteristics of hazardous wastes defined in Subpart C of Part 261. This definition also covers spills of the commercial chemical products and manufacturing chemical intermediates listed in § 261.33 (e) and (f). The Agency interprets spills of these materials to constitute discarding of such materials (see definitions in § 261.2 (c) and (d)). These materials, when discarded, are hazardous waste (see § 261.33). In addition, other materials, when spilled, are considered solid waste because spilling constitutes discarding, and may exhibit the characteristic of hazardous waste defined in Subpart C of Part 261.

Members of the regulated community have asked whether certain activities taken in immediate response to such spills constitute treatment (e.g., neutralizing the hazardous waste) or storage (e.g., containing the waste in treating, storage, or disposal facilities) under RCRA. These questions have significant practical implications. Treatment and storage of hazardous wastes, under the regulations, must be carried out in facilities that have interim status under Section 3001(e) of RCRA and 40 CFR Part 122 or that have a storage or treatment permit from EPA or a State authorized to run a hazardous waste program under Section 3002(e). Spills are subject to the provisions of Subpart B. In many cases, the treatment or storage necessary to respond to spills will not be covered by a RCRA permit or interim status. This is particularly true for generators who do not treat, store or dispose of hazardous waste and transporters who would have neither a permit nor interim status. It also may be true for owners and operators of treatment and storage facilities where their permit or interim status may not cover the types of treatment or storage performed in responding to a particular spill. Persons responding to the spills would be placed in the uncomfortable position of taking actions necessary to protect human health and the environment while being in violation of RCRA.

In addition, Parts 264 and 265 set forth the manner in which persons may treat.

Under § 122.27 the Regional Administrator is authorized to issue emergency permits if: (a) imminent and substantial endangerment to human health or the environment to allow the treatment, storage or disposal of hazardous waste for a nonpermitted facility or activity not covered by a permit, § 122.27 set forth procedures governing the issuance of emergency permits. EPA is presently developing guidance for the issuance of these permits.

Hazardous wastes produced in small quantities are excluded from full Subtitle C regulation under § 261.1. A condition of that exclusion, however, is that wastes subject to § 261.13 must be managed in Subtitle B facilities, facilities operated by the State, or use, re-use, reclaim, or reclamation facilities. Thus, even for spills by small quantity generators, the same dilemma is posed for persons whose response might constitute treatment or storage.
or store hazardous wastes. With respect to chemical, physical, and biological treatment, for example, the regulations prescribe such things as general operating requirements, waste analysis and treat tests, and closure requirements. See 40 CFR 285 Subpart Q. If, for example, reagents are used to absorb or neutralize a chemical product listed in 261.33 which has spilled in a plant, the treatment requirements specified in the regulations would technically govern the response to the spill.

This amendment is designed to allow appropriate responses to spills of hazardous wastes without being limited by the treatment and storage standards and the permit and interim status requirements of the regulations. It should be noted that EPA is developing regulations which will address in more comprehensive fashion the application of the RCRA regulations to spill response activities. That rulemaking will clarify, among other things, the relationship of RCRA and other Federal statutes, particularly the Clean Water Act and the Hazardous Materials Transportation Act, which concern spill activities.

II. What These Amendments Do

The amendments published today add three new elements to the regulations published in May, 1980: they add a definition of spill exempt immediate containment and treatment activities from the Part 264 and 265 regulations governing treatment and storage; and, amend Part 122 to indicate that such activities do not have to be covered by a RCRA permit or interim status. The definition of "spill" is the same as the definition of "discharge" in § 260.10(a), except that the word "intentional" has been deleted from the definition of spill and the phrase "material which, when spilled, becomes hazardous waste" has been added. The exclusion from regulation provided in today's amendments is designed to allow persons to respond immediately to sudden, unplanned occurrences, i.e., accidents, which release materials or wastes into the environment. There does not appear to be any basis to extend today's action to intentional releases which might occur. Releases which occur from burst pipes and ruptured containers would be considered spills; releases which routinely occur from, for example, scheduled maintenance of machinery would not be. The Agency specifically requests comment on whether the definition of spills provides appropriate scope for the substantive amendments published today. For those of the RCRA portions of the consolidated permit regulations, a corresponding definition of spill has been added to § 122.3.

The amendments to Parts 264 and 265 state that treatment and containment actions taken in immediate response to spills are treatment or storage of hazardous waste. These response activities are not subject, therefore, to the detailed requirements of those parts governing treatment and storage. The amendment to § 122.21 indicates that these activities do not have to be covered by a RCRA permit.

The amendments only cover activities during the immediate response to a spill. As discussed below, once this response is accomplished, other regulatory provisions apply. Section IV of this preamble provides examples of how these amendments and the other regulatory provisions apply. Section IV of this preamble describes how the application of the Part 264 and 265 regulations by clarifying that actions taken, for example, in the event of a spill, may be considered "treatment" under Part 266 if the spill is contained in time to prevent harm to the environment. If the Agency believes that anyone is abusing this provision, it will not hesitate to bring enforcement actions, including, under appropriate circumstances, criminal prosecutions.

III. Regulations Not Affected by This Amendment

The purpose of today's amendments is to allow persons to treat and contain spills without having engaged in treatment and storage activities and to recognize that spills occur at places which might otherwise not be treatment and storage facilities. These amendments do not affect whether the spilled substance, residue or debris is a hazardous waste under Part 261 or will govern. They do not affect in any way the application of the generator and transporter requirements; Parts 262 and 263 will govern these activities. After the immediate response activities are completed, the hazardous waste is subject to all the requirements for transportation, treatment, storage, or disposal.

The regulations promulgated in May, 1980, explicitly place specific requirements for certain spills of hazardous waste—discharges occurring during transportation and releases occurring at on-site accumulation areas and in treatment, storage and disposal facilities. These regulations, described briefly below, are unaffected by the amendments published today. These amendments complement the regulations by clarifying that actions taken in response to spills and in compliance with those regulations are not subject to the treatment and storage regulations and do not have to be carried out at a treatment or storage facility with a RCRA permit or in interim status.

Discharges of hazardous waste during transportation are subject to the provisions of Part 253 concerning immediate action, reporting, and cleanup, 40 CFR 263.30 and 263.31. 45 FR 12741 (February 28, 1980), republished at 45 FR 33152 (May 19, 1980). Discharges of hazardous materials during transportation are also subject to the reporting provisions of DOT regulations under the Hazardous Materials Transportation Act. 49 CFR 171.15, 171.16. These regulations will apply to spills during transportation and these requirements are not affected by today's amendment.

The Part 264 and 265 regulations contain extensive requirements for hazardous waste management facilities concerning preparedness and prevention, and contingency plans and emergency procedures. 40 CFR Part 265, Subparts C and D. 45 FR 33328. 33327 (May 13, 1980). To ensure proper response to explosions, fires, and other releases of hazardous waste, these provisions require owners and operators of regulated facilities to have safety equipment and systems, arrangements with relevant local authorities, a contingency plan and emergency procedures covering response activities. These regulations continue to apply to releases at hazardous waste management facilities which present dangers to human health and the environment. For example, §§ 264.56 and 265.56, concerning emergency procedures, have not been exempted. The emergency coordinator must follow the procedures set forth in those sections. Today's amendment simply means that actions taken, for example, under § 265.56(e), are not subject to the treatment and storage requirements of Part 265.

Regulations promulgated under other Federal, state or local laws may apply to spills of hazardous waste and other materials. On the Federal level, two examples are Section 311 of the Clean Water Act and the Hazardous Materials Transportation Act. Under Section 311 of the Clean Water Act, discharges of oils and hazardous substances (which may also be hazardous wastes) are subject to regulation. Hazardous materials, as regulated by DOT under the Hazardous Materials Transportation Act, include hazardous wastes. See 45 FR 3451 (May 22, 1980). The amendments published today concern only RCRA requirements and in no way affect a person's obligations or responsibilities under any other applicable Federal, state or local law.
IV. Examples of How These Amendments Operate

The following examples illustrate the manner in which the amendments published today operate and tie in with the other RCRA regulations.

1. A manufacturer spills a commercial chemical product listed in §261.33(e) on the floor of his plant. He immediately uses a reagent to absorb or neutralize the spill, where residue amounts to more than 100 kilograms. He places the residue in containers for subsequent transportation off-site. What regulations apply?

The manufacturer is a generator of a hazardous waste—the spilled chemical as well as the resulting residue. He is not a small quantity generator because he has generated more than 100 kilograms of §261.33(e) residue. See 40 CFR §261.5(c)(2). His use of the reagent is subject to treatment regulations of Parts 264 and 265 and this use does not have to be covered by a RCRA permit or interim status. Once the immediate response is over, however, he becomes subject to the generator requirements of Part 262. These include requirements for accumulation on-site, use of EPA identification numbers prior to transporting the residue off-site, initiation of the manifest, and use of appropriate packaging, labelling, marking and placarding. 

Manufacturers who anticipate such spills may, as a precautionary measure, make necessary arrangements to comply with the Part 262 regulations in advance. And, the transportation and subsequent treatment, storage or disposal of the spill residue is subject to the requirements of Parts 263, 264, 265 and 266.

2. A tank used to accumulate hazardous waste (under the requirements of §262.34) ruptures and the waste spills on to the ground. Because the tank does not have a secondary containment system, the generator immediately builds an emergency dike to contain the spilled waste. He subsequently pumps the spilled waste into drums and, after several weeks, ships those drums off-site to an incinerator.

The design, construction and operation of the emergency containment dike is not subject to the RCRA Subtitle C regulations (however, the overall response to the spill is subject to the requirements of Subparts C and D of Part 265 which apply by reference through §262.34). The storage of the cleaned-up wastes in drums is subject to the accumulation requirements of §262.34 if storage in the drums is for less than 90 days before off-site shipment or in a on-site. If storage in the drums exceeds 90-days, then this must be covered by a RCRA permit (an existing permit, a new permit, or an emergency permit) or be covered by interim status, and must be carried out in compliance with the applicable requirements of Parts 264 or 265. The incinerator that the drumsed wastes shipped to, must have a RCRA permit or interim status.

If, as part of the immediate clean-up action, the containment soil of the diked containment area is treated (e.g., decontamination of the soil in a mobile treatment unit) or the spilled waste is treated, such activity also would not be subject to regulation. However, if such treatment extends beyond the immediate clean-up action, EPA will require an emergency RCRA permit to be obtained. If contaminated soil is left in place, this constitutes disposal and will require a RCRA permit.

3. A spill of hazardous waste material listed in §261.33(e) occurs in transportation. What must the transporter do?

Under §263.30(a), the transporter must take immediate action to protect human health and the environment. The spill containment or treatment action taken in immediate response is exempt from the treatment and storage requirements of Parts 264 and 265 and the transporter is not required to have a RCRA permit or interim status for such action. If he has generated hazardous waste, he must comply with Part 262 when the immediate actions are over. If he transports the spill residue from the spill site, he must comply with the transporter requirements of Part 263 and 265 and transport the residue to a facility with a RCRA permit or interim status. The transporter must notify the National Response Center. If an on-scene coordinator or other official arrives, that official may undertake response activities which are exempted by today's amendments from the RCRA requirements and permit requirements for treatment and storage. Under the present regulations, §263.30(b), these officials may authorize the removal of the waste by transporters without EPA identification numbers and without the preparation of a manifest. The hazardous waste residue must be sent to a hazardous waste management facility with a RCRA permit or interim status. If long-term containment or treatment occurs at the spill site, the site must have a full RCRA permit, interim status, or an emergency permit.

4. A spill occurs on the site of disposal facility which is in interim status. The operator of the facility undertakes immediate containment and clean up. He subsequently disposes of the waste at his facility.

The immediate containment and clean up activities are exempted from the requirements of Part 264 and storage and treatment. The owners and operators of the facility must, however, carry out the provisions of the contingency plan under §265.51 and follow the emergency procedures §265.36. The disposal of the hazardous waste is subject to the disposal requirements of Part 265. If the disposal facility is unable to dispose of the spill residue, the owner or operator of the facility, if he has generated a hazardous waste, may accumulate the waste on-site under the provisions of §262.34. and must comply with all the Part 262 requirements applicable to generators of hazardous waste.

V. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereunder take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. For the amendments promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be contrary to the public interest. The amendments make clear that persons responding to spills are not engaging in treatment and storage activities and that such activities do not have to be done in facilities with a RCRA permit or interim status. The effect of the amendments will be to relieve these persons of having to comply with a number of impractical requirements with respect to spills response actions. The Agency believes that this is not the type of regulation revision that Congress had in mind
when it provided a six month delay between the promulgation and the effective date of revisions to regulations.

Consequently, the Agency is setting an effective date of November 19, 1980, for these amendments.

VI. Promulgation in Interim Final Form

These amendments operate as a clarification of the hazardous waste regulations published in May of 1980. 45 FR 33088 (May 19, 1980). With certain exceptions, those regulations did not address containment and treatment of spills of hazardous wastes or materials which, when spilled, become hazardous wastes. A literal interpretation of the May regulations, however, would mean that such actions constitute storage and disposal fully subject to regulation. These amendments conform the regulations to their original intent. The Agency believes that good cause exists for promulgation of this rule in final form. See 5 U.S.C. 555(b)(3).

Delaying the application of these rules to allow opportunity for public notice and comment would work substantial hardship on persons handling hazardous waste. The regulatory program goes into effect on November 19, 1980. Spills are everyday occurrences in the real world. Without immediate clarification of the regulations, all persons who might in the future spill a hazardous material or hazardous waste would have to be prepared to be in full compliance with the Part 265 regulations governing treatment and storage. Without these clarifying amendments substantial hardship would be imposed, without appreciable benefit, on the regulated community.

VII. Requests for Comments

The Agency is soliciting comments on all aspects of the amendments and on all issues discussed in this preamble. In addition, the Agency may initiate more comprehensive rulemaking in the near future on RCRA's application to spill responses. The amendments published today will be subject to reconsideration at that time. The public may accordingly be provided additional opportunity to comment on the Agency's regulation of spills.

VIII. Regulatory Impacts

The effect of these amendments is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. The Agency is unable to estimate these reductions.

Dated: November 14, 1980.
Douglas M. Costale,
Administrator.

Title 40 of the code of Federal Regulations is amended as follows:

§ 260.10 [Amended]
1. Add the following definition to § 260.10(a)(64):
"Spill" means the accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

§ 122.3 [Amended]
1. Add the following definition to § 122.3:
"Spill" [RCRA] means the accidental spilling, leaking, pumping, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

§ 264.1 [Amended]
3. Add the following paragraph (g)(8) to § 264.1:

(8) Persons with respect to those activities which are carried out to immediately contain or treat a spill of hazardous waste or material which, when spilled, becomes a hazardous waste, except that, with respect to such activities, the appropriate requirements of Subpart C and D of this Part are applicable to owners and operators of treatment, storage and disposal facilities otherwise subject to this Part.

[Comment: This paragraph only applies to activities taken in immediate response to a spill. After the immediate response activities are completed, the applicable regulations of this Chapter apply fully to the management of any spill residue or debris which is a hazardous waste under Part 261.]

§ 122.21 [Amended]
3. Add the following paragraph (d)(3) to § 122.21:

(d) Further exclusions. A person is not required to obtain a RCRA permit for those activities he carries out to immediately contain or treat a spill of hazardous waste or material which, when spilled, becomes a hazardous waste. [Comments: This exclusion is intended to relieve persons of the necessity of obtaining a RCRA permit where the treatment or storage of hazardous waste is undertaken as part of an immediate response to a spill. Any treatment, storage of disposal of spilled material or spill residue or debris that is undertaken must be covered by a RCRA permit, an emergency RCRA permit or interim status.]

These amendments are issued under the authority of Sections 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), 6924 and 6925.

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40 CFR Part 122

[SWH-FRL 1875-2]

Hazardous Waste Management System: General and EPA Administered Permit Programs: The Hazardous Waste Permit Program

AGENCY: United States Environmental Protection Agency.

ACTION: Interim final rule and request for comments.

SUMMARY: The Environmental Protection Agency ("EPA") is today amending its hazardous waste permit regulations to clarify the circumstances under which hazardous waste management facilities may qualify for interim status. Interim status is the condition under which certain facilities would be treated as having been issued a permit until such time as final administrative action was taken on their permit application. These amendments have been promulgated in response to questions from States and the regulated community concerning the eligibility of various types of facilities for interim status.