

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 110, 259, 261, 266, 267, 270, 271, 300 and 373****[FRL-5224-1]****Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs; Removal of Legally Obsolete Rules****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is removing from the Code of Federal Regulations (CFR) several sections of the CFR pertaining to solid waste, hazardous waste, oil discharges and EPA's Superfund program which are no longer legally in effect. Deleting these sections from the CFR will clarify the legal status of the Agency's regulations for both the regulated community and the public.

**EFFECTIVE DATE:** This final rule takes effect on June 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jim O'Leary (202-260-0724), Office of Solid Waste, or Jim Fary (703-603-8899), Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the RCRA/Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

**SUPPLEMENTARY INFORMATION:****I. Introduction**

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995 to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.), and the Deepwater Ports Act (DWPA) (33 U.S.C. 1501 et seq.). Based on this review, EPA is eliminating the following obsolete RCRA, CERCLA and DWPA rules from the CFR. These rules are no longer legally in effect because (1) they implement statutory provisions which have been repealed, (2) they have expired by their own terms or by the terms of the statute, or (3) they have been vacated (i.e., declared void and of no effect) by a court.

The removal of these rules from the CFR because they are no longer legally in effect is not intended to affect the status of any civil or criminal actions that were initiated prior to June 29, 1995 or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

**II. Obsolete Rules****Section 110.11 Discharge at Deepwater Ports**

Section 18 of the DWPA prohibits the discharge of oil from a deepwater port and establishes liability for the clean-up of oil discharges. On April 2, 1987, EPA issued a regulation defining the term "discharge of oil" for purposes of Section 18.

On August 18, 1990, Section 18 was repealed by Section 2003(a)(3) of the Oil Pollution Act of 1990. Accordingly, EPA is removing from the CFR its definition of "discharge of oil" under Section 18.

**Part 259—Standards for the Tracking and Management of Medical Waste**

The Medical Waste Tracking Act of 1988 (Subchapter J of RCRA) required EPA to promulgate regulations for tracking and managing medical waste as part of a two-year Federal demonstration program under the Act. The required regulations were issued by EPA on March 24, 1989, and became effective on July 22, 1989.

On July 22, 1991, in accordance with both the Act and the regulations issued by EPA, the two-year demonstration program expired. See RCRA §§ 11001(d) and 40 CFR 259.2(a). All Federal medical waste regulations also expired at that time, with the exception of recordkeeping provisions; those provisions required regulated entities to retain certain records for three years (or longer, if EPA or a State has initiated an enforcement action). See 40 CFR 259.2(b), § 259.54, § 259.77, and § 259.83. This three-year record retention period has now also expired, and EPA is unaware of any pending Federal or State enforcement action regarding Federal medical waste requirements. Accordingly, EPA is removing these medical waste regulations from the CFR.

**Section 261.31 Hazardous Wastes From Non-Specific Sources**

On February 6, 1991, EPA issued regulations listing certain wood preserving wastes as hazardous wastes. The Agency was sued on these listings, and in response, temporarily stayed the effective date of its listing decision. See § 261.31(a), footnote 1. This stay expired

on May 6, 1992. Accordingly, EPA is removing all references to this stay from the CFR.

**Section 266.104(f) Alternative HC [hydrocarbon] Limit for Furnaces With Organic Matter in Raw Material**

On February 21, 1991, EPA issued standards for boilers and industrial furnaces (BIFs) burning hazardous wastes. Among other things, these standards required BIFs to meet one of three alternative emission standards for carbon monoxide. One of these alternative standards—set forth in 40 CFR 266.104(f)—was designed to address situations where organic matter in the non-waste feed to an industrial furnace made it difficult for the facility to meet one of the other two alternatives.

On February 22, 1994, in *Horsehead Resource Development Co. v. Browner*, 16 F.3d 1246 (D.C. Cir. 1994), cert. denied sub nom. *Cement Kiln Recycling Coalition v. Browner*, 115 U.S. 72 (1994), a Federal appeals court ruled that EPA had failed to follow proper rulemaking procedures in issuing this standard and vacated it. Accordingly, EPA is removing this standard and all references to this standard from the CFR.

**Part 267—Interim Standards for Owners and Operators of New Hazardous Waste Land Disposal Facilities.**

RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status. RCRA §§ 3005(a) and 3005(e). Prior to 1984, permits could not be issued for a particular management practice unless EPA had promulgated permitting standards for that activity. RCRA § 3005(c)(1).

At the end of 1980, EPA had not yet issued final standards for permitting hazardous waste land disposal facilities. This meant that new land disposal facilities, which could not qualify for interim status<sup>1</sup>, could not be authorized to operate. To address this problem, on February 13, 1981, EPA issued interim permitting standards for new land disposal facilities that could be used to permit new facilities pending the development of final standards.

By their own terms, these interim standards expired on January 26, 1983, when final permitting standards for land disposal facilities (contained in 40 CFR Part 264, Subparts K–N) became effective. See 40 CFR 267.3.

<sup>1</sup> "Interim status" allows existing facilities that make appropriate filings to continue to operate pending a final permit decision. See RCRA § 3005(e).