

with the schedule negotiated in the consent decree for this rulemaking, to publish a supplemental proposal on HWIR mixed waste exit criteria after initial comments have been received. The supplemental proposal would further describe the regulatory options being considered and will solicit additional comment on more specific options.

X. Implementation of Conditional Exemption Option 1

A. Introduction

Using the concept of contingent management, EPA is proposing to create a second, alternative set of exit levels for nonwastewaters that are managed in landfills or monofills, but not land treatment units. Persons wishing to utilize this alternative exit scheme would not only have to meet the recalculated concentration limits for all constituents in their wastes, but also comply with conditions prohibiting land treatment. Compliance with notification and tracking requirements described in more detail below will also be necessary. The exit levels for this alternative are set out in appendix XI of 40 CFR part 261; the requirements and conditions are set out in proposed § 261.37. Nonwastewaters that do not meet the exit levels in appendix X to 40 CFR part 261 will be eligible for exit only if they meet the more relaxed levels in appendix XI of 40 CFR part 261 and comply with all relevant conditions.

EPA derived the levels for this alternative by deleting all of the modeling results for the land treatment scenario from its risk assessment data base, and selecting the lowest remaining exit value from the remaining modeling results for other types of waste management units. The same approach used to establish exit levels presented in Section V. of today's proposed rulemaking was used to establish exit levels under this option. That is, where complete risk data was not available, surrogates were used to extrapolated exit levels (see Section IV.H) and where analytical limitations existed, EQCs were used as exit levels (see Section IV.I). As a practical matter, this approach affects only the exit levels for nonwastewaters. As explained above in section IV, EPA created the original exit levels for nonwastewaters by grouping the modeling results for the unit types typically used to manage solid materials (ash monofills, piles, and land treatment units) and selecting the lowest value from all pathways modeled for these scenarios. EPA created the separate wastewater exit levels by grouping the

results from units typically used to manage liquid wastes (tanks and surface impoundments). Consequently, the wastewater exit levels are not based on the modeling of land treatment units, and these levels are not affected by the decision to exclude results from the land treatment scenario.

The Agency is proposing that the contingent management exemption be self-implementing. Therefore, the claimant would have the burden of demonstrating that all of the provisions for the contingent management exemption described herein have been met. In an enforcement action, a waste for which a contingent management exemption is claimed would be considered a Subtitle C hazardous waste unless the claimant was able to produce evidence that all of the conditions of the exemption have been met.

B. When Contingent Management Exemptions Become Effective

The Agency is proposing two options for the point at which the contingent management exemption would become effective.

1. Option 1A—Placement of the Waste in a Qualifying Unit

Under the first option, the conditional exemption for "contingent management" nonwastewaters would not become effective until the waste had been placed in a qualifying unit. Prior to actual disposal, the nonwastewater would be managed as a hazardous waste according to all applicable RCRA provisions, including 40 CFR parts 262 (for generators) and 263 (for transporters) and part 268 (regarding treatment prior to land disposal). These requirements include compliance with the waste manifest provisions of 40 CFR part 262, subpart B, and the pre-transport provisions of 40 CFR part 262, subpart C, which contains, among other provisions, the provisions governing hazardous waste accumulation. Treatment and storage prior to disposal would remain subject to parts 264, 265, and 270.

The Agency believes this approach makes it easier to ensure consistent implementation and safe management of the waste. It also decreases the potential implementation concerns that may arise if some states adopt this rule as part of their authorized programs and others do not. For example, this approach would reconcile transportation concerns that could arise if waste, conditionally-exempt in one state, were transported through a state that had not adopted the contingent management exemption as part of its authorized program.

Under this option, the Agency is considering and requesting comment on the applicability of amending 40 CFR 264.1 and 265.1 to allow off-site disposal facilities to store candidate contingent management exempt wastes for up to 10 days without becoming a subtitle C treatment, storage, and disposal facility, prior to ultimate disposal in a monofill or landfill. The Agency requests comment on whether 10 days is a sufficient or appropriate length of time, and if not, what time period may be appropriate.

Under the above approach, contingent management exempt nonwastewaters being disposed of on-site also would not become exempt until placed in a disposal unit meeting the requirements established under this rule. However, since the current waste accumulation provisions of 40 CFR 262.34, allow a generator to store hazardous waste on-site in tanks, containers or containment buildings for 90 days without becoming a Subtitle C storage facility, EPA believes that this approach should not place undue burdens on a generator. EPA requests comment on whether § 262.34 will in fact enable generators of exempt nonwastewaters to store wastes on-site in unpermitted units for a reasonable period of time prior to land disposal. EPA acknowledges that nonwastewaters are typically not stored in tanks.

2. Option 1B—Effective Upon Meeting the Exit Levels

The second option that EPA is considering would allow a nonwastewater to become exempt from all hazardous waste requirements except part 268 as soon as it meets appendix XI of 40 CFR part 261 exit levels and the claimant has met all the requirements and conditions of the exemption, including certifying that the waste will be managed in a monofill or land disposal unit. The goal of this approach is to ensure nonwastewaters will not be managed in a land treatment unit, which was found to pose the greatest risk for many routes of exposure. Under this approach, storage, treatment and transportation of the nonwastewater could take place outside of Subtitle C control upon meeting the requirements and conditions for the exemption. If EPA were to adopt such an approach, it would impose conditions to ensure that the exempted nonwastewater reached the types of units for which the exemption was designed. Various options are suggested below in Section D.1.

Finally, EPA notes that the proposed approaches have different implications for LDR relief. These differences, which