

The alternative to this approach would be to require owners and operators of nonhazardous waste facilities to sign and return manifests as a condition of the exemption. Failure to satisfy this condition would void the exemption and return the waste to the hazardous waste management regime, even if it were in fact safely placed in an appropriate waste management unit. EPA requests comment on this alternative.

Under option 1A, where all Subtitle C regulations apply until placement of the nonwastewater in a monofill or landfill, EPA is proposing conditions that make the claimant responsible for obtaining a copy of the manifest to ensure the waste has reached its destination. The claimant would also have the burden of acquiring evidence from the receiving facility that the waste was placed in either a monofill or land disposal unit.

Under Option 1B, where the exemption becomes effective upon the waste meeting the appendix XI of 40 CFR part 261 exit levels, any tracking system established would be a condition that the claimant would have to meet to maintain the contingent management exemption. To ensure that listed wastes exempted under this option actually go to a landfill or monofill, EPA is proposing to require exemption claimants to comply with the requirements of part 262 (with the modification discussed above) relating to the uniform hazardous waste manifest.

Since this option allows wastes to go to facilities that are not subject to the duty to return the manifest under § 264.71–264.72 or § 265.71–264.72, EPA is proposing to require the claimant to ensure that the manifest is returned and that it—or some other document—provides information showing that the facility designated on the manifest did in fact receive the waste and did place it in a landfill or monofill (and not a land treatment unit). The duties would be identical to those proposed above for claimants under the first option. The rationale for imposing the duties on the claimant—and not the receiving facility—is also the same.

An alternative which EPA requests comment on is the concept of imposing conditions that require a uniform, national tracking document similar to the current uniform manifest to accompany the waste until it reaches its final destination. This document could inform transporters and other waste handlers that the waste is an exempt hazardous waste that must be managed in a monofill or land disposal facility and loses its exemption if it is managed in a land treatment unit. EPA could

further require that the disposal facility certify that the nonwastewater was disposed in a monofill or land disposal unit and return the tracking document and certification to the original exemption claimant. EPA could also ensure that the implementing agency (EPA or an authorized state) received notice of any problems in waste disposal by imposing requirements similar to the current § 262.42 exception reporting provisions.

Another alternative would be to require, in lieu of a tracking document, a contractual agreement between the exemption claimant and the receiving facility specifying the type of waste the receiving facility will accept, the type of units it will use, and information on the volume and frequency of deliveries. EPA could require either the claimant or the receiving facility (or both) to maintain a copy of the agreement on-site and make it available to state or EPA inspectors. EPA also could require exemption claimants and transporters to create and keep similar contracts. EPA, however, requests comment on whether transporters would require claimants to provide information on the exempted waste's origin and the regulatory limits on its disposal options even without federal regulation.

EPA requests comment on whether any of these alternatives can adequately ensure that mismanagement will not occur so that these wastes managed under this option 1B approach would not need to be classified as hazardous.

2. Qualifying Unit

A “qualifying unit” for today's contingent management proposal is a landfill or monofill. For purposes of today's proposal, a landfill is defined in § 260.10 as being “a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave or a corrective action management unit.” The Agency is proposing a definition for monofill in § 260.10 as a landfill where waste of only one kind or type is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit. Also, for today's proposal, a land treatment facility is defined in § 260.10 as being “a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are

disposal facilities if the waste will remain after closure.” The Agency requests comment on whether other units could be considered “qualifying units” for contingent management exempt waste and whether additional modeling is needed to assess risks from management of nonwastewaters from other units.

The Agency modeled risks from waste piles in both its multipathway and groundwater analyses. It modeled only groundwater risks from landfills. As explained elsewhere in this preamble, EPA believes that the nongroundwater risks posed by piles generally are higher than the nongroundwater risks posed by landfills. EPA, however, is not proposing to allow wastes placed in piles to be exempt under the exit levels for contingent management option 1. Piles, as defined in Part 260, are temporary units. To ensure that exempted wastes removed from piles went only to landfills or monofills, EPA would have to impose additional tracking conditions. These could be difficult to craft and enforce effectively. EPA currently thinks that excluding piles from eligibility will provide much better assurance that exempted wastes will not be mismanaged.

EPA acknowledges that the exit levels for this option, which are based in many cases on the evaluation of waste piles, may, for some pathways, be more restrictive than levels for landfills. If EPA later completes a multipathway analysis of landfill units, it will be able to use the levels from that modeling in lieu of the modeling from piles to derive exit levels for this option.

The Agency requests comment on the proposal to exclude wastes placed in piles from being eligible for exemption under this option. The Agency also requests comment on the alternatives of allowing wastes to be exempt either permanently or temporarily (e.g., for one year) after they are placed in piles.

3. Claimant's Duty To Ensure Compliance With All Requirements and Conditions

Today's proposal requires that, in order to claim a contingent management exemption, the person submitting the claim must manage the waste for which the exemption is claimed in accordance with the requirements and conditions established by this rule. To satisfy this rule, the claimant must ensure that the waste is actually disposed of in a qualifying unit. The burden of satisfying all conditions for the exemption falls on the claimant as the person in the best position to determine eligibility of a waste for an exemption and to ensure informed waste management decisions. The claimant may enter into contractual