

## § 265.255

and must comply with the procedures of § 265.221(b). "Construction commences" is as defined in § 260.10 of this chapter under "existing facility".

[57 FR 3493, Jan. 29, 1992]

### § 265.255 Action leakage rates.

(a) The owner or operator of waste pile units subject to § 265.254 must submit a proposed action leakage rate to the Regional Administrator when submitting the notice required under § 265.254. Within 60 days of receipt of the notification, the Regional Administrator will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Regional Administrator before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Regional Administrator shall approve an action leakage rate for surface impoundment units subject to § 265.254. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly flow rate from the monitoring data obtained under § 265.260, to an average daily flow rate (gallons per acre per day) for each sump. Unless the Regional Administrator approves a different calculation, the average daily flow rate for each sump must be cal-

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culated weekly during the active life and closure period.

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### § 265.256 Special requirements for ignitable or reactive waste.

(a) Ignitable or reactive waste must not be placed in a pile unless the waste and pile satisfy all applicable requirements of 40 CFR part 268, and:

(1) Addition of the waste to an existing pile (i) results in the waste or mixture no longer meeting the definition of ignitable or reactive waste under § 261.21 or § 261.23 of this chapter, and (ii) complies with § 265.17(b); or

(2) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

(b) [Reserved]

[45 FR 33232, May 19, 1980, as amended at 55 FR 22685, June 1, 1990]

### § 265.257 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see appendix V for examples) must not be placed in the same pile, unless § 265.17(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

[*Comment:* The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the contact or mixing of incompatible wastes or materials.]

(c) Hazardous waste must not be piled on the same area where incompatible wastes or materials were previously piled, unless that area has been decontaminated sufficiently to ensure compliance with § 265.17(b).

### § 265.258 Closure and post-closure care.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.),

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contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless §261.3(d) of this chapter applies; or

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 265.310).

[47 FR 32368, July 26, 1982]

### § 265.259 Response actions.

(a) The owner or operator of waste pile units subject to §265.254 must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under §265.255. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) If the flow rate into the leak determination system exceeds the action leakage rate for any sump, the owner or operator must:

(1) Notify the Regional Administrator in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Regional Administrator within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipts should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Regional Administrator the results of the analyses specified in paragraphs (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Regional Administrator a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b)(3), (4), and (5) of this section, the owner or operator must:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

[57 FR 3494, Jan. 29, 1992]

### § 265.260 Monitoring and inspection.

An owner or operator required to have a leak detection system under §265.254 must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

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## Subpart M—Land Treatment

### § 265.270 Applicability.

The regulations in this subpart apply to owners and operators of hazardous waste land treatment facilities, except as §265.1 provides otherwise.

### § 265.271 [Reserved]

### § 265.272 General operating requirements.

(a) Hazardous waste must not be placed in or on a land treatment facility unless the waste can be made less