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(2) There is no reason to believe that the liner is not functioning as designed.

(d) The double liner requirement set forth in paragraph (a) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such waste does not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in §261.4 of this chapter, with EPA Hazardous Waste Number D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in §144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA section 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of paragraph (a) of this section and in good faith compliance with paragraph (a) of this section and with guidance documents governing liners and leachate collection systems under paragraph (a) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to paragraph (a) of this section will be required for such unit by the Regional Administrator when issuing the first permit to such facility, except that the Regional Administrator will not be precluded from requiring installation of a new liner when the Regional Administrator has reason to believe that any liner installed pursuant to the requirements of paragraph (a) of this section is leaking.

(f) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(g) The owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(h) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(i) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind must cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

[*Comment:* As required by §265.13, the waste analysis plan must include analyses needed to comply with §§265.312, 265.313, and 265.314. As required by §265.73, the owner or operator must place the results of these analyses in the operating record of the facility.]

[45 FR 33232, May 19, 1980, as amended at 47 FR 32368, July 26, 1982; 50 FR 18374, Apr. 30, 1985. Redesignated from §265.302 at 57 FR 3494, Jan. 29, 1992; 50 FR 28750, July 15, 1985, as amended at 57 FR 3494, Jan. 29, 1992; 57 FR 30658, July 10, 1992]

§ 265.302 Action leakage rate.

(a) The owner or operator of landfill units subject to §265.301(a) must submit a proposed action leakage rate to the Regional Administrator when submitting the notice required under §265.301(b). 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 §265.301(a). The action leakage rate is the maximum design flow rate that the

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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 or monthly flow rate from the monitoring data obtained under § 265.304 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 calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under § 265.304(b).

[57 FR 3494, Jan. 29, 1992]

§ 265.303 Response actions.

(a) The owner or operator of landfill units subject to § 265.301(a) must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under § 265.302. 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 detection system exceeds the action leakage rate for any sump, the owner or operator must:

(1) Notify the Regional Administrator in writing of the exceedance 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 receipt 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]

§ 265.304 Monitoring and inspection.

(a) An owner or operator required to have a leak detection system under § 265.301(a) 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.

(b) After the final cover is installed, the amount of liquids removed from each leak detection system sump must