ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

REGULATION NO. 23

HAZARDOUS WASTE MANAGEMENT

Submitted to the Pollution Control and Ecology Commission in June, 2003
DRAFT

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Provisions of APC&EC Regulation No. 23 (Hazardous Waste Management) are amended as itemized below:

SECTION 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

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1. **Section 260.10** is amended:
   a. By removing the definition of ‘‘Corrective action management unit (CAMU).’’
   b. By adding the definition of “Dioxins and furans (D/F)”
   c. By removing the definition of “Facility personnel.”
   d. By revising the definition of ‘‘Remediation waste.’’
   e. By adding the definition of “TEQ.”

The revisions read as follows:

§ 260.10 Definitions.

* * * *

~~**“Corrective action management unit”** (CAMU) means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility.~~

* * * *

“Dioxins and furans (D/F)” means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

* * * *

~~*“**Facility Personnel**” means the personnel employed by a hazardous waste management facility and who are responsible for, or who supervise, or who engage in the handling, sorting, mixing, treatment, analyzing, or disposal of hazardous waste and the operation of any equipment of machinery necessary to complete these tasks.*~~

* * * *

“Remediation waste” means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, ~~that contain listed hazardous waste or that themselves exhibit a hazardous characteristic and~~ that are managed for implementing cleanup.

* * * *

“TEQ” means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

* * * *

2. At **Section 260.11(a)(11)**, the phrase “OSW Methods Team, 401 M St., SW.” is replaced with “OSW Methods Team, 1200 Pennsylvania Ave., NW.”

SECTION 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. **Section 261.2** is amended by revising paragraph (c)(3) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

(3) Reclaimed. Materials noted with an ''X'' in column 3 of Table 1 are solid wastes when reclaimed (except as provided under § 261.4(a)(17)). Materials noted with a ''—''in column 3 of Table 1 are not solid wastes when reclaimed. ~~(except as provided under § 261.4(a)(17))~~.

* * * * *

4. **Section 261.3** is amended by adding paragraph (g)(4) to read as follows:

§ 261.3 Definition of hazardous waste.

(g) * * *

(4) any mixture of a solid waste excluded from regulation under § 261.4(b)(7) and a hazardous waste listed in subsection D of this section solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in subsection C of this section for which the hazardous waste listed in subsection D of this section was listed.

* * * * *

5. **Section 261.4** is amended by revising paragraph (a)(17) and paragraph (b)(15) and by adding paragraphs (a)(20) and (a)(21) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(17) ~~Secondary~~ Spent materials (~~i.e. ,sludges, by products, and spent materials~~ as defined in § 261.1) (other than hazardous wastes listed in subsection D of this section) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The ~~secondary~~ spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The ~~secondary~~ spent material is not accumulated speculatively;

(iii) Except as provided in paragraph (a)(17)(iv) of this section, the ~~secondary~~ spent material is stored in tanks, containers, or buildings meeting

the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the ~~secondary~~ spent material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in § 260.10 of this regulation), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing ~~secondary~~ spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the ~~secondary~~ spent material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the ~~secondary~~ spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing ~~secondary~~ spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Director must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Director providing the following information: The types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual

quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of ~~§ 261.(b)(7)~~ paragraph (a)(7) of this section, mineral processing ~~secondary~~ spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by nonmineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

* * * * *

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in § 261.1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Regional Administrator or State Director in whose jurisdiction the exclusion is being claimed, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(*1*) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(*2*) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(*3*) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of this paragraph (a)(20).

(D) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous

secondary materials. For each shipment these records must at a minimum contain the following information:

(*1*) Name of the transporter and date of the shipment;

(*2*) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(*3*) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in paragraph (a)(20)(ii)(B) of this section.

(B) Submit a one-time notification to the Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in § 262.11 of this regulation, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in paragraph (a)(20)(ii)(A) of this section, and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of Sections 264 and 265 of this regulation.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under paragraph (a)(20) of this section, provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6

Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of paragraph (a)(21)(ii) of this section. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this paragraph (a)(21).

* * * *

(b) * * *

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178, if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing:

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or

dedicated pipe, is subject to regulation under sections 307(b) or 402 of the federal Clean Water Act.

(v) ~~After~~ As of February 13, 2001, leachate or gas condensate derived from K169– 172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (*e.g.*, shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph (b)(15)(v) after the emergency ends.

6. **Section 261.24** is amended by revising the first sentence of paragraph (a) to read as follows:

261.24 Toxicity characteristic.

(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, as incorporated by reference in § 260.11 of this regulation, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at the concentration equal to or greater than the respective value given in that table.

* * * * * *

7. In **Section 261.32**, the table is amended by adding in alphanumeric order (by the first column) under the subgroup ''Inorganic Chemicals'' to read as follows:

§ 261.32 Hazardous waste from specific sources.

* * * * *

* * * * * * *

Inorganic chemicals:

* * * * * *

Industry and EPA hazardous waste No.	*Hazardous waste/ Hazardous code*
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide). (E)
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide). (T)
K178	Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process. (T)

* * * * * *

8. **Section 261.38** is amended by revising Table 1 to read as follows:

261.38 Comparable/Syngas Fuel Exclusion.

* * * *

TABLE 1 TO § 261.38.—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION					
Chemical name	CAS No.	Composite value (mg/kg)	Heating value (BTU/lb)	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Total Nitrogen as N	NA	9000	18400	4900	---
Total Halogens as Cl	NA	1000	18400	540	---
Total Organic Halogens as Cl	NA	---	---	---	(1)
Polychlorinated biphenyls, total [Arocolors, total]	1336-36-3	ND	---	ND	1.4
Cyanide, total	57-12-5	ND	---	ND	1.0
Metals					
Antimony, total	7440-36-0	ND	---	12	---
Arsenic, total.	7440-38-2	ND	---	0.23	---
Barium, total	7440-39-3	ND	---	23	---
Beryllium, total	7440-41-7	ND	---	1.2	---
Cadmium, total	7440-43-9	ND	---	1.2	---
Chromium, total	7440-47-3	ND	---	2.3	---
Cobalt	7440-48-4	ND	---	4.6	---
Lead, total	7439-92-1	57	18100	31	---
Manganese	7439-96-5	ND	---	1.2	---
Mercury, total	7439-97-6	Nd	---	0.25	---
Nickel, total	7440-02-0	106	18400	58	---
Selenium, total	.7782-49-2	ND	---	0.23	---
Silver, total	7440-22-4	ND	---	2.3	---
Thallium, total	7440-28-0	ND	---	23	---
Hydrocarbons					
Benzo[a]anthracene	56-55-3	ND	---	2400	---
Benzene	71-43-2	8000	19600	4100	---
Benzo[b]fluoranthene	205-99-2	ND	---	2400	---
Benzo[k]fluoranthene	207-08-9	ND	---	2400	---
Benzo[a]pyrene	50-32-8	ND	---	2400	---
Chrysene	218-01-9	ND	---	2400	---
Dibenzo[a,h]anthracene.	53-70-3	ND	---	2400	---
7,12-Dimethylbenz[a]anthracene	57-97-6	ND	---	2400	---
Fluoranthene	206-44-0	ND	---	2400	---
Indeno(1,2,3-cd)pyrene	193-39-5	ND	---	2400	---
3-Methylcholanthrene	56-49-5	ND	---	2400	---
Naphthalene	91-20-3	6200	19400	3200	---
Toluene	108-88-3	69000	19400	36000	---
Oxygenates:					
Acetophenone	98-86-2	ND	---	2400	--
Acrolein	107-02-8	ND	---	39	---
Allyl alcohol	107-18-6	ND	---	30	---
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117-81-7	ND	---	2400	---
Butyl benzyl phthalate.	85-68-7	ND	---	2400	---
o-Cresol [2-Methyl phenol]	95-48-7	ND	---	2400	---
m-Cresol [3-Methyl phenol]	108-39-4	ND	---	2400	---
p-Cresol [4-Methyl phenol].	106-44-5	ND	---	2400	---
Di-n-butyl phthalate	84-74-2	ND	---	2400	---
Diethyl phthalate	84-66-2	ND	---	2400	---
2,4-Dimethylphenol	105-67-9	ND	---	2400	---
Dimethyl phthalate	131-11-3	ND	---	2400	---

Di-n-octyl phthalate	117-84-0	ND	---	2400	---
Endothall	145-73-3	ND	---	100	---
Ethyl methacrylate	97-63-2	ND	---	39	---
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	ND	---	100	---
Isobutyl alcohol	78-83-1	ND	---	39	---
Isosafrole	120-58-1	ND	---	2400	---
Methyl ethyl ketone [2-Butanone].	78-93-3	ND	---	39	---
Methyl methacrylate	80-62-6	ND	---	39	---
1,4-Naphthoquinone	130-15-4	ND	---	2400	---
Phenol	108-95-2	ND	---	2400	---
Propargyl alcohol [2-Propyn-1-ol]	107-19-7	ND	---	30	---
Safrole.	94-59-7	ND	---	2400	---
Sulfonated Organics:					
Carbon disulfide	75-15-0	ND	---	ND	39
Disulfoton	298-04-4	ND	---	ND	2400
Ethyl methanesulfonate	62-50-0	ND	---	ND	2400
Methyl methanesulfonate	66-27-3	ND	---	ND	2400
Phorate	298-02-2	ND	---	ND	2400
1,3-Propane sultone	1120-71-4	ND	---	ND	100
Tetraethyldithiopyrophosphate [Sulfotepp].	3689-24-5	ND	---	ND	2400
Thiophenol [Benzenethiol]	108-98-5	ND	---	ND	30
O,O,O-Triethyl phosphorothioate	126-68-1	ND	---	ND	2400
Nitrogenated Organics:					
Acetonitrile [Methyl cyanide]	75-05-8	ND	---	ND	39
2-Acetylaminofluorene [2-AAF]	53-96-3	ND	---	ND	2400
Acrylonitrile.	107-13-1	ND	---	ND	39
4-Aminobiphenyl	92-67-1	ND	---	ND	2400
4-Aminopyridine	504-24-5	ND	---	ND	100
Aniline	62-53-3	ND	---	ND	2400
Benzidine	92-87-5	ND	---	ND	2400
Dibenz[a,j]acridine	224-42-0	ND	---	ND	2400
O,O-Diethyl O-pyrazinyl phosphorothioate [Thionazin]	297-97-2	ND	---	ND	2400
Dimethoate	60-51-5	ND	---	ND	2400
.p-(Dimethylamino) azobenzene [4-Dimethylaminoazobenzene]	60-11-7	ND	---	ND	2400
3,3'-Dimethylbenzidine	119-93-7	ND	---	ND	2400
[alpha],[alpha]-Dimethylphenethylamine	122-09-8	ND	---	ND	2400
3,3'-Dimethoxybenzidine	119-90-4	ND	---	ND	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	ND	---	ND	2400
4,6-Dinitro-o-cresol	534-52-1	ND	---	ND	2400
2,4-Dinitrophenol.	51-28-5	ND	---	ND	2400
2,4-Dinitrotoluene	121-14-2	ND	---	ND	2400
2,6-Dinitrotoluene	606-20-2	ND	---	ND	2400
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88-85-7	ND	---	ND	2400
Diphenylamine	122-39-4	ND	---	ND	2400
Ethyl carbamate [Urethane]	51-79-6	ND	---	ND	100
Ethylenethiourea (2-Imidazolidinethione)	96-45-7	ND	---	ND	110
Famphur	52-85-7	ND	---	ND	2400
Methacrylonitrile	126-98-7	ND	---	ND	39
Methapyrilene	91-80-5	ND	---	ND	2400
Methomyl	16752-77-5	ND	---	ND	57
2-Methyllactonitrile, [Acetone cyanohydrin]	75-86-5	ND	---	ND	100
Methyl parathion	298-00-0	ND	---	ND	2400
MNNG (N-Metyl-N-nitroso-N'-nitroguanidine)	70-25-7	ND	---	ND	110
1-Naphthylamine, [[alpha]-Naphthylamine]	134-32-7	ND	---	ND	2400
2-Naphthylamine, [[beta]-Naphthylamine]	91-59-8	ND	---	ND	2400
Nicotine	54-11-5	ND	---	ND	100
4-Nitroaniline, [p-Nitroaniline]	100-01-6	ND	---	ND	2400
Nitrobenzene	98-95-3	ND	---	ND	2400
p-Nitrophenol, [p-Nitrophenol]	100-02-7	ND	---	ND	2400
5-Nitro-o-toluidine	99-55-8	ND	---	ND	2400
N-Nitrosodi-n-butylamine	924-16-3	ND	---	ND	2400
N-Nitrosodiethylamine	55-18-5	ND	---	ND	2400
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86-30-6	ND	---	ND	2400

N-Nitroso-N-methylethylamine	10595-95-6	ND	---	ND	2400
N-Nitrosomorpholine	59-89-2	ND	---	ND	2400
N-Nitrosopiperidine	100-75-4	ND	---	ND	2400
N-Nitrosopyrrolidine	930-55-2	ND	---	ND	2400
2-Nitropropane	79-46-9	ND	---	ND	30
Parathion	56-38-2	NS	---	ND	2400
Phenacetin	62-44-2	ND	---	ND	2400
1,4-Phenylene diamine, [p-Phenylenediamine]	106-50-3	ND	---	ND	2400
N-Phenylthiourea	103-85-5	ND	---	ND	57
2-Picoline [alpha-Picoline]	109-06-8	ND	---	ND	2400
Propylthioracil, [6-Propyl-2-thiouracil]	51-52-5	ND	---	ND	100
Pyridine	110-86-1	ND	---	ND	2400
Strychnine	57-24-9	ND	---	ND	100
Thioacetamide	62-55-5	ND	---	ND	57
Thiofanox	39196-18-4	ND	---	ND	100
Thiourea	62-56-6	ND	---	ND	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	ND	---	ND	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	ND	---	ND	57
o-Toluidine	95-53-4	ND	---	ND	2400
p-Toluidine	106-49-0	ND	---	ND	2400
1,3,5-Trinitrobenzene, [sym-Trinitobenzene]	99-35-4	ND	---	ND	2400
Halogenated Organic:					
Allyl chloride	107-05-1	ND	---	ND	39
Aramite	140-57-8	ND	---	ND	2400
Benzal chloride [Dichloromethyl benzene]	98-87-3	ND	---	ND	100
Benzyl chloride	100-44-77	ND	---	ND	100
bis(2-Chloroethyl)ether [Dichoroethyl ether]	111-44-4	ND	---	ND	2400
Bromoform [Tribromomethane]	75-25-2	ND	---	ND	39
Bromomethane [Methyl bromide]	74-83-9	ND	---	ND	39
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101-55-3	ND	---	ND	2400
Carbon tetrachloride	56-23-5	ND	---	ND	39
Chlordane	57-74-9	ND	---	ND	14
.p-Chloroaniline	106-47-8	ND	---	ND	2400
Chlorobenzene	108-90-7	ND	---	ND	39
Chlorobenzilate	510-15-6	ND	---	ND	2400
p-Chloro-m-cresol	59-50-7	ND	---	ND	2400
2-Chloroethyl vinyl ether	110-75-8	ND	---	ND	39
Chloroform	67-66-3	ND	---	ND	39
Chloromethane [Methyl chloride]	74-87-3	ND	---	ND	39
2-Chloronaphthalene [beta-Chloronaphthalene]	91-58-7	ND	---	ND	2400
2-Chlorophenol [o-Chlorophenol]	95-57-8	ND	---	ND	2400
Chloroprene [2-Chloro-1,3-butadiene]	1126-99-8	ND	---	ND	39
2,4-D [2,4-Dichlorophenoxyacetic acid]	94-75-7	ND	---	ND	7.0
Diallate	2303-16-4	ND	---	ND	2400
1,2-Dibromo-3-chloropropane	96-12-8	ND	---	ND	39
1,2-Dichlorobenzene [o-Dichlorobenzene]	95-50-1	ND	---	ND	2400
1,3-Dichlorobenzene [m-Dichlorobenzene]	541-73-1	ND	---	ND	2400
1,4-Dichlorobenzene [p-Dichlorobenzene]	106-46-7	ND	---	ND	2400
3,3'-Dichlorobenzidine	91-94-1	ND	---	ND	2400
Dichlorodifluoromethane [CFC-12]	75-71-8	ND	---	ND	39
1,2-Dichloroethane [Ethylene dichloride]	107-06-2	ND	---	ND	39
1,1-Dichloroethylene [Vinylidene chloride]	75-35-4	ND	---	ND	39
Dichloromethoxy ethane [Bis(2- chloroethoxy) methane	111-91-1	ND	---	ND	2400
2,4-Dichlorophenol	120-83-2	ND	---	ND	2400
2,6-Dichlorophenol	87-65-0	ND	---	ND	2400
1,2-Dichloropropane [Propylene dichloride]	78-87-5	ND	---	ND	39
cis-1,3-Dichloropropylene	10061-01-5	ND	---	ND	39
trans-1,3-Dichloropropylene	10061-02-6	ND	---	ND	39
1,3-Dichloro-2-propanol	96-23-1	ND	---	ND	30
Endosulfan I	959-98-8	ND	---	ND	1.4
Endosulfan II	33213-65-9	ND	---	ND	1.4
Endrin	72-20-8	ND	---	ND	1.4
Endrin aldehyde	7421-93-4	ND	---	ND	1.4
Endrin Ketone	53494-70-5	ND	---	ND	1.4

Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106-89-8	ND	---	ND	30
Ethylidene dichloride [1,1-Dichloroethane]	75-34-3	ND	---	ND	39
2-Fluoroacetamide	640-19-7	ND	---	ND	100
Heptachlor	76-44-8	ND	---	ND	1.4
Heptachlor epoxide	118-74-1	ND	---	ND	2.8
Hexachlorobenzene	1024-57-3	ND	---	ND	2400
Hexachloro-1,3-butadiene [Hexachlorobutadiene]	87-68-3	ND	---	ND	2400
Hexachlorocyclopentadiene.	77-47-4	ND	---	ND	2400
Hexachloroethane	67-72-1	ND	---	ND	2400
Hexachlorophene	70-30-4	ND	---	ND	59000
Hexachloropropene [Hexachloropropylene]	1888-71-7	ND	---	ND	2400
Iodrin	465-73-6	ND	---	ND	2400
Kepone [Chlordecone]	143-50-0	ND	---	ND	4700
Lindane [gamma-BHC] [gamma- Hexachloro-cyclohexane]	58-89-9	ND	---	ND	1.4
Methylene chloride [Dichloromethane]	75-09-2	ND	---	ND	39
4,4'-Methylene-bis(2-chloroaniline)	101-14-4	ND	---	ND	100
Methyl iodide [Iodomethane]	74-88-4	ND	---	ND	39
Pentachlorobenzene	608-93-5	ND	---	ND	2400
Pentachloroethane	76-01-7	ND	---	ND	39
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	82-68-8	ND	---	ND	2400
Pentachlorophenol	87-86-5	ND	---	ND	2400
Pronamide	23950-58-5	ND	---	ND	2400
Silvex [2,4,5-Trichlorophenoxypropionic acid]	1746-01-6	ND	---	ND	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]		ND	---	ND	30
1,2,4,5-Tetrachlorobenzene	95-94-3	ND	---	ND	2400
1,1,2,2-Tetrachloroethane	79-34-5	ND	---	ND	39
Tetrachloroethylene [Perchloroethylene]	127-18-4	ND	---	ND	39
2,3,4,6-Tetrachlorophenol	58-90-2	ND	---	ND	2400
1,2,4-Trichlorobenzene	120-82-1	ND	---	ND	2400
1,1,1-Trichloroethane [Methyl chloroform].	71-55-6	ND	---	ND	39
1,1,2-Trichloroethane [Vinyl trichloride]	79-00-5	ND	---	ND	39
Trichloroethylene.	79-01-6	ND	---	ND	39
Trichlorofluoromethane [Trichlormonofluoromethane]	75-69-4	ND	---	ND	39
2,4,5-Trichlorophenol	95-95-4	ND	---	ND	2400
2,4,6-Trichlorophenol	88-06-2	ND	---	ND	2400
1,2,3-Trichloropropane	96-18-4	ND	---	ND	39
Vinyl Chloride	75-01-4	ND	---	ND	39

Notes:
NA--Not Applicable.
ND--Nondetect.
\1\ 25 or individual halogenated organics listed below.

Appendix VII to Section 261—Basis for Listing Hazardous Waste

9. **Appendix VII to Section 261** is amended by adding the following waste streams in alphanumeric order (by the first column) to read as follows:

* * * * * * *

EPA hazardous waste No	*Hazardous constituents for which listed*
K176	Arsenic, Lead
K177	Antimony
K178	Thallium

* * * * * * *

Appendix IX to Section 261 — Wastes Excluded Under §§ 260.20 and 260.22

10. **Appendix IX to Section 261** is amended by adding the following waste stream to read as follows:

Tokusen USA, Inc.
Conway, AR

Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste Nos. F006) generated at a maximum annual rate of 670 cubic yards per calendar year after December 31, 2002 and disposed of in a Subtitle D landfill. For the exclusion to be valid, Tokusen must implement a testing program that meets the following Paragraphs:

(1) Delisting Levels: All leachable concentrations for those constituents listed below in (i) and (ii) must not exceed the following levels (mg/l). Tokusen must use an acceptable leaching method, for example SW-846, Method 1311 to measure constituents in the waste leachate, dewatered WWTP sludge

(i) Inorganic Constituents Antimony- 0.360 mg/l; Arsenic - 0.0654 mg/l; Barium - 51.1 mg/l; Chromium - 5.0 mg/l; Cobalt - 15.7 mg/l; Copper - 7.350 mg/l; Lead - 5.0 mg/l; Nickel - 19.7 mg/l; Selenium - 1.0 mg/l; Silver - 2.68 mg/l; Vanadium - 14.8 mg/l; Zinc – 196 mg/l.

(ii) OrganicConstituents 1,4-Dichlorobenzene - 3.03 mg/l; Hexachlorobutadiene - 0.21 mg/l.

(2) Waste Holding and Handling: Tokusen must store the dewatered WWTP sludge as described in its RCRA permit, or continue to dispose of as hazardous all dewatered WWTP sludge generated, until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied.

(A) Not used.

(B) Levels of constituents measured in the samples of the dewatered WWTP sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. Tokusen can manage and dispose the non-hazardous dewatered WWTP sludge according to all applicable solid waste regulations.

(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), Tokusen must re-treat the batches of waste used to generate the representative sample (according to SW-846 methodologies) until it meets the levels. Tokusen must repeat the analyses of the treated waste.

(D) If the facility has not treated the waste, Tokusen must manage and dispose the waste generated under Subtitle C of RCRA.

(3) Verification Testing Requirements: Tokusen must perform sample collection and analyses, including quality control procedures, according to SW-846 methodologies. If the Departmet and EPA judge the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). Tokusen must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA and the Department in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B).

(A) Initial Verification Testing: After EPA and ADEQ grant this final exclusion, Tokusen must do the following:

(i) Collect and analyze composites of the dewatered WWTP sludge.

(ii) Make two composites of representative grab samples (according to SW-846 methodologies) collected.

(iii) Analyze the waste, before disposal, for all of the constituents listed in Paragraph 1.

(iv) Sixty (60) days after this exclusion becomes final, report to EPA and ADEQ the operational and analytical test data, including quality control information.

(B) Subsequent Verification Testing: Following written notification by EPA and the Department, Tokusen may substitute the testing conditions in (3)(B) for (3)(A). Tokusen

must continue to monitor operating conditions, and analyze representative samples (according to SW-846 methodologies) each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter.

(C) Termination of Organic Testing:

(i) Tokusen must continue testing as required under Paragraph (3)(B) for organic constituents in Paragraph (1)(A)(ii), until the analytical results submitted under Paragraph (3)(B) show a minimum of two consecutive samples below the delisting levels in Paragraph (1)(A)(i), Tokusen may then request that EPA and the Department stop quarterly organic testing. After EPA and ADEQ notify Tokusen in writing, the company may end quarterly organic testing.

(ii) Following cancellation of the quarterly testing, Tokusen must continue to test a representative composite sample (according to SW-846 methodologies) for all constituents listed in Paragraph (1) annually (by twelve months after final exclusion).

(4) Changes in Operating Conditions: If Tokusen significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify EPA and the Department in writing; they may no longer handle the waste generated from the new process as nonhazardous until the waste meets the delisting levels set in Paragraph (1) and they have received written approval to do so from EPA and the Department.

(5) Data Submittals: Tokusen must submit the information described below. If Tokusen fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA and ADEQ, at their discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Tokusen must:

(A) Submit the data obtained through Paragraph 3 to the Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) and to the Active Sites Branch, Hazardous Waste Division, ADEQ, 8001 National Drive, Little Rock, AR 72219 within the time specified.

(B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years.

(C) Furnish these records and data when EPA or the State of Arkansas request them for inspection.

(D) A company official having supervisory responsibility should send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA or ADEQ in their sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA or ADEQ and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

(6) Reopener.

(A) If, anytime after disposal of the delisted waste, Tokusen possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Director and the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Director and

the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.

(B) If the annual testing of the waste does not meet the delisting requirements in Paragraph (1), Tokusen must report the data, in writing, to the Director and the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.

(C) If Tokusen fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Director and/or Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Department or Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(D) If the Director, or Regional Administrator or his delegate determines that the reported information does require Department or Agency action, the Director or Regional Administrator or his delegate will notify the facility in writing of the actions the Director, the Regional Administrator or his delegate believe are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Department or Agency action is not necessary. The facility shall have 10 days from the date of the Director's and/or the Regional Administrator or his delegate's notice to present such information.

(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Director or the Regional Administrator or his delegate will issue a final written determination describing the Department and/or Agency actions that are necessary to protect human health or the environment. Any required action described in the Director's or the Regional Administrator or his delegate's determination shall become effective immediately, unless the Director or the Regional Administrator or his delegate provides otherwise.

(7) Notification Requirements: Tokusen must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision:

(A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities.

(B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.

* * * * * * *

Appendix I to Section 262 — Uniform Hazardous Waste Manifest and Instructions

11. **Appendix I to Section 262, Arkansas's Additional Requirements for Completing the Hazardous Waste Manifest, paragraph (a)(7)** is revised to read as follows:

* * * * * * *

(a) The following items shall be completed as State manifest reporting requirements: (the following instructions refer to items A-K on the hazardous waste manifest report form (Arkansas/EPA Form No. 8700-22) and are to be completed for all inter- and intrastate shipments of hazardous waste):

* * *

(7) ITEM K: Emergency response contact (~~individual's name and telephone number~~ e.g., a telephone contact that is monitored 24 hours daily, and the name of a person or company which can provide specific information about the history and contents of the load in question) .

* * *

SECTION 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. **Section 264.340** is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and adding paragraph (b), to read as follows:

§ 264.340 Applicability.

* * * * *

(b) *Integration of the MACT standards.*

(1) Except as provided by paragraphs (b)(2), (b)(3), and (b)(4) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under 40 CFR 63.1207(j) and 40 CFR 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this regulation will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(2) The MACT standards do not replace the closure requirements of § 264.351 of this regulation, or the applicable requirements of subsections A through H, BB and CC of this section.

(3) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of 40 CFR Part 63.1206(b)(14).

(4) The following requirements remain in effect for startup, shutdown, and malfunction events if you elect to comply with § 270.235(a)(1)(i) of this regulation to minimize emissions of toxic compounds from these events:

(i) Section 264.345(a) requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

(ii) Section 264.345(c) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

* * * *

13. **Section 264.601** is amended by revising the introductory text to read as follows:

§ 264.601 Environmental performance standards.

A miscellaneous unit must be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. Permits for miscellaneous units are to contain such terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste hazardous constituents from the unit. Permit terms and provisions must include those requirements of subsections I through O and subsections AA through CC of this section, Section 270 of this regulation, 40 CFR Part 63 subpart EEE, and 40 CFR Part 146 that are appropriate for the miscellaneous unit being permitted. Protection of human health and the environment includes, but is not limited to:
* * * *

14. The title for **Part 264 Subsection S**, ''Corrective Action for Solid Waste Management Units,'' is revised to read ''Special Provisions for Cleanup.''
14. **Section 264.550** is added to Subsection S to read as follows:

§ 264.550 Applicability of Corrective Action Management Unit (CAMU) Regulations.

(a) Except as provided in paragraph (b) of this section, CAMUs are subject to the requirements of § 264.552.

(b) CAMUs that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the Department or EPA on or before November 20, 2000, are subject to the requirements in § 264.551 for grandfathered CAMUs; CAMU waste, activities, and design will not be subject to the standards in § 264.552, so long as the waste, activities, and design remain within the general scope of the CAMU as approved.

15. **Section 264.552** is redesignated as § 264.551 and newly designated § 264.551 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 264.551 Grandfathered Corrective Action Management Units (CAMUs).

(a) To implement remedies under § 264.101 of this regulation, or the Arkansas Remedial Trust Fund Act (A.C.A. § 8-7-501 *et seq.*), or to implement remedies at a permitted facility that is not subject to § 264.101, the Director may designate an area at the facility as a corrective action management unit under the requirements in this subsection. Corrective action management unit means an area within a facility that is

used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

* * * * *

16. A new **Section 264.552** is added to read as follows:

§ 264.552 Corrective Action Management Units (CAMU).

(a) To implement remedies under § 264.101 or the Arkansas Remedial Trust Fund Act (A.C.A. § 8-7-501 *et seq.*), or to implement remedies at a permitted facility that is not subject to § 264.101, the Director may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) CAMU-eligible waste means :

(i) All solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.

(ii) Wastes that would otherwise meet the description in paragraph (a)(1)(i) of this section are not ''CAMU-eligible Wastes'' where:

(A) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers or nonland-based units as part of cleanup, or containers or tanks are excavated during the course of cleanup; or

(B) The Director exercises the discretion in paragraph 2) of this section to prohibit the wastes from management in a CAMU.

(iii) Notwithstanding paragraph (a)(1)(i) of this section, where appropriate, as-generated nonhazardous waste may be placed in a CAMU where such waste is being used facilitate treatment or the performance of the CAMU.

(2) The Director may prohibit, where appropriate, the placement of waste in a CAMU where the Director has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of Section 268 of this regulation, or applicable unit design requirements of this section, or applicable unit design requirements of Section 265 of this regulation, that non-compliance with other applicable requirements of this regulation likely contributed to the release of the waste.

(3) Prohibition against placing liquids in CAMUs.

(i) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(ii) The requirements in § 264.314(d) for placement of containers holding free liquids in landfills apply to placement of a CAMU except where placement facilitates the remedy selected for the waste.

(iii) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to § 264.314(f).

(iv) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with § 264.314(c). Sorbents used to treat free liquids in CAMUs must meet the requirements of § 264.314(e).

(4) Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(5) Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Director may designate a regulated unit (as defined in § 264.90(a)(2)) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under § 264.113 or § 265.113 of this regulation; and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(2) The subsection F, G, and H requirements and the unit-specific requirements of this Section 264 or Section 265 of this regulation that applied to the regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The Director shall designate a CAMU that will be used for storage and/or treatment only in accordance with paragraph (f) of this section. The Director shall designate all other CAMUs in accordance with the following:

(1) The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

(2) Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

(3) The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

(6) The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

(7) The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Director to designate a CAMU in accordance with the criteria in this section. This must include, unless not reasonably available, information on:

(1) The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);

(2) Whether the waste was listed or identified as hazardous at the time of disposal and/or release; and

(3) Whether the disposal and/or release of the waste occurred before or after the land disposal requirements of Section 268 of this regulation were in effect for the waste listing or characteristic.

(e) The Director shall specify, in the permit or order, requirements for CAMUs to include the following:

(1) The areal configuration of the CAMU.

(2) Except as provided in paragraph (g) of this section, requirements for CAMU-eligible waste management to include the specification of applicable design, operation, treatment and closure requirements.

(3) Minimum design requirements. CAMUs, except as provided in paragraph (f) of this section, into which wastes are placed must be designed in accordance with the following:

(i) Unless the Director approves alternate requirements under paragraph (e)(3)(ii) of this section, CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes of this section, *composite liner* means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component;

(ii) Alternate requirements. The Director may approve alternate requirements if:

(A) The Director finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in paragraph (e)(3)(i) of this section; or

(B) The CAMU is to be established in an area with existing significant levels of contamination, and the Director finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

(4) Minimum treatment requirements: Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with paragraph (f) of this section, CAMU-eligible wastes that, absent this section, would be subject to the treatment requirements of Section 268 of this regulation, and that the Director determines contain principal hazardous constituents must be treated to the standards specified in paragraph (e)(4)(iii) of this section.

(i) Principal hazardous constituents are those constituents that the Director determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(A) In general, the Director will designate as principal hazardous constituents:

(*1*) Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and

(*2*) Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

(B) The Director will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site; when making such designation, the Director may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

(C) The Director may also designate other constituents as principal hazardous constituents that the Director determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(ii) In determining which constituents are ''principal hazardous constituents,'' the Director must consider all constituents which, absent this section, would be subject to the treatment requirements in Section 268 of this regulation.

(iii) Waste that the Director determines contains principal hazardous constituents must meet treatment standards determined in accordance with paragraph (e)(4)(iv) or (e)(4)(v) of this section:

(iv) Treatment standards for wastes placed in CAMUs.

(A) For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by paragraph (e)(4)(iv)(C) of this section.

(B) For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal

treatment technology is used), except as provided by paragraph (e)(4)(iv)(C) of this section.

(C) When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard not required. Universal Treatment Standards are identified in § 268.48 Table UTS of this regulation.

(D) For waste exhibiting the hazardous characteristic of ignitability, corrosivity or reactivity, the waste must also be treated to eliminate these characteristics.

(E) For debris, the debris must be treated in accordance with § 268.45 of this regulation, or by methods or to levels established under paragraphs (e)(4)(iv)(A) through (D) or paragraph e)(4)(v) of this section, whichever the Director determines is appropriate.

(F) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Director may specify a leaching test other than the TCLP (SW-846 Method 1311, 40 CFR 260.11(11)) to measure treatment effectiveness, provided the Director determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

(v) Adjusted standards. The Director may adjust the treatment level or method in paragraph (e)(4)(iv) this section to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method must be protective of human health and the environment:

(A) The technical impracticability of treatment to the levels or by the methods in paragraph (e)(4)(iv) of this section;

(B) The levels or methods in paragraph (e)(4)(iv) of this section would result in concentrations of principal hazardous constituents (PHCs) that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law); (C) The views of the affected local community on the treatment levels or methods in paragraph (e)(4)(iv) of this section as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

(D) The short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in paragraph (e)(4)(iv) of this section;

(E) The long-term protection offered by the engineering design of the CAMU and related engineering controls:

(*1*) Where the treatment standards in paragraph (e)(4)(iv) of this section are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

(*2*) Where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d); or

(*3*) Where, after review of appropriate treatment technologies, the Director determines that cost-effective treatment is not reasonably available, and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d); or

(*4*) Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

(*5*) Where, after review of appropriate treatment technologies, the Director determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraphs (e)(3)(i) and (ii) of this section, or the CAMU provides substantially equivalent or greater protection.

(vi) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

(vii) For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the Director may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

(5) Except as provided in paragraph (f) of this section, requirements for ground water monitoring and corrective action that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

(iii) Require notification to the Director and corrective action as necessary to protect human health and the environment for releases to ground water from the CAMU.

(6) Except as provided in paragraph (f) of this section, closure and post-closure requirements:

(i) Closure of corrective action management units shall:

(A) Minimize the need for further maintenance; and

(B) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents,

leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Director for a given CAMU:

(A) Requirements for excavation, removal, treatment or containment of wastes; and

(B) Requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under paragraph (e) of this section, the Director shall consider the following factors:

(A) CAMU characteristics;

(B) Volume of wastes which remain in place after closure;

(C) Potential for releases from the CAMU;

(D) Physical and chemical characteristics of the waste;

(E) Hydrological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

(F) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Cap requirements:

(A) At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided paragraph (e)(6)(iv)(B) of this section:

(*1*) Provide long-term minimization of migration of liquids through the closed unit;

(*2*) Function with minimum maintenance;

(*3*) Promote drainage and minimize erosion or abrasion of the cover;

(*4*) Accommodate settling and subsidence so that the cover's integrity maintained; and

(*5*) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(B) The Director may determine that modifications to paragraph (e)(6)(iv)(A) of this section are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation).

(v) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs must be designated in accordance with all of the requirements this section, except as follows.

(1) CAMUs that are used for storage and/or treatment only and that operate accordance with the time limits established in the staging pile regulations at § 264.554(d)(1)(iii), (h), and (i) are subject to the requirements for staging piles at § 264.554(d)(1)(i) and ii), § 264.554(d)(2), § 264.554(e) and (f), and § 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at paragraphs (c) and (e)(3) through (6).

(2) CAMUs that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at § 264.554(d)(1)(iii), (h), and (i):

(i) Must operate in accordance with a time limit, established by the Director, that is no longer than necessary to achieve a timely remedy selected for the waste, and

(ii) Are subject to the requirements for staging piles at § 264.554(d)(1)(i) and (ii), § 264.554(d)(2), § 264.554(e) and (f), and § 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at paragraphs (c) and (e)(4) and (6). (g) CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at paragraph (e)(3)(i) of this section, caps at paragraph (e)(6)(iv) of this section, ground water monitoring requirements at paragraph (e)(5) of this section or, for treatment and/or storage-only CAMUs, the design standards at paragraph (f) of this section.

(g) CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at paragraph (e)(3)(i) of this section, caps at paragraph (e)(6)(iv) of this section, ground water monitoring requirements at paragraph (e)(5) of this section or, for treatment and/or storage-only CAMUs, the design standards at paragraph (f) of this section.

(h) The Director shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under paragraph (e)(4)(v) of this section to the treatment standards in paragraph (e)(4)(iv) of this section.

(i) Notwithstanding any other provision of this section, the Director may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a CAMU into an existing permit must be approved by the Director according to the procedures for Department-initiated permit modifications under § 270.41 of this regulation, or according to the permit modification procedures of § 270.42 of this regulation.

(k) The designation of a CAMU does not change ADEQ's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

17. **Section 264.554** is amended by adding (a)(1) and adding and reserving (a) (2) to read as follows:

§ 264.554 Staging piles.

(a) * * *

(1) For the purposes of this section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

(2) [Reserved]

* * * *

18. **Section 264.555** is added to Subsection S to read as follows:

§ 264.555 Disposal of CAMU-eligible wastes in permitted hazardous waste landfills.

(a) The Director may approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of Section 268 of this regulation, if the conditions in paragraphs (a)(1) through (3) of this section are met:

(1) The waste meets the definition of CAMU-eligible waste in § 264.552(a)(1) and (2).

(2) The Director identifies principal hazardous constitutes in such waste, in accordance with § 264.552(e)(4)(i) and (ii), and requires that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

(i) The treatment standards under 264.552(e)(4)(iv); or

(ii) Treatment standards adjusted in accordance with § 264.552(e)(4)(v)(A), (C), (D) or (E)(*1*); or

(iii) Treatment standards adjusted in accordance with § 264.552(e)(4)(v)(E)(*2*), where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long term threat posed by the waste, including the threat at the remediation site.

(3) The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in Subsection N of this section, and be authorized to accept CAMU-eligible wastes; for the purposes of this requirement, ‘‘permit’’ does not include interim status.

(b) The person seeking approval shall provide sufficient information to enable the Director with regulatory oversight at the location where the cleanup is taking place to approve placement of CAMU-eligible waste in accordance with paragraph (a) this section. Information required by § 264.552(d)(1) through (3) for CAMU applications must be provided, unless not reasonably available.

(c) The Director shall provide public notice and a reasonable opportunity for public comment before approving CAMU eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at § 264.552(h). The approval must be specific to a single remediation.

(d) Applicable hazardous waste management requirements in this part, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this section, for CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding § 270.4(a) of this regulation, a landfill may not receive hazardous CAMU-eligible waste under this section unless its permit specifically authorizes receipt of such waste.

(e) For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with paragraph (d) of this section until the following additional conditions have been met:

(1) The landfill owner/operator notifies the Director and persons on the facility mailing list, maintained in accordance with 40 CFR 124.10(c)(1)(ix), of his or her intent to receive CAMU-eligible waste in accordance with this section; the notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

(2) Persons on the facility mailing list may provide comments, including objections to the receipt of the CAMU-eligible waste, to the Director within 15 days of notification.

(3) The Director may object to the placement of the CAMU-eligible waste in the landfill within 30 days of notification; the Director may extend the review period an additional 30 days because of public concerns or insufficient information.

(4) CAMU-eligible wastes may not be placed in the landfill until the Director has notified the facility owner/operator that he or she does not object to its placement.

(5) If the Director objects to the placement or does not notify the facility owner/operator that he or she has chosen not to object, the facility may not receive the waste, notwithstanding § 270.4(a), until the objection has been resolved, or the owner/operator obtains a permit modification in accordance with the procedures of § 270.42 specifically authorizing receipt of the waste.

(6) As part of the permit issuance or permit modification process of paragraph (d) of this section, the Director may modify, reduce, or eliminate the notification requirements of this paragraph as they apply to specific categories of CAMU-eligible waste, based on minimal risk.

(f) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this section must comply with the requirements of § 268.7(a)(4); off-site facilities treating CAMU-eligible wastes to comply with this section must comply with the requirements of § 268.7(b)(4), except that the certification must be with respect to the treatment requirements of paragraph (a)(2) of this section.

(g) For the purposes of this section only, the ''design of the CAMU'' in § 264.552(e)(4)(v)(E) means design of the permitted Subtitle C landfill.

SECTION 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

19. **Section 265.340** is amended by redesignating paragraph (b) as paragraph(c), and adding paragraph (b) to read as follows:

§ 265.340 Applicability.

* * * * *

(b) *Integration of the MACT standards.*

(1) Except as provided by paragraphs (b)(2) and (b)(3) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under 40 CFR §§ 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, subpart EEE.

(2) The MACT standards do not replace the closure requirements of § 264.351 of this regulation or the applicable requirements of subparts A through H, BB and CC of this section.

(3) Section 265.345 generally prohibiting burning of hazardous waste during startup and shutdown remains in effect if you elect to comply with § 270.235(b)(1)(i) of this regulation to minimize emissions of toxic compounds from startup and shutdown.

* * * *

SECTION 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

20. **Section 266.20** is amended by removing the last two sentences of paragraph (b), and adding paragraph (d) to read as follows:

§ 266.20 Applicability.

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in subsection D of Section 268 (or applicable prohibition levels in § 268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain. ~~Commercial fertilizers that are produced for the general public's use that~~

~~contain recyclable materials also are not presently subject to regulation provided they meet these same treatment standards or prohibition levels for each recyclable material that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation.~~

* * * * *

(d) Fertilizers that contain recyclable materials are not subject to regulation provided that:

(1) They are zinc fertilizers excluded from the definition of solid waste according to § 261.4(a)(21) of this regulation; or

(2) They meet the applicable treatment standards in subsection D of Section 268 of this regulation for each hazardous waste that they contain.

21. **Section 266.100** is revised to read as follows:

§ 266.100 Applicability.

(a) The regulations of this subsection apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in § 260.10 of this regulation) irrespective of the purpose of burning or processing, except as provided by paragraphs (b), (c), (d), (g), and (h) of this subsection. In this subpart, the term "burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of §§ 266.104, 266.105, 266.106, and 266.107 apply to facilities operating under interim status or under a RCRA permit as specified in §§ 266.102 and 266.103.

(b) *Integration of the MACT standards.*

(1) Except as provided by paragraph (b)(2) of this section, the standards of this part no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under 40 CFR §§ 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this part will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(2) The following standards continue to apply:

(i) If you elect to comply with § 270.235(a)(1)(i) of this regulation to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, § 266.102(e)(1) requiring operations in accordance with the operating requirements specified in the permit at all times that hazardous waste is in the unit, and § 266.102(e)(2)(iii) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes. These provisions apply only during startup, shutdown, and malfunction events;

(ii) The closure requirements of §§ 266.102(e)(11) and 266.103(l);

(iii) The standards for direct transfer of § 266.111;

(iv) The standards for regulation of residues of § 266.212; and

(v) The applicable requirements of subsections A through H, BB and CC of sections 264 and 265 of this regulation.

~~(b)~~(c) The following hazardous wastes and facilities are not subject to regulation under this subsection:

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subsection C of section 261 of this regulation. Such used oil is subject to regulation under Section 279 of this regulation;

(2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;

(3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3) (iii) and (iv) of this regulation, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under § 261.5 of this regulation; and

(4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

~~(c)~~(d) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces, but not including cement kilns, aggregate kilns, or halogen acid furnaces burning hazardous waste) that process hazardous waste solely for metal recovery are conditionally exempt from regulation under this subpart, except for §§ 266.101 and 266.112.

(1) To be exempt from §§ 266.102 through 266.111, an owner or operator of a metal recovery furnace or mercury recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of paragraph (d)(3) of this section, and owners or operators of lead recovery furnaces that are subject to regulation under the Secondary Lead Smelting NESHAP must comply with the requirements of paragraph (h) of this section.

(i) Provide a one-time written notice to the Director indicating the following:

(A) The owner or operator claims exemption under this paragraph;

(B) The hazardous waste is burned solely for metal recovery consistent with the provisions of paragraph (d)(2) of this section;

(C) The hazardous waste contains recoverable levels of metals; and

(D) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this paragraph;

(ii) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this paragraph under procedures specified by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, incorporated by reference in § 260.11

of this regulation or alternative methods that meet or exceed the SW-846 method performance capabilities. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

(iii) Maintain at the facility for at least three years records to document compliance with the provisions of this paragraph including limits on levels of toxic organic constituents and BTU value of the waste, and levels of recoverable metals in the hazardous waste compared to normal nonhazardous waste feedstocks.

(2) A hazardous waste meeting either of the following criteria is not processed solely for metal recovery:

(i) The hazardous waste has a total concentration of organic compounds listed in Section 261, Appendix VIII, of this regulation exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph ~~(c)~~ (d)(1)(iii) of this subsection; or

(ii) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph ~~(c)~~(d)(1)(iii) of this subsection.

(3) To be exempt from §§ 266.102 through 266.111, an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the Secondary Lead Smelting NESHAP) or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the Director identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this paragraph or paragraph ~~(c)~~(d)(1) of this subsection. The owners or operator must comply with the requirements of paragraph ~~(c)~~(d)(1) of this section for those wastes claimed to be exempt under that paragraph and must comply with the requirements below for those wastes claimed to be exempt under this paragraph ~~(c)~~(d)(3).

(i) The hazardous wastes listed in Appendices XI, XII, and XIII, Section 266, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of paragraph ~~(c)~~(d)(1) of this subsection, provided that:

(A) A waste listed in appendix IX of this section must contain recoverable levels of lead, a waste listed in Appendix XII of this section must contain recoverable levels of nickel or chromium, a waste listed in

Appendix XIII of this section must contain recoverable levels of mercury and contain less than 500 ppm of Section 261, Appendix VIII organic constituents, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal; and

(B) The waste does not exhibit the Toxicity Characteristic of § 261.24 of this regulation for an organic constituent; and

(C) The waste is not a hazardous waste listed in subsection D of Section 261 of this regulation because it is listed for an organic constituent as identified in Appendix VII of Section 261 of this regulation; and

(D) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of paragraph ~~(c)~~(d)(3) of this subsection and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to paragraph ~~(c)~~(d)(1)(ii) of this subsection and records to document compliance with paragraph ~~(c)~~(d)(3) of this subsection shall be kept for at least three years.

(ii) The Director may decide on a case-by-case basis that the toxic organic constituents in a material listed in Appendix XI, XII, or XIII of this section that contains a total concentration of more than 500 ppm toxic organic compounds listed in Appendix VIII, Section 261 of this regulation, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this subsection. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this subpart when burning that material. In making the hazard determination, the Director will consider the following factors:

(A) The concentration and toxicity of organic constituents in the material; and

(B) The level of destruction of toxic organic constituents provided by the furnace; and

(C) Whether the acceptable ambient levels established in Appendices IV or V of this section may be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average off-site ground level concentration.

~~(d)~~(e) The standards for direct transfer operations under § 266.111 apply only to facilities subject to the permit standards of § 266.102 or the interim status standards of § 266.103.

~~(e)~~(f) The management standards for residues under § 266.112 apply to any boiler or industrial furnace burning hazardous waste.

~~(f)~~(g) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, palladium, iridium, osmium, rhodium, or ruthenium, or any combination of these are conditionally exempt from regulation under

this subpart, except for § 266.112. To be exempt from §§ 266.101 through 266.111, an owner or operator must:

(1) Provide a one-time written notice to the Director indicating the following:

(i) The owner or operator claims exemption under this paragraph;

(ii) The hazardous waste is burned for legitimate recovery of precious metal; and

(iii) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this paragraph; and

(2) Sample and analyze the hazardous waste as necessary to document that the waste is burned for recovery of economically significant amounts of precious metal using procedures specified by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, incorporated by reference in § 260.11 of this regulation or alternative methods that meet or exceed the SW-846 method performance capabilities. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

(3) Maintain at the facility for at least three years records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.

(h) Starting June 23, 1997, owners or operators of lead recovery furnaces that process hazardous waste for recovery of lead and that are subject to regulation under the Secondary Lead Smelting NESHAP, are conditionally exempt from regulation under this subpart, except for § 266.101. To be exempt, an owner or operator must provide a one-time notice to the Director identifying each hazardous waste burned and specifying that the owner or operator claims an exemption under this paragraph. The notice also must state that the waste burned has a total concentration of non-metal compounds listed in Section 261, Appendix VIII, of this regulation of less than 500 ppm by weight, as fired and as provided in paragraph (d)(2)(i) of this subsection, or is listed in Appendix XI to this Section 266.

22. **Section 266.101** is amended by revising paragraph (c)(1) to read as follows:

266.101 Management prior to burning.

* * * * *

(c) *Storage and treatment facilities.* (1) Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of Sections 264, 265, and 270 of this regulation, except as provided by paragraph (c)(2) of this section. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

* * * * *

23. **Section 266.105** is amended by redesignating paragraph (c) as paragraph (d) and adding paragraph (c), to read as follows:

266.105 Standards to control particulate matter.
* * * * *
(c) Oxygen correction. (1) Measured pollutant levels must be corrected for the amount of oxygen in the stack gas according to the formula:

$$P_c = P_m \times 14/(E - Y)$$

Where:
P_c is the corrected concentration of the pollutant in the stack gas, P_m is the measured concentration of the pollutant in the stack gas, E is the oxygen concentration on a dry basis in the combustion air fed to the device, and Y is the measured oxygen concentration on a dry basis in the stack.

(2) For devices that feed normal combustion air, E will equal 21 percent. For devices that feed oxygen-enriched air for combustion (that is, air with an oxygen concentration exceeding 21 percent), the value of E will be the concentration of oxygen in the enriched air.
(3) Compliance with all emission standards provided by this subpart must be based on correcting to 7 percent oxygen using this procedure.
* * * * *

24. **Section 266.112,** paragraph (b)(1) introductory text is amended by adding a sentence at the end and paragraph (b)(2)(i) is revised to read as follows:

§ 266.112 Regulation of residues.
* * * * *
(b) * * *
(1) * * * For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8–TCDD equivalent values using the procedure specified in section 4.0 of appendix IX of this section.
* * * * *

(2) * * *
(i) *Nonmetal constituents.* The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in appendix VII of this Section, or the level of detection (using analytical procedures prescribed in SW–846), whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix VII of this part, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures contained in SW–846, or other appropriate methods), whichever is higher, must be used. The levels specified in appendix VII of this section (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of appendix VII of this paragraph) are administratively stayed under the condition, for those constituents specified in paragraph b)(1) of this section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this regulation for F039 nonwastewaters. In complying with

those alternative levels, if an owner or operator is unable detect a constituent despite documenting use of best good-faith efforts as defined by applicable EPA or Department guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by § 268.43 of this regulation for F039 nonwastewaters. ~~The stay will remain in effect until further administrative action is taken and notice is published in the Federal Register, the Code of Federal Regulations, and this Regulation No. 23; and~~ In complying with the § 268.43 of this regulation F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans.

Note to this paragraph: The administrative stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this regulation for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the **Federal Register** and the Code of Federal Regulations, and this Regulation No. 23.

* * * *

25. **Appendix VIII to Section 266** is revised to read as follows:

APPENDIX VIII TO PART 266.—ORGANIC COMPOUNDS FOR WHICH RESIDUES MUST BE ANALYZED	
Volatiles	***Semivolatiles***
Benzene	Bis(2-ethylhexyl)phthalate
Toluene	Naphthalene
Carbon tetrachloride	Phenol
Chloroform	Diethyl phthalate
Methylene chloride	Butyl benzyl phthalate
Trichloroethylene	2,4–Dimethylphenol
Tetra chloroethylene	o-Dichlorobenzene
1,1,1–Trichloroethane	m-Dichlorobenzene
Chlorobenzene	p-Dichlorobenzene
cis-1,4–Dichloro-2-butene.	Hexachlorobenzene
Bromochloromethane	2,4,6–Trichlorophenol
Bromodichloromethane.	Fluoranthene
Bromoform	o-Nitrophenol
Bromomethane	1,2,4-trichlorobenzene
Methylene bromide	o-Chlorophenol
Methyl ethyl ketone	Pentachlorophenol
	Pyrene
	Dimethyl phthalate
	Mononitrobenzene
	2,6- Toluene diisocyanate
	Polychlorinated dibenzo-p-dioxins [1]
	Plychlorinated dibenzo-furans [1]

[1] Analyses for polychlorinated dibenzo-pdioxins and polychlorinated dibenzo-furans are required only for residues collected from areas downstream of the combustion chamber (e.g., ductwork, boiler tubes, heat exchange surfaces, air pollution control devices, etc.).

SECTION 268—LAND DISPOSAL RESTRICTIONS

Subpart C—Prohibitions on Land Disposal

26. **Section 268.36** is added to read as follows:

§ 268.36 Waste specific prohibitions— inorganic chemical wastes

(a) Effective May 20, 2002, the wastes specified in 40 CFR part 261 as EPA Hazardous Wastes Numbers K176, K177, and K178, and soil and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soil and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subsection D of this section;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under § 268.44;

(4) Hazardous debris has met the treatment standards in § 268.40 or the alternative treatment standards in § 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable subpart D levels, the waste is prohibited from land disposal, and all requirements of this part are applicable, except as otherwise specified.

27. **Section 268.40** is amended by removing and reserving paragraph (i). Also in **Section 268.40**, the Table of Treatment Standards is amended by adding entries to the end of entries D006, D009, and D011; and by adding in alphanumeric order new entries for K176, K177, and K178 as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

~~(i) Zinc-containing fertilizers that are produced for the general public's use and that are produced from or contain recycled characteristic hazardous wastes (D004-D011) are subject to the applicable treatment standards in § 268.41 contained in the 40 CFR, parts 260-299, edition revised as of July 1, 1990.~~

* * * * *

The following additions are made alphabetically to the Table of Treatment Standards as shown below:

§ 268.40 TREATMENT STANDARDS FOR HAZARDOUS WASTES					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT SUBCATEGORY	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common name	CAS Number	Concentration in mg/L [3], or Technology Code [4]	Concentration in mg/kg [5] unless noted as "mg/L TCLP", or Technology Code
* * * * *					
D006[9]	Radioactively contaminated cadmium in accordance with § 268.45 containing batteries. (Note: This subcategory consists of nonwastewaters only)	Cadmium	7440-43-9	NA	Macroencapsulation
D009[9]	Radioactively contaminated mercury in accordance with § 268.45 containing batteries. (Note: This subcategory consists of nonwastewaters only)	Mercury	7439-97-6	NA	Macroencapsulation
D011[9]	Radioactively contaminated silver in accordance with § 268.45 containing batteries. (Note: This subcategory consists nonwastewaters only)	Silver	7440-22-4	NA	Macroencapsulation
* * * * *					
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide).	Antimony	7440–36–0	1.9	1.15 mg/L TCLP
		Arsenic	7440–38–2	1.4	5.0 mg/L TCLP
		Cadmium	7440–43–9	0.69	0.11 mg/L TCLP
		Lead	7439–92–1	0.69	0.75 mg/L TCLP
		Mercury	7439–97–6	0.15	0.025 mg/L TCLP
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of	Antimony	7440–36–0	1.9	1.15 mg/L TCLP
		Arsenic	7440–38–2	1.4	5.0 mg/L TCLP
		Lead	7439–92–1	0.69	0.75 mg/L TCLP

	intermediates (e.g., antimony metal or crude antimony oxide).				
K178	Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.	1,2,3,4,6,7,8-Heptachlorodibenzop-dioxin. (1,2,3,4,6,7,8-HpCDD)	35822–39–4	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562–39–4	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673–89–7	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		HxCDDs (All Hexachlorodibenzop-dioxins).	34465–46–8	0.000063 or CMBST[11].	0.001 or CMBST[11]
		HxCDFs (All Hexachlorodibenzofurans)	55684–94–1	0.000063 or CMBST[11]	0.001 or CMBST[11]
		1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin. (OCDD)	3268–87–9	0.000063 or CMBST[11]	0.005 or CMBST[11]
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran. (OCDF)	39001–02–0	0.000063 or CMBST[11].	0.005 or CMBST[11]
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	36088–22–9	0.000063 or CMBST[11]	0.001 or CMBST[11]
		PeCDFs (All Pentachlorodibenzofurans)	30402–15–4	0.000035 or CMBST[11].	0.001 or CMBST[11]
		TCDDs (All tetrachlorodi-benzo-pdioxins)	41903–57–5	0.000063 or CMBST[11]	0.001 or CMBST[11]
		TCDFs (All tetrachlorodibenzofurans).	55722–27–5	0.000063 or CMBST[11]	0.001 or CMBST[11]
		Thallium	7440–28–0	1.4	0.20 mg/L TCLP
* * * * *					

.

Footnotes to Treatment Standard Table 268.40:

[1] The waste descriptions provided in this table do not replace waste descriptions in Section 261 of this regulation. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of Section 264, Subsection O or Section 265, Subsection O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in § 268.40(d) of this regulation. All concentration standards for nonwastewaters are based on analysis of grab samples.

[11] For these wastes, the definition of CMBST is limited to: (1) Combustion units operating under § 266, (2) combustion units permitted under Section 264, Subpart O, or (3) combustion units operating under Section 265, Subpart O, which have obtained a determination of equivalent treatment under § 268.42(b).

SECTION 270— ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

28. **Section 270.19** is amended by revising the introductory text and adding paragraph (e) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

Except as § 264.340 of this Regulation and § 270.19(e) provide otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of paragraphs (a), (b), (c) of this section.

* * * *

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR §§ 63.1207(j) and §§ 63.1210(b) documenting compliance with all applicable requirements of 40 CFR Part 63, Subpart EEE), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

29. **Section 270.22** is amended by adding introductory text to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR 63, subpart EEE (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR §§ 63.1207(j) and §§ 63.1210(b) documenting compliance with all applicable requirements of 40 CFR Part 63, Subpart EEE), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

30. **Section 270.42** is amended by revising paragraph (j)(1) to read as follows:

§ 270.42 Permit modifications at the request of the permittee.

* * * *

(j) * * *

(1) Facility owners or operators must ~~comply~~ have complied with the Notification of Intent to Comply (NIC) requirements of ~~40 CFR 63.1211 before a permit modification can be requested under this section.~~ 40 CFR 63.1210 that were in effect prior to October 11, 2000, (See 40 CFR Part 63 Revised as of July 1, 2000) in order to request a permit modification under this section.

* * * *

31. **Appendix I to § 270.42** is amended by adding an entry 8 in numerical order in section A and revising entry 9 in section L to read as follows:

APPENDIX I TO § 270.42—CLASSIFICATION OF PERMIT MODIFICATION

Modification Class	
A. General Permit Provisions:	
* * * * *	
8. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility).	1[1]
* * * * *	
L. Incinerators, Boilers, and Industrial Furnaces:	
* * * * *	
9. Technology Changes Needed to meet Standards under 40 CFR part 63 (Subpart EEE— National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(j) are followed.	1[1]
* * * * *	

1 Class 1 modifications requiring prior Agency approval.

32. **Section 270.62** is amended by adding introductory text to read as follows:

§ 270.62 Hazardous waste incinerator permits.

When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE , *i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR §§ 63.1207(j) and §§ 63.1210(b) documenting compliance with all applicable requirements of 40 CFR Part 63, Subpart EEE), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

33. **Section 270.66** is amended by adding introductory text to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR §§ 63.1207(j) and §§ 63.1210(b) documenting compliance with all applicable requirements of 40 CFR Part 63, Subpart EEE), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

34. **Section 270** is amended by adding **Subsection I** to read as follows:

Subsection I—Integration with Maximum Achievable Control Technology (MACT) Standards

§ 270.235 Options for incinerators and cement and lightweight aggregate kilns to minimize emissions from startup, shutdown, and malfunction events.

(a) *Facilities with existing permits.*

(1) *Revisions to permit conditions after documenting compliance with MACT.* The owner or operator of a RCRA-permitted incinerator, cement kiln, or lightweight aggregate kiln may request that the Director address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to §§ 264.340(b) and 266.100(b) of this regulation:

(i) *Retain relevant permit conditions*. Under this option, the Director will:

(A) Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c); and

(B) Limit applicability of those permit conditions only to when the facility is operating under its startup, shutdown, and malfunction plan.

(ii) *Revise relevant permit conditions*.

(A) Under this option, the Director will:

(*1*) Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of

toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history.

(*2*) Retain or add these permit requirements to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) *Changes that may significantly increase emissions.*

(*1*) You must notify the Director in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the Director of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(*2*) The Director may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(*i*) Upon permit renewal, or, if warranted;

(*ii*) By modifying the permit under §§ 270.41(a) or 270.42.

(iii) *Remove permit conditions*. Under this option:

(A) The owner or operator must document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the Director under 40 CFR 63.1206(c)(2)(ii)(B); and

(B) The Director will remove permit conditions that are no longer applicable according to §§ 264.340(b) and 266.100(b) of this regulation.

(2) *Addressing permit conditions upon permit reissuance*. The owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that has conducted a comprehensive performance test and submitted to the Director a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, subpart EEE, may request in the application to reissue the permit for the combustion unit that the Director control emissions from startup, shutdown, and malfunction events under any of the following options:

(i) *RCRA option A*.

(A) Under this option, the Director will:

(*1*) Include, in the permit, conditions that ensure compliance with §§ 264.345(a) and 264.345(c) or §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and

(*2*) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.; or

(ii) *RCRA option B.*

(A) Under this option, the Director will:

(*1*) Include, in the permit conditions, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(*2*) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) *Changes that may significantly increase emissions.*

(*1*) You must notify the Director in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the Director of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(*2*) The Director may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(*i*) Upon permit renewal, or, if warranted;

(*ii*) By modifying the permit under §§ 270.41(a) or 270.42; or

(iii) *CAA option*. Under this option:

(A) The owner or operator must document that the startup, shutdown, and malfunction plan required under § 63.1206(c)(2) of this chapter has been approved by the Director under 40 CFR 63.1206(c)(2)(ii)(B); and

(B) The Director will omit from the permit conditions that are not applicable under §§ 264.340(b) and 266.100(b) of this regulation.

(b) *Interim status facilities*.

(1) *Interim status operations*. In compliance with §§ 265.340 and 266.100(b), the owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of Sections 265 or 266 of this regulation may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Director a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, subpart EEE.

(i) *RCRA option*. Under this option, the owner or operator continues to comply with the interim status emission standards and operating requirements of Sections 265 or 266 of this regulation relevant to control of emissions from startup, shutdown, and malfunction events. Those standards

and requirements apply only during startup, shutdown, and malfunction events; or

(ii) *CAA option*. Under this option, the owner or operator is exempt from the interim status standards of Sections 265 or 266 of this regulation relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the Director that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) have been approved by the Director under 40 CFR 63.1206(c)(2)(ii)(B).

(2) *Operations under a subsequent RCRA permit*. When an owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of Sections 265 or 266 of this regulation submits a RCRA permit application, the owner or operator may request that the Director control emissions from startup, shutdown, and malfunction events under any of the options provided by paragraphs (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this subsection.

35. **Section 19(c)** is revised to read as follows**:**

Section 19
EFFECT OF FEDERAL REGULATIONS

(c) Nothing in this Section shall prohibit the Commission from imposing any rule or regulation, nor the Department from imposing any ~~rule, regulation,~~ standard, procedure, or permit condition which is more stringent than federal regulations, when such rule, standard, procedure or permit condition is required as a part of this Regulation or the Act or when the Commission and/or the Department finds such stringency is necessary to protect the public health or the environment.

36. **Section 24** is repealed and reserved.

Section 24. (Reserved)
~~REMEDIAL ACTION REVOLVING LOANS~~

~~(a) A.C.A. § 8-7-504, as amended by Act 1042 of 1997, provides for the establishment of a Remedial Action Account in the Department's Construction Assistance Revolving Loan Fund. These funds may be used to provide loans to prospective and actual purchasers of abandoned industrial, commercial, or agricultural sites for the purpose of completing site assessments, remedial investigations, and remedial actions pursuant to the provisions of A.C.A. § 8-7-1101.~~

~~(b) Loans from the Remedial Action Account of the Construction Assistance Revolving Loan Fund shall be applied for, evaluated, and awarded under the provisions of APC&EC Regulation No. 10, (Regulation Governing the Revolving Loan Fund Program).~~

37. **Section 26** is revised to read as follows:

Section 26
CRITERIA FOR LISTING HAZARDOUS SUBSTANCE SITES

(a) Monies deposited into the Hazardous Substance Remedial Action Trust Fund shall be segregated into two portions.

(1) Eighty percent (80%) of the annual receipts shall be designated for expenditures related to National Priority List (NPL) sites as listed ~~at § 27(a) below~~ in APC&EC Regulation No. 30 (Hazardous Substances Remedial Action Trust Fund Priority List).

(2) Twenty percent (20%) of the annual receipts shall be designated for expenditures related to State Priority List (SPL) sites as listed ~~at § 27(b) below~~ in APC&EC Regulation No. 30 (Hazardous Substances Remedial Action Trust Fund Priority List)..

(3) In the event monies from either NPL ~~§ 27(a)~~ or SPL ~~27(b)~~ sites are not expended in any given year, the remaining monies shall be carried over to the next year and shall remain as originally apportioned, unaffected by apportionment of additional funds in subsequent years.

(b) Monies from the Hazardous Substance Remedial Action Trust Fund may not be expended by the Director at any hazardous substance site until such hazardous substance site is listed ~~at Section 27 of this regulation~~ in APC&EC Regulation No. 30 (Hazardous Substances Remedial Action Trust Fund Priority List)..

(c) A hazardous substance site may be listed at ~~Section 27(a)~~ APC&EC Regulation No. 30, § 30.202 (National Priority List (NPL) site) provided that:

(1) The hazardous substance site has been investigated and ranked by use of the revised Hazard Ranking System (rHRS), and

(2) The hazardous substance site scored a minimum of 28.50 based on the rHRS, or has been designated as the State's priority site in accordance with 40 CFR 300.425(c)(2) and placed on the federal National Priorities List as published in the *Federal Register*, and

(3) A final Remedial Investigation/Feasibility Study (and Health Risk Assessment, where applicable) has been conducted, and

(4) The Department has concurred with the remedy selection, and

(5) A Record of Decision (ROD) regarding the remedial action has been issued, and

(6) Federal monies for the remedial action at the hazardous substance site have been committed, and

(7) The Remedial Design has progressed to the 90% complete stage, and

(8) The Department has provided a 30-day public comment period and opportunity for hearing.

(d) In the event EPA implements a Superfund Accelerated Clean-up, a hazardous substance site may be listed at ~~Section 27(a)~~ APC&EC Regulation No. 30, §30.202 (NPL sites) provided that:

(1) EPA has published the hazardous substance site on an Early Action List in the *Federal Register,* or

(2) EPA has identified the hazardous substance site as a Fast Track Remediation site, and

(3) The Remedial Design has progressed to the 90% complete stage, and

(4) The Department has concurred that delay in listing would cause unwarranted delay in clean-up of the site and restoration of the environment, and

(5) The Department has provided a 30 day public comment period and opportunity for hearing.

(e) Should the Commission disapprove the inclusion of a hazardous substance site to ~~Section 27(a)~~ APC&EC Regulation No. 30, § 30.202, the Chairperson of the Commission shall cause the record to reflect the specific rationale for this disapproval.

(f) In the event two (2) or more hazardous substance sites identified at ~~Section 25(a)~~ APC&EC Regulation No. 30, § 30.202 are eligible for funding in any given year under the above criteria, priority for available funding shall be as follows:

(1) Those sites at which remedial actions (including operations and maintenance) have been initiated previously.

(2) Additional hazardous substance sites based on the order of greatest impact to public health and/or the environment, as determined by the Director after reviewing available information developed in accordance with CERCLA as amended, and any other information considered applicable and scientifically reliable.

(g) Hazardous substance sites may be listed at ~~Section 27(b)~~ APC&EC Regulation No. 30 § 30.302 (State Priority List (SPL) sites) which pose a potential substantial endangerment to human health and/or the environment but do not meet the criteria listed at Section 26(c) or (d). Hazardous substance sites listed at ~~Section 27(b)~~ APC&EC Regulation No. 30, § 30.302 will be eligible for investigation and necessary remedial action on a case-by-case basis as determined by the Director.

(h) Hazardous substance sites listed at ~~Section 27(b)(1)~~ Regulation No. 30 § 30.302(A) are those where investigatory activities are required to determine the extent and degree (if any) of the release or threat of release of a hazardous substance at the site and any scientific or engineering studies deemed necessary by the Director to determine available and necessary alternatives for remediation.

(i) Hazardous substance sites listed at ~~Section 27(b)(2)~~ Regulation No. 30, § 30.302(B) are those requiring remediation activities to adequately secure, contain, abate, treat, dispose, or control hazardous substances to the extent financially and technically feasible, as determined by the director. Remediation activities shall include but are not limited to any engineering design work necessary to adequately plan and implement remedial measures.

(j) Hazardous substance sites may be listed at ~~Section 27(b)~~ Regulation No. 30, § 30.302 based on:

(1) Proximity to population centers;

(2) Potential impacts to surface waters;

(3) Potential impact to groundwater;

(4) Hydrologic and geologic characteristics,

(5) The toxicity and characterization of hazardous substances present;

(6) The mobility of the hazardous substances present;

(7) The attenuation of the hazardous substances present; and

(8) Releases or threat of releases of the hazardous substances.

(k) In the event two or more hazardous substance sites identified at ~~Section 27(b)~~ Regulation No. 30, § 30.302 are eligible for funding in any given year under the above criteria, priority for available funding shall be as follows:

(1) Those sites at which remedial actions (including operations and maintenance) have been initiated previously.

(2) Additional hazardous substance sites based on the order of greatest impact to public health and/or the environment, as determined by the Director after reviewing available information developed or discovered in the investigatory process.

(l) The above shall not be construed to preclude or limit the authority of the Director in:

(1) Mandating actions, pursuant to Ark. Code, Ann. §§ 8-7-401 *et seq.* (the Emergency Response Trust Fund Act), deemed necessary to abate an imminent and substantial endangerment to the public health, safety, and welfare, or to the environment, or

(2) Ordering responsible parties to address and abate any release of a hazardous substance, pursuant to Ark. Code, Ann. §§ 8-7-401 *et seq.* or 8-7-501 *et seq.*

38. **Section 27** is removed and reserved. The Remedial Action Trust Fund Priority List formerly found in this Section will be published separately as APC&EC Regulation No. 30 (Hazardous Substances Remedial Action Priority List).

Section 27. (Reserved) ~~**HAZARDOUS SUBSTANCE REMEDIAL ACTION TRUST FUND PRIORITY LIST**~~

~~(a) *National Priority List (NPL) Sites:*~~

~~(1) Cecil Lindsey Landfill, Newport~~
~~(2) Old Midland Products, Ola~~
~~(3) Rogers Road Landfill, Jacksonville~~
~~(4) Jacksonville/Graham Road Landfill, Jacksonville~~
~~(5) Gurley Oil Pits, Edmonson~~
~~(6) Popile, El Dorado~~
~~(7) Mountain Pine Pressure Treating, Plainview~~

~~(b) *State Priority List (SPL) Sites:*~~

~~(1) Investigation category~~

~~(A) Benton Salvage, Benton~~
~~(B) Utilities Services, Inc., Pine Bluff~~
~~(C) Jimelco, Little Rock~~
~~(D) Rixey Iron & Metals Company, North Little Rock~~
~~(E) Griffing Railway Repair, El Dorado~~
~~(F) Leachville Metal Plating, Leachville~~
~~(G) Mountain Pine Pressure Treating, Plainview~~
~~(H) Plainview Lumber Company, Plainview~~

~~(I) R&P Electroplating, Fayetteville.~~
~~(J) Baird Manufacturing, Inc., Clarendon~~
~~(K) Amity Lacquer Paint and Chemical Manufacturing Company, Amity~~
~~(L) Red River Aluminum, Stamps~~
~~(M) Cedar Chemical Corporation, West Helena~~

~~(2) Remediation Category~~
~~(A) Vertac Chemical Corporation, Jacksonville~~
~~(B) Benton Salvage, Benton~~
~~(C) Garland County Industrial Landfill, Hot Springs~~
~~(D) Utilities Services, Inc., Pine Bluff~~
~~(E) Jimelco, Little Rock~~
~~(F) Rixey Iron & Metals Company, North Little Rock~~
~~(G) Griffing Railway Repair, El Dorado~~
~~(H) Leachville Metal Plating, Leachville~~
~~(I) Mountain Pine Pressure Treating, Plainview~~
~~(J) Plainview Lumber Company, Plainview~~
~~(K) R&P Electroplating, Fayetteville~~
~~(L) Baird Manufacturing, Inc., Clarendon~~
~~(M) Amity Lacquer Paint and Chemical Manufacturing Company, Amity~~
~~(N) Red River Aluminum, Stamps~~
~~(O) Mid-South Reclamation Industries, Smackover~~
~~(P) Cedar Chemical Corporation, West Helena~~