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Hazardous Waste Identification Rule

Hazardous Remediation Waste Management Requirements (HWIR-Media): Final Rule

Effective Date: June 1, 1999

Introduction

Currently, hazardous wastes managed during a site cleanup are generally subject to the same Resource Conservation and Recovery Act (RCRA), Subtitle C (Hazardous Waste Management) requirements as are newly generated wastes from industrial processes. Such requirements were designed primarily to prevent releases of hazardous wastes and constituents during ongoing management of the newly generated wastes. In comparison to ongoing management scenarios, however, clean-up scenarios usually involve less-concentrated wastes, one-time or shorter term activities. Therefore, the Subtitle C requirements are often not appropriate for a particular clean-up scenario. Notwithstanding, the RCRA does not allow EPA and States to modify existing Subtitle C requirements on a case by case basis to make them more appropriate for specific clean-up circumstances. Hence, the goal of the HWIR-Media final rule is to reform the Subtitle C regulations to provide Federal and State regulatory agencies with enough flexibility to establish appropriate hazardous waste management options for each clean-up scenario.

Rule Synopsis

On November 30, 1998, the HWIR-Media final rule was published in the *Federal Register* [63 FR 65874 - 65947].¹ The final rule adopts only selected elements from the HWIR-Media proposal [61 FR 18780 (April 29, 1996)], which requested comments on two alternative comprehensive

approaches for modifying how the RCRA hazardous waste regulations apply to remediation wastes (the “Bright Line” approach and the “Unitary” approach). Additionally, the final rule does not withdraw the regulations which define and govern corrective action management units (CAMUs), as was proposed. In a separate *Federal Register* notice [63 FR 28604 (May 26, 1998)], the EPA finalized the land disposal restrictions (LDR) treatment standards for hazardous contaminated soil, which were included in the HWIR-Media proposal.

The HWIR-Media final rule has the following elements.²

- The existing definitions of “corrective action management unit (CAMU)” and “remediation waste” in 40 CFR 260.10 are modified to clarify that remediation waste need not be generated by corrective actions conducted pursuant to RCRA in order to qualify for management in a CAMU or temporary unit.
- Definitions for the terms “remediation waste management site” and “staging pile” are added to 40 CFR 260.10.
- A new type of RCRA permit (i.e., a Remedial Action Plan (RAP)) with a streamlined permitting process is established for governing treatment, storage, and disposal of hazardous remediation wastes.
- An exemption from the requirement that a facility needing a RCRA permit must conduct facility-wide corrective action is added to 40 CFR 264.101 for remediation waste management sites located at remediation-only facilities, whether the remediation waste management site is permitted using a traditional RCRA permit or a RAP.
- A new type of hazardous waste management unit (i.e., the staging pile) is created for accumulation and temporary storage of solid, non-flowing hazardous remediation waste.
- An exclusion from the definition of hazardous waste is added to 40 CFR 261.4 for dredged material subject to a permit that has been issued under section 404 of the

¹ Unless a different date is given, each citation to volume 63 of the *Federal Register* (i.e., 63 FR) throughout the remainder of this Regulatory Bulletin refers to a page within the HWIR-Media final rule, which is located at 63 FR 65874 - 65947 (November 30, 1998).

² The preamble and regulatory language for the HWIR-Media final rule are written in a “readable regulations” format. This new format is part of EPA’s ongoing efforts at regulatory re-invention, and looks very different from existing regulatory text. It is intended to make it easier for readers to find and understand the information in the preamble and rule.

Federal Water Pollution Control Act of 1977 (CWA), or under section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA, also known as the Ocean Dumping Act).

- Abbreviated procedures are added whereby an application for a change to a previously authorized State RCRA program is not required to contain all of the components delineated in 40 CFR 271.21(b), if the purpose of the change is to implement modifications to the corresponding Federal program that are routine or minor. Also, deadlines are specified within which the EPA must: (1) notify a State of application deficiencies; and (2) publish, after receipt of a complete application, a notice that final authorization is being granted.

Background

Existing RCRA hazardous waste regulations were, in general, designed to prevent releases of and minimize generation of hazardous wastes at ongoing operations. They were not intended to govern management of wastes generated during response actions. Also, as nationally applicable requirements, the existing regulations were written to be protective for the highest risk activities that the regulations allow. Hence, with few exceptions, the existing RCRA hazardous waste regulations are conservatively designed to ensure proper management of hazardous wastes over a range of waste types, environmental conditions, management scenarios, and operational contingencies. In administering these RCRA regulations with respect to wastes generated during response actions, EPA and States have identified three sets of requirements that create roadblocks, rather than incentives, for site cleanups. These are LDR requirements, minimum technological requirements (MTRs), and permitting requirements.

The existing LDR requirements (40 CFR part 268) generally prohibit placement of any hazardous waste into a land-based unit without treatment to meet specified standards. Also, LDR requirements do not allow temporary storage or accumulation of untreated hazardous remediation wastes during a response action. These requirements can be a strong disincentive to excavating and managing such wastes as part of any response action. Instead, decision makers often choose *in situ* remediation techniques to avoid any need to accumulate or store hazardous remediation wastes.

The MTRs consist of mandated design and operating features intended to prevent release of hazardous wastes from land-based hazardous waste management units. For example, 40 CFR 264.251 is an MTR requiring that a waste pile be equipped with a liner designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil, or into groundwater or surface water at any time during the pile's active life (including the closure period). Such MTRs are usually appropriate for a unit that manages wastes generated by

industrial processes. However, they may not be necessary in situations involving a unit used for short-term placement of remediation waste during a response action.

In most circumstances, a RCRA permit is required before treating, storing or disposing of hazardous wastes, including hazardous remediation wastes. To obtain a RCRA permit through the traditional permitting process, the owner or operator of the hazardous waste treatment, storage, or disposal facility is first required to hold a public meeting. Then, an application containing a large volume of information must be submitted to the responsible regulatory agency. Next, the responsible agency must review the application, determine its completeness, request additional information (if necessary), prepare a draft permit, issue the draft permit for public review and comment, hold a public hearing (if requested), and issue or deny a final permit. This process often takes several years. Hence, a response action that involves obtaining a RCRA permit for a hazardous remediation waste treatment, storage, or disposal unit may be significantly delayed by the permitting process. Furthermore, seeking a traditional RCRA permit for on-site hazardous waste management activities triggers a requirement to investigate and clean up the entire facility [40 CFR 264.101]. This facility-wide cleanup requirement, which applies even if the only on-site hazardous waste unit requiring a RCRA permit manages nothing but remediation waste, can deter potential cleanups, especially if the facility owner or operator wanted to clean up only a small portion of the property.

For a time, the EPA tried through a series of regulations and policies to address the roadblocks for cleanups created by LDR requirements, MTRs, and permitting requirements. However, the EPA's efforts had limited success. By 1993, EPA knew that further reforms were needed, but would be controversial. Therefore, the EPA convened a committee under the Federal Advisory Committee Act (FACA) to provide recommendations.

Based on the recommendations and discussions of the FACA committee, the EPA advanced the HWIR-Media proposal in April 1996 [61 FR 18780 (April 29, 1996)]. The HWIR--Media proposal presented two comprehensive approaches (the "Bright Line" approach and the "Unitary" approach) for solving the problems inherent to managing hazardous remediation waste under the existing RCRA hazardous waste regulations. However, after evaluating comments filed about the two suggested approaches, the EPA concluded that stakeholders fundamentally disagree on many remediation waste management issues. As a result, the EPA decided that "pursuing broad regulatory reform would be a time- and resource-intensive process that would most likely result in a rule that would provoke additional years of litigation and associated uncertainty" [63 FR 65879]. Therefore, neither the Bright Line nor the Unitary Approach has been finalized in the HWIR-Media final rule. Instead, in an effort to improve remediation waste management and expedite cleanups in the near term, only certain elements of

the proposal are finalized, and the CAMU rule is retained. However, in the long term, the EPA is convinced that additional reform is needed to expedite the clean-up program. Therefore, the EPA expects to continue its support of appropriate legislation addressing application of LDR requirements, MTRs, and permitting requirements to remediation wastes [63 [FR](#) 65879].

The Final Rule

The HWIR-Media final rule, which is the subject of this Regulatory Bulletin, was published on November 30, 1998 (63 [FR](#) 65874 - 65947) and becomes effective on June 1, 1999.

Corrective Action Management Units (CAMUs)

On February 16, 1993, the EPA published a final rule in the *Federal Register* that allows EPA Regional Administrators or authorized States to designate areas at hazardous waste management facilities as CAMUs [58 [FR](#) 8658] (referred to as the “CAMU rule”). Under the CAMU rule, an area designated as a CAMU is specifically earmarked for managing remediation wastes generated by clean-up activities [40 CFR 260.10]. By definition, placing remediation wastes into or within a CAMU does not constitute land disposal [58 [FR](#) 8658, 8665 (February 16, 1993)], and the LDR regulations do not apply. Further, waste disposal within CAMUs is not subject to otherwise applicable MTRs [58 [FR](#) 8658, 8661 (February 16, 1993)].

On May 14, 1993, the Environmental Defense Fund (EDF) challenged the legal and policy bases of the final CAMU regulations [*Environmental Defense Fund v. EPA*, No 93-1316 (D.C. Cir.)]. In 1994, the Court stayed this litigation in anticipation that the final HWIR-Media regulations, when published, might resolve many of the issues. The stay gave the parties until 91 days after publication in the *Federal Register* of the HWIR-Media final rule (i.e., until March 1, 1999) to inform the Court whether they would dismiss the petitions for review, enter into settlement discussions, or proceed with the litigation. It has been reported that the litigants plan to enter into formal settlement discussions. The goal of such discussions is to agree on technical changes to the CAMU rule that will fix the legal problem on which the suit was based. [“Stakeholder Process to Alter CAMU Rule Begins,” *Inside EPA’s Superfund Report*, February 17, 1999, page 19]

The purpose of the CAMU rule was to encourage more and improved waste cleanups, thereby increasing protection of human health and the environment [58 [FR](#) 8658, 8659 (February 16, 1993)]. The DOE supported the CAMU concept when it was first proposed in 1990 [DOE Comments on “Corrective Action (Subpart S) for Solid Waste Management Units at Hazardous Waste Management

Facilities,” Proposed Rule, 55 [FR](#) 30798, July 27, 1990 (November 23, 1990)], and again in 1992 when the EPA published a supplemental information notice [DOE Comments on “Corrective Action for Solid Waste Management Units (SWMUs) at Hazardous Waste Management Facilities,” Notice of Data Availability and Request for Comments, 57 [FR](#) 48195, October 22, 1992 (November 23, 1992)].

The HWIR-Media proposal suggested deleting the CAMU rule because the EPA believed that, as proposed, the HWIR-Media regulations would provide equivalent remediation waste management flexibility. The DOE opposed deletion of the CAMU regulations primarily because the HWIR-Media proposal would have applied only to contaminated media, while the CAMU regulations allow all types of remediation wastes to be flexibly managed. [DOE Comments on “Requirements for Management of Hazardous Contaminated Media (HWIR-Media),” Proposed Rule, 61 [FR](#) 18780, April 29, 1996 (August 28, 1996), pages 46 - 51] Ultimately, the EPA decided that the HWIR-Media final rule should leave the CAMU regulations in place. This decision rested on the EPA’s conclusion that including only selected elements of the proposal in the HWIR-Media final rule did not fully preserve the flexibility of the CAMU rule [63 [FR](#) 65921].

Since the HWIR-Media final rule retains the CAMU regulations, the EPA wanted to clarify their applicability. Specifically, the EPA wanted to clarify that a CAMU can be designated at a remediation-only facility³ that operates under a remedial action plan (RAP) or other permit, even though such a facility is not subject to the corrective action provisions of 40 CFR 264.101 or RCRA section 3008(h). The EPA also wanted to clarify that CAMUs are not restricted to wastes generated solely through specific RCRA regulatory mechanisms, or to clean-up wastes generated solely at RCRA treatment, storage, or disposal facilities. Accordingly, the HWIR-Media final regulations changed the CAMU definition to read as follows [63 [FR](#) 65880; 63 [FR](#) 65937, codifying 40 CFR 260.10]:

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.

Remediation Waste Management Sites

In the HWIR-Media proposal, the EPA suggested that the term “media remediation site” be defined as “an area contaminated with hazardous waste that is subject to cleanup under State or Federal authority, and areas that are in close

³ EPA uses the term “remediation-only facility” to refer to facilities that require RCRA permits solely because they manage hazardous remediation wastes. [63 [FR](#) 65880, note 3]

proximity to the contaminated area,” which would be used to manage contaminated media. [61 [FR](#) 18780, 18792 (April 29, 1996)] Areas meeting this definition would have been granted certain exemptions from RCRA Subtitle C requirements. The word “media” was included in the name of these areas to emphasize that only sites managing contaminated media (e.g., soil and groundwater) could qualify. The DOE supported the media remediation area concept, but requested that the EPA consider clarifying the aerial boundaries within which relief from RCRA Subtitle C requirements would be available. Specifically, the DOE urged that the final definition of “media remediation site” clarify that a remediation waste treatment, storage, and disposal facility would be eligible to be part of a “media remediation site,” if it was centrally located on a large industrial property containing multiple contaminated areas, or within a specified radius of multiple contaminated areas. [DOE Comments on “Requirements for Management of Hazardous Contaminated Media (HWIR-Media),” Proposed Rule, 61 [FR](#) 18780 (April 29, 1996), August 28, 1996, page 16]

The HWIR-Media final rule does not establish “media remediation sites.” Instead, it defines “remediation waste management sites.” In taking this action, EPA reasoned that leaving the word “media” out of the newly defined phrase would signal that all types of remediation wastes, not just contaminated media, are allowed at remediation waste management sites. In addition, EPA intended the words “waste management” in the new phrase to clearly distinguish the phrase “remediation waste management sites” from “remediation sites,” which usually refers to a broader geographic area subject to cleanup [63 [FR](#) 65882].

A “remediation waste management site” is defined by the HWIR-Media final rule as “a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation waste.” [63 [FR](#) 65937, codifying 40 CFR 260.10] In order to promote voluntary cleanups, this final definition abandons proposed language that would have limited media remediation sites to areas subject to a cleanup under State or Federal authority [63 [FR](#) 65882]. For the purpose of determining whether a facility qualifies as a remediation waste management site, the HWIR-Media final rule revises the definition of “remediation waste.” Under the new definition, remediation waste is “all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup.” [63 [FR](#) 65937, codifying 40 CFR 260.10] This change addresses the DOE’s comment about centralized remediation waste management facilities by eliminating the prior definition’s requirement that remediation waste originate “within the facility boundary.” The new definition allows wastes managed at off-site locations to qualify as remediation waste, even if they are removed from their site of origin.

The HWIR-Media final regulations governing remediation waste management sites differ from those governing other hazardous waste management facilities in the following three respects [63 [FR](#) 65882]:

- Remediation waste management sites can be permitted using either the new RAP, or a traditional RCRA permit. The process for obtaining a RAP is delineated in 40 CFR Part 270, Subpart H [63 [FR](#) 65941] (see page 5, below).
- If a remediation waste management site is located at a remediation-only facility, facility-wide corrective action is not required, whether the remediation waste management site is permitted using a traditional RCRA permit or a RAP. [63 [FR](#) 65938, codifying 40 CFR 264.1(j) and 264.101(d)]
- Remediation waste management sites must comply with newly stated performance standards that address general facility requirements, preparedness and prevention, and contingency planning and emergency procedures [63 [FR](#) 65938, codifying 40 CFR 264.1(j)]. They are not compelled to comply with 40 CFR 264, Subparts B, C, and D, which govern the same activities at other hazardous waste management facilities.

Staging Piles

The HWIR-Media proposal suggested creating a new type of waste management unit called a “remediation pile” which was to be used for temporary treatment or storage of remediation wastes during remedial operations. The DOE supported this concept, but in its comments on the proposed rule, requested that the final regulations confirm that a remediation pile could be designated, operated, and closed not only under the provisions of a traditional RCRA permit or order, but also under a RAP (called a Remedial Management Plan (RMP) in the HWIR-Media proposal) [DOE Comments on “Requirements for Management of Hazardous Contaminated Media (HWIR-Media),” Proposed Rule, 61 [FR](#) 18780 (April 29, 1996), August 28, 1996, page 51]

The HWIR-Media final rule creates a new type of waste management unit called a “staging pile” that is based on the proposed “remediation pile,” but that has been modified to address comments the EPA received on the proposed rule. The principal differences between the proposed remediation pile and the final staging pile are as follows [63 [FR](#) 65910 - 65911]:

- The name is changed to make it clear that staging piles are to be used only for temporary storage of remediation wastes, and not for other remediation waste management activities, such as treatment.
- Treatment would have been allowed in a remediation pile, but will not be allowed in staging piles because some forms of treatment (for example, air stripping, or in some cases, biological treatment) might not be properly controlled if performed in a staging pile [63 [FR](#) 65913; 63 [FR](#) 65939, codifying 40 CFR 264.554(b)] .

- The permissible length of operating life for a remediation pile would have been determined on a case-specific basis, but for a staging pile, it is restricted to two years, unless an extension (of up to 180 days) is granted [63 [FR](#) 65913; 63 [FR](#) 65939, codifying 40 CFR 264.554(d)(1)(iii)].
- Appropriate design and operating standards for a remediation pile were to be determined using the review criteria for temporary units. For a staging pile, instead of referencing the review criteria for temporary units, the HWIR-Media final rule lists the factors that must be used in determining design and operating standards [63 [FR](#) 65939, codifying 40 CFR 264.554(d)(2)]. Additionally, the following performance goals are specified for the design and operating standards for a staging pile [63 [FR](#) 65939, codifying 40 CFR 264.554(d)(1)(i) and (ii)]:
 - ▶ Facilitate a reliable, effective and protective remedy; and
 - ▶ Prevent or minimize releases of hazardous wastes and hazardous constituents, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment.
- Closure requirements are established for staging piles based on whether the pile is located on a previously contaminated area or a previously uncontaminated area [63 [FR](#) 65913; 63 [FR](#) 65940, codifying 40 CFR 264.554(j) and (k)]. The EPA inadvertently omitted closure requirements from the regulatory language of the HWIR-Media proposal dealing with remediation piles.

The HWIR-Media final rule defines a “staging pile” as “an accumulation of solid, non-flowing remediation waste (as defined in [40 CFR] §260.10) that is not a containment building and is used only during remedial operations for temporary storage at a facility” [63 [FR](#) 65939, codifying 40 CFR 264.554(a)]. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originate. This definition of staging pile differs from the existing definition of “pile” given in 40 CFR 260.10 in the following three ways [63 [FR](#) 65884]:

- The definition of “pile” limits a pile’s contents to non-containerized waste;
- The definition of “pile” addresses “accumulation of solid, non-flowing *hazardous waste*,” rather than “solid, non-flowing *remediation waste*”; and
- The definition of “pile” allows *treatment or storage*, rather than just *temporary storage*.

To use a staging pile, the following requirements must be met.

- The staging pile must be designated by the responsible regulatory agency either in a RCRA permit, or, if the staging pile is located at an interim status facility, in an order or closure plan [63 [FR](#) 65912; 63 [FR](#) 65939, codifying 40 CFR 264.554(b)].

- To get a staging pile designated, an application must be filed with the responsible regulatory agency [63 [FR](#) 65913; 63 [FR](#) 65939, codifying 40 CFR 264.554(c)].
- If the facility hosting the staging pile already has a RCRA permit that is not a RAP, the requirements for requesting a Class 2 permit modification must be followed. If the facility has a RAP, the requirements and procedures for modifying the RAP, which are specified in the RAP, must be followed [63 [FR](#) 65913; 63 [FR](#) 65940, codifying 40 CFR 264.554(1)(1) and (2)].
- If the facility hosting the staging pile is subject to an interim status closure plan, an application must be filed according to the provisions in 40 CFR 265.112(c) [63 [FR](#) 65913; 63 [FR](#) 65940, codifying 40 CFR 264.554(1)(3)].
- If the facility hosting the staging pile has interim status and is subject to an order, an application must be filed according to the provisions of the order [63 [FR](#) 65913; 63 [FR](#) 65940, codifying 40 CFR 264.554(1)(4)].
- Placement of ignitable, reactive, or incompatible remediation wastes into a staging pile is prohibited unless specified precautions are taken [63 [FR](#) 65913; 63 [FR](#) 65939-65940, codifying 40 CFR 264.554(e) and (f)].
- The responsible regulatory agency must document and make the rationale for designating a staging pile available to the public through the appropriate public participation process [63 [FR](#) 65913; 63 [FR](#) 65940, codifying 40 CFR 264.554(m)].
- To extend the operation of a staging pile beyond the length of time provided in the permit, closure plan, or order (which time cannot exceed two years), a demonstration must be made to the responsible regulatory agency. The demonstration must explain why the extension (1) will not pose a threat to human health and the environment, and (2) is necessary to ensure timely and efficient implementation of remedial actions at the facility [63 [FR](#) 65913; 63 [FR](#) 65940, codifying 40 CFR 264.554(h) and (i)].
- A staging pile must be closed within 180 days after its operating term expires [63 [FR](#) 65913; 63 [FR](#) 65940, codifying 40 CFR 264.554(j) and (k)].

Remedial Action Plans (RAPs)

Background

The HWIR-Media proposal introduced the “Remediation Management Plan (RMP)” as a streamlined, special form of RCRA permit that would have governed hazardous remediation wastes at remediation-only sites. A RMP would also have been the vehicle whereby a responsible regulatory agency could have exempted low risk hazardous contaminated media from RCRA Subtitle C management requirements if such media would be managed according to site-specific management requirements contained in the RMP. As a general concept, the DOE supported the creation of a streamlined administrative mechanism, such as the RMP,

to govern management of hazardous contaminated media. However, the DOE expressed concern that implementation of the proposed process for issuing RMPs might prove to be so burdensome that States would not embrace it [DOE Comments on “Requirements for Management of Hazardous Contaminated Media (HWIR-Media),” Proposed Rule, 61 FR 18780 (April 29, 1996), August 28, 1996, pages 38 - 45].

The EPA chose not to finalize the aspect of the HWIR-Media proposal that would have allowed responsible regulatory agencies to use RMPs to exempt low risk hazardous contaminated media from RCRA Subtitle C requirements on a site-specific basis. Instead, the final rule changed the name of the “Remediation Management Plan” to “Remedial Action Plan” (RAP). A RAP does not document and enforce site-specific alternative management requirements for hazardous contaminated media because the HWIR-Media final rule does not provide for such media to be exempted from RCRA Subtitle C. Instead, a RAP offers a streamlined permitting process for treating, storing, and disposing of hazardous remediation wastes, including hazardous contaminated media, in accordance with RCRA Subtitle C.

Advantages of RAPs

Whenever someone stores, treats, or disposes of hazardous remediation waste in a manner that requires a RCRA permit, that person must either obtain a traditional RCRA permit, or obtain a RAP [63 FR 65942, codifying 40 CFR 270.85(a)]. When deciding which approach to take, the remediation waste management facility owner/operator should consider whether the following aspects of the RAP permitting process would offer advantages compared to the traditional RCRA permitting process:

- Adjustments are allowed in the level of public participation during processing of a RAP application to match site-specific circumstances, as long as public notice of an opportunity to comment and request a hearing is provided as required in RCRA section 7004(b) [63 FR 65896].
- Adjustments are allowed in the type and quantity of information required in a RAP application to match the expected complexity of the remedial action [63 FR 65891 - 65893].
- A RAP may be written either as a stand-alone document, or as part of another document that includes information and/or conditions for other activities at the remediation waste management site. This allows integrated preparation and joint issuance of the RAP and remedy selection documents [63 FR 65887].
- An application must be prepared, signed, and submitted to the responsible regulatory agency [63 FR 65942, codifying 40 CFR 270.95]. In addition to providing the name, address, location, owner/operator information, and layout of the remediation waste management site for which a RAP is sought, a RAP application must specify the properties and quantities of the hazardous remediation wastes that will be treated, stored, or disposed, and must describe the treatment technologies and handling systems to be used. The remaining contents of a RAP application are flexible. The only requirement is that the information be adequate to (1) demonstrate that, if conducted as represented in the application, the remediation waste management activities will ensure compliance with all applicable regulations in 40 CFR Parts 264, 266, and 268; (2) enable the EPA Regional Administrator to carry out his/her duties under other Federal laws; and (3) provide other information requested by the responsible regulatory agency [63 FR 65942, codifying 40 CFR 270.110(a) - (i)].
- The responsible regulatory agency must review the RAP application for completeness; determine whether to issue a tentative decision to approve the application; prepare a draft RAP for public comment or issue a notice of intent to deny the RAP; and prepare a statement of basis [63 FR 65943, codifying 40 CFR 270.130 - 270.140(a)].
- An administrative record must be made publically available before a final RAP decision is issued [63 FR 65943, codifying 40 CFR 270.140(b)].
- Public participation must be conducted, including, at a minimum, radio and newspaper notices from the responsible regulatory agency of its intention to issue or deny the RAP; a 45-day-long opportunity for the public to submit written comments and request a hearing; and public access to the administrative record [63 FR 65943, codifying 40 CFR 270.145(a) - (c)].
- If a public hearing is requested, or if the responsible regulatory agency otherwise determines that a hearing is needed, then the responsible regulatory agency must conduct a hearing [63 FR 65943, codifying 40 CFR 270.145(d)].
- A final RAP decision may be administratively appealed [63 FR 65943, codifying 40 CFR 270.155].

A final RAP will become effective 30 days after notice of its approval is given to the applicant and all others who commented on the draft RAP [63 FR 65943, codifying 40 CFR 270.160].

RAP Modification, Revocation and Reissuance, and Termination

The HWIR-Media final rule requires that each RAP specify procedures for modification, revocation and reissuance, and termination [63 FR 65900]. The EPA adopted this requirement to foster flexible procedures capable of accommodating unpredictable, site-specific

contingencies and existing State requirements. In the event that modification, revocation and reissuance, or termination of a site's RAP would cause a "significant" change in how remediation waste is managed at a site, the applicable procedures must provide adequate opportunities for public review and comment [63 [FR](#) 65944, codifying 40 CFR 270.170]. In this regard, the EPA expects changes of the type that would trigger a Class 2 or 3 modification to a traditional RCRA permit to be the type of changes that, when they involve management of hazardous remediation wastes, would be considered "significant" [63 [FR](#) 65900].

The holder of a RAP may request modification, revocation and reissuance, or termination of the RAP at any time. However, if a change of ownership or operational control occurs at a remediation waste management site covered by a RAP, the holder of the RAP is required to file a request either for modification of the RAP, or for revocation and reissuance [63 [FR](#) 65946, codified at 40 CFR 270.220].

The responsible regulatory agency is allowed to initiate modification, revocation and reissuance, or termination of a RAP only for specified reasons [63 [FR](#) 65944 - 65945, codified at 40 CFR 270.175, 270.180, and 270.185]. In the case of termination, the specified reasons are as follows:

- The facility is not in compliance with the RAP;
- The facility did not fully disclose relevant facts in the application for the RAP or during the RAP issuance process;
- The facility misrepresented relevant facts at the time they were provided to the responsible regulatory agency; or
- The responsible regulatory agency determines that the activity authorized by the RAP endangers human health or the environment and the only available remedy is to terminate the RAP.

The decision of a responsible regulatory agency to modify, revoke and reissue, or terminate a RAP can be administratively appealed by anyone who participated in the hearing (if one was held), or anyone who commented on the responsible regulatory agency's notice announcing the intended decision [63 [FR](#) 65945, codifying 40 CFR 270.190(a)]. The same persons are eligible to request an informal appeal if the responsible regulatory agency decides to deny a request for modification, revocation and reissuance, or termination of a RAP [63 [FR](#) 65945, codifying 40 CFR 270.190(b)].

RAP Expiration and Renewal

A RAP is allowed to have a term of up to 10 years, but the RAP must be reviewed and, if necessary, modified every five years if it covers a land disposal unit. If a remedial action subject to a RAP is expected to last less than 10 years, the RAP may specify a term of less than 10 years [63 [FR](#) 65945, codifying 40 CFR 270.195].

The process for renewing a RAP is the same as for obtaining a new one (see page 6, above) [63 [FR](#) 65945, codifying 40 CFR 270.200]. If a complete, timely, renewal application has been filed, an expiring RAP remains in effect until a new RAP is issued [63 [FR](#) 65945, codifying 40 CFR 270.205].

Record Keeping

Records supporting the RAP application, operating records required by the RAP, and any other records required by the RAP must be kept for three years [63 [FR](#) 65945, codifying 40 CFR 270.210].

Obtaining a RAP for Off-site Activities

A RAP may be requested and approved for remediation waste management activities at a location remote from the area where the remediation wastes originated (i.e., off-site) if the applicant can demonstrate and the responsible regulatory agency agrees that such a location would be more protective than the contaminated area or areas in close proximity (i.e., on-site) [63 [FR](#) 65946, codifying 40 CFR 270.230(a) and (b)]. The process for obtaining a RAP covering off-site remediation waste management activities is the same as the process for obtaining a RAP covering on-site activities (see page 6, above) [63 [FR](#) 65946, codifying 40 CFR 270.230(c)]. However, the full public participation and notice requirements for obtaining a traditional RCRA permit must be used. Further, only the person responsible for the cleanup from which the remediation wastes originate can be issued the RAP for an off-site location, and the off-site location cannot be located within 200 feet of a geologic fault which has experienced displacement during Holocene time [63 [FR](#) 65946, codifying 40 CFR 270.230(d)].

Dredged Material Exclusion

The HWIR-Media final rule contains an exclusion from the definition of hazardous waste for dredged material subject to a permit that has been issued under section 404 of the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 (CWA) (including general permits), or under section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA, also known as the Ocean Dumping Act) [63 [FR](#) 65937, codifying 40 CFR 261.4(g)]. This exclusion will not alter existing practice significantly, but it clarifies regulatory roles within the EPA in an effort to avoid duplication of administrative efforts. The DOE's comments on the HWIR-Media proposal supported this exclusion because the exclusion is directed at removing dual regulation [DOE Comments on HWIR- Media Proposal, Specific Comment V.H.1 (August 28, 1996), page 51].

The term "dredged material" means "material that is excavated or dredged from the waters of the United States"

(i.e., the definition given in 40 CFR 232.2). As such, dredged material may simply be media, which is not necessarily waste. However, in cases where dredged material is determined to be (or to contain) waste, the HWIR-Media final rule excludes the material from the RCRA hazardous waste requirements (if the material is subject to a CWA section 404 or MPRSA section 103 permit). Even so, such dredged material would not be excluded from RCRA requirements applicable to *solid waste*. Hence, if dredged material is solid waste, States and local authorities will continue to regulate it under RCRA Subtitle D (State or Regional Solid Waste Plans), even though it is excluded from the requirements of RCRA Subtitle C (Hazardous Waste Management).

Finally, dredged material that is not subject to a CWA section 404 or MPRSA section 103 permit will not be excluded from the definition of hazardous waste. For example, under the HWIR-Media final rule, if dredged material that meets the RCRA definitions of solid and hazardous waste will be disposed in an upland location with no runoff or return flow to waters of the United States, it will not be within the jurisdiction of either the CWA or the MPRSA (i.e., neither a CWA section 404 permit nor an MPRSA section 103 permit would be required). Therefore, the HWIR-Media dredged material exclusion will not exclude such dredged material from full regulation under the RCRA Subtitle C hazardous waste program.

Abbreviated State Authorization Procedures

In several notices published since 1995,⁴ the EPA proposed abbreviated authorization procedures intended to expedite the review and approval of minor (or routine) as well as significant revisions to authorized State RCRA programs. The DOE generally supported these proposals [DOE Comments on “Land Disposal Restrictions -- Phase IV,” Proposed Rule, 60 FR 43654 (August 22, 1995), November 20, 1995, page 36; DOE Comments on “Requirements for Management of Hazardous Contaminated Media (HWIR-Media),” Proposed Rule, 61 FR 18780 (April 29, 1996), August 28, 1996, page 45].

However, after evaluating the comments received, the EPA decided to promulgate in the HWIR-Media final rule only the

procedure to abbreviate the State authorization process for minor (or routine) program revisions [63 FR 65927]. No changes have been promulgated to the State authorization process for significant program revisions.

The HWIR-Media final rule creates a new regulatory paragraph, 40 CFR 271.21(h), that consists of (1) requirements for an abbreviated application from a State seeking authorization to implement a minor (or routine) RCRA rule, and (2) requirements for an expedited review by the EPA of such applications. The HWIR-Media final rule also adds a new Table 1 to 40 CFR 271.21. In the future, as they are promulgated, the EPA will list in Table 1 each minor (or routine) RCRA rule for which States may seek authorization using the abbreviated State authorization process. A RCRA rule will be considered minor (or routine) for the purpose of being listed in Table 1 if the rule does not change the basic structure of the RCRA hazardous waste program, or expand the program into significant new areas or jurisdictions [63 FR 65928].

None of the substantive provisions in the HWIR-Media final rule will be listed in Table 1 because the EPA considers them to be fairly complex and not part of a series of routine rulemakings [63 FR 65925].

Effect of the Final Rule on Authorized State RCRA Programs

In general, States are not required to amend their RCRA programs to incorporate new Federal requirements, unless the new Federal requirements are more stringent than existing Federal requirements (whether such requirements are promulgated pursuant to the authority of the Hazardous and Solid Waste Amendments of 1984 (HSWA) or pursuant to non-HSWA authority) [63 FR 65925, col. 1]. The EPA has determined that all requirements in the HWIR-Media final rule are less stringent than existing Federal requirements [63 FR 65925, col. 2]. Hence, no State that has an authorized RCRA program is required to implement any provisions of the HWIR-Media final rule. Notwithstanding, the EPA will implement the HWIR-Media final rule in States that do not have authorized RCRA programs. In addition, the EPA is strongly encouraging States with authorized RCRA programs to adopt all provisions of the HWIR-Media final rule in order to increase the pace and efficiency of hazardous waste cleanups [63 FR 65925, col. 2].

Table A (see page 9, below) reports which agency (EPA or the State) will implement the final HWIR-Media provisions, based on the level of RCRA authorization that has been granted to the State. Additional information follows the table.

⁴ Land Disposal Restrictions (LDR) Phase IV, Notice of Proposed Rulemaking, 60 FR 43654, August 22, 1995 [proposed a procedure (subsequently called Category 1) for authorizing States to implement minor or routine RCRA rules]; Land Disposal Restrictions (LDR) Phase IV, Supplemental Notice of Proposed Rulemaking, 61 FR 2338, January 25, 1996 [suggested modifications to the proposed Category 1 procedure]; and HWIR-Media, Notice of Proposed Rulemaking, 61 FR 18818, April 29, 1996 [proposed a streamlined procedure (subsequently called Category 2) for authorizing States to implement significant RCRA rules].

TABLE A: Implementation of Final HWIR-Media Provisions

<i>HWIR-Media Provision</i>	<i>States with neither RCRA Base Authorization nor HSWA Affected Program Authorization</i>	<i>States with RCRA Base Authorization but not HSWA Affected Program Authorization</i>	<i>States with both RCRA Base Authorization and HSWA Affected Program Authorization</i>
<i>Creation of Staging Pile as Hazardous Waste Management Unit</i>	EPA, unless & until State becomes authorized for both RCRA base program & HSWA affected program	EPA, unless & until State becomes authorized for HSWA affected program*	Neither EPA nor State, unless & until State amends HSWA affected program and EPA approves
<i>Creation of RAP as Type of RCRA Permit</i>	EPA, unless & until State becomes authorized for RCRA base program	Neither EPA nor State, unless & until State amends base program and EPA approves	Neither EPA nor State, unless & until State amends base program and EPA approves
<i>Exemption of Remediation-only Sites from Site-Wide Corrective Action</i>	EPA, unless & until State becomes authorized for both RCRA base program & HSWA affected program	EPA, unless & until State becomes authorized for HSWA affected program	Neither EPA nor State, unless & until State amends HSWA affected program and EPA approves
<i>Exclusion of Dredged Material Subject to CWA §404 permit from Definition of Hazardous Waste</i>	EPA, unless & until State becomes authorized for RCRA base program	Neither EPA nor State, unless & until State amends base program and EPA approves	Neither EPA nor State, unless & until State amends base program and EPA approves

* EPA will not implement the staging pile provisions in a State if doing so will conflict with the State's hazardous waste program [63 FR 65925, col. 3].

In any State without RCRA base authorization, provisions of a Federal rule promulgated pursuant to non-HSWA authority are implemented by the EPA, and become effective in that State on the effective date of the Federal final rule. In any State with RCRA base authorization, such provisions must be implemented by the State, and do not become effective until after the State has amended its regulations and the EPA has approved the amended program. The dredged material exclusion and the requirements that apply to RAPs were promulgated pursuant to non-HSWA statutory authority and are implemented as described in this paragraph [63 FR 65925, col. 1].

Implementation of provisions in the HWIR-Media final rule that were promulgated pursuant to HSWA authority will vary depending on the status of a State's authorization for those HSWA programs that are affected by the final rule

(e.g., LDRs, MTRs, corrective action).⁵ If a State is already authorized for an affected HSWA program, then the EPA will not implement in that State the HWIR-Media provisions related to the authorized program. Unless and until the authorized State adopts regulations to implement the HWIR-Media final rule, and the EPA approves them, the HSWA provisions of the HWIR-Media final rule will not be implemented in that State [63 FR 65925, col. 2].

In States that are not authorized for an affected HSWA program, the EPA will implement the HWIR-Media provisions related to the unauthorized program because, even though less stringent, such provisions are part of the Federal RCRA program. The EPA will not, however, implement any such HSWA provision of the HWIR-Media final rule if the provision conflicts with any other part of the State's existing authorized hazardous waste program [63 FR 65925, col. 3].

The requirements in the HWIR-Media final rule for staging piles, and the provisions exempting remediation-only facilities from the requirement for site-wide corrective action, were both promulgated pursuant to HSWA and will be implemented as described in the two preceding paragraphs [63 FR 65925, col. 2].

Relationship of the Final Rule to Other EPA Regulations, Initiatives and Programs

Subpart S Initiative

Because the HWIR-Media final rule specifically addresses the management of remediation waste during a site cleanup, the EPA expects it to complement the broader Subpart S Initiative, which is an effort to improve the RCRA corrective action program [see 61 FR 19432 (May 1, 1996)]. [63 FR 65931]

Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media and Debris

On December 24, 1992, the EPA published notice of the proposed "Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media and Debris" (referred to as the "Non-UST TC Suspension") [57 FR 61542]. The purpose of the Non-UST TC Suspension was to relieve significant disincentives to clean up created by RCRA Subtitle C requirements, such as the LDRs, at sites where media and debris were found to exhibit the hazardous waste toxicity characteristic (TC) due to benzene contamination from petroleum with an origin other than an underground storage tank (UST).

⁵ No State can be authorized to implement a HSWA program without first receiving RCRA base authorization.

The Non-UST TC Suspension was never finalized because the EPA believed that the HWIR-Media rule might solve most of the problems the Non-UST TC Suspension was intended to address by excluding petroleum-contaminated media and debris from RCRA Subtitle C hazardous waste requirements. However, the HWIR-Media final rule does not exclude any wastes from RCRA Subtitle C requirements. Therefore, the EPA now plans to revisit the issues addressed in the Non-UST TC Suspension.

Deferral of Petroleum-Contaminated Media and Debris from Underground Storage Tank Corrective Actions

The HWIR-Media final rule does not affect the temporary deferral [*see* 40 CFR 261.4(b)(10)] from certain portions of the RCRA Subtitle C hazardous waste regulations of petroleum-contaminated media and debris generated by underground storage tank corrective actions subject to RCRA Subtitle I (requiring UST owners to perform corrective action in response to leaks of petroleum and hazardous substances).

Hazardous Waste Identification Rule (HWIR-Waste)

The HWIR-Media final rule does not exclude any wastes from RCRA Subtitle C requirements. As a result, the HWIR-Media final rule does not address the issue of primary concern in the HWIR-Waste proposed rule, which is identification of the point at which wastes that meet the RCRA definition of “hazardous waste” present sufficiently low risk to human health and the environment that they should be allowed to exit the RCRA Subtitle C hazardous waste regulatory system. Therefore, the HWIR-Media final rule should have no effect on the HWIR-Waste proposed rule.

CERCLA

The staging pile provisions of the HWIR-Media final rule will be applicable or relevant and appropriate requirements (ARARs) at most CERCLA sites. Therefore, the staging pile provisions should increase materials management flexibility at such sites. Otherwise, the EPA expects little of no effect on the CERCLA program from the HWIR-Media final rule [63 FR 65932].

Legislative Reforms

The EPA expects the HWIR-Media final rule to be only a partial solution to the problems associated with applying RCRA hazardous waste requirements to remediation wastes. Therefore, the EPA intends to continue to promote potential legislation that would accomplish needed additional reforms [63 FR 65932].

Brownfields

Brownfields are defined as abandoned, idled, or underused industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. By streamlining the RCRA permitting process for RAPs and removing the requirement for facility-wide corrective action at remediation-only facilities, the HWIR-Media final rule should facilitate clean-up activities at Brownfield sites [63 FR 65932].

Land Disposal Restrictions (40 CFR Part 268)

The EPA finalized land disposal restrictions (LDR) treatment standards for contaminated soils in the final LDR Phase IV regulations [63 FR 28556 (May 26, 1998)]. The HWIR-Media final rule does not change those treatment standards or establish any other LDR treatment standards for remediation wastes.

Questions of policy or questions requiring policy decisions will not be dealt with in EH-413 Regulatory Bulletins unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Regulatory Bulletin to:

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