

**§ 256.23**

**40 CFR Ch. I (7-1-06 Edition)**

design, construction, operational, monitoring, reporting, completion and maintenance requirements.

(3) Permit procedures should include provisions to ensure that future use of the property on which the facility is located is compatible with that property's use as a solid waste disposal facility. These procedures should include identification of future land use or the inclusion of a stipulation in the property deed which notifies future purchasers of precautions necessitated by the use of the property as a solid waste disposal facility.

(4) Permits should only be issued to facilities that are consistent with the State plan, or with substate plans developed under the State plan.

(e) The enforcement system should be designed to include both administrative procedures and judicial remedies to enforce the compliance schedules and closure procedures for open dumps.

(1) Permits, surveillance, and enforcement system capabilities should be designed for supporting court action.

(2) Detection capabilities and penalties for false reporting should be provided for.

**§ 256.23 Requirements for closing or upgrading open dumps.**

In meeting the requirement of section 4003(3) for closing or upgrading open dumps:

(a) The State plan shall provide for the classification of existing solid waste disposal facilities according to the criteria. This classification shall be submitted to EPA, and facilities classified as open dumps shall be published in the inventory of open dumps.

(b) The State plan shall provide for an orderly time-phasing of the disposal facility classifications described in paragraph (a) of this section. The determination of priorities for the classification of disposal facilities shall be based upon:

(1) The potential health and environmental impact of the solid waste disposal facility;

(2) The availability of State regulatory and enforcement powers; and

(3) The availability of Federal and State resources for this purpose.

(c) For each facility classified as an open dump the State shall take steps to close or upgrade the facility. Evidence of that action shall be incorporated by reference into the annual work program and be made publicly available. When the State's actions concerning open dumps are modified, the changes shall be referenced in subsequent annual work programs.

(d) In providing for the closure of open dumps the State shall take steps necessary to eliminate health hazards and minimize potential health hazards. These steps shall include requirements for long-term monitoring or contingency plans where necessary.

**§ 256.24 Recommendations for closing or upgrading open dumps.**

(a) All sources of information available to the State should be used to aid in the classification of facilities. Records of previous inspections and monitoring, as well as new inspections and new monitoring, should be considered.

(b) The steps to close or upgrade open dumps established under § 256.23(c) should be coordinated with the facility needs assessment described in § 256.41.

(c) A determination should be made of the feasibility of resource recovery or resource conservation to reduce the solid waste volume entering a facility classified as an open dump; and feasible measures to achieve that reduction should be implemented.

(d) At the time of classification of existing solid waste disposal facilities pursuant to § 256.23, the State should consider developing appropriate timetables or schedules by which any responsible party can be brought into compliance with the open dumping prohibition pursuant to §§ 256.26 and 256.27.

[44 FR 45079, July 31, 1979, as amended at 46 FR 47051, Sept. 23, 1981]

**§ 256.25 Recommendation for inactive facilities.**

Inactive facilities that continue to produce adverse health or environmental effects should be evaluated according to the criteria. The State plan should provide for measures to ensure that adverse health or environmental effects from inactive facilities are

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minimized or eliminated. Such measures may include actions by disposal facility owners and operators, notification of the general public, adjacent residents and other affected parties and notification of agencies responsible for public health and safety.

### § 256.26 Requirement for schedules leading to compliance with the prohibition of open dumping.

In implementing the section 4005(c) prohibition on open dumping, the State plan shall provide that any entity which demonstrates that it has considered other public or private alternatives to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, may obtain a timetable or schedule for compliance which specifies a schedule of remedial measures, and an enforceable sequence of actions, leading to compliance within a reasonable time (not to exceed 5 years from the date of publication of the inventory).

### § 256.27 Recommendation for schedules leading to compliance with the prohibition of open dumping.

In reviewing applications for compliance schedules under § 256.26, the State should consider the availability of processing and disposal facilities, the likelihood of environmental damage from disposal at available facilities, the existence of State or substate requirements (including other compliance schedules) applicable to available facilities, cost constraints, existing contractual agreements and other pertinent factors.

## Subpart D—Resource Conservation and Resource Recovery Programs

### § 256.30 Requirements.

(a) In order to comply with sections 4003(2) and (6) as they pertain to resource conservation and recovery, the State plan shall provide for a policy and strategy for encouragement of resource recovery and conservation activities.

(b) In order to comply with section 4003(5), the State plan shall provide that no local government within the State is prohibited under State or local

law from entering into long-term contracts for the supply of solid waste to resource recovery facilities.

### § 256.31 Recommendations for developing and implementing resource conservation and recovery programs.

(a) In order to encourage resource recovery and conservation, the State plan should provide for technical assistance, training, information development and dissemination, financial support programs, market studies and market development programs.

(b) In order to comply with the requirement of § 256.30(b) regarding long-term contract prohibitions, the State plan should provide for:

(1) Review of existing State and local laws and regulations pertinent to contracting for resource recovery services or facilities.

(2) Reporting of all laws and regulations found to be in violation of this requirement to the executive officer of the administrative agency responsible for the statute.

(3) Development of an administrative order or a revised law or regulation or any other preliminary step for the removal or amending of a law or regulation in violation of this requirement.

(4) Development of a strategy for the consideration of the legislature to prohibit and/or remove from State or local law provisions in violation of this requirement.

(c) The State plan should aid and encourage State procurement of products containing recovered materials in accord with section 6002 of the Act. To assist this effort, the State plan should provide for:

(1) The development of a policy statement encouraging the procurement of recovered materials, wherever feasible;

(2) The identification of the key purchasing agencies of the State, along with potential uses of recovered materials by these agencies; and,

(3) The development of a plan of action to promote the use of recovered materials through executive order, legislative initiative, or other action that the State deems necessary.

(d) In order to encourage resource recovery and conservation, the State