

(ii) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(iii) The tank is used solely for emergencies.

(2) The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981) (incorporated by reference, see § 260.11).

(h) Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for incompatible wastes:

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

(2) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless § 265.17(b) is complied with.

[51 FR 25479, July 14, 1986, as amended at 53 FR 34087, Sept. 2, 1988; 71 FR 16911, Apr. 4, 2006; 71 FR 40275, July 14, 2006]

#### § 265.202 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

[61 FR 59968, Nov. 25, 1996]

### Subpart K—Surface Impoundments

#### § 265.220 Applicability.

The regulations in this subpart apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste, except as § 265.1 provides otherwise.

#### § 265.221 Design and operating requirements.

(a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impound-

ment unit, and each replacement of an existing surface impoundment unit must install two or more liners, and a leachate collection and removal system between the liners, and operate the leachate collection and removal system, in accordance with § 264.221(c), unless exempted under § 264.221(d), (e), or (f) of this Chapter.

(b) The owner or operator of each unit referred to in paragraph (a) of this section must notify the Regional Administrator at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a part B application within six months of the receipt of such notice.

(c) The owner or operator of any replacement surface impoundment unit is exempt from paragraph (a) of this section if:

(1) The existing unit was constructed in compliance with the design standards of § 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

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

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

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in § 261.24 of this chapter, with EPA Hazardous Waste Numbers D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has

been exempted from the requirements of paragraph (a) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment must comply with appropriate post-closure requirements, including but not limited to ground-water monitoring and corrective action;

(B) The monofill is located more than one-quarter mile from an “underground source of drinking water” (as that term is defined in 40 CFR 270.2); and

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

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

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

(f) A surface impoundment must maintain enough freeboard to prevent any overtopping of the dike by over-

filling, wave action, or a storm. Except as provided in paragraph (b) of this section, there must be at least 60 centimeters (two feet) of freeboard.

(g) A freeboard level less than 60 centimeters (two feet) may be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of his knowledge and opinion, prevent overtopping of the dike. The certification, along with a written identification of alternate design features or operating plans preventing overtopping, must be maintained at the facility.

(h) Surface impoundments that are newly subject to RCRA section 3005(j)(1) due to the promulgation of additional listings or characteristics for the identification of hazardous waste must be in compliance with paragraphs (a), (c) and (d) of this section not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall not be cut short as the result of the promulgation of land disposal prohibitions under part 268 of this chapter or the granting of an extension to the effective date of a prohibition pursuant to §268.5 of this chapter, within this 48-month period.

[50 FR 16048, Apr. 23, 1985. Redesignated at 57 FR 3492, Jan. 29, 1992. 50 FR 28749, July 15, 1985, as amended at 55 FR 11876, Mar. 29, 1990; 57 FR 3492, Jan. 29, 1992; 57 FR 37267, Aug. 18, 1992; 71 FR 16911, Apr. 4, 2006; 71 FR 40275, July 14, 2006]

#### § 265.222 Action leakage rate.

(a) The owner or operator of surface impoundment units subject to §265.221(a) must submit a proposed action leakage rate to the Regional Administrator when submitting the notice required under §265.221(b). Within 60 days of receipt of the notification, the Regional Administrator will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Regional Administrator before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.