

Colorado Hazardous Waste Regulations

Part 100

Permit Regulations

(amended 02/16/16, effective 03/30/16)

To obtain more information regarding the Colorado Hazardous Waste Regulations, please contact the Hazardous Materials and Waste Management Division at 303-692-3300.



COLORADO
Department of Public
Health & Environment

PART 100 - PERMIT REGULATIONS

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100.1 PERMIT APPLICATION

§ 100.10 SCOPE OF THE RCRA PERMIT REQUIREMENT. Who must apply?

RCRA requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Part 261 of these regulations. The terms "treatment", "storage", "disposal", and "hazardous waste" are defined in § 260.10 of these regulations. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure (according to § 265.115 of these regulations) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under § 100.10(b) and (c), or obtain an enforceable document in lieu of a post-closure permit, as provided under paragraph (d) of this section. If a post-closure permit is required, the permit must address applicable Part 264 Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements of these regulations. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(a) Specific exclusions from the RCRA permit requirement:

- (1) Generators who accumulate hazardous waste on site for less than the time periods provided in § 262.34.
- (2) Farmers who dispose of hazardous waste pesticides from their own use, as provided in § 262.70.
- (3) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under this part by § 261.5 (small generator exemption).
- (4) Persons who own or operate facilities for the treatment, storage or disposal of hazardous wastes excluded under this part by § 261.4.
- (5) Owners or operators of totally enclosed treatment facilities as defined in § 260.10.
- (6) Owners and operators of elementary neutralization units or wastewater treatment units as defined in § 260.10.
- (7) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 at a transfer facility for a period of ten days or less.
- (8) Persons who carry out activities to immediately contain or treat a discharge, or an imminent and substantial threat of a discharge, of hazardous waste or material which, when discharged, becomes a hazardous waste. After the immediate response activities are completed, any treatment, storage, or disposal of discharged material or discharge residue or debris that is undertaken must be covered by a RCRA permit, an emergency RCRA permit or

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an interim status corrective action order pursuant to § 265.5. Facilities subject only to the corrective action or closure requirements of Part 264 or Part 265 may alternatively use an enforceable document pursuant to § 100.10(d), or a Corrective Action Plan pursuant to § 100.26. In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(9) Generators adding absorbent material to waste in a container (as defined in § 260.10) and generators adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and §§ 264.17(b), 264.171, and 264.172 are complied with.

(10) Persons who qualify for a permit by rule for injection wells (See § 100.21).

(11) Persons who qualify for a permit by rule for POTWS (See § 100.21).

(12) Reserved

(13) Generators who qualify for a permit by rule for on-site treatment (See § 100.21).

(14) Universal waste handlers and universal waste transporters (as defined in § 260.10) managing the wastes listed below. These handlers are subject to regulation under Part 273 of these regulations.

(i) Batteries as described in § 273.2(a) of these regulations;

(ii) Pesticides as described in § 273.2(b) of these regulations;

(iii) Mercury-containing devices as described in § 273.2(c) of these regulations;

(iv) Aerosol cans as described in § 273.2(d) of these regulations;

(v) Lamps as described in § 273.2(e) of these regulations; and

(vi) Electronic devices and electronic components as described in § 273.2(f) of these regulations.

(b) **Closure by removal.** Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Part 265 standards must obtain a post-closure permit unless they can demonstrate to the Department that the closure met the standards for closure by removal or decontamination in § 264.258, § 264.280(e), or § 264.228, respectively. The demonstration may be made in the following ways:

(1) If the owner/operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that Part 264 closure by removal standards were met. If the Department believes that Part 264 standards were met, it will notify the public of this proposed decision, allow for

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public comment, and reach a final determination according to the procedures in paragraph (c) of this section.

(2) If the owner/operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the Department for a determination that a post-closure permit is not required because the closure met the applicable Part 264 closure standards.

(i) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under Colorado requirements that met or exceeded the applicable Part 264 closure-by-removal standard.

(ii) The Department shall approve or deny the petition according to the procedures outlined in paragraph (c) of this section.

(c) Procedures for closure equivalency determination.

(1) If a facility owner/operator seeks an equivalency demonstration under § 100.10(b), the Department will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Department will also, in response to a request or at its discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Part 265 closure to a Part 264 closure. The Department will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)

(2) The Department will determine whether the Part 265 closure met Part 264 closure by removal or decontamination requirements within 90 days of its receipt. If the Department finds that the closure did not meet the applicable Part 264 standards, it will provide the owner/operator with a written statement of the reasons why the closure failed to meet Part 264 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Department will review any additional information submitted and make a final determination within 60 days.

(3) If the Department determines that the facility did not close in accordance with Part 264 closure by removal standards, the facility is subject to post-closure permitting requirements.

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(d) **Enforceable documents for post-closure care.** At the discretion of the Director, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of § 265.121 of these regulations. "Enforceable document" means an order, a plan, or other document issued by EPA or by the state of Colorado under an authority that meets the requirements of 40 CFR 271.16(e) including, but not limited to, a corrective action order issued by EPA under section 3008(h), a corrective action order issued by the Department under § 265.5 of these regulations, a CERCLA remedial action, or a closure or post-closure plan.

(e) **Corrective Action Plans.** At the Department's discretion, an owner or operator may obtain a Corrective Action Plan in accordance with § 100.26 authorizing corrective action or closure activities at a non-permitted facility to satisfy the permitting requirements of this Part 100.

§ 100.11 APPLICATION FOR A PERMIT. When to Apply.

(a) Existing HWM facilities. Part A Application.

(1) **Part A Application Requirements for Facilities that Have Federal Interim Status on the Effective Date of These Regulations.** Any owner or operator of a hazardous waste management facility, except as provided in C.R.S. 1973, 25-15-101 *et seq.*, who has federal interim status for the treatment, storage, or disposal of hazardous waste on the effective date of these regulations shall have an identical status with the Department.* Unless otherwise notified by a facility owner or operator, the Department shall accept all Part A applications on file with EPA on the effective date of these regulations as an equivalent State Part A application. Changes under this section do not include changes made solely for the purpose of complying with requirements of § 265.193 for tanks and ancillary equipment.

* When the Department determines upon examination or reexamination of a Part A application that it fails to meet the standards of these regulations, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or operator will then be subject to enforcement for operating without a permit.

(2) **Existing HWM facilities and interim status qualifications.**

Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit must submit Part A of their permit application no later than:

(i) six months after the date of publication of regulations which first require them to comply with the standards set forth in Part 265 or 267, or

(ii) thirty days after the date they first become subject to the standards set forth in Part 265 or 267, whichever first occurs.*

* Under (i), the Commission may promulgate regulations under Part 261 listing and identifying new wastes which are hazardous; such facilities managing those newly listed wastes and who have not previously filed a Part A application must submit their Part A permit application within six months of the date of promulgation in order to qualify for interim status for those newly listed wastes. Such facilities managing those newly listed wastes and who have previously filed a Part A application must amend their Part A permit application within six months of the date of promulgation in order to qualify for interim status for those newly listed wastes. Under (ii) a generator who has been accumulating hazardous waste in accordance with § 262.34, and who begins to store the waste for more than 90 days may qualify for interim status as a storage facility if:

- (1) The storage area was in existence on November 19, 1980 (i.e. the generator was accumulating hazardous waste at the facility on or before that date, and the waste accumulated is the same type on and after November 19, 1980 or was in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit, and
- (2) the owner or operator complied with the notification requirement in Part 99 and
- (3) the Part A permit application is submitted within 30 days of the date that the waste first becomes subject to Part 265, or a longer period is allowed by the Director under § 100.11(a)(4). The thirty day filing period is triggered when the storage period exceeds 90 days.

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A small quantity generator who exceeds the small quantity exemption level may also qualify for interim status as a storage facility under (ii) if they file within thirty days of the date they first lose their status as a small quantity generator. Under § 261.5, these generators may continue to store hazardous waste for 90 days after they exceed the exemption level. They then have 30 days to file their Part A permit application to qualify for interim status.

Finally, a facility which properly determined on August 18, 1980 that the solid waste it was treating did not exhibit any of the characteristics of hazardous waste, but on retesting finds that it does constitute a hazardous waste, may qualify for interim status. Under (ii), these facilities must file a Part A permit application within 30 days of finding that they need interim status for a treatment, storage, or disposal operation because they are handling a hazardous waste. Existing treatment, storage, or disposal facilities must amend their Part A permit application within 30 days of finding that they need interim status for a treatment, storage, or disposal operation because the waste they are handling now exhibits the Part 261 Subpart C characteristics of hazardous waste.

(3) The Director may by publication in the COLORADO REGISTER extend the date by which owners and operators of specified classes of existing HWM facilities must submit Part A of their permit application if he/she finds that (i) there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application and (ii) such confusion is attributable to ambiguities in Colorado's Parts 260, 261, or 265 regulations.

(4) The Director may by compliance order issued under C.R.S. 25-15-308(2) extend the date by which the owner and operator of an existing HWM facility must submit Part A of their permit application.

(b) Existing HWM facilities. Part B Application.

(1) Owners and operators of existing hazardous waste management facilities are required to submit Part B of their application no later than six months from the date of request by the State Director, unless a longer period is granted by the Director. Any owner or operator of an existing HWM facility may voluntarily submit Part B of the application at any time.

Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application is grounds for termination of interim status under the procedures specified in § 100.5.

Notwithstanding the above, any owner or operator of an existing HWM facility must submit a Part B permit application in accordance with the dates specified in § 100.20. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit must submit a Part B application in accordance with the dates specified in § 100.20.

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(2) Any HWM facility which has a federal RCRA permit for the treatment, storage, or disposal of hazardous waste may apply for and receive an identical State RCRA permit, subject to the application fee requirements of § 100.3.

(c) New HWM Facilities. Part A and Part B Application.

(1) Except as provided in paragraph (c)(3) of this section, no person shall begin physical construction of a new HWM facility without having submitted Part A and Part B of the permit application and having received a finally effective state RCRA permit.

(2) An application for a permit for a new HWM facility shall be filed with the State Director at least 180 days before physical construction is expected to commence, except as provided in paragraph (c)(3) of this section.

(3) Notwithstanding paragraph (c)(1) of this section, a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the Administrator under section (6)(e) of the Toxic Substance Control Act and any person owning or operating such a facility may, at any time after construction or operation of such a facility, file an application for a state RCRA permit to incinerate hazardous waste authorizing such facility to incinerate waste identified or listed under Part 261.

(d) Updating Part A Permit Applications.

(1) Persons who have filed Part A of their permit application and have interim status for the treatment, storage, or disposal of hazardous waste identified or listed in Part 261 are required to inform the Director of any changes in their facility or operation which require modification of the information contained in their Part A application.

(2) The following changes require prior approval by the Director (in accordance with § 100.20):

(i) The treatment, storage, or disposal of additional hazardous wastes as listed or identified in Part 261, and not previously identified in the Part A application (except as provided in § 100.11(a)(2)).

(ii) Increases in the design capacity of processes used to treat, store, or dispose of hazardous waste.

(iii) Significant changes in the processes or additional processes used to treat, store, or dispose of hazardous waste.

(iv) Changes in the ownership or operational control of a facility.

(3) The owner or operator of a facility who fails to comply with the updating requirements of paragraphs (d)(1) and (d)(2) of this section does not receive interim status as to the wastes not covered by duly filed or amended Part A applications.

(e) Reapplications. Continuations of Expiring State RCRA permits.

(1) Any HWM facility with an effective State RCRA permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(2) The conditions of an expired permit continue in force until the effective date of a new permit if:

(i) The permittee has submitted a complete and timely application for a new permit under § 100.5 of this section, and

(ii) The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(iii) Permits continued under this section remain fully effective and enforceable.

(f) Pre-application public meeting and notice.

(1) **Applicability.** The requirements of paragraph (f) of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing any change that would qualify as a class 3 permit modification under § 100.63. The requirements of this section do not apply to permit modifications under § 100.63 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(2) Prior to the submission of a part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities in sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility. The applicant shall give an overview of the facility in as much detail as possible, such as identifying the type of facility, the location of the facility, the general processes involved, the types of wastes generated and managed, and implementation of waste minimization and pollution control measures. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

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(3) The applicant shall submit a stenographic or electronic record and a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (f)(2) of this section, and copies of any written comments or materials submitted at the meeting, to the Department as a part of the part B application, in accordance with § 100.41(a).

(4) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the Department upon request, documentation of the notice.

(i) The applicant shall provide public notice in all of the following forms:

(A) **A newspaper advertisement.** The applicant shall publish a notice, fulfilling the requirements in paragraph (f)(4)(ii) of this section, in a newspaper of general circulation and the newspaper of record in the county that hosts the proposed location of the facility everyday of publication for a period of one week. In addition, the Director shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties, where the Director determines that such publication is necessary to inform the affected public. In situations where the geographic area of a host jurisdiction or adjacent jurisdiction is very large (hundreds of square miles), the newspaper notice shall cover a reasonable radius (e.g., 50 miles) from the facility. The notice must be published as a display advertisement. The advertisement shall appear in a place within the newspaper calculated to give the general public effective notice; it must be of sufficient size to be seen easily by the reader.

(B) **A visible and accessible sign.** The applicant must post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (f)(4)(ii) of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(C) **A broadcast media announcement.** The applicant must broadcast a notice, fulfilling the requirements in paragraph (f)(4)(ii) of this section, on at least one local radio station or television station one time per day for one week. The applicant may employ another medium with prior approval of the Director.

(D) **A notice to the Department.** The applicant must send a copy of the newspaper notice to the Department and to the appropriate units of State and local government, in accordance with § 100.506(c)(1)(v).

(ii) The notices required under paragraph (f)(4)(i) of this section must include:

(A) The date, time, and location of the meeting;

(B) A brief description of the purpose of the meeting;

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(C) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(D) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(E) The name, address, and telephone number of a contact person for the applicant.

§ 100.12 APPLICATION FOR A PERMIT. How to Apply.

(a) **Application Requirement.** Any person who is required to have a State RCRA permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application as described in this section and in § 100.4, exclusively.

(b) **Duty to apply.** When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner must also sign the permit application.

(c) **Signatory Requirement.** All permit applications shall be signed as follows:

(1) For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official.

(d) Certification.

(1) Any person signing a document under paragraph (a) or (b) of this section must make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(2) For remedial action plans (RAPs) under § 100.27 of this part, if the operator certifies according to paragraph (d)(1) of this section, then the owner may choose to make the following certification instead of the certification in paragraph (d)(1) of this section:

Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, upon information and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(e) Completeness. The Director shall not issue a permit before receiving a complete application, except for RCRA permits by rule (§ 100.21) and emergency permits (§ 100.22). Application requirements for a State RCRA permit (Part A and Part B) are found in § 100.4. An application for a permit is complete when the Director determines that the application form and, if a notice of deficiency has been issued, information in the response to the notice of deficiency, contain the information required by § 100.4. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in § 100.41(b)(8).

(f) RESERVED.

(g) Permits by Rule and Emergency permits.

(1) Facilities that meet the conditions listed in § 100.21 are deemed to have a permit by rule and need not apply for a State RCRA permit.

(2) Emergency permits. Procedures for applications, issuance, and administration of emergency permits are found exclusively in § 100.22.

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§ 100.13 RECORDKEEPING REQUIREMENTS.

Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this part for a period of at least 3 years from the date the application is signed.

100.2 SPECIAL PERMITS

§ 100.20 QUALIFYING FOR INTERIM STATUS.

(a) Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit, except as provided in Sections 25-15-101 et seq., C.R.S. (1982), shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

- (1) Complied with the requirements of Part 99 pertaining to notification of hazardous waste activity.
- (2) Complied with the requirements of § 100.11 governing submission of Part A applications; and
- (3) Complied with the fee requirements of § 100.3.

(b) Interim Status Requirements.

- (1) Owners or operators shall comply with the interim status standards in Part 265.
- (2) The facility shall not treat, store, or dispose of hazardous waste not specified in Part A of the permit application, unless the owner or operator submits the revised Part A permit application required by § 100.11(d)(1) prior to such a change, and the change is approved by the Director;
- (3) Changes in the processes for the treatment, storage, or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised Part A permit application prior to such a change, along with a justification explaining the need for the change) and the Director approves the change because:
 - (i) It is necessary to prevent a threat to human health or the environment because of an emergency situation, or
 - (ii) It is necessary to comply with State regulations (including the interim status standards in Part 265) or State or Local laws.
- (4) Increases in the design capacity of processes used at the facility may be made if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the change because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities;

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(5) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of Part 266, (financial requirements), until the new owner or operator has demonstrated to the Director that he/she is complying with that part. The new owner or operator must demonstrate compliance with the financial requirements of Part 266 of these regulations within six months of the date of the change in ownership or operational control of the facility. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with that part, the Director shall notify the old owner or operator in writing that he/she no longer needs to comply with that part as of the date of demonstration.

(6) In no event shall changes be made to an HWM Facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new HWM Facility. Changes prohibited under this paragraph do not include changes to treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by Part 268 of these regulations or RCRA section 3004 [42 U.S.C. § 6924], provided that such changes are made solely for the purpose of complying with Part 268 of these regulations or RCRA section 3004 [42 U.S.C. § 6924].

(c) Duration of Interim Status.

Interim status terminates when:

(1) final administrative disposition of a State RCRA permit application, except an application for a remedial action plan (RAP) under § 100.27 of this part, is made.

(2) interim status is terminated as provided in § 100.11.

(3) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(i) the owner or operator submits a Part B application for a permit for that facility prior to that date; and

(ii) the owner or operator certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

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(4) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

(i) submits a Part B application for a RCRA permit for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(ii) certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(5) For owners or operators of each incinerator facility on November 8, 1989, unless the owner or operator of the facility submits a Part B application for a RCRA permit for an incinerator facility by November 8, 1986.

(6) For owners or operators of any facility (other than a land disposal or an incinerator facility) on November 8, 1992, unless the owner or operator of the facility submits a Part B application for a RCRA permit for the facility by November 8, 1988.

(d) Paragraph (a) of this section shall not apply to any facility which has been previously denied a RCRA permit or if authority to operate the facility under RCRA has been previously terminated.

§ 100.21 PERMITS BY RULE

The following shall be deemed to have a State RCRA permit and need not apply to the Department if the conditions listed are met:

(a) **[RESERVED]**

(b) **Injection wells.** The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(1) Has a permit for underground injection issued under 40 CFR Part 122, Subpart C or 40 CFR Part 123, Subpart C; and

(2) Complies with the conditions of that permit and the requirements of 40 CFR § 122.45 (requirements for wells managing hazardous waste).

(3) For UIC permits issued after November 8, 1984:

(i) Complies with § 264.101 of these regulations and

[RESERVED]

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(ii) Where the UIC well is the only unit at a facility which requires a RCRA permit, complies with 40 CFR § 270.14(d).

(c) **Publicly owned treatment works.** The owner or operator of a POTW which accepts for treatment hazardous waste, if the owner or operator:

- (1) Has an NPDES permit;
- (2) Complies with the conditions of that permit; and
- (3) Complies with the following regulations:
 - (i) Colorado Part 264.11, Identification number;
 - (ii) Colorado Part 264.71, Use of manifest system;
 - (iii) Colorado Part 264.72, Manifest discrepancies;
 - (iv) Colorado Part 264.73(a) and (b)(1), Operating record;
 - (v) Colorado Part 264.75, Biennial reports;
 - (vi) Colorado Part 264.76, Unmanifested waste report; and
 - (vii) For NPDES permits issued after Nov. 8, 1984, Colorado Part 264.101
- (4) If the waste meets all Federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

(d) **Generator treatment.** A generator performing on-site treatment of its own waste, if the generator:

- (1) Treats the waste in accumulation tanks or containers;
- (2) Treats the waste to make it more suitable for recycling or reclamation (on or off-site) or to reduce its volume or toxicity;
- (3) Complies with the following regulations:
 - (i) Part 262;
 - (ii) Section 265.13 (Waste Analysis); and
 - (iii) Section 265.17 (General requirements for Ignitable, Reactive, or Incompatible Wastes).

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(4) Develops a written waste analysis plan describing the procedures that will be carried out to accomplish treatment of the waste. The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the waste being treated and contain all of the information necessary to treat the waste.

(5) Thermal treatment of wastes is prohibited.

(6) Treatment of reactive waste is prohibited.

(e) **Corrective Action.** The owner or operator of a surface impoundment, waste pile, land treatment unit or landfill established as part of a corrective action management unit pursuant to § 264.551 or 264.552, or a temporary unit pursuant to § 264.553, provided:

(1) The corrective action management unit or temporary unit has been designated by and made a part of an order issued by the Department pursuant to § 265.5, or a Corrective Action Plan approved by the Department pursuant to § 100.26; and

(2) The public has been provided a period of at least 30 days to comment on the designation of the corrective action management unit or temporary unit. However, where the Department determines that corrective action is necessary to address immediate threats to human health or the environment and a delay in the designation of the corrective action management unit or temporary unit would adversely impact human health or the environment, such public comment period may be reduced or eliminated.

§ 100.22 SHORT-TERM PERMITS.

(a) **Emergency permits.** Notwithstanding any other provision of this part, in the event the Director finds an imminent and substantial endangerment to human health or the environment the Director may issue a temporary emergency permit: (1) to a non-permitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

(1) May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

(2) Shall not exceed 90 days in duration;

(3) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Director at any time without process if the Director determines that termination is appropriate to protect human health and the environment;

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(5) Shall be accompanied by a public notice published under § 100.506 including:

- (i) Name and address of the office granting the emergency authorization;
- (ii) Name and location of the permitted HWM facility;
- (iii) A brief description of the wastes involved;
- (iv) A brief description of the action authorized and reasons for authorizing it; and
- (v) Duration of the emergency permit; and

(6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this part and Parts 264 and 266.

(b) **Trial Permits.** Trial permits are applicable only to hazardous wastes generated by small quantity generators as provided under § 261.5 of these regulations.

(1) For the purposes of encouraging alternative and innovative hazardous waste treatment technologies and for assessing the operational feasibility of such technologies, the Director may issue trial RCRA permits for new or pilot scale hazardous waste management units. A trial permit shall be issued for a duration not to exceed 90 days and shall provide for compliance to the maximum extent practicable with the applicable standards contained in Part 264. The Director may incorporate such other requirements contained in Part 100 of these regulations to the extent he or she deems necessary, including but not limited to the submittal of design specifications and operation plans, application requirements, and public notice requirements. Trial permits shall be issued for a duration and under certain operating conditions such that the waste feed rates reflect the minimum volume of hazardous waste treatment necessary to make the feasibility demonstration.

(2) Applicants for trial permits are subject to the application fee requirements of § 100.3.

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(c) Permits for land treatment demonstrations using field tests or laboratory analyses.

(1) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of § 264.272 of these regulations, the Director may issue a treatment demonstration permit. The permit must contain only those requirements necessary to meet the standards in § 264.272(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction, operation and maintenance of the land treatment unit.

(i) The Director may issue a two-phase facility permit if he/she finds that based on information submitted in Part B of the application, substantial, although incomplete or inconclusive information already exists upon which to base the issuance of a facility permit.

(ii) If the Director finds that not enough information exists upon which he/she can establish permit conditions to attempt to provide for compliance with all of the requirements of Subpart M, he/she must issue a treatment demonstration permit covering only the field test or laboratory analyses.

(2) If the Director finds that a phased permit may be issued, he/she will establish as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration cleanup activities, and any other conditions which the Director finds may be necessary under § 264.272(c). The Director will include conditions in the second phase of the facility permit to attempt to meet all Subpart M requirements pertaining to unit design, construction, operation, and maintenance. The Director will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(i) The first phase of the permit will be effective as provided in § 100.61 of these regulations.

(ii) The second phase of the permit will be effective as provided in paragraph (c)(4) of this section.

(3) When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he/she must submit to the Director a certification, signed by a person authorized to sign a permit application (§ 100.12) or report under § 100.44, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator must also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Director approves a later date.

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(4) If the Director determines that the results of the field tests or laboratory analyses meet the requirements of § 264.272 of these regulations, he/she will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with Part 264, Subpart M of these regulations, based upon the results of the field tests or laboratory analyses.

(i) This permit modification may proceed under § 100.63, or otherwise will proceed as a modification under § 100.61. If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.

(ii) If no modifications of the second phase of the permit are necessary, the Director will give notice of his/her final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in § 100.511(b).

(5) Owners or operators of facilities submitting applications for land treatment demonstration permits under this section are subject to the annual operating, permit review and issuance, and permit modification fees specified in § 100.3. For the purposes of that section, a land treatment demonstration permit application and an application for a land treatment permit under Part 264, Subpart M shall be considered as a single application for that facility.

§ 100.23 INTERIM PERMITS FOR UIC WELLS.

The Director may issue a permit under this part to any Class I UIC well (see 40 CFR § 122.32) injecting hazardous wastes until such time as the State has an EPA - approved UIC program. Any such permit shall apply and insure compliance with all applicable requirements of Part 264, Subpart R of these regulations, and shall be for a term not to exceed two years. Any permit under this section shall contain a condition providing that it will terminate upon final action by the Director under a UIC program to issue or deny a UIC permit for the facility.

§ 100.24 GENERAL PERMITS.

The Department may develop general permits (and application procedures for general permits) applicable to classes or subclasses of HWM facilities which are consistent with the requirements of this part and Parts 264 and 266 of these regulations.

§ 100.25 RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS

(a) The Department may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Part 264 or 267.

(b) Any such permit shall include terms and conditions as will assure protection of human health and the environment. Such permits shall:

(1) provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Department deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(2) include such requirements as the Department deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the Department deems necessary regarding testing and providing of information to the Department with respect to the operation of the facility.

(c)(1) For the purpose of expediting review and issuance of permits under this section, the Department may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Part 100 except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

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(2) Permits issued under this section shall provide for construction of such facilities as necessary, and for operation of the facility for not longer than one year. Any permit may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

(d) The Department may order an immediate termination of all operations at the facility at any time it determines that termination is necessary to protect human health and the environment.

§ 100.26 Corrective Action Plan.

(a) The owner or operator of a hazardous waste facility that is subject to the corrective action or closure requirements of Part 264 or Part 265, but that does not currently have a treatment, storage or disposal permit, may submit an application for a Corrective Action Plan to conduct corrective action or closure. Applications for such plans may be for entire facilities or portions thereof. An approved Corrective Action Plan serves as a permit for the facility.

(b) The Department shall review applications submitted under this section and shall provide formal written notification that a corrective action plan submitted to the Department under this section has been approved or disapproved. In the event the corrective action plan is not approved by the Department, the Department shall promptly provide the applicant with a written statement of the reasons for such denial. If the Department disapproves a corrective action plan based upon the applicant's failure to submit the information required by subsection (c), the Department shall notify the applicant of the specific information omitted by the applicant. The Department shall use its best efforts to:

(1) Complete the review of the initial application within sixty (60) days after submittal and spend no more than forty (40) hours to review simple corrective action plans and no more than one hundred (100) hours to review more complex corrective action plans;

(2) Complete the review of each separate report/plan submitted under a phased approach corrective action plan within sixty (60) days after submittal of such report/plan and spend no more than forty (40) hours to review such report/plan; and

(3) Complete the review of the completion report for an approved corrective action plan within thirty (30) days after submittal of such completion report and spend no more than twenty (20) hours to review such completion report.

(c) Applications for Corrective Action Plans under this section shall include, at a minimum, the following:

(1) name(s) and address(es) of the owner and operator of the facility;

(2) name and telephone number of the facility contact person for the application;

(3) location of the facility;

(4) EPA Identification Number of the facility;

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(5) description of historic uses and waste handling practices at the facility;

(6) description of site characterization activities and type and extent of contamination identified to date, including a description of any hazardous waste or hazardous constituents; and

(7) a Corrective Action Plan that either:

(i) includes characterization data that describes fully the vertical and horizontal extent of contamination and either:

(A) a remediation plan or

(B) a request for no further action

that is based on meeting state standards or risk-based cleanup goals; or

(ii) provides for a phased approach to investigation of the full vertical and horizontal extent of contamination and cleanup of hazardous wastes and constituents, as necessary, based on state standards or risk-based cleanup goals.

(d) Corrective Action Plans approved under this section:

(1) shall specify the date they become effective;

(2) shall specify actions the applicant must take to comply with the closure or corrective action requirements of Part 264 or 265, as appropriate, and a schedule for implementing such actions; and

(3) may designate corrective action management units or temporary units under §§ 264.551, 264.552 or 264.553, in accordance with § 100.21(e);

(e) Corrective Action Plans approved under this section are subject to the provisions of § 100.32.

(f) Corrective Action Plans approved under this section do not authorize any action that requires a permit under this Part for the treatment, storage, or disposal of hazardous waste.

(g) Corrective Action Plans approved under this section, and any determinations that the Department makes pursuant thereto, are requirements of Part 3 of the Act, and are subject to appeal pursuant to the provisions of § 25-15-305, C.R.S.

(h) Corrective Action Plans approved under this section do not excuse, nor constitute a defense to, any prior violation of the Act or the Regulations. Approval of a Corrective Action Plan under this section does not impair the Department's ability to take any other appropriate action (including issuing or modifying permits or orders) regarding releases of hazardous wastes or hazardous constituents that are not addressed in the Corrective Action Plan.

§ 100.27 -- Remedial Action Plans (RAPs)

Why is this subpart written in a special format?

Sec.

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§ 100.27 -- Remedial Action Plans (RAPs)

This subpart is written in a special format to make it easier to understand the regulatory requirements. Like other state regulations, this establishes enforceable legal requirements. For this Subpart, **AI** and **Ayou** refer to the owner/operator.

(a) General Information

§ 100.27(a)(1) What is a RAP?

(i) A RAP is a special form of RCRA permit that you, as an owner or operator, may obtain, to authorize you to treat, store, or dispose of hazardous remediation waste (as defined in § 260.10 of these regulations) at a remediation waste management site. A RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under § 100.27(f).

(ii) Other requirements in Part 100 of these regulations do not apply to RAPs unless those requirements for traditional RCRA permits are specifically required under §100.27. The definitions in § 260.10 of these regulations apply to RAPs.

(iii) Notwithstanding any other provision of this part, any document that meets the requirements in this section constitutes a RCRA permit under § 25-15-303, C.R.S.

(iv) A RAP may be:

(A) A stand-alone document that includes only the information and conditions required by this subpart; or

(B) Part (or parts) of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by this subpart.

(v) If you are treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by Federal or State cleanup authorities, your RAP does not affect your obligations under those authorities in any way.

(vi) If you receive a RAP at a facility operating under interim status, the RAP does not terminate your interim status.

§ 100.27(a)(2) When do I need a RAP?

(i) Whenever you treat, store, or dispose of hazardous remediation wastes in a manner that requires a RCRA permit under § 100.10, you must either obtain:

(A) A RCRA permit according to Part 100; or

(B) A RAP according to this subpart.

(ii) Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under this Subpart.

(iii) You may obtain a RAP for managing hazardous remediation waste at an already permitted RCRA facility. You must have these RAPs approved as a modification to your existing permit according to the requirements of § 100.61 or § 100.63 instead of the requirements in this Subpart. When you submit an application for such a modification, however, the information requirements in § 100.63(a)(1)(i), (b)(1)(iv), and (c)(1)(iv) do not apply; instead, you must submit the information required under § 100.27(b)(4). When your permit is modified the RAP becomes part of the RCRA permit. Therefore when your permit (including the RAP portion) is modified, revoked and reissued, terminated or when it expires, it will be modified according to the applicable requirements in §§ 100.61 through 100.63, revoked and reissued according to the applicable requirements in §§ 100.61 and 100.64, terminated according to the applicable requirements in § 100.64, and expire according to the applicable requirements in §§ 100.45 and 100.11(e) of these regulations.

§ 100.27(a)(3) Does my RAP grant me any rights or relieve me of any obligations?

The provisions of § 100.46 apply to RAPs. (Note: The provisions of § 100.46(a) provide you assurance that, as long as you comply with your RAP, the State will consider you in compliance with Subtitle C of RCRA, and will not take enforcement actions against you. However, you should be aware of four exceptions to this provision that are listed in § 100.46.)

(b) Applying for a RAP

§ 100.27(b)(1) How do I apply for a RAP?

To apply for a RAP, you must complete an application, sign it, and submit it to the Director according to the requirements in this subpart.

§ 100.27(b)(2) Who must obtain a RAP?

When a facility or remediation waste management site is owned by one person, but the treatment, storage or disposal activities are operated by another person, it is the operator's duty to obtain a RAP, except that the owner must also sign the RAP application.

§ 100.27(b)(3) Who must sign the application and any required reports for a RAP?

Both the owner and the operator must sign the RAP application and any required reports according to § 100.12(c) and § 100.44(a) and (b). In the application, both the owner and the operator must also make the certification required under § 100.12(d)(1). However, the owner may choose the alternative certification under § 100.12(d)(2) if the operator certifies under § 100.12(d)(1).

§ 100.27(b)(4) What must I include in my application for a RAP?

You must include the following information in your application for a RAP:

- (i) The name, address, and EPA identification number of the remediation waste management site;
- (ii) The name, address, and telephone number of the owner and operator;
- (iii) The latitude and longitude of the site;
- (iv) The United States Geological Survey (USGS) or county map showing the location of the remediation waste management site;
- (v) A scaled drawing of the remediation waste management site showing:
 - (A) The remediation waste management site boundaries;
 - (B) Any significant physical structures; and
 - (C) The boundary of all areas on-site where remediation waste is to be treated, stored or disposed;
- (vi) A specification of the hazardous remediation waste to be treated, stored or disposed of at the facility or remediation waste management site. This must include information on:
 - (A) Constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated and/or otherwise managed;
 - (B) An estimate of the quantity of these wastes; and
 - (C) A description of the processes you will use to treat, store, or dispose of this waste including technologies, handling systems, design and operating parameters you will use to treat hazardous remediation wastes before disposing of them according to the LDR standards of Part 268 of these regulations, as applicable;

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(vii) Enough information to demonstrate that operations that follow the provisions in your RAP application will ensure compliance with applicable requirements of Parts 264, 267, and 268 of these regulations;

(viii) Such information as may be necessary to enable the Director to carry out his/her duties under other Federal laws as is required for traditional RCRA permits under § 100.41(a)(19);

(ix) Any other information the Director decides is necessary for demonstrating compliance with this subpart or for determining any additional RAP conditions that are necessary to protect human health and the environment.

§ 100.27(b)(5) What if I want to keep this information confidential?

Part 2 (Public Information) of these regulations allows you to claim as confidential any or all of the information you submit to the Department under this subpart. You must assert any such claim at the time that you submit your RAP application or other submissions by stamping the words "confidential business information" on each page containing such information. If you do assert a claim at the time you submit the information, the Department will treat the information according to the procedures in Part 2 of these regulations. If you do not assert a claim at the time you submit the information, the Department may make the information available to the public without further notice to you. The Department will deny any requests for confidentiality of your name and/or address.

§ 100.27(b)(6) To whom must I submit my RAP application?

You must submit your application for a RAP to the Director for approval.

§ 100.27(b)(7) If I submit my RAP application as part of another document, what must I do?

If you submit your application for a RAP as a part of another document, you must clearly identify the components of that document that constitute your RAP application.

(c) Getting a RAP Approved

§ 100.27(c)(1) What is the process for approving or denying my application for a RAP?

(i) If the Director tentatively finds that your RAP application includes all of the information required by § 100.27(b)(4) and that your proposed remediation waste management activities meet the regulatory standards, the Director will make a tentative decision to approve your RAP application. The Director will then prepare a draft RAP and provide an opportunity for public comment before making a final decision on your RAP application, according to this subpart.

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(ii) If the Director tentatively finds that your RAP application does not include all of the information required by § 100.27(b)(4) or that your proposed remediation waste management activities do not meet the regulatory standards, the Director may request additional information from you or ask you to correct deficiencies in your application. If you fail or refuse to provide any additional information the Director requests, or to correct any deficiencies in your RAP application, the Director may make a tentative decision to deny your RAP application. After making this tentative decision, the Director will prepare a notice of intent to deny your RAP application ("notice of intent to deny") and provide an opportunity for public comment before making a final decision on your RAP application, according to the requirements in this Subpart. The Director may deny the RAP application either in its entirety or in part.

§ 100.27(c)(2) What must the Director include in a draft RAP?

If the Director prepares a draft RAP, it must include the:

(i) Information required under § 100.27(b)(4)(i) through (b)(4)(vi);

(ii) The following terms and conditions:

(A) Terms and conditions necessary to ensure that the operating requirements specified in your RAP comply with applicable requirements of Parts 264, 267, and 268 of these regulations (including any recordkeeping and reporting requirements). In satisfying this provision, the Director may incorporate, expressly or by reference, applicable requirements of Parts 264, 267, and 268 of these regulations into the RAP or establish site-specific conditions as required or allowed by Parts 264, 267, and 268 of these regulations;

(B) Terms and conditions in § 100.42;

(C) Terms and conditions for modifying, revoking and reissuing, and terminating your RAP, as provided in § 100.27(d)(1); and

(D) Any additional terms or conditions that the Director determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and

(iii) If the draft RAP is part of another document, as described in § 100.27(a)(1)(iv)(B), the Director must clearly identify the components of that document that constitute the draft RAP.

§ 100.27(c)(3) What else must the Director prepare in addition to the draft RAP or notice of intent to deny?

Once the Director has prepared the draft RAP or notice of intent to deny, he/she must then:

- (i) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;
- (ii) Compile an administrative record, including:
 - (A) The RAP application, and any supporting data furnished by the applicant;
 - (B) The draft RAP or notice of intent to deny;
 - (C) The statement of basis and all documents cited therein (material readily available at the Department or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis); and
 - (D) Any other documents that support the decision to approve or deny the RAP; and
- (iii) Make information contained in the administrative record available for review by the public upon request.

§ 100.27(c)(4) What are the procedures for public comment on the draft RAP or notice of intent to deny?

- (i) The Director must:
 - (A) Send notice to you of his/her intention to approve or deny your RAP application, and send you a copy of the statement of basis;
 - (B) Publish a notice of his/her intention to approve or deny your RAP application in a major local newspaper of general circulation;
 - (C) Broadcast his/her intention to approve or deny your RAP application over a local radio station; and
 - (D) Send a notice of his/her intention to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.
- (ii) The notice required by paragraph (a) of this section must provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within at least 45 days.

(iii) The notice required by paragraph (a) of this section must include:

- (A) The name and address of the office processing the RAP application;
- (B) The name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;
- (C) A brief description of the activity the RAP will regulate;
- (D) The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;
- (E) A brief description of the comment procedures in this section, and any other procedures by which the public may participate in the RAP decision;
- (F) If a hearing is scheduled, the date, time, location and purpose of the hearing;
- (G) If a hearing is not scheduled, a statement of procedures to request a hearing;
- (H) The location of the administrative record, and times when it will be open for public inspection; and
- (I) Any additional information the Director considers necessary or proper.

(iv) If, within the comment period, the Director receives written notice of opposition to his/her intention to approve or deny your RAP application and a request for a hearing, the Director must hold an informal public hearing to discuss issues relating to the approval or denial of your RAP application. The Director may also determine on his/her own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Director must schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in paragraph (a) of this section. This notice must, at a minimum, include the information required by paragraph (c) of this section and:

- (A) Reference to the date of any previous public notices relating to the RAP application;
- (B) The date, time and place of the hearing; and
- (C) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§ 100.27(c)(5) How will the Director make a final decision on my RAP application?

- (i) The Director must consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny, and revise your draft RAP based on those comments, as appropriate.
- (ii) If the Director determines that your RAP includes the information and terms and conditions required in § 100.27(c)(2), then he/she will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.
- (iii) If the Director determines that your RAP does not include the information required in § 100.27(c)(2), then he/she will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied.
- (iv) If the Director's final decision is that the tentative decision to deny the RAP application was incorrect, he/she will withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in this subpart.
- (v) When the Director issues his/her final RAP decision, he/she must refer to the procedures for appealing the decision under § 100.27(c)(6).
- (vi) Before issuing the final RAP decision, the Director must compile an administrative record. Material readily available at the Department or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final RAP must include information in the administrative record for the draft RAP (see § 100.27(c)(3)(ii)) and:
 - (A) All comments received during the public comment period;
 - (B) Tapes or transcripts of any hearings;
 - (C) Any written materials submitted at these hearings;
 - (D) The responses to comments;
 - (E) Any new material placed in the record since the draft RAP was issued;
 - (F) Any other documents supporting the RAP; and
 - (G) A copy of the final RAP.
- (vii) The Director must make information contained in the administrative record available for review by the public upon request.

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§ 100.27(c)(6) May the decision to approve or deny my RAP application be administratively appealed?

(i) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny your RAP application following the procedures under § 100.514 of these regulations. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under § 100.511 of these regulations (or a decision under § 100.64 to deny a permit for the active life of a RCRA hazardous waste management facility or unit). Instead of the notice required under §§ 100.514 and 100.506 of these regulations, the Director will give public notice of any grant of review of RAPs through the same means used to provide notice under § 100.27(c)(4). The notice will include:

(A) The case name and docket number; and

(B) The information specified in § 100.27(c)(4)(iii), as appropriate.

§ 100.27(c)(7) When does my RAP become effective?

Your RAP becomes effective 30 days after the Director notifies you and all commenters that your RAP is approved unless:

(i) The Director specifies a later effective date in his/her decision;

(ii) You or another person has appealed your RAP under § 100.27(c)(6) (if your RAP is appealed, and the request for review is granted under § 100.27(c)(6), conditions of your RAP are stayed; or

(iii) No commenters requested a change in the draft RAP, in which case the RAP becomes effective immediately when it is issued.

§ 100.27(c)(8) When may I begin physical construction of new units permitted under the RAP?

You must not begin physical construction of new units permitted under the RAP for treating, storing or disposing of hazardous remediation waste before receiving a finally effective RAP.

(d) How May my RAP be Modified, Revoked and Reissued, or Terminated?

§ 100.27(d)(1) After my RAP is issued, how may it be modified, revoked and reissued, or terminated?

In your RAP, the Director must specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of your RAP. These procedures must provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change your management of your remediation waste, or that otherwise merits public review and comment. If your RAP has been incorporated into a traditional RCRA permit, as allowed under § 100.27(a)(2)(iii), then the RAP will be modified according to the applicable requirements in §§ 100.61 through 100.63, revoked and reissued according to the applicable requirements in §§ 100.61 and 100.64, or terminated according to the applicable requirements of § 100.64.

§ 100.27(d)(2) For what reasons may the Director choose to modify my final RAP?

(i) The Director may modify your final RAP on his/her own initiative only if one or more of the following reasons listed in this section exist(s). If one or more of these reasons do not exist, then the Director will not modify your final RAP, except at your request. Reasons for modification are:

(A) You made material and substantial alterations or additions to the activity that justify applying different conditions;

(B) The Director finds new information that was not available at the time of RAP issuance and would have justified applying different RAP conditions at the time of issuance;

(C) The standards or regulations on which the RAP was based have changed because of new or amended statutes, standards or regulations, or by judicial decision after the RAP was issued;

(D) If your RAP includes any schedules of compliance, the Director may find reasons to modify your compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which you as the owner/operator have little or no control and for which there is no reasonably available remedy;

(E) You are not in compliance with conditions of your RAP;

(F) You failed in the application or during the RAP issuance process to disclose fully all relevant facts, or you misrepresented any relevant facts at the time;

(G) The Director has determined that the activity authorized by your RAP endangers human health or the environment and can only be remedied by modifying; or

(H) You have notified the Director (as required in the RAP under § 100.42(l)(3)) of a proposed transfer of a RAP.

(ii) Notwithstanding any other provision in this section, when the Director reviews a RAP for a land disposal facility under § 100.27(d)(6), he/she may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Parts 260 through 267 and Part 100 of these regulations.

(iii) The Director will not reevaluate the suitability of the facility location at the time of RAP modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

§ 100.27(d)(3) For what reasons may the Director choose to revoke and reissue my final RAP?

(i) The Director may revoke and reissue your final RAP on his/her own initiative only if one or more reasons for revocation and reissuance exist(s). If one or more reasons do not exist, then the Director will not modify or revoke and reissue your final RAP, except at your request. Reasons for modification or revocation and reissuance are the same as the reasons listed for RAP modifications in § 100.27(d)(2)(i)(E) through (d)(2)(i)(H) if the Director determines that revocation and reissuance of your RAP is appropriate.

(ii) The Director will not reevaluate the suitability of the facility location at the time of RAP revocation and reissuance, unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

§ 100.27(d)(4) For what reasons may the Director choose to terminate my final RAP, or deny my renewal application?

The Director may terminate your final RAP on his/her own initiative, or deny your renewal application for the same reasons as those listed for RAP modifications in § 100.27(d)(2)(i)(E) through (d)(2)(i)(G) if the Director determines that termination of your RAP or denial of your RAP renewal application is appropriate.

§ 100.27(d)(5) May the decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed?

(i) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may appeal the Director's decision to approve a modification, revocation and reissuance, or termination of your RAP, according to § 100.27(c)(6). Any person who did not file comments or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination, may petition for administrative review only of the changes from the draft to the final RAP decision.

(ii) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may informally appeal the Director's decision to deny a request for modification, revocation and reissuance, or termination following the procedures under § 100.514 of these regulations.

§ 100.27(d)(6) When will my RAP expire?

RAPs must be issued for a fixed term, not to exceed 10 years, although they may be renewed upon approval by the Director in fixed increments of no more than ten years. In addition, the Director must review any RAP for hazardous waste land disposal five years after the date of issuance or reissuance and you or the Director must follow the requirements for modifying your RAP as necessary to assure that you continue to comply with currently applicable requirements in § 25-15-303, C.R.S.

§ 100.27(d)(7) How may I renew my RAP if it is expiring?

If you wish to renew your expiring RAP, you must follow the process for application for and issuance of RAPs in this subpart.

§ 100.27(d)(8) What happens if I have applied correctly for a RAP renewal but have not received approval by the time my old RAP expires?

If you have submitted a timely and complete application for a RAP renewal, but the Director, through no fault of yours, has not issued a new RAP with an effective date on or before the expiration date of your previous RAP, your previous RAP conditions continue in force until the effective date of your new RAP or RAP denial.

(e) Operating Under Your RAP

§ 100.27(e)(1) What records must I maintain concerning my RAP?

You are required to keep records of:

- (i) All data used to complete RAP applications and any supplemental information that you submit for a period of at least 3 years from the date the application is signed; and
- (ii) Any operating and/or other records the Director requires you to maintain as a condition of your RAP.

§ 100.27(e)(2) How are time periods in the requirements in this subpart and my RAP computed?

- (i) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event. (For example, if your RAP specifies that you must close a staging pile within 180 days after the operating term for that staging pile expires, and the operating term expires on June 1, then June 2 counts as day one of your 180 days, and you would have to complete closure by November 28.)
- (ii) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event. (For example, if you are transferring ownership or operational control of your site, and wish to transfer your RAP, the new owner or operator must submit a revised RAP application no later than 90 days before the scheduled change. Therefore, if you plan to change ownership on January 1, the new owner/operator must submit the revised RAP application no later than October 3, so that the 90th day would be December 31.)

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(iii) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day.

(iv) Whenever a party or interested person has the right to or is required to act within a prescribed period after the service of notice or other paper upon him/her by mail, 3 days must be added to the prescribed term.

§ 100.27(e)(3) How may I transfer my RAP to a new owner or operator?

(i) If you wish to transfer your RAP to a new owner or operator, you must follow the requirements specified in your RAP for RAP modification to identify the new owner or operator, and incorporate any other necessary requirements. These modifications do not constitute significant modifications for purposes of § 100.27(d)(1). The new owner/operator must submit a revised RAP application no later than 90 days before the scheduled change along with a written agreement containing a specific date for transfer of RAP responsibility between you and the new permittees.

(ii) When a transfer of ownership or operational control occurs, you as the old owner or operator must comply with the applicable requirements in Part 266 (Financial Requirements), of these regulations until the new owner or operator has demonstrated that he/she is complying with the requirements in that part. The new owner or operator must demonstrate compliance with Part 266 of these regulations within six months of the date of the change in ownership or operational control of the facility or remediation waste management site. When the new owner/operator demonstrates compliance with Part 266 of these regulations to the Director, the Director will notify you that you no longer need to comply with Part 266 of these regulations as of the date of demonstration.

§ 100.27(e)(4) What must the State or EPA Region report about noncompliance with RAPs?

The State or EPA Region must report noncompliance with RAPs according to the provisions of 40 CFR § 270.5.

(f) Obtaining a RAP for an Off-Site Location

§ 100.27(f)(1) May I perform remediation waste management activities under a RAP at a location removed from the area where the remediation wastes originated?

(i) You may request a RAP for remediation waste management activities at a location removed from the area where the remediation wastes originated if you believe such a location would be more protective than the contaminated area or areas in close proximity.

(ii) If the Director determines that an alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then the Director may approve a RAP for this alternative location.

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(iii) You must request the RAP, and the Director will approve or deny the RAP, according to the procedures and requirements in this subpart.

(iv) A RAP for an alternative location must also meet the following requirements, which the Director must include in the RAP for such locations:

(A) The RAP for the alternative location must be issued to the person responsible for the cleanup from which the remediation wastes originated;

(B) The RAP is subject to the expanded public participation requirements in §§ 100.11(f), 100.506(a)(1)(vii) and 100.506(f) of these regulations;

(C) The RAP is subject to the public notice requirements in § 100.506(c) of these regulations;

(D) The site permitted in the RAP may not be located within 61 meters or 200 feet of a fault which has had displacement in the Holocene time (you must demonstrate compliance with this standard through the requirements in § 100.41(a)(11)) (See definitions of terms in § 264.18(a) of these regulations);

Note to paragraph (iv)(D): Sites located in political jurisdictions other than those listed in Appendix VI of Part 264 of these regulations, are assumed to be in compliance with this requirement.

(v) These alternative locations are remediation waste management sites, and retain the following benefits of remediation waste management sites:

(A) Exclusion from facility-wide corrective action under § 264.101 of these regulations; and

(B) Application of § 264.1(j) of these regulations in lieu of Part 264, subparts B, C, and D, of these regulations.

§ 100.28 Permits for incinerators, boilers, and industrial furnaces burning hazardous waste.

(a) **General.** Owners and operators of new incinerators, boilers and industrial furnaces (those not operating under the interim status standards of Subparts O or H, Part 265 of these regulations) are subject to paragraphs (b) through (f) of this section. Incinerators operating under the interim status standards of Subpart O of Part 265, and boilers and industrial furnaces operating under the interim status standards of Subpart H of Part 265 of these regulations are subject to paragraph (g) of this section.

(b) **Permit operating periods for new incinerators, boilers and industrial furnaces.** A permit for a new incinerator, boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

(1) **Pretrial burn period.** For the purposes of determining operational readiness following completion of physical construction, the Director must establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator, boiler or industrial furnace. These permit conditions will be effective for the minimum time required to bring the incinerator, boiler or industrial furnace to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Director may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to § 100.60 (Modification of permits) of these regulations.

(i) Applicants must submit a statement, with part B of the permit application, which suggests the conditions necessary to operate in compliance with the standards of §§ 264.342 through 264.345 of these regulations during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in § 264.346 of these regulations.

(ii) The Director will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of §§ 263.342 through 264.345 of these regulations based on his/her engineering judgment.

(2) **Trial burn period.** For the duration of the trial burn, the Director must establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of §§ 264.342 through 264.345 of these regulations and determining adequate operating conditions under § 264.346 of these regulations. Applicants must propose a trial burn plan, prepared under paragraph (c) of this section, to be submitted with part B of the permit application.

(3) **Post-trial burn period.** (i) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Director to reflect the trial burn results, the

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Director will establish operating requirements, including, but not limited to, allowable waste feeds most likely to ensure compliance with the performance standards of §§ 264.342 through 264.345 of these regulations based on his/her engineering judgment.

(ii) Applicants must submit a statement, with part B of the application, which identifies the conditions necessary to operate during this period in compliance with the performance standards of §§ 264.342 through 264.345 of these regulations. This statement should include, at a minimum, restrictions on the operating requirements provided by § 264.346 of these regulations.

(iii) The Director will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of §§ 264.342 through 264.345 of these regulations based on his/her engineering judgment.

(4) **Final permit period.** For the final period of operation, the Director will develop operating requirements in conformance with § 264.346 of these regulations that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of §§ 264.342 through 264.345 of these regulations. Based on the trial burn results, the Director shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to § 100.63 of these regulations.

(c) **Requirements for trial burn plans.** The trial burn plan must include the following information. The Director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph:

(1) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feed stocks, as fired, that includes:

(i) Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash;

(ii) Viscosity or description of the physical form of the feed stream;

(2) An analysis of each hazardous waste, as fired, including:

(i) An identification of any hazardous organic constituents listed in Appendix VIII of Part 261 of these regulations that are present in the feed stream, except that the applicant need not analyze for constituents listed in Appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with appropriate analytical techniques.

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- (ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods.
 - (iii) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.
- (3) A detailed engineering description of the incinerator, boiler or industrial furnace, including:
- (i) Manufacturer's name and model number of the incinerator, boiler or industrial furnace;
 - (ii) Type of incinerator, boiler or industrial furnace;
 - (iii) Maximum design capacity in appropriate units;
 - (iv) Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;
 - (v) Capacity of hazardous waste feed system;
 - (vi) Description of automatic hazardous waste feed cutoff system(s);
 - (vii) Description of any air pollution control system;
 - (viii) Description of stack gas monitoring and any pollution control monitoring systems;
 - (ix) Linear dimensions of the incinerator, boiler or industrial furnace unit, including the cross sectional area of the combustion chamber;
 - (x) The capacity of the prime mover (if applicable);
 - (xi) The nozzle and burner design (if applicable);
 - (xii) A description of any auxiliary fuel system (type/feed);
 - (xiii) Construction materials; and
 - (xiv) Location and description of temperature, pressure, and flow indicating and control devices.
- (4) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

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- (5) A detailed test schedule for each hazardous waste for which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the Director's decision under paragraph (b)(2) of this section.
- (6) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the incinerator, boiler or industrial furnace to meet the performance standards in §§ 264.342 through 264.345 of these regulations.
- (7) A description of, and planned operating conditions for, any emission control equipment that will be used.
- (8) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.
- (9) The procedures and results of the Pre-trial Burn Risk Assessment required under § 100.28(h) of these regulations.
- (10) Such other information as the Director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (b)(2) of this section.
- (d) **Trial burn procedures.** (1) A trial burn must be conducted to demonstrate conformance with the standards of §§ 264.342 through 264.345 of these regulations under an approved trial burn plan.
- (2) The Director shall approve a trial burn plan if he/she finds that:
- (i) The trial burn is likely to determine whether the incinerator, boiler or industrial furnace can meet the performance standards of §§ 264.342 through 264.345 of these regulations;
 - (ii) The trial burn itself will not present an imminent hazard to human health and the environment;
 - (iii) The trial burn will help the Director to determine operating requirements to be specified under § 264.346 of these regulations; and
 - (iv) The information sought in the trial burn cannot reasonably be developed through other means.
- (3) The Director must send a notice to all persons on the facility mailing list as set forth in § 100.506(c)(1)(iv) of these regulations and to the appropriate units of State and local government as set forth in § 100.506(c)(1)(v) of these regulations announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

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(i) This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice must contain:

(A) The name and telephone number of applicant's contact person;

(B) The name and telephone number of the permitting agency contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(4) The applicant must submit to the Director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in paragraph (c) of this section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Director.

(5) All data collected during any trial burn must be submitted to the Director following completion of the trial burn.

(6) All submissions required by this paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under § 100.44.

(e) **Special procedures for DRE trial burns.** Based on the hazardous waste analysis data and other information in the trial burn plan, the Director will specify, as trial Principal Organic Hazardous Constituents (POHCs), those compounds for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the Director based on information including his/her estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in Part 261, Subpart D of these regulations, the hazardous waste organic constituent(s) identified in Appendix VII of that part as the basis for listing.

(f) **Determinations based on trial burn.** During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(1) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);

(2) For determining compliance with the DRE trial burn:

(i) A quantitative analysis of the trial POHCs in the hazardous waste feed;

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(ii) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs; and

(iii) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in § 264.342 of these regulations;

(3) A quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;

(4) A quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl₂), and computations showing conformance with the applicable emission performance standards;

(5) A quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

(6) An identification of sources of fugitive emissions and their means of control;

(7) A continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and

(8) A measurement of average, maximum, and minimum temperatures of the combustion gas and the combustion gas velocity.

(9) A quantitative analysis of the exhaust gas for the concentration and mass emission rate(s) of any Part 261, Appendix VIII organic compounds, and any identified organic products of incomplete combustion (PICs).

(10) A continuous measurement of any PICs in the exhaust gas (if required by the Director under § 264.347 of these regulations).

(11) Such other information as the Director may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in §§ 264.342 through 264.345 of these regulations and to establish the operating conditions required by § 264.346 of these regulations as necessary to meet those performance standards.

(g) **Interim status incinerators, boilers and industrial furnaces.** For the purpose of determining feasibility of compliance with the performance standards of §§ 264.342 through 264.345 of these regulations and of determining adequate operating conditions under Part 265, Subpart O of these regulations for incinerators and under Part 265, Subpart H of these regulations for boilers or industrial furnaces, applicants owning or operating existing incinerators, boilers or industrial furnaces operated under the interim status standards of Subpart O or Subpart H of Part 265 of these regulations must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in § 100.41(b)(5)(iii). The Director must announce his or her intention to approve of the trial burn plan

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in accordance with the timing and distribution requirements of paragraph (d)(3) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in paragraph (f) of this section with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the Director to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the Director.

(h) Pre-Trial Burn Multi-Pathway Health Risk Assessment (MPHRA)

- (1) The applicant shall provide an estimate of stack emissions from the proposed incineration, boiler, or industrial furnace facility with the trial burn plan as part of the application. The basis for these estimates shall be clearly defined in the application. The applicant shall consider all Part 261, Appendix VIII compounds reasonably expected to be in the waste or in the emissions in this estimate. The applicant will assume 99.99% DRE for organic waste feed constituents, including Principal Organic Hazardous Constituents (POHCs), unless other information is available for the applicant to justify, or the Director to require, modifying this assumption.
- (2) The applicant shall perform air dispersion modeling for the estimated emissions using an air dispersion model approved for this application by the Director. The results of this modeling shall be included as part of the application. The name of the dispersion model(s) utilized, and assumptions and inputs to the model(s) shall be clearly defined in the application.
- (3) The applicant shall perform a MPHRA using the results obtained from the air dispersion modeling for the estimated emissions of Part 261, Appendix VIII compounds. The MPHRA shall examine exposure to adults and children and include the following exposure pathways:
 - (i) direct inhalation,
 - (ii) dermal exposure,
 - (iii) exposure resulting from deposition of metallic and organic compounds in soil, surface water, and due to ingestion of local and homegrown foodstuffs, or fish.
- (4) The applicant shall include the results of the MPHRA in the permit application. The methodology, assumptions and inputs to the risk assessment shall be clearly defined in the application.

(5) Comparison of estimated emissions to Part 264-Subpart O Performance Standards and to the Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (the “MACT Standards”) of 40 CFR Part 63, Subpart EEE:

(i) The applicant shall perform a side by side comparison of the predicted ambient air concentrations calculated from the approved air dispersion model, which are based on an estimate of emissions from the facility, with the performance standards of Part 264-Subpart O and the MACT Standards of 40 CFR Part 63, Subpart EEE. The results of this comparison shall be reported in the trial burn portion of the application.

(ii) If any Part 264-Subpart O Performance Standard or any MACT Standard of 40 CFR Part 63, Subpart EEE is exceeded based on the estimated stack emissions, the results of the air dispersion modeling, and the resultant MPHRA conducted under paragraph (c)(5) of this section, the facility shall provide a discussion of the results, and propose an approach to ensure that the standards will be met if an operating permit were issued by the Department.

(iii) If the applicant is unable to propose an approach to ensure that the applicable Part 264, Subpart O standard or, MACT standard can be met, then the Director may deny a permit for the active life of a hazardous waste management facility or unit.

(i) Post-Trial Burn MPHRA:

(1) Following completion of an approved trial burn, the owner or operator shall perform air dispersion modeling for the measured emissions of Part 261, Appendix VIII compounds and products of incomplete combustion (PICs) using an air dispersion model approved for this application by the Director.

(2) The results of this modeling shall be submitted with the trial burn results. The name of the dispersion model(s) utilized, and the assumptions and inputs to the dispersion model(s) shall be clearly defined in the trial burn report.

(3) The owner or operator shall perform a MPHRA using the results of stack sampling and results obtained from the air dispersion modeling for the measured emissions. The methodology, assumptions and inputs to the risk assessment shall be clearly defined in the trial burn report. The MPHRA shall examine exposure to adults and children and include the following exposure pathways:

(i) direct inhalation,

(ii) dermal exposure,

(iii) exposure resulting from deposition of metallic and organic compounds in soil, vegetation, surface water, and due to ingestion of local foodstuffs or fish.

(4) Comparison of measured emissions to trial burn permit emission standards:

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- (i) The facility shall report the results of all Part 261, Appendix VIII and any other organic compounds sampled and analyzed during the trial burn(s).
- (ii) The owner or operator shall perform a comparison of the measured emissions with the applicable permit emission standards.
 - (A) If the constituent specific measured emissions comply with the applicable permit emission standards then the trial-burn permit emission standards become the final permit emission standards for the incinerator, boiler, or industrial furnace.
 - (B) If a constituent specific measured emission(s) exceeds an applicable permit trial burn emission standard, then the Permittee must describe an alternative approach for operation of the hazardous waste combustion system that will ensure compliance with the acceptable performance standard defined under § 264.342(a) of these regulations. If the proposed alternative approach includes modification of any permit emission standard or operating condition in the permit, then the Permittee must modify the permit in accordance with §100.63 of these regulations. In evaluating the alternative approach or any associated permit modification, the Director may require that the MPHRA or the trial burn be repeated to ensure that the acceptable performance standard is achieved.

100.3 FACILITY FEES

§ 100.30 COVERAGE OF THE HAZARDOUS WASTE FEE SYSTEM

(a) **General applicability.** Facilities that are regulated under Parts 261, 262, 264, 265 or 100 of these regulations are subject to the following fees as described in these sections:

(1) **Annual fees** (§ 100.31)

- (i) Operating fees
- (ii) Post-closure fees, as applicable
- (iii) Generator fees
- (iv) Corrective Action fees, as applicable

(2) **Document review and activity fees** (§ 100.32)

- (i) Document review
- (ii) Activity

(3) **Hazardous waste notification fees** (§ 100.33)

(b) **Classification of facilities.**

For the purposes of these sections, hazardous waste treatment, storage, and disposal units are classified according to the method or methods used to manage hazardous wastes. These classes are ranked from I - IV with class I being the highest class.

Class I includes those unit(s) of a facility which manage hazardous wastes in landfills, disposal corrective action management units (“CAMUs”), or underground injection wells pursuant to Parts 264, 265, and 100 of these regulations.

Class II includes those unit(s) of a facility which manage hazardous wastes in surface impoundments, land treatment facilities, waste piles, or treatment/storage CAMUs, or which incinerate hazardous waste or burn hazardous waste in boilers or industrial furnaces, or which are research, pilot, or RD&D units pursuant to Parts 264, 265, and 100 of these regulations.

Class III includes those unit(s) of a facility used to manage hazardous wastes in tanks or containers, waste piles, containment buildings, or any unit used for physical, chemical, biological, or thermal treatment of hazardous waste pursuant to Parts 264, 265, and 100 of these regulations, except those units listed in Classes I or II.

Class III also includes hazardous waste management units associated with resource recovery, namely, treatment or storage of the hazardous waste residues generated from a resource recovery facility. Such units associated with resource recovery are subject to the reduced fee requirements described further in § 100.31.

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Class IV includes those hazardous waste management facilities that qualify for a permit by rule under § 100.21.

§ 100.31 ANNUAL FEES.

(a) **Applicability.**

(1) **Operating fees.** All facilities that are operated for the treatment, storage, or disposal of hazardous wastes under Parts 264, 265 or 100 of these regulations are subject to the annual operating fee from the time such facilities first begin treating, storing or disposing of hazardous waste until final closure is certified and shall provide payment to provide reimbursement to the Department for those costs incurred in tracking, compliance monitoring, compliance assistance, plan review, enforcement, and other recurring activities that are reasonable and necessary to ensure compliance with these regulations.

(2) **Post-closure fees.** All facilities that conduct post-closure care under §§ 264.117 through 264.120 or §§ 265.117 through 265.121 of these regulations are subject to the post-closure fee for the duration of the post-closure care period and shall provide payment to provide reimbursement to the Department for those costs incurred in tracking, compliance monitoring, compliance assistance, plan review, enforcement, and other recurring activities that are reasonable and necessary to ensure compliance with these regulations.

(3) **Generator fees.** All generators of hazardous waste that are subject to the fee requirements of section 25-15-302, C.R.S. and § 262.13 of these regulations, shall provide payment to reimburse the Department for those costs incurred in tracking, compliance monitoring, compliance assistance, plan review, enforcement, and other recurring activities that are reasonable and necessary to ensure compliance with these regulations.

(4) **Corrective Action fees.** Any facility performing corrective action activities under §§ 100.26, 100.27, 264.101, or 265.5 of these regulations are subject to annual fees for the operation and post-closure care of any corrective action management unit established under § 264.552 of these regulations. In addition, all facilities that utilize environmental use restrictions, as defined in section 25-15-101(4.7), C.R.S., as a basis for corrective action decisions at areas of their facility that are not otherwise subject to post-closure fees are subject to an annual fee for the environmental use restrictions. These fees are to provide reimbursement to the Department for those costs incurred in tracking, compliance monitoring, compliance assistance, plan review, enforcement, and other recurring activities that are reasonable and necessary to ensure compliance with these regulations.

(b) **Schedule.** Owners and operators of treatment, storage or disposal facilities shall pay annual operating, post-closure, and corrective action fees according to the schedule in this section. The total annual operating fee for non-commercial treatment, storage, or disposal facilities (including operating fees for corrective action management units) shall not exceed \$50,000 unless wastes managed at such facility include: (1) acute hazardous wastes, as specified under § 261.33; (2) reactive wastes, as specified under § 261.23; or (3) radioactive mixed wastes. If a facility manages any of these wastes, then the \$50,000 ceiling for annual fees shall not apply to these wastes but shall only apply to other wastes managed at the facility. Fees for these three types of

hazardous waste shall be calculated separately and shall not be subject to the \$50,000 limit shown in the schedule presented at the end of this Part.

(1) Treatment or disposal facilities.

(i) Owners or operators of commercial hazardous waste treatment or disposal facilities shall pay annual operating fees based either on the quantity of hazardous waste received at the facility for treatment or disposal in a hazardous waste management unit during the calendar year, as recorded in the facility operating record kept in accordance with § 264.73 or § 265.73 of these regulations, or a minimum fee based on the type of treatment or disposal units or processes at the facility, whichever results in the greater fee.

(ii) Owners or operators of commercial Class I hazardous waste treatment or disposal facilities shall also pay annual operating fees based on the quantity of non-hazardous waste received at the facility for treatment or disposal in a hazardous waste management unit during the calendar year, as recorded in the facility operating record kept in accordance with § 264.73 or § 265.73 of these regulations. This fee will not apply to materials regulated by a radioactive materials license issued by this Department.

(iii) Owners or operators of non-commercial hazardous waste treatment or disposal facilities shall pay annual operating fees based either on the quantity of hazardous waste treated or disposed in a hazardous waste management unit during the calendar year, as recorded in the facility operating record kept in accordance with § 264.73 or § 265.73 of these regulations, or a minimum fee based on the type of treatment or disposal units or processes at the facility, whichever results in the greater fee.

(iv) Owners or operators of non-commercial Class I hazardous waste treatment or disposal facilities shall also pay annual operating fees based on the quantity of non-hazardous waste received at the facility for treatment or disposal in a hazardous waste management unit during the calendar year, as recorded in the facility operating record kept in accordance with § 264.73 or § 265.73 of these regulations. This fee will not apply to materials regulated by a radioactive materials license issued by this Department.

(v) For commercial and non-commercial hazardous waste facilities or units that first begin treating or disposing of any type of waste on a date other than January 1st in any given calendar year, the minimum fee, if applicable, shall be assessed on a prorated basis.

(vi) Each volume of any type of waste treated or disposed at a hazardous waste management unit of a facility is subject to the annual operating fee based on whether that waste is treated or disposed, as shown in the schedule of this section. In cases where a given volume of any type of waste is treated and/or disposed at a particular facility or undergoes more than one type of treatment at that facility, that volume of waste shall be subject to only one fee - that which applies to the treatment or disposal method in the highest class on the annual fee schedule.

(vii) In cases where a given volume of hazardous waste is only stored pending treatment or disposal, that hazardous waste is subject to a fee based on the amount of that hazardous waste in storage at the facility on December 31 of the previous year plus the amount of that hazardous waste shipped off-site during the previous year. Commercial facilities

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have the option of calculating the fee for hazardous waste which is only stored pending treatment or disposal by using operating records kept in accordance with § 264.73 or § 265.73 of these regulations that note the volume of this hazardous waste received during the previous calendar year.

(viii) No less than the minimum fee shall apply to each treatment and/or disposal facility regardless of the volume of waste received by the facility or whether any waste is treated, stored or disposed by the facility during the year. The minimum fee which applies to a given facility shall be calculated by adding the minimums shown in the schedule of this section for each type of treatment, storage or disposal unit or process required to be listed on the facility's Part A permit application.

(2) Storage-only facilities.

(i) Owners or operators of facilities that store hazardous waste but do not perform treatment on or disposal of that waste shall pay annual operating fees based on the volume of hazardous waste in all waste management units (e.g. tanks plus containers) on December 31 of the preceding year plus the amount of hazardous waste shipped off-site from the facility during the previous year. For the purposes of this paragraph, this includes storage of hazardous waste prior to resource recovery. Commercial facilities have the option of calculating the fee for hazardous waste which is only stored by using operating records kept in accordance § 264.73 or § 265.73 of these regulations that note the volume of this hazardous waste received during the previous calendar year.

(ii) No less than the minimum fee shall apply to each facility regardless of the volume of hazardous waste shipped off-site from the facility, or whether any hazardous waste was stored by the facility during the year. The minimum fee which applies to a given facility shall be calculated by adding the minimums shown in the schedule of this section for each type of storage unit required to be listed on the facility's Part A permit application.

(3) The closure period.

(i) For purposes of this section, the "closure period" for interim status treatment, storage or disposal facilities undergoing final closure (as defined in § 260.10 of these regulations) is that time from final approval of a closure plan under § 265.112(d) until final certification of closure under § 265.115. For permitted facilities undergoing final closure, the "closure period" is that time from the beginning of implementation of an approved closure plan until final certification of closure under § 264.115. For purposes of this section, the term "closure plan" includes any equivalent document required under §§ 264.110(c) or 265.110(d). For facilities undergoing final closure, the annual fee during the closure period shall be calculated by adding the following two components:

(A) For that portion of the year prior to the beginning of the closure period, the appropriate fees for the facility as described above in § 100.31(b)(1) and (2) shall be assessed on a prorated basis, except that the inventory date for calculating the volume of waste in storage shall be the last day before the closure period begins, instead of December 31, and;

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(B) For that portion of the year when the facility is in the closure period, the minimum fee calculated according to (b)(1)(ii) and (b)(2)(ii) shall apply, on a prorated basis. If any units are being closed under § 264.310 or § 265.310 (as landfills), then the minimum fee shown in the schedule for units closing as landfills shall apply to those units.

(ii) For purposes of this section, the "closure period" for hazardous waste management units at interim status facilities undergoing partial closure (as defined in § 260.10 of these regulations) is that time from final approval of a closure plan for those units under § 265.112(d) until final certification of closure for those units under § 265.115. For units at permitted facilities undergoing partial closure, the closure period is that time from the beginning of implementation of an approved closure plan for those units until final certification of closure for those units under § 264.115. For facilities undergoing partial closure the annual fee during the closure period shall be calculated by adding the following two components:

(A) For that portion of the year prior to the beginning of the closure period, the appropriate fees for the facility as described above in § 100.31(b)(1) and (2) shall be assessed on a prorated basis, except that the inventory date for calculating the volume of hazardous waste in storage shall be the last day before the closure period begins, instead of December 31, and;

(B) For that portion of the year when units at the facility are in the closure period, the appropriate fees for the facility as described above in § 100.31(b)(1) and (2) shall be assessed on a prorated basis, with the following exceptions: the fee for the facility shall not be based on the volume of hazardous waste managed at units in the closure period, the minimum fee for the facility according to (b)(1)(ii) and (b)(2)(ii) shall include the minimum fees for those units in the closure period, and if any of those units are being closed under § 264.310 or § 265.310 (as landfills), then the minimum fee shown in the schedule for units closing as landfills shall apply to those units.

(4) **Post-closure.** Owners or operators of treatment, storage or disposal facilities subject to post-closure care shall pay post-closure fees based on the number of units (e.g., two surface impoundments plus one waste pile) being closed pursuant to §§ 264.110(c) or 264.310 or §§ 265.110(d) or 265.310. The post-closure fees apply on a prorated basis when a facility or units at a facility are in the post-closure care period for a portion of the year.

(5) **Corrective Action.** Owners or operators of facilities that utilize environmental use restrictions as a basis for corrective action decisions, under §§ 100.26, 264.101, or 265.5 of these regulations, at areas of their facility that are not otherwise subject to post-closure fees shall pay an annual fee associated with that environmental use restriction. The environmental use restriction fee shall be assessed at a rate of \$1,000 per each five geographically distinct areas subject to environmental use restrictions, or fraction thereof. (For example, if a facility had 1, 2, 3, 4 or 5 geographically distinct areas subject to environmental use restrictions, it would pay a \$1,000 annual fee; if it had 6, 7, 8, 9, or 10 geographically distinct areas subject to environmental use restrictions, it would pay an annual fee of \$2,000; etc.) This fee applies on a prorated basis for any portion of an environmental use restriction in place for only a portion of the year.

ANNUAL FEES SCHEDULE

Type of facility/regulated unit	Operating Fee
<u>Class I</u>	
Landfills Commercial	\$9.92/ton of hazardous waste disposed, \$5.25/ton of non-hazardous waste disposed, min. of \$56,700
Non-commercial	\$9.92/ton of hazardous waste disposed, \$5.25/ton of non-hazardous waste disposed, min. of \$17,010
Units closing as landfills	
Commercial	\$42,525
Non-commercial	\$17,010
Underground injection wells	\$9.92/ton of hazardous waste disposed, \$5.25/ton of non-hazardous waste disposed, min. of \$14,175
Disposal CAMUs	\$9.92/ton of hazardous waste disposed, \$5.25/ton of non-hazardous waste disposed, min. of \$7,088
<u>Class II</u>	
Surface impoundments Commercial	\$7.09/ton of waste stored, min. of \$17,010
Non-commercial	\$7.09/ton of waste stored, min. of \$12,474
Waste piles	\$7.09/ton of waste stored, min. of \$12,474
Land Treatment	\$7.09/ton of waste treated, min. of \$12,474
Incinerators/Boilers and Industrial Furnaces	
Off-site (commercial) facilities	\$7.09/ton of waste processed, min. of \$22,680
On-site facilities	\$7.09/ton of waste processed, min. of \$11,340
Research, Pilot or RD & D facilities	\$7.09/ton of waste processed, min. of \$2,835
Treatment/Storage CAMUs	\$3.55 /ton of waste treated or stored, min. of \$1,418

Type of facility/regulated unit	Operating Fee
<u>Class III</u>	
Tank storage (except resource recovery)	\$7.09/ton of waste stored, min. of \$1,871
Container storage (except resource recovery)	\$7.09/ton of waste stored, min. of \$1,871
Containment Buildings	\$7.09/ton of waste stored, min. of \$1,871
Treatment processes, all except those done in Class II units	\$7.09/ton of waste treated, min. of \$1,871
Tank storage (resource recovery)	\$4.12/ton of waste stored, min. of \$936
Container storage (resource recovery)	\$4.12/ton of waste stored, min. of \$936
<u>Class IV</u>	
All except injection wells	\$3.27/ton of waste treated or stored, min. of \$210
<u>Post-Closure Fee</u>	
All units (including CAMUs)	\$5,250 per unit
Use restrictions for corrective action decisions	\$1,000 per each five geographically distinct areas subject to environmental use restrictions, or fraction thereof. ⁽¹⁾

⁽¹⁾ For purposes of this calculation, each Solid Waste Management Unit or otherwise regulated unit shall be considered a geographically distinct unit. In addition, groundwater shall be treated as geographically distinct from associated soil contamination.

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(c) **Payment.** All owners and operators of facilities subject to the fees of this section shall provide timely payment of the annual fees to the Treasurer of the State of Colorado, as provided in this section. All annual fees shall be credited to the Hazardous Waste Service Fund. A late payment fee of 2% per month or portion thereof shall be assessed on any unpaid balance subject to the limitations of § 24-79.5-101, et seq. C.R.S.

(1) **Disposal.** Owners and operators of commercial hazardous waste disposal facilities shall submit payment of the annual operating fee on a quarterly basis. The fee shall be paid within 30 days after receiving the bill for the previous quarter. Owners and operators of non-commercial hazardous waste disposal facilities shall submit payment of the annual operating fee each year within 30 days after receiving the bill. These fees shall be calculated as previously described in this section using the schedule of this section.

(2) **Treatment and Storage.** Owners and operators of hazardous waste treatment and storage facilities shall submit payment of the annual operating fee each year within 30 days after receiving the bill. The fee shall be calculated as previously described in this section using the schedule of this section.

(3) **Post-closure.** Owners and operators of facilities conducting post-closure care shall submit payment of the annual post-closure fee each year within 30 days after receiving the bill. The fee shall be calculated as previously described in this section using the schedule of this section.

(4) **Generators.** Owners and operators of facilities that generate hazardous waste shall submit payment of the annual generator fee each year within 30 days after receiving the bill. The fee shall be consistent with § 262.13 of these regulations.

(5) **Corrective Action.** Owners and operators of facilities conducting corrective action shall submit payment of the corrective action fee each year within 30 days after receiving the bill. The fee shall be calculated as previously described in this section using the schedule of this section.

(d) **Annual review.** Each year, beginning July 2002, the Director shall review the annual fee structure for treatment, storage and disposal facilities and generators and shall submit a report to the Commission evaluating whether the fee structure is both equitable to the regulated community and is sufficient to recover reasonable program expenses incurred. In making this evaluation, and in proposing any adjustments to the fee structure, the Director shall apply the criteria set forth in section 25-15-302(3.5)(b), C.R.S.

§ 100.32 DOCUMENT REVIEW AND ACTIVITY FEES

(a) **Applicability.** Facilities subject to regulation under Parts 264 or 265 of these regulations are subject to the following fees:

(1) **Document Review Fees.** The Document Review Fees shall provide reimbursement to the Department for professional staff and administrative personnel time spent reviewing, evaluating and responding to any and all documents submitted or required to be submitted in connection with the following:

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- (i) interim status and modifications thereto;
- (ii) permit applications required by Part 100;
- (iii) permit implementation not related to compliance inspections;
- (iv) permit modifications;
- (v) closure plans and modifications, and equivalent documents under §§ 264.110(c) or 265.110(d);
- (vi) post-closure plans and modifications, and equivalent documents under §§ 264.110(c) or 265.110(d);
- (vii) permit and interim status corrective action;
- (viii) delisting petitions;
- (ix) consent decrees, valid orders (or portions thereof) or consent orders for corrective action;
- (x) Corrective Action Plans;
- (xi) Remedial Action Plans; and
- (xii) Environmental Covenants, Notices of environmental use restrictions, ordinances and resolutions described in § 25-15-320(3)(b)(II), and intergovernmental agreements described in § 25-15-320(3)(b)(III), C.R.S.

For purposes of this section, "evaluating" includes time spent determining whether the document is adequate for its intended purpose and/or complies with regulatory requirements. The term "responding" includes Department determinations to approve, approve with conditions, request additional information or modify, or disapprove, revoke, reissue, terminate or deny the permit, closure plan or other document. The term "reviewing" includes reviews of information submitted to the Department by the facility or its agents, regardless of whether the documents require a determination by the Department.

(2) **Activity Fees.** The activity fees shall provide reimbursement to the Department for professional staff and administrative personnel time spent on the following activities related to (a)(1)(i-xii) above:

- (i) oversight activities;
- (ii) meetings;
- (iii) preparing for meetings;

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- (iv) negotiations;
- (v) responding to questions or information requested at meetings with the facility or the facility's representatives;
- (vi) preparation for and attendance at public meetings or hearings; and
- (vii) responding to questions or information requested at public meetings or hearings.

For purposes of this section a "public meeting" means a hearing that has been publicly noticed.

For purposes of this section, the Department will begin charging the facility for pre-permit application meetings and review of documents beginning with the second meeting between the Department and the facility, regardless of whether the facility files a permit application, Corrective Action Plan, or other document listed in (a)(1) above.

In addition to the document review and activity fees specified above, the facility will reimburse the Department for any legal fees incurred by the Department associated with (1) and (2) above, in the amount the Department is then paying for legal representation to the Colorado Attorney General.

The document review and activity fee schedule shall be reviewed annually by the Director and a report shall be provided to the Commission which makes a determination on whether the fee is both equitable to the regulated community and is sufficient to recover reasonable program expenses incurred thereby.

(b) **Schedule.** Hazardous waste treatment, storage, and disposal facilities that are subject to the review and activity fees under paragraph (a) of this section shall pay an hourly charge of \$150 for departmental staff and administrative time. The Director shall establish a time-keeping system and shall make available to the owner/operator of the facility a record of those activities for which the owner/operator has been charged.

The document review and activity fee of each type of regulated unit shall not exceed the ceilings noted in the schedule below and in paragraph (c) of this section. For facilities with more than one regulated unit, the maximum document review and activity fee is the sum of the ceiling fees for each unit at the facility.

DOCUMENT REVIEW AND ACTIVITY FEE

Facility Class/Regulated Unit	Ceiling Fee		
	Operating Permits	Post-Closure Permits and alternate enforceable mechanisms	Closure Plan or alternate enforceable document
<u>Class I</u>			
Landfills			
Commercial	\$250,000	\$85,000	\$85,000
Non-commercial	\$85,000	\$42,500	\$42,500
Underground injection wells			
Commercial	\$85,000	\$42,500	\$42,500
Non-commercial	\$42,500	\$21,250	\$21,250
<u>Class II</u>			
Incinerators/Boilers and Industrial Furnaces			
Off-site (Commercial) facilities	\$250,000	\$85,000	\$85,000
On-site facilities	\$68,000	\$34,000	\$34,000
Research, Pilot or RD & D facilities	\$34,000	\$17,000	\$17,000
Surface impoundments	\$51,000	\$25,500	\$34,000
All others	\$34,000	\$17,000	\$17,000
<u>Class III</u>			
First unit of a facility	\$30,000	\$8,500	\$8,500
Each additional unit	\$15,000	\$4,250	\$4,250
<u>Corrective Action</u>			
Each Solid Waste Management Unit at a facility	\$25,000 per year		

(c) **Document Modification Ceiling Schedule.**

(1) **Class 1 modification.** Review and activity fees for a Class 1 modification of an existing State RCRA permit as defined in § 100.63 shall have a ceiling fee of \$2,000.

(2) **Class 2 modification.** Review and activity fees for a Class 2 modification of an existing State RCRA permit as defined in § 100.63 shall have a ceiling of 50% of the ceiling fee identified in § 100.32 for each unit affected by the modification.

(3) **Class 3 modification.** Review and activity fees for a Class 3 modification of an existing State RCRA permit as defined in § 100.63 shall have a ceiling fee of 100% of the ceiling fee identified in § 100.32 for each unit affected by the modification.

(d) **Payment.** (1) Facilities subject to regulation under Parts 264 or 265 of these regulations shall provide timely payment of the document review and activity fee upon billing by the Department on a quarterly basis or upon another basis as determined by the Director. For purposes of this section, "timely payment" means within thirty days of receipt of the Department's billing, or other time frame approved in writing by the Director. Payment shall be made to the Treasurer of the State of Colorado, which monies shall be credited to the Hazardous Waste Service Fund. A late payment fee of 2% per month or portion thereof shall be assessed on any unpaid balance subject to the limitations of § 24-79.5-101, et seq. C.R.S.

(2) Failure to make timely payment of any document review and activity fee is a cause for termination of a permit as described in § 100.64.

(e) **Annual review.** Each year, beginning July 2002, the Director shall review the document review fee structure and shall submit a report to the Commission evaluating whether the fee structure is both equitable to the regulated community and is sufficient to recover reasonable program expenses incurred. In making this evaluation, and in proposing any adjustments to the fee structure, the Director shall apply the criteria set forth in section 25-15-302(3.5)(b).

§ 100.33 HAZARDOUS WASTE NOTIFICATION FEES

(a) **Applicability.** Facilities subject to regulation under Parts 99 and 261.5 or 262 of these regulations are subject to the following fees:

(1) A facility modifying their notification to any status requiring a lesser hazardous waste generation rate (e.g., a Large Quantity Generator re-notifying as a Small Quantity Generator, Conditionally Exempt Small Quantity Generator, or non-generator) shall pay \$120 along with submittal of their revised notification information. The Department will not process the notification change without payment of the \$120 fee.

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(2) A facility submitting a new notification under Part 99 shall pay \$120, except that newly notifying Conditionally Exempt Small Quantity Generators shall not be subject to this fee. The Department will not process the notification without payment of the \$120 fee.

All notification updates that are providing or changing information required in the notification will not be assessed any fee unless these updates also meet criteria (1) or (2) above.

100.4 PERMIT REQUIREMENTS AND CONDITIONS

§ 100.40 CONTENTS OF APPLICATION (PART A).

(a) Information requirements.

In accordance with § 100.11(a) and (c) all owners and operators of hazardous waste management facilities who are required to submit Part A of a permit application shall provide the following information to the Director, using the application form provided by the Director.

- (1) Name, mailing address, and location of the facility for which the application is submitted, including the latitude and longitude of the facility, and whether the facility is located on Indian lands.
- (2) An indication of whether the facility is new or existing and whether it is a first or revised application.
- (3) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public or other entity.
- (4) The name, address and telephone number of the owner of the facility.
- (5) A brief description of the nature of the business.
- (6) Up to four SIC codes which best reflect the principal products or services provided by the facility.
- (7) A listing of all permits or construction approvals received or applied for under any of the following programs:
 - (i) Hazardous Waste Management program under RCRA.
 - (ii) UIC program under SDWA.
 - (iii) NPDES program under CWA.
 - (iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.
 - (v) Nonattainment program under the Clean Air Act.
 - (vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

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- (vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
 - (viii) Dredge or fill permits under Section 404 of CWA.
 - (ix) Other relevant environmental permits, including State permits.
 - (x) A copy of the contingency plan required by Part 264, Subpart D. Include, where applicable, as part of the contingency plan, specific requirements in §§ 264.227, 264.255, and 264.200.
- (8) The activities conducted by the applicant which require it to obtain a State RCRA permit, including a description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.
- (9) A specification of the hazardous wastes listed or designated under Part 261 of these regulations to be treated, stored, or disposed at the facility; an estimate of the quantity of such wastes to be treated, stored, or disposed annually; and a general description of the processes to be used for such wastes.
- (10) For existing HWM facilities, a scale drawing of the entire facility showing the location of all past, present, and future treatment, storage and disposal areas.
- (11) For existing HWM facilities, photographs of the entire facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.
- (12) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within one quarter mile of the facility property boundary.
- (13) For hazardous debris, a description of the debris category(ies) and containment category(ies) to be treated, stored, or disposed of at the facility.

(b) Additional information requirements for hazardous waste incinerator, boiler, or industrial furnace facilities.

In addition to the information required by § 100.40(a), applicants for a permit to operate a hazardous waste incinerator, boiler, or industrial furnace facility shall submit as part of Part A of a permit application, any relevant information bearing upon the qualifications of the facility's principals and supervisory or key employees to engage in the operation of a hazardous waste incinerator, boiler, or industrial furnace. This information shall include, but is not limited to:

- (1) The identification of the owner and operator of the facility, including all general partners of a partnership, any limited partner of a partnership, and stockholder of a corporation or any participant in any other type of business organization or entity who owns or controls, directly or indirectly more than five (5) percent of each partnership, corporation or other business organization and all officials of the facility who have direct management responsibility for the facility or responsibility for operation of the hazardous waste incinerator, boiler, or industrial furnace (the "principals and supervisory or key employees").
- (2) The identification of the person responsible for the overall operations of the facility (i.e., a plant manager, superintendent, or a person of similar responsibility) and the other supervisory or key employees who are or will be responsible for the operation of the hazardous waste incinerator, boiler, or industrial furnace.
- (3) Information concerning the technical qualifications and experience of the person responsible for the overall operations of the facility and the other supervisory or key employees responsible for the operation of the hazardous waste incinerator, boiler, or industrial furnace.
- (4) Information concerning any past State or Federal environmental violation involving the same business or another business with which the principals or supervisory or key employees were affiliated directly that occurred within five (5) years preceding the date of submission of the Part A application and which relate directly to violations that resulted in a compliance order or civil or administrative penalty (irrespective of whether the matter was disposed of by an adjudication or by a without prejudice settlement) or judgement of conviction whether entered after trial or a plea, either of guilt or nolo contendere or civil injunctive relief and involved the storage, disposal, transport, generation or any other hazardous waste management activities.
- (5) A list of all companies currently owned or operated in the past by the principals or supervisory or key employees identified in paragraphs (b)(1) or (b)(2) of this section that are or were directly or indirectly involved with any hazardous waste management activities.

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§ 100.41 STATE RCRA PERMIT. CONTENTS OF APPLICATION (PART B).

In accordance with § 100.11(b) and (c), all owners and operators of hazardous waste management facilities who are required to submit Part B of a permit application shall provide the information listed below.* Part B information requirements presented below reflect the standards promulgated in Parts 264 and 266 of these regulations. These information requirements are necessary in order for the Department to determine compliance with the Parts 264 and 266 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in Part B can not be provided to the extent required, the Director may make allowance for submission of such information on a case-by-case basis. Information required in Part B shall be submitted to the Director and signed in accordance with requirements in § 100.12. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer. For post-closure permits, only the information specified in § 100.41(b)(14) is required in Part B of the permit application. Part B of the RCRA application includes the following:

(a) **General information requirements.** The following information is required for all HWM facilities, except as § 264.1 provides otherwise:

- (1) A general description of the facility.
- (2) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Part 264 of these regulations.
- (3) A copy of the waste analysis plan required by § 264.13(b) and, if applicable, § 264.13(c).
- (4) A description of the security procedures and equipment required by § 264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement.
- (5) A copy of the general inspection schedule required by § 264.15(b) of these regulations. Include, where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1084, 264.1085, 264.1086, and 264.1088 of these regulations.
- (6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of Part 264, Subpart C.

* The Department recommends that potential applicants schedule a preapplication conference with the division to discuss information that will be required in the Part B Application.

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(7) A copy of the contingency plan required by Part 264, Subpart D. Include, where applicable, as part of the contingency plan, specific requirements in §§ 264.227, 264.255, and 264.200.

(8) A description of procedures, structures, or equipment used at the facility to:

- (i) Prevent hazards in unloading operations (for example, ramps, special forklifts);
- (ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);
- (iii) Prevent contamination of water supplies;
- (iv) Mitigate effects of equipment failure and power outages;
- (v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and
- (vi) Prevent releases to atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive or incompatible wastes as required to demonstrate compliance with § 264.17 including documentation demonstrating compliance with § 264.17(c).

(10) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals).

(11) Facility location information:

(i) [Reserved]

(ii) The owner or operator of a new hazardous waste management facility shall demonstrate compliance with the seismic standard [§ 264.18(a)(1)]. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided must be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted must show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3000 feet of a facility are present, based on data from:

(1) Published geologic studies.

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- (2) Aerial reconnaissance of the area within a five-mile radius from the facility.
- (3) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and
- (4) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 1,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 1,000 feet of such portions of the facility, data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 1,000 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of any faults found.

(iii) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain. This identification must indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where a FIA map is not available. For all treatment or storage facilities, and existing disposal facilities, information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) which must be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood. For existing disposal facilities, the information provided must also demonstrate compliance with § 264.18(b)(1) concerning the prevention of washout during any closure period or post-closure care period required under § 264.117.

(iv) Owners and operators of treatment or storage facilities, and existing disposal facilities located in the 100-year floodplain must provide the following information:

- (A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood.
- (B) Structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., floodwalls, dikes) at the facility and how these will prevent washout.

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(v) Existing treatment, storage, and disposal facilities NOT in compliance with § 264.18(b)(1) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the HWM facility in a safe manner as required to demonstrate compliance with § 264.16. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in § 264.16(a)(3).

(13) A copy of the closure plan and, where applicable, the post-closure plan required by §§ 264.112, 264.118 and 264.197. Include, where applicable, as part of the plans, specific requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601, and 264.603.

(14) For existing facilities, a copy of the recorded environmental covenant to document compliance with § 264.119.

(15) The most recent closure cost estimate for the facility prepared in accordance with § 266.12 and a copy of the financial assurance mechanism adopted in compliance with § 266.14.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with § 266.13 plus a copy of the financial assurance mechanism adopted in compliance with § 266.14.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of § 266.16. For a new facility, documentation showing the amount of insurance meeting the specification of § 266.16, that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in § 266.16.

(18) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet).^{*} Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of HWM facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

(i) Map scale and date.

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- (ii) 100-year floodplain area.
- (iii) Surface waters including intermittent streams.
- (iv) Surrounding land uses (residential, commercial, agricultural, recreational).
- (v) A wind rose (i.e., prevailing windspeed and direction).
- (vi) Orientation of the map (north arrow).
- (vii) Legal boundaries of the HWM facility site.
- (viii) Access control (fences, gates).
- (ix) Injection and withdrawal wells both on-site and off-site.
- (x) Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.).
- (xi) Barriers for drainage or flood control.
- (xii) Location of operational units within the HWM facility site, where hazardous waste is (or will be) treated, stored, or disposed (include equipment cleanup areas).

* For large HWM facilities, the Department will allow the use of other scales on a case by case basis.

(19) Applicants may be required to submit such information as may be necessary to enable the Director to carry out his/her duties under other applicable State laws.

(20) The Director may require a permittee or an applicant to submit information in order to establish permit conditions under §§ 100.43 and 100.45 of these regulations.

(21) For land disposal facilities, if a case-by-case extension has been approved under § 268.5 or 40 CFR § 268.5 or a petition has been approved under § 268.6, a copy of the notice of approval for the extension or petition is required.

(22) A stenographic or electronic record and a summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under § 100.11(f)(3) of these regulations.

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(b) **Specific information requirements.** The following additional information is required from owners or operators of specific types of HWM facilities that are used or to be used for storage or treatment:

(1) **For facilities that store containers of hazardous waste, except as otherwise provided in § 264.170:**

(i) A description of the containment system to demonstrate compliance with § 264.175. Show at least the following:

(A) Basic design parameters, dimensions, and materials of construction.

(B) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(C) Capacity of the containment system relative to the number and volume of containers to be stored.

(D) Provisions for preventing or managing run-on.

(E) How accumulated liquids can be analyzed and removed to prevent overflow.

(ii) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with § 264.175(c), including:

(A) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(B) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(iii) Sketches, drawings, or data demonstrating compliance with § 264.176 (location of buffer zone and containers holding ignitable or reactive wastes) and § 264.177(c) (location of incompatible wastes), where applicable.

(iv) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with § 264.177(a) and (b), and § 264.17(b) and (c).

(v) Information on air emission control equipment as required in § 100.41(b)(13).

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(2) For facilities that use tanks to store or treat hazardous waste, except as otherwise provided in § 264.190:

- (i) A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 264.191 and 264.192;
- (ii) Dimensions and capacity of each tank;
- (iii) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents);
- (iv) A diagram of piping, instrumentation, and process flow for each tank system;
- (v) A description of materials and equipment used to provide external corrosion protection, as required under § 264.192(a)(3)(ii);
- (vi) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with § 264.192(b), (c), (d), and (e);
- (vii) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of § 264.193(a), (b), (c), (d), (e), and (f);
- (viii) For tank systems for which a variance from the requirements of § 264.193 is sought (as provided by § 264.193(g);
 - (A) Detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water during the life of the facility, or
 - (B) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment.
- (ix) Description of controls and practices to prevent spills and overflows, as required under § 264.194(b); and
- (x) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of § 264.198 and § 264.199.
- (xi) Information on air emission control equipment as required in § 100.41(b)(13).

(3) For facilities that store, treat, or dispose of hazardous waste in surface impoundments, except as otherwise provided in § 264.1.

- (i) A list of the hazardous wastes placed or to be placed in each surface impoundment;
- (ii) Detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated, and maintained to meet the requirements of §§ 264.19, 264.221, 264.222, and 264.223 of these regulations, addressing the following items:
 - (A) The liner system (except for an existing portion of a surface impoundment). If an exemption from the requirement for a liner is sought as provided by § 264.221(b), submit detailed plans and engineering and hydrogeologic reports as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;
 - (B) The double liner and leak (leachate) detection, collection, and removal system, if the surface impoundment must meet the requirements of § 264.221(c) of these regulations. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by § 264.221(d), (e), or (f) of these regulations, submit appropriate information;
 - (C) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
 - (D) The construction quality assurance (CQA) plan if required under § 264.19 of these regulations;
 - (E) Proposed action leakage rate, with rationale, if required under § 264.222 of these regulations, and response action plan, if required under § 264.223 of these regulations;
 - (F) Prevention of overtopping; and
 - (G) Structural integrity of dikes;
- (iii) A description of how each surface impoundment, including the double liner system, leak detection system, cover system, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of § 264.226(a), (b), and (d) of these regulations. This information must be included in the inspection plan submitted under paragraph (a)(5) of this section;

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(iv) A certification by a qualified engineer which attests to the structural integrity of each dike, as required under § 264.226(c). For new units, the owner or operator must submit a statement by a qualified engineer that he/she will provide such a certification upon completion of construction in accordance with the plans and specifications;

(v) A description of the procedure to be used for removing a surface impoundment from service, as required under § 264.227(b) and (c). This information should be included in the contingency plan submitted under paragraph (a)(7) of this section;

(vi) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under § 264.228(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator must submit detailed plans and an engineering report describing how § 264.228(a)(2) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under paragraph (a)(13) of this section;

(vii) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how § 264.229 will be complied with;

(viii) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how § 264.230 will be complied with.

(ix) A waste management plan for Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of § 264.231. This submission must address the following items as specified in § 264.231:

(A) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(B) The attenuative properties of underlying and surrounding soils or other materials;

(C) The mobilizing properties of other materials co-disposed with these wastes; and

(D) The effectiveness of additional treatment, design, or monitoring techniques.

(x) Information on air emission control equipment as required in § 100.41(b)(13).

(4) For facilities that store or treat hazardous waste in waste piles, except as otherwise provided in § 264.1:

- (i) A list of hazardous wastes placed or to be placed in each waste pile;
- (ii) If an exemption is sought to § 264.251 and Subpart F of Part 264 as provided by § 264.250(c) or § 264.90(b)(2), an explanation of how the standards of § 264.250(c) will be complied with and detailed plans and an engineering report describing how the requirements of § 264.90(b)(2) will be met.
- (iii) Detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated, and maintained to meet the requirements of §§ 264.19, 264.251, 264.252, and 264.253 of these regulations, addressing the following items:
 - (A)(1) The liner system (except for an existing portion of a waste pile), if the waste pile must meet the requirements of § 264.251(a) of these regulations. If an exemption from the requirement for a liner is sought as provided by § 264.251(b) of these regulations, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;
 - (2) The double liner and leak (leachate) detection, collection, and removal system, if the waste pile must meet the requirements of § 264.251(c) of these regulations. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by § 264.251(d), (e), or (f) of these regulations, submit appropriate information;
 - (3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
 - (4) The construction quality assurance (CQA) plan if required under § 264.19 of these regulations;
 - (5) Proposed action leakage rate, with rationale, if required under § 264.252 of these regulations, and response action plan, if required under § 264.253 of these regulations;
- (B) Control of run-on;
- (C) Control of run-off;

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(D) Management of collection and holding units associated with run-on and run-off control systems; and

(E) Control of wind dispersal of particulate matter, where applicable;

(iv) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.254(a), (b), and (c) of these regulations. This information must be included in the inspection plan submitted under paragraph (a)(5) of this section;

(v) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

(vi) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of § 264.256 will be complied with;

(vii) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how § 264.257 will be complied with;

(viii) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under § 264.258(a). For any waste not to be removed from the waste pile upon closure, the owner or operator must submit detailed plans and an engineering report describing how § 264.310(a) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under paragraph (a)(13) of this section.

(ix) A waste management plan for Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a waste pile that is not enclosed (as defined in § 264.250(c)) is or will be designed, constructed, operated, and maintained to meet the requirements of § 264.259. This submission must address the following items as specified in § 264.259:

(A) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(B) The attenuative properties of underlying and surrounding soils or other materials;

(C) The mobilizing properties of other materials co-disposed with these wastes; and

(D) The effectiveness of additional treatment, design, or monitoring techniques.

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(5) **For facilities that incinerate, process or otherwise burn hazardous waste in incinerators, boilers, or industrial furnaces**, except as § 264.340 of these regulations provides otherwise, the applicant must fulfill the requirements of paragraphs (b)(5)(i), (ii) as applicable to the trial burn for metals emissions, (iii) as applicable to the trial burn for total chloride or chlorine emissions, (iv) and (v) of this section. All Applicants must follow the procedures of C.R.S. 25-15-Part 5 for obtaining a certificate of designation (CD) for a facility applying for a permit to burn hazardous waste under the requirements of Part 264-Subpart O.

(i) When seeking exemption under § 264.340(b) or (c) of these regulations (ignitable, corrosive or reactive wastes only):

(A) Documentation that the waste is listed as a hazardous waste in Part 261, Subpart D, of these regulations solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

(B) Documentation that the waste is listed as a hazardous waste in Part 261, Subpart D, of these regulations solely because it is reactive (Hazard Code R) for characteristics other than those listed in § 261.23(a)(4) and (5) of these regulations, and will not be burned when other hazardous wastes are present in the combustion zone; or

(C) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under Part 261, Subpart C, of these regulations; or

(D) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in § 261.23(a)(1), (2), (3), (6), (7), or (8) of these regulations, and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(ii) Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with § 100.28(h); or

(iii) **Waiver of trial burn for metals.** When seeking to be permitted under the Tier I (or adjusted Tier I) metals feed rate screening limits provided by § 264.344(b) and (e) of these regulations that control metals emissions without requiring a trial burn, the owner or operator must submit:

(A) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(B) Documentation of the concentration of each metal controlled by § 264.344(b) or (e) of these regulations in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;

(C) Documentation of how the applicant will ensure that the Tier I feed rate screening limits provided by § 264.344(b) or (e) of these regulations will not be exceeded during the averaging period provided by that paragraph;

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(D) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by § 264.344(b)(3) through (b)(5) of these regulations;

(E) Documentation of compliance with the provisions of § 264.344(b)(6) of these regulations, if applicable, for facilities with multiple stacks;

(F) Documentation that the facility does not fail the criteria provided by § 264.344(b)(7) of these regulations for eligibility to comply with the screening limits; and

(G) Proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feed stocks.

(iv) **Waiver of trial burn for HCL and Cl₂**. When seeking to be permitted under the Tier I (or adjusted Tier I) feed rate screening limits for total chloride and chlorine provided by § 264.345(b)(1) and (e) of these regulations that control emissions of hydrogen chloride (HCl) and chlorine gas (Cl₂) without requiring a trial burn, the owner or operator must submit:

(A) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(B) Documentation of the levels of total chloride and chlorine in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;

(C) Documentation of how the applicant will ensure that the Tier I (or adjusted Tier I) feed rate screening limits provided by § 264.345(b)(1) or (e) of these regulations will not be exceeded during the averaging period provided by that paragraph;

(D) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by § 264.345 of these regulations;

(E) Documentation of compliance with the provisions of § 264.345(b)(6) of these regulations, if applicable, for facilities with multiple stacks;

(F) Documentation that the facility does not fail the criteria provided by § 264.345(b)(3) of these regulations for eligibility to comply with the screening limits; and

(G) Proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feed stocks.

(v) The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance with §§ 264.342 through 264.345 of these regulations and § 100.28 of these regulations by providing the information required by § 100.28 of these

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regulations from previous compliance testing of the device in conformance with § 265.140 of these regulations, or from compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by § 100.28 of these regulations must be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating information must be provided. In addition, the following information shall be submitted for a waiver from any trial burn:

(A) An analysis of each waste or mixture of wastes to be burned including:

(1) Heat value of the waste in the form and composition in which it will be burned.

(2) Viscosity (if applicable), or description of physical form of the waste.

(3) An identification of any hazardous organic constituents listed in Part 261, Appendix VIII of these regulations, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of these regulations which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques.

(4) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

(5) A quantification of those hazardous constituents in the waste which may be designated as POHCs based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in §§ 264.342, 264.343, 264.344, and 264.345 of these regulations.

(B) A detailed engineering description of the incinerator, boiler, or industrial furnace, including:

(1) Manufacturer's name and model number of the incinerator, boiler, or industrial furnace.

(2) Type of incinerator, boiler, or industrial furnace.

(3) Linear dimension of incinerator, boiler, or industrial furnace unit including cross sectional area of combustion chamber.

(4) Description of auxiliary fuel system (type/feed).

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- (5) Capacity of prime mover (if applicable).
- (6) Description of automatic waste feed cutoff system(s).
- (7) Stack gas monitoring and pollution control monitoring system.
- (8) Nozzle and burner design (if applicable).
- (9) Construction materials.
- (10) Location and description of temperature, pressure, and flow indicating devices and control devices.

(C) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in § 100.41(b)(5)(v)(A). This analysis should specify the POHCs which the applicant has identified in the waste for which a permit is sought, and any differences from the POHCs in the waste for which burn data are provided.

(D) The design and operating conditions of the incinerator, boiler, or industrial furnace unit to be used, compared with that for which comparative burn data are available.

(E) A description of the results submitted from any previously conducted trial burn(s) including:

- (1) Sampling and analysis techniques used to calculate performance standards in §§ 264.342, 264.343, 264.344, and 264.345 of these regulations.
- (2) Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement).

(F) The expected incinerator, boiler, or industrial furnace operation information to demonstrate compliance with §§ 264.342, 264.343, 264.344, and 264.345 and § 264.346 of these regulations including but not limited to:

- (1) Expected carbon monoxide (CO) level in the stack exhaust gas.
- (2) Waste feed rate.
- (3) Combustion zone temperature.
- (4) Indication of combustion gas velocity.
- (5) Expected stack gas volume, flow rate, and temperature.
- (6) Computed residence time for waste in the combustion zone.

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- (7) Expected hydrochloric acid removal efficiency.
- (8) Expected fugitive emissions and their control procedures.
- (9) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(G) Such supplemental information as the Director finds necessary to achieve the purposes of this paragraph, including but not limited to the information required under § 100.28(h), the Pre-Trial Burn MPHRA.

(H) Waste analysis data, including that submitted in paragraph (b)(5)(v)(A), sufficient to allow the Director to specify as permit Principal Organic Hazardous Constituents (permit POHCs) those constituents for which destruction and removal efficiencies will be required.

(vi) The Director shall approve a permit application without a trial burn if he/she finds that:

(A) The wastes are sufficiently similar; and

(B) The incinerator, boiler, or industrial furnace units are virtually identical and at the same facility, and the data from other trial burns, operational burns, or compliance tests at virtually identical units are adequate to specify (under § 264.346 of these regulations) at virtually identical operating conditions that will ensure that the performance standards in §§ 264.342, 264.343, 264.344, and 264.345 and operating requirements in § 264.346 of these regulations will be met by the incinerator, boiler, or industrial furnace.

NOTE: The Applicant must refer to 25-15-Part 5, C.R.S., for the procedures to obtain a certificate of designation (CD) for a facility applying for a permit to burn hazardous waste under the requirements of Part 264-Subpart O.

(vii) **Alternative HC limit for industrial furnaces with organic matter in raw materials.** Owners and operators of industrial furnaces requesting an alternative HC limit under § 264.342(h) of these regulations shall submit the following information at a minimum:

(A) Documentation that the furnace is designed and operated to minimize HC emissions from fuels and raw materials;

(B) Documentation of the proposed baseline flue gas HC (and CO) concentration, including data on HC (and CO) levels during tests when the facility produced normal products under normal operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;

(C) Test burn protocol to confirm the baseline HC (and CO) level including information on the type and flow rate of all feedstreams, point of introduction of all feedstreams, total organic carbon content (or other appropriate measure of organic

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content) of all nonfuel feedstreams, and operating conditions that affect combustion of fuel(s) and destruction of hydrocarbon emissions from nonfuel sources;

(D) Trial burn plan to:

(1) Demonstrate that flue gas HC (and CO) concentrations when burning hazardous waste do not exceed the baseline HC (and CO) level; and

(2) Identify the types and concentrations of organic compounds listed in Appendix VIII, Part 261 of these regulations, that are emitted when burning hazardous waste in conformance with procedures prescribed by the Director;

(E) Implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline HC level and procedures to periodically confirm the baseline HC level; and

(F) Such other information as the Director finds necessary to achieve the purposes of this paragraph.

(viii) **Alternative metals implementation approach.** When seeking to be permitted under an alternative metals implementation approach under § 264.344(f) of these regulations, the owner or operator must submit documentation specifying how the approach ensures compliance with the metals emissions standards of § 264.344(c) or (d) of these regulations and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide such other information that the Director finds necessary to achieve the purposes of this paragraph.

(ix) **Automatic waste feed cutoff system.** Owners and operators shall submit information describing the automatic waste feed cutoff system, including any pre-alarm systems that may be used.

(x) **Direct transfer.** Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in § 264.346(f) of these regulations) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by § 264.346(f) of these regulations.

(xi) **Residues.** Owners and operators that claim that their residues are excluded from regulation under the provisions of § 264.347 of these regulations must submit information adequate to demonstrate conformance with those provisions.

(xii) **Public participation requirements at pre-application.**

See § 100.11(f) for the pre-application public meeting and notice requirements.

(xiii) **Information repository.**

(A) At the time an application for a State RCRA permit for an incineration, boiler, or industrial furnace facility is submitted, the Director will require the applicant to

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establish and maintain an information repository. The purpose of this provision is to make accessible to interested persons documents, reports and other public information developed pursuant to activities required under Parts 264 and 100.

(B) The information repository shall contain all documents, reports, data, and other information deemed sufficient by the Director for public understanding of the plans, activities, and operations of any hazardous waste facility that is operating or seeking a permit. The applicant shall also place a copy of the application on file at the local health department, or other location agreed upon by the Director and local jurisdiction to be accessible to the public, such as an information repository established by the Director for the proposed incineration, boiler, or industrial furnace facility.

(C) The information repository shall be located and maintained at a location chosen by the facility that is within reasonable distance of the facility, and within a structure with suitable public access, such as a county library, courthouse, or local government building. However, if the Director determines the location unsuitable for allowing appropriate access to interested persons, the Director may specify a more appropriate location. The repository shall be open to the public during reasonable hours, or accessible by appointment. The information repository shall be located to provide reasonable access to a photocopy machine or alternative means for people to obtain copies of documents at reasonable cost.

(D) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(E) Information regarding opportunities and procedures for public involvement, including the opportunity to be put on the facility mailing list, shall be made available at the repository.

(F) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director, unless existing State regulations require the State to maintain the information repository.

(xiv) Development of a Community Involvement Plan.

The Applicant for a State RCRA permit for a hazardous waste incineration, boiler, or industrial furnace facility must develop a Community Involvement Plan (CIP) for the Director's review and approval, and include it as part of the facility's Part B application. The purpose of the CIP is to ensure that the local community is informed regarding technical and regulatory matters related to the proposed incineration, boiler, or industrial furnace facility, and ensure that a mechanism is in place for the community to obtain information related to the proposed facility and voice their comments and concerns to the facility and regulatory agencies as these are identified.

(6) For facilities that use land treatment to dispose of hazardous waste, except as otherwise provided in § 264.1:

(i) A description of plans to conduct a treatment demonstration as required under § 264.272. The description must include the following information:

(A) The wastes for which the demonstration will be made and the potential hazardous constituents in the wastes;

(B) The data sources to be used to make the demonstration (e.g., literature, laboratory data, field data, or operating data);

(C) Any specific laboratory or field test that will be conducted, including

(1) the type of test (e.g., column leaching, degradation);

(2) materials and methods, including analytical procedures;

(3) expected time for completion;

(4) characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices;

(ii) A description of a land treatment program, as required under § 264.271. This information must be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program must address the following items:

(A) The wastes to be land treated;

(B) Design measures and operating practices necessary to maximize treatment in accordance with § 264.273(a) including:

(1) Waste application method and rate;

(2) Measures to control soil pH;

(3) Enhancement of microbial or chemical reactions;

(4) Control of moisture content;

(C) Provisions for unsaturated zone monitoring, including:

(1) Sampling equipment, procedures, and frequency;

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- (2) Procedures for selecting sampling locations;
- (3) Analytical procedures;
- (4) Chain of custody control;
- (5) Procedures for establishing background values;
- (6) Statistical methods for interpreting results;
- (7) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for such selection in § 264.278(a);

(D) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to § 264.13;

(E) The proposed dimensions of the treatment zone;

(iii) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of § 264.273. This submission must address the following items:

(A) Control of run-on;

(B) Collection and control of run-off;

(C) Minimization of run-off of hazardous constituents from the treatment zone;

(D) Management of collection and holding facilities associated with run-on and run-off control systems;

(E) Periodic inspection of the unit. This information should be included in the inspection plan submitted under paragraph (a)(5) of this section;

(F) Control of wind dispersal of particulate matter, if applicable;

(iv) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under § 264.276(a) will be conducted including:

(A) Characteristics of the food-chain crop for which the demonstration will be made;

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(B) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(C) Procedures for crop growth, sample collection, sample analysis, and data evaluation;

(D) Characteristics of the comparison crop including the location and conditions under which it was or will be grown.

(v) If food-chain crops are to be grown, and cadmium is present in the land-treated waste, a description of how the requirements of § 264.276(b) will be complied with;

(vi) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under § 264.280(a)(8) and § 264.280(c)(2). This information should be included in the closure plan and, where applicable, the post-closure care plan submitted under paragraph (a)(13) of this section;

(vii) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of § 264.281 will be complied with;

(viii) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how § 264.282 will be complied with.

(ix) A waste management plan for Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how the land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of § 264.283:

(A) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(B) The attenuative properties of underlying and surrounding soils or other materials;

(C) The mobilizing properties of other materials co-disposed with these wastes; and

(D) The effectiveness of additional treatment, design, or monitoring techniques.

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(7) For facilities that dispose of hazardous waste in landfills, except as otherwise provided in § 264.1:

- (i) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;
- (ii) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated, and maintained to meet the requirements of §§ 264.19, 264.301, 264.302, and 264.303 of these regulations, addressing the following items:
 - (A)(1) The liner system (except for an existing portion of a landfill), if the landfill must meet the requirements of § 264.301(a) of these regulations. If an exemption from the requirement for a liner is sought as provided by § 264.301(b) of these regulations, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;
 - (2) The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of § 264.301(c) of these regulations. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by § 264.301(d), (e), or (f) of these regulations, submit appropriate information;
 - (3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
 - (4) The construction quality assurance (CQA) plan if required under § 264.19 of these regulations;
 - (5) Proposed action leakage rate, with rationale, if required under § 264.302 of these regulations, and response action plan, if required under § 264.303 of these regulations;
- (B) Control of run-on;
- (C) Control of run-off;
- (D) Management of collection and holding facilities associated with run-on and run-off control systems; and

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(E) Control of wind dispersal of particulate matter, where applicable.

(iii) If an exemption from Subpart F of Part 264 is sought as provided by § 264.90(b)(2), the owner or operator must submit detailed plans and an engineering report describing how the requirements of § 264.90(b)(2) will be complied with.

(iv) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.303(a), (b), and (c) of these regulations. This information must be included in the inspection plan submitted under paragraph (a)(5) of this section;

(v) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with § 264.310(a), and a description of how each landfill will be maintained and monitored after closure in accordance with § 264.310(b). This information should be included in the closure and post-closure plans submitted under paragraph (a)(13) of this section.

(vi) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of § 264.312 will be complied with;

(vii) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how § 264.313 will be complied with;

(viii) If bulk or non-containerized liquid waste or waste containing free liquids is to be landfilled, an explanation of how the requirements of § 264.314 will be complied with;

(ix) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of § 264.315 or § 264.316, as applicable, will be complied with.

(x) A waste management plan for Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of § 264.317. This submission must address the following items as specified in § 264.317:

(A) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(B) The attenuative properties of underlying and surrounding soils or other materials;

(C) The mobilizing properties of other materials co-disposed with these wastes; and

(D) The effectiveness of additional treatment, design, or monitoring techniques.

(8) Exposure information

(i) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, treats or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(A) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (A); and

(C) The potential magnitude and nature of the human exposure resulting from such releases.

(ii) By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the information required in paragraph (8)(i) of this section.

(9) Special Part B information requirements for drip pads.

Except as otherwise provided by § 264.1 of these regulations, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

(i) A list of hazardous wastes placed or to be placed on each drip pad.

(ii) If an exemption is sought to Subpart F of Part 264 of these regulations, as provided by § 264.90 of these regulations, detailed plans and an engineering report describing how the requirements of § 264.90(b)(2) of these regulations will be met.

(iii) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated, and maintained to meet the requirements of § 264.573 of these regulations, including the as-built drawings and specifications. This submission must address the following items as specified in § 264.571 of these regulations:

(A) The design characteristics of the drip pad;

(B) The liner system;

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- (C) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;
- (D) Practices designed to maintain drip pads;
- (E) The associated collection system;
- (F) Control of the run-on to the drip pad;
- (G) Control of the run-off from the drip pad;
- (H) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;
- (I) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned.
- (J) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;
- (K) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and non-pressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;
- (L) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;
- (M) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals.
- (N) A description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.573 of these regulations. This information should be included in the inspection plan submitted under § 100.41(a)(5) of these regulations.

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(O) A certification signed by an independent, qualified, registered engineer, stating that the drip pad design meets the requirements of paragraphs (a) through (f) of § 264.573 of these regulations.

(P) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under § 264.575(a) of these regulations. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how § 264.310(a) and (b) of these regulations will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under § 100.41(a)(13)

(10) Except as otherwise provided in § 264.600, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units must provide the following additional information:

(i) A detailed description of the unit being used or proposed for use, including the following:

(A) Physical characteristics, materials of construction, and dimensions of the unit:

(B) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of § 264.601 and § 264.602; and

(C) For disposal units, a detailed description of plans to comply with the post-closure requirements of § 264.603.

(ii) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of § 264.601. If the applicant can demonstrate that he/she does not violate the environmental performance standards of § 264.601 and the Director agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

(iii) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.

(iv) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.

(v) Any additional information determined by the Director to be necessary for evaluation of compliance of the unit with the environmental performance standards of § 264.601 of these regulations.

(11) Specific Part B information requirements for process vents.

Except as otherwise provided in § 264.1, owners and operators of facilities that have process vents to which Subpart AA of Part 264 applies must provide the following additional information:

(i) For facilities that cannot install a closed-vent system and control device to comply with the provisions of Part 264 Subpart AA on the effective date that the facility becomes subject to the provisions of Part 264 or 265 Subpart AA, an implementation schedule as specified in § 264.1033(a)(2).

(ii) Documentation of compliance with the process vent standards in § 264.1032, including:

(A) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).

(B) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or concentrations) that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(C) Information and data used to determine whether or not a process vent is subject to the requirements of § 264.1032.

(iii) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of § 264.1032, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in § 264.1035(b)(3).

(iv) Documentation of compliance with § 264.1033, including:

(A) A list of all information references and sources used in preparing the documentation.

(B) Records, including the dates, of each compliance test required by § 264.1033(k).

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(C) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Department that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

(D) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(E) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless the total organic emission limits of § 264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent.

(12) Specific part B information requirements for equipment.

Except as otherwise provided in § 264.1, owners and operators of facilities that have equipment to which Subpart BB of Part 264 applies must provide the following additional information:

(i) For each piece of equipment to which Subpart BB of Part 264 applies:

(A) Equipment identification number and hazardous waste management unit identification.

(B) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(C) Type of equipment (e.g., a pump or pipeline valve).

(D) Percent by weight total organics in the hazardous waste stream at the equipment.

(E) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(F) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

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(ii) For facilities that cannot install a closed-vent system and control device to comply with the provisions of Part 264 Subpart BB on the effective date that the facility becomes subject to the provisions of Part 264 or 265 Subpart BB, an implementation schedule as specified in § 264.1033(a)(2).

(iii) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in § 264.1035(b)(3).

(iv) Documentation that demonstrates compliance with the equipment standards in §§ 264.1052 to 264.1059. This documentation shall contain the records required under § 264.1064. The Department may request further documentation before deciding if compliance has been demonstrated.

(v) Documentation to demonstrate compliance with § 264.1060 shall include the following information:

(A) A list of all information references and sources used in preparing the documentation.

(B) Records, including the dates, of each compliance test required by § 264.1033(j).

(C) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Department that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

(D) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(E) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

(13) Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers.

(i) Except as otherwise provided in § 264.1 of these regulations, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of Part 264, Subpart CC of these regulations shall provide the following additional information:

(A) Documentation for each floating roof cover installed on a tank subject to § 264.1084(d)(1) or § 264.1084(d)(2) of these regulations that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in § 264.1084(e)(1) or § 264.1084(f)(1) of these regulations.

(B) Identification of each container area subject to the requirements of Part 264, Subpart CC of these regulations and certification by the owner or operator that the requirements of this subpart are met.

(C) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of § 264.1084(d)(5) or § 264.1086(e)(1)(ii) of these regulations that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(D) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of § 264.1085(c) of these regulations that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in § 264.1085(c)(1) of these regulations.

(E) Documentation for each closed-vent system and control device installed in accordance with the requirements of § 264.1087 of these regulations that includes design and performance information as specified in § 100.41(b)(11)(iii) and (iv) of these regulations.

(F) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

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(G) When an owner or operator of a facility subject to Part 265, Subpart CC of these regulations cannot comply with Part 264, Subpart CC of these regulations by the date of permit issuance, the schedule of implementation required under § 265.1082 of these regulations.

(14) Part B information requirements for post-closure permits. For post-closure permits, the owner or operator is required to submit only the information specified in §§ 100.41(a)(1), (4), (5), (6), (11), (13), (14), (16), and (18), (c), and (d), unless the Director determines that additional information from §§ 100.41(a), 100.41(b)(2), 100.41(b)(3), 100.41(b)(4), 100.41(b)(6), or 100.41(b)(7) is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in § 100.10(d).

(c) **Additional information requirements.** The following additional information regarding protection of ground water is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in § 264.90(b) of these regulations:

(1) A summary of the ground-water monitoring data obtained during the interim status period under §§ 265.90 through 265.94, where applicable.

(2) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including ground-water flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area).

(3) On the topographic map required under paragraph (a)(19) of this section, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under § 264.95, the proposed location of ground-water monitoring wells as required under § 264.97 and, to the extent possible, the information required in paragraph (c)(2) of this section;

(4) A description of any plume of contamination that has entered the ground water from a regulated unit at the time that the application is submitted that:

(i) Delineates the extent of the plume on the topographic map required under paragraph (a)(19) of this section;

(ii) Identifies the concentration of each Appendix IX, of Part 264 of these regulations, constituent throughout the plume or identifies the maximum concentrations of each Appendix IX constituent in the plume.

(5) Detailed plans and an engineering report describing the proposed ground-water monitoring program to be implemented to meet the requirements of § 264.97;

(6) If the presence of hazardous constituents has not been detected in the ground water at the time of permit application, the owner or operator must submit sufficient information,

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supporting data, and analyses to establish a detection monitoring program which meets the requirements of § 264.98. This submission must address the following items as specified under § 264.98:

- (i) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;

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(ii) A proposed ground-water monitoring system;

(iii) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

(iv) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(7) If the presence of hazardous constituents has been detected in the ground water at the point of compliance at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of § 264.99. Except as provided in § 264.98(h)(5), the owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of § 264.100, unless the owner or operator obtains written authorization in advance from the Department to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with § 264.99, the owner or operator must address the following items:

(i) A description of the wastes previously handled at the facility;

(ii) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(iii) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with §§ 264.97 and 264.99;

(iv) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in § 264.94(a), including a justification for establishing any alternate concentration limits;

(v) Detailed plans and an engineering report describing the proposed ground-water monitoring system, in accordance with the requirements of § 264.97; and

(vi) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(8) If hazardous constituents have been measured in the ground water which exceed the concentration limits established under § 264.94 Table 1, or if ground-water monitoring conducted at the time of permit application under § 265.90 through § 265.94 at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over background concentrations, the owner or operator must submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of § 264.100. However, an owner or operator is not required to submit information to establish a corrective action program if he/she demonstrates to the Director that alternate concentration limits will protect human health and the environment after considering the criteria listed in § 264.94(b). An owner or operator

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who is not required to establish a corrective action program for this reason must instead submit sufficient information to establish a compliance monitoring program which meets the requirements of § 264.99 and paragraph (c)(6) of this section. To demonstrate compliance with § 264.100, the owner or operator must address, at a minimum, the following items:

- (i) A characterization of the contaminated ground water, including concentrations of hazardous constituents;
- (ii) The concentration limit for each hazardous constituent found in the ground water as set forth in § 264.94;
- (iii) Detailed plans and an engineering report describing the corrective action to be taken; and
- (iv) A description of how the groundwater monitoring program will assess the adequacy of the corrective action.
- (v) The permit may contain a schedule for submittal of the information required in paragraphs (c)(8)(iii) and (iv) provided the owner or operator obtains written authorization from the Department prior to submittal of the complete permit application.

(d) Information requirements for solid waste management units.

- (1) The following information is required for each solid waste management unit at a facility seeking a permit:
 - (i) The location of the unit on the topographic map required under paragraph (a)(18) of this section.
 - (ii) Designation of the type of unit.
 - (iii) General dimensions and structural description (supply any available drawings).
 - (iv) When the unit was operated.
 - (v) Specification of all wastes that have been managed at the unit, to the extent available.
- (2) The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

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(3) The owner/operator must conduct and provide the results of sampling and analysis of groundwater, landsurface, and subsurface strata, surface water, or air, which may include the installation of wells, where the Director ascertains it is necessary to complete a RCRA Facility Assessment that will determine if more complete investigation is necessary.

§ 100.42 GENERALLY APPLICABLE PERMIT CONDITIONS.

The following conditions apply to all State RCRA permits. Conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

(a) **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Hazardous Waste Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See § 100.22).

(b) **Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) **Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) **Duty to mitigate.** The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) **Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

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(g) **Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) **Duty to provide information.** The permittee shall furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) **Inspection and entry.** The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- (1) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Hazardous Waste Act, any substances or parameters at any location.

(j) **Monitoring and records.**

- (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by § 264.73(b)(9) of these regulations, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification or application. This period may be extended by request of the Director at any time. The permittee shall maintain records from all ground monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.
- (3) Records of monitoring information shall include:
 - (i) The date, exact place, and time of sampling or measurements;

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- (ii) The individual(s) who performed the sampling or measurements;
- (iii) The date(s) analyses were performed;
- (iv) The individuals(s) who performed the analyses;
- (v) The analytical techniques or methods used; and
- (vi) The results of such analyses.

(k) **Signatory requirement.** All applications, reports, or information submitted to the Director shall be signed and certified. (See §§ 100.12 and 100.44)

(l) **Reporting requirements -**

(1) **Planned changes.** The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. For a new HWM facility, the permittee may not commence treatment, storage, or disposal of hazardous waste; and for a facility being modified the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until;

(i) The permittee has submitted to the Director by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(ii)(A) The Director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(B) Within 15 days of the date of submission of the letter in paragraph (1)(1)(i) of this section, the permittee has not received notice from the Director of his or her intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

(2) **Anticipated noncompliance.** The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in §§ 100.61 and 100.63, until:

(i) The permittee has submitted to the Director by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

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(ii)(A) The Director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(B) Within 15 days of the date of submission of the letter in paragraph (1)(2)(i) of this section, the permittee has not received notice from the Director of his or her intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

(3) **Transfers.** This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the State Hazardous Waste Act. (See § 100.62; in some cases, modification or revocation and reissuance is mandatory.)

(4) **Monitoring reports.** Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) **Compliance schedules.** Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) **Twenty-four hour reporting.** The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The following shall be included as information which must be reported orally within 24 hours under this section:

(i) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

(ii) Any information of a release or discharge of hazardous waste, or of a fire or explosion from a HWM facility, which could threaten the environment or human health outside the facility. The description of the occurrence and its cause shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident;

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(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

The Director may waive the five day written notice requirement in favor of a written report within fifteen days.

(7) **Other noncompliance.** The permittee shall report all instances of noncompliance not reported under paragraphs (1)(4), (5), and (6), of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(6) of this section.

(8) **Other information.** Where the permittee becomes aware that he/she failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, he/she shall promptly submit such facts or information.

(m) **Additional reporting requirements.** The following reports required by Part 264 shall be submitted in addition to those required by § 100.42(1):

(1) **Manifest discrepancy report:** if a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee must submit a letter report including a copy of the manifest to the Director. (See § 264.72)

(2) **Unmanifested waste report:** must be submitted to the Director within 15 days of receipt of unmanifested waste. (See § 264.76.)

(3) **Annual report:** an annual report must be submitted covering facility activities during the previous calendar year, if required by the Director under § 264.75.

(n) **Information repository.** The Director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in § 100.506(f)(1). The information repository will be governed by the provisions in § 100.506 of these regulations.

§ 100.43 ESTABLISHING PERMIT CONDITIONS FOR INDIVIDUAL PERMITS.

(a) General.

(1) In addition to conditions required in all permits for the State hazardous waste program under § 100.42, the Director shall establish conditions in individual permits, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the State Hazardous Waste Act and these regulations. In satisfying this provision, the Director may incorporate applicable requirements of Parts 264 and 266 through 268 of these regulations directly into the permit or establish other permit conditions that are based on Parts 264 and 266 through 268. An applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 100.61. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

(2) Each permit issued under Part 100 of these regulations shall contain such terms and conditions as the Director determines necessary to protect human health and the environment.

(b) Requirements for recording and reporting of monitoring results.

All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Parts 264 and 266 of these regulations. Reporting shall be no less frequent than specified in the above regulations.

(c) Schedules of Compliance. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the State Hazardous Waste Act and these regulations.

(1) **Time for compliance.** Any schedules of compliance under this section shall require compliance as soon as possible.

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(2) **Interim dates.** Except as provided in paragraph (d)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.*

* Examples of interim requirements include: (1) let a contract for construction of required facilities; (2) commence construction of required facilities; (3) complete construction of required facilities.

(3) **Reporting.** A RCRA permit shall be written to require that no later than 14 days following such interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements.

(d) **Alternative schedules of compliance.** A RCRA permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste and (1) for treatment and storage HWM facilities, closing pursuant to applicable requirements, and (2) for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements; and (3) by plugging and abandonment for UIC wells) rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

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(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements,

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (d)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation.

(e) **Variances.** The Department in its discretion may grant a low hazard variance from a provision of these regulations based upon a determination that variations in Colorado such as climate, geology, or such other factors relevant to the management of hazardous waste minimize the risks of handling waste. No variance will be granted unless it is, at least, consistent with the purposes and requirements of these regulations, including protection of public health and the environment, equal to and as stringent in effect as that provided in these regulations, and will not cause a violation of any provision of C.R.S. 1973, 25-15-101 et seq. or any other applicable law.

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§ 100.44 REPORTS

(a) **Signatory requirement.** All reports required by permits and other information requested by the Director shall be signed by a person described in § 100.12(c), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described in § 100.12(c);
- (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility; and
- (3) The written authorization is submitted to the Director.

(b) **Changes to authorization.** If an authorization under paragraph (a) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (a) of this section must be submitted to the Director prior to or together with any reports or information to be signed by an authorized representative.

§ 100.45 DURATION OF PERMITS

(a) RCRA permits shall be effective for a fixed term not to exceed 10 years. (See also § 100.23 (interim permits for UIC wells)).

(b) Except as provided in § 100.61, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

(d) Each permit for a land disposal facility shall be reviewed by the Director five years after the date of permit issuance or reissuance and shall be modified as necessary as provided in § 100.61.

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§ 100.46 EFFECT OF A PERMIT.

(a) Compliance with a RCRA permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

(1) Become effective by statute;

(2) Are promulgated under Part 268 of these regulations restricting the placement of hazardous wastes in or on the land;

(3) Are promulgated under Part 264 of these regulations regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of § 100.63 Class 1* permit modifications; or

(4) Are promulgated under Subparts AA, BB, or CC of Part 265 of these regulations limiting air emissions.

(b) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, State or local law or regulations.

§ 100.47 REFERENCES.

(a) When used in Part 100 of these regulations, the following publications are incorporated by reference: (See § 260.11 References)

100.5 PERMIT REVIEW AND ISSUANCE

§ 100.500 REVIEW FOR COMPLETENESS

(a) The Director shall review for completeness every application for a State RCRA permit. Each application for a State-issued permit, should be reviewed for completeness by the Director within 60 days of its receipt. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete in a notice of deficiency (NOD), which shall be sent promptly to the applicant. The NOD shall specify a date for submitting the necessary information. Information submitted in response to the NOD should be reviewed within 60 days of its submission. The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. The Director shall notify the applicant that the application is complete when he or she determines that the information required by § 100.4 has been submitted. After the application is completed, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(b) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision including C.R.S. 25-15-308.

(c) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

(d) The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in paragraph (a) of this section.

§ 100.501 PROJECT DECISION SCHEDULE

For each application from a major new HWM facility, the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing, and

(d) Render a final permit decision.

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§ 100.502 DRAFT PERMITS

(a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Director tentatively decides to deny the permit application, he or she should issue a notice of intent to deny within 6 months of receipt of a completed application. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. See § 100.502(d). If the Director's final decision (§ 100.511) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (c) of this section.

(c) If the Director decides to prepare a draft permit, he or she should prepare a draft permit within 6 months of receipt of a completed application. The draft permit shall contain the following information:

(1) All conditions under § 100.42 (Generally Applicable Permit Conditions).

(2) All applicable conditions under § 100.43 (Establishing Permit Conditions for Individual Permits).

(d) All draft permits prepared under this section shall be accompanied by a statement of basis (§ 100.504) or fact sheet (§ 100.503), shall be based on the administrative record (§ 100.505), publicly noticed (§ 100.506), and made available for public comment (§ 100.507). The Director shall give notice of opportunity for a public hearing (§ 100.508), render a final decision (§ 100.511), and respond to comments (§ 100.512).

§ 100.503 FACT SHEET

(a) A fact sheet shall be prepared for every draft permit for a major HWM facility or activity, and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

(2) The type and quantity of wastes which are proposed to be or are being treated, stored, or disposed.

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- (3) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 100.505;
- (4) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (5) A description of the procedures for reaching a final decision on the draft permit including:
 - (i) The beginning and ending dates of the comment period under § 100.506 and the address where comments will be received;
 - (ii) Procedures for requesting a hearing and the nature of that hearing; and
 - (iii) Any other procedures by which the public may participate in the final decision.
- (6) Name and telephone number of a person to contact for additional information.

§ 100.504 STATEMENT OF BASIS

The Director shall prepare a statement of basis for a draft permit for which a fact sheet under § 100.503 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

§ 100.505 ADMINISTRATIVE RECORD FOR DRAFT PERMITS.

- (a) The provisions of a draft permit prepared under § 100.502 shall be based on the administrative record defined in this section.
- (b) For preparing a draft permit under § 100.502, the record should consist of:
 - (1) The application, if required, and any supporting data furnished by the applicant;
 - (2) The draft permit or notice of intent to deny the application or to terminate the permit;
 - (3) The statement of basis (§ 100.504) or fact sheet (§ 100.503);
 - (4) All documents cited in the statement of basis or fact sheet; and

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(5) Other non-confidential documents contained in the supporting file for the draft permit, e.g., memorandums of meetings and records of communication.

(c) Material readily available at the Department or published material that is generally available, and that is included in the administrative record under paragraph (b) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(d) This section applies to all draft permits when public notice was given after the effective date of these regulations.

§ 100.506 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD.

(a) Scope.

(1) The Director shall give public notice that the following actions have occurred:

(i) A permit application has been tentatively denied under § 100.502;

(ii) A draft permit has been prepared under § 100.502, and if applicable,

(iii) A hearing has been scheduled under § 100.508.

(iv) A permit application for a hazardous waste incineration, boiler, or industrial furnace facility has been submitted.

(A) The Director shall provide public notice that a Part A and Part B permit application for an incineration, boiler, or industrial furnace facility has been submitted to the Department, and is available for review. The requirements of this section apply to permit renewals under § 100.11(e) as well as to original applications.

(B) The notice shall be published within 10 working days after the application is received by the Director. The notice must include:

(1) The name and telephone number of the applicant's contact person;

(2) The name and telephone number of the Department's contact office, and a mailing address to which comments and inquiries may be directed throughout the permit review process;

(3) An address to which people can write in order to be put on the facility mailing list;

(4) Location(s) where copies of the permit application and any supporting documents can be viewed and copied;

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(5) A brief description of the facility and proposed operations, including the address or a map (i.e., a sketched or copied street map) of the facility location on the front page of the notice; and

(6) The date the application was submitted.

(C) Concurrent with the notice required under this subpart, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the permitted facility or at the Department. For facilities establishing an information repository pursuant to § 100.41(b)(5)(xiii) of these regulations, the applicant shall place a copy of the permit application or modification request, and any supporting documents in the information repository.

(D) The requirements of this section do not apply to permit modifications under § 100.63 of these regulations, and/or applications that are submitted for the sole purpose of conducting post-closure activities at a facility.

(v) A comment period on permit application for a hazardous waste incineration facility will be opened.

(A) The Director shall provide public notice of a comment period on the Part A and Part B permit application for a hazardous waste incineration, boiler, or industrial furnace facility prior to issuance of a Notice of Completeness under § 100.500. The comment period will be intended to address the trial burn plan and Phase I Pre-trial burn Multi-Pathway risk assessment in the application. The comment period will be open for at least 30 days, and notification to the public will be given at least 14 days prior to the beginning of the comment period. The opening and closing dates of the comment period will be specified in the notice.

(B) The Director shall prepare a responsiveness summary addressing the comments received on the application, and mail this summary to all parties who provided written comments on the application.

(C) Nothing in this section shall prevent interested parties from submitting information to the Director prior to the comment periods held under this section. However, in order to ensure that comments are included in the responsiveness summary, the comments must be submitted in writing during the announced public comment period.

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(vi) A schedule has been established for the trial burn for a hazardous waste incineration, boiler, or industrial furnace facility.

The Director must send a notice to all persons on the facility mailing list as specified in § 100.506(c) and to the appropriate units of State and local government as specified in § 100.506(c) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(A) This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the Department.

(B) This notice must contain:

- (1) The name and telephone number of applicant's contact person;
- (2) The name and telephone number of the Department's contact office;
- (3) Location where the approved trial burn plan and any supporting documents can be reviewed and copied; and
- (4) An expected time period for commencement and completion of the trial burn.

(vii) A permit application for a hazardous waste facility, other than a hazardous waste incineration, boiler, or industrial furnace facility as addressed in paragraph (a)(1)(iv) of this section, has been submitted.

(A) The Director shall provide public notice as set forth in § 100.506(c)(1)(iv), and notice to appropriate units of State and local government as set forth in § 100.506(c)(1)(v), that a part B permit application has been submitted to the Department and is available for review. The requirements of paragraph (a)(1)(vii) of this section apply to all RCRA part B applications seeking initial permits for hazardous waste management units (other than hazardous waste incinerators, boilers, or industrial furnaces) and to RCRA part B applications seeking renewal of permits for such units under § 100.11(e).

(B) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

- (1) The name and telephone number of the applicant's contact person;
- (2) The name and telephone number of the Department's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

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(3) An address to which people can write in order to be put on the facility mailing list;

(4) The location where copies of the permit application and any supporting documents can be viewed and copied;

(5) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

(6) The date that the application was submitted.

(C) Concurrent with the notice required under paragraph (a)(1)(vii) of this section, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the Department.

(D) The requirements of paragraph (a)(1)(vii) of this section do not apply to permit modifications under § 100.63 of these regulations or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 100.511. Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit action.

(b) **Timing.**

(1) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application required under paragraph (a) of this section, shall allow at least 45 days for public comment.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

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(c) **Methods.** Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

(i) The applicant;

(ii) Any other agency which the Director knows has issued or is required to issue a UIC, PSD, NPDES or 404 permit for the same facility or activity (including EPA when the draft permit is prepared by the state).

(iii) Federal and State agencies with jurisdiction over fish and wildlife resources, the Advisory Council on Historic Preservation, State Historic Preservation Officers and other appropriate government authorities, including any affected States;

(iv) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press, publication on the Department's and the Division's website, and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.)

(v)(A) Local government having jurisdiction over the area where the facility is proposed to be located; and

(B) State agency having any authority under State law with respect to the construction or operation of such facility.

(2) Publication of a notice on the Department's and the Division's website.

(3) Publication on the Department's and Division's Facebook page.

(4) Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(5) Any other method deemed reasonable and necessary to give actual notice of the action in question to the persons potentially affected by it, which may include press releases or any other forum or medium to elicit public participation.

(d) **Contents.**

(1) **All public notices.** All public notices issued under this part shall contain the following minimum information:

- (i) Name and address of the Department;
- (ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
- (iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;
- (iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and
- (v) A brief description of the comment procedures required by § 100.507 and § 100.508 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.
- (vi) The following statement in prominent type: FAILURE TO RAISE AN ISSUE OR PROVIDE INFORMATION DURING THE PUBLIC COMMENT PERIOD MAY PREVENT YOU FROM RAISING THAT ISSUE OR SUBMITTING SUCH INFORMATION IN AN APPEAL OF THE DEPARTMENT'S FINAL DECISION.
- (vii) Any additional information considered necessary or proper.

(2) **Public notices for hearings.** In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under § 100.508 shall contain the following information:

- (i) Reference to the date of previous public notices relating to the permit;
- (ii) Date, time, and place of the hearing;
- (iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(e) In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1)(i), (ii) and (iii) of this section shall be mailed a copy of the fact sheet or statement of basis (if any), the permit application (if any) and the draft permit (if any).

(f) Information repository.

(1) The Director may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director shall notify the facility that it must establish and maintain an information repository. (See § 100.42(n) of these regulations for similar provisions relating to the information repository during the life of a permit).

(2) The information repository shall contain all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established. The Director shall have the discretion to limit the contents of the repository.

(3) The information repository shall be located and maintained at a site chosen by the facility. If the Director finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Director shall specify a more appropriate site.

(4) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(5) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director. The Director may close the repository at his or her discretion, based on the factors in paragraph (f)(1) of this section.

§ 100.507 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS.

During the public comment period provided under § 100.506, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 100.512.

§ 100.508 PUBLIC HEARINGS.

(a) The Director shall hold a public hearing whenever he or she finds one or more of the following:

- (1) On the basis of requests, a significant degree of public interest in a draft permit(s);
- (2) Whenever such a hearing might clarify one or more issues involved in the permit decision;
- (3) Whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice under § 100.506(b)(1). Such written notice shall set forth a brief and plain statement of the reasons for opposition to the draft permit(s), including any objections to particular draft permit conditions. For purposes of this section, written notice of opposition to a draft permit must be expressly stated and will not be inferred from comments submitted under § 100.507. In addition, if the person requesting the hearing desires to have the applicant respond to any issues concerning the permit application and supporting information, he or she shall submit to the Director such issues within 45 days of public notice under § 100.506(b)(1).

(b) Whenever possible, the Director shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility. Public notice of the hearing shall be given as specified in § 100.506.

(c) Whenever a public hearing will be held the Director or his or her designee shall be responsible for its scheduling and orderly conduct.

(d) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 100.506 shall automatically be extended to the close of any public hearing under this section. The Director or his or her designee may also extend the comment period by so stating at the hearing.

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(e) The applicant shall ensure that the person(s) responsible for submitting the permit application is (are) present at the hearing and available for questioning. The applicant and any other person requesting the hearing shall also ensure the presence and availability for questioning by other participants in the hearing those persons as are necessary and qualified to address any issues submitted under § 100.508(a)(3).

(f) A tape recording of the hearing shall be available for public inspection. Any party may request a written transcript from the Department, the cost of which shall be borne by the requesting party.

(g) This hearing shall satisfy the requirements of Section 24-4-104(9), C.R.S. (1973).

§ 100.509 OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION DURING THE PUBLIC COMMENT PERIOD.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period (including any public hearing) under § 100.506. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the Department as requested by the Director. (A comment period longer than 45 days may often be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they should be freely granted under § 100.506 to the extent that the commenter demonstrates the need for such time.) A person's failure to raise issues or present information as required by this section may preclude a party from raising those issues or introducing the information during an appeal under § 100.514.

§ 100.510 REOPENING OF THE PUBLIC COMMENT PERIOD.

(a) If any data, information, or arguments submitted during the public comment period, including information or arguments required under § 100.509, appear to raise substantial new questions as determined by the Director, concerning a permit, the Director may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under § 100.502;

(2) Prepare a revised statement of basis under § 100.504, a fact sheet or revised fact sheet under § 100.503 and reopen the comment period under § 100.510; or

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- (3) Reopen or extend the comment period under § 100.506 to give interested persons an opportunity to comment on the information or arguments submitted.
- (b) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 100.506 shall define the scope of the reopening.
- (c) Public notice of any of the above actions shall be issued under § 100.506.

§ 100.511 ISSUANCE AND EFFECTIVE DATE OF PERMIT.

- (a) The Director should render a final permit decision within 90 days after the close of the public comment period under § 100.506. The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.
- (b) A final permit decision shall become effective 30 days after the service of notice of the decision under paragraph (a) of this section, unless:
 - (1) A later effective date is specified in the decision; or
 - (2) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.
- (c) The final permit decision made under this section constitutes final agency action for the purposes of judicial review.

§ 100.512 RESPONSE TO COMMENTS.

- (a) At the time that any final permit is issued under § 100.511, the Director shall issue a response to comments. This response shall:
 - (1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - (2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.
- (b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 100.513. If new points are raised or new material supplied during the public comment period, the Department may document its response to those matters by adding new materials to the administrative record.

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(c) The response to comments shall be available to the public.

§ 100.513 ADMINISTRATIVE RECORD FOR FINAL PERMIT DECISIONS.

(a) The Director shall base final permit decisions under § 100.511 on the administrative record defined in this section.

(b) For the purposes of this section, the administrative record for any final permit decision shall consist of the administrative record for the draft permit and:

(1) All comments received during the public comment period provided under § 100.506 (including any extension or opening under § 100.510);

(2) The tape or transcript of any hearing(s) held under § 100.508;

(3) Any written materials submitted at such a hearing;

(4) The response to comments required by § 100.512 and any new material placed in the record under that section;

(5) Other documents contained in the supporting file for the permit; and

(6) The final permit.

(c) The additional documents required under paragraph (b) of this section should be added to the record as soon as possible after their receipt or publication by the Department. The record shall be complete on the date the final permit is issued.

(d) This section applies to all final RCRA permits when the draft permit was subject to the administrative record requirements of § 100.505.

(e) Material readily available at the Department, or published materials which are generally available and which are included in the administrative record under the standards of this section or of § 100.512 ("Response to Comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

§ 100.514 APPEAL OF RCRA PERMITS.

The applicant and any other person adversely affected or aggrieved by any permit condition may seek judicial review of the condition in accordance with these regulations, section 25-15-305, C.R.S., and section 24-4-106, C.R.S. The Department will certify the record on review within 30 days of the filing of the complaint, unless otherwise ordered by the court.

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§ 100.515 COMPUTATION OF TIME.

- (a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.
- (b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.
- (c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.
- (d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other papers upon him or her by mail, 3 days shall be added to the prescribed time.

100.6 CHANGES IN PERMITS

§ 100.60 Modification of Permits.

- (a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in § 100.61 or §§ 100.63 and 100.64. All requests shall be in writing and shall contain facts or reasons supporting the request.
- (b) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.
- (c)(1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 100.61 or 100.63(c), he or she shall prepare a draft permit under § 100.502 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.
 - (2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

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(3) Class 1 and 2 modifications as defined in § 100.63(a) and (b) are not subject to the requirements of this section.

(d) If the Director tentatively decides to terminate a permit under § 100.64, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under this section shall be based on the administrative record as defined in § 100.505.

§ 100.61 Modification or Revocation and Reissuance of Permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 100.42), receives a request for revocation and reissuance under § 100.60 or conducts a review of the permit file), he or she may determine whether one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see § 100.60(c)(2)). If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of § 100.63. Otherwise, a draft permit must be prepared and other procedures in Part 100 followed.

(a) **Causes for modification.** The following are causes for modification, but not revocation and reissuance, of permits; the following may be causes for revocation and reissuance, as well as modification, when the permittee requests or agrees.

(1) **Alterations.** There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) **Information.** The Director has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(3) **New statutory requirements or regulations.** The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

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(4) **Compliance schedules.** The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the Director under § 100.45, the Director shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Parts 260 through 268, and 100.

(b) **Causes for modification or revocation and reissuance.** The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Causes exists for termination under § 100.64, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 100.42(1)(3)) of a proposed transfer of the permit.

(c) **Facility siting.** Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

§ 100.62 Transfer of Permits.

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 100.61(b) or § 100.62(b) to identify the new permittee and incorporate such other requirements as may be necessary under the State Hazardous Waste Act.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with § 100.63. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Part 266 (Financial Requirements) until the new owner or operator has demonstrated that he or she is complying with the requirements of that part. The new owner or operator must demonstrate compliance with Part 266 requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Part 266, the Director shall notify the old owner or operator that he or she no longer needs to comply with Part 266 as of the date of demonstration.

§ 100.63 Permit Modification At The Request Of The Permittee.

(a) Class 1 modifications.

(1) Except as provided in paragraph (a)(2) of this section, the permittee may put into effect Class 1 modifications listed in Appendix I of this section under the following conditions:

(i) The permittee must notify the Director concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notice, the permittee must provide the applicable information required by §§ 100.40, 100.41, 100.28, and 100.22(c).

(ii) The permittee must send a notice of the modification to all persons on the facility mailing list, maintained by the Director in accordance with § 100.506(c)(1)(iv), and the appropriate units of Federal, State and local government, as specified in § 100.506(c)(1)(ii), (iii) and (v). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior Director approval, the notification must be made within 90 calendar days after the Director approves the request.

(iii) Any person may request the Director to review, and the Director may for cause reject, any Class 1 modification. The Director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I by a footnote may be made only with the prior written approval of the Director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in § 100.63(b) for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the Director of this decision in the notice required in § 100.63(b)(1).

(b) Class 2 modifications.

(1) For Class 2 modifications, listed in Appendix I of this section, the permittee must submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit:

(ii) Identifies that the modification is a Class 2 modification:

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(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by §§ 100.40, 100.41, 100.28 and 100.22(c).

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Director and to the appropriate units of Federal, State and local government as specified in § 100.506(c)(1)(ii), (iii) and (v), and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within 7 days before or after the date of submission of the modification request, and the permittee must provide to the Director evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, in accordance with § 100.63(b)(5), and the name and address of a Department contact to whom comments must be sent;

(ii) Announcement of the date, time, and place for a public meeting held in accordance with § 100.63(b)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of a Department contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (b)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Department contact identified in the public notice.

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(6)(i) No later than 90 days after receipt of the notification request, the Director must:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request;

(C) Determine that the modification request must follow the procedures in § 100.63(c) for Class 3 modifications for the following reasons:

(1) There is a significant public concern about the proposed modifications; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days, or

(E) Notify the permittee that he or she will decide on the request within the next 30 days.

(ii) If the Director notifies the permittee of a 30-day extension for a decision, the Director must, no later than 120 days after receipt of the modification request:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request; or

(C) Determine that the modification request must follow the procedures in § 100.63(c) for Class 3 modifications for the following reasons:

(1) There is a significant public concern about the proposed modifications; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days.

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(iii) If the Director fails to make one of the decisions specified in paragraph (b)(6)(ii) of this section by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal Department action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Parts 265 and 266. If the Director approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in paragraphs (b)(6)(i), (ii), or (iii) of this section, such action cancels the temporary or automatic authorization.

(iv)(A) In the case of an automatic authorization under paragraph (b)(6)(iii) of this section, or a temporary authorization under paragraph (b)(6)(i)(D) or (ii)(D) of this section, if the Director has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(1) The permittee has been authorized temporarily to conduct the activities described in the permit modification request, and

(2) Unless the Director acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(B) If the owner/operator fails to notify the public by the date specified in paragraph (b)(6)(iv)(A) of this section, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(v) Except as provided in paragraph (b)(6)(vii) of this section, if the Director does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a Class 3, the permittee is authorized to conduct the activities described in the permit modification request for the life of their permit unless modified later under § 100.61 or § 100.63. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Parts 265 and 266.

(vi) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the Director must consider all written comments submitted to the Department during the public comment period and must respond in writing to all significant comments in his or her decision.

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(vii) With the written consent of the permittee, the Director may extend indefinitely or for a specified period the time periods for final approval or denial of a modification request or for reclassifying a modification as a Class 3.

(7) The Director may deny or change the terms of a Class 2 permit modification request under paragraphs (b)(6)(i) through (iii) of this section for the following reasons:

(i) The modification request is incomplete;

(ii) The requested modification does not comply with the appropriate requirements of Parts 264 and 266 or other applicable requirements; or

(iii) The conditions of the modification fail to protect human health and the environment.

(8) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the Director establishes a later date for commencing construction and informs the permittee in writing before day 60.

(c) Class 3 modifications.

(1) For Class 3 modifications listed in Appendix I of this section, the permittee must submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 3 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by §§ 100.40, 100.41, 100.28 and 100.22(c).

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Director and to the appropriate units of Federal, State and local government as specified in § 100.506(c)(1)(ii), (iii) and (v), and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the Director evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, and a name and address of a Department contact to whom comments must be sent;

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(ii) Announcement of the date, time, and place for a public meeting on the modification request in accordance with § 100.63(c)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of a Department contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department contact person".

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (c)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Department contact identified in the notice.

(6) After the conclusion of the 60-day comment period, the Director must grant or deny the permit modification request according to the permit modification procedures of Part 100. In addition, the Director must consider and respond to all significant written comments received during the 60-day comment period.

(d) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of this section, the permittee may submit a Class 3 modification request to the Department, or the permittee may request a determination by the Director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, the permittee must provide the Department with the necessary information to support the requested classification.

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(2) The Director shall make the determination described in paragraph (d)(1) of this section as promptly as practicable. In determining the appropriate class for a specific modification, the Director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria:

(i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.

(ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(A) Common variations in the types and quantities of the wastes managed under the facility permit;

(B) Technological advancements, and

(C) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(iii) Class 3 modifications substantially alter the facility or its operation.

(e) Temporary authorizations.

(1) Upon request of the permittee, the Director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of not more than 180 days.

(2)(i) The permittee may request a temporary authorization for:

(A) Any Class 2 modification meeting the criteria in paragraph (e)(3)(ii) of this section, and

(B) Any Class 3 modification that meets the criteria in paragraph (3)(ii)(A) or (B) of this section; or that meets the criteria in paragraphs (3)(ii)(C) through (E) of this section and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(ii) The temporary authorization request must include:

(A) A description of the activities to be conducted under the temporary authorization;

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(B) An explanation of why the temporary authorization is necessary; and

(C) Sufficient information to ensure compliance with Parts 264 and 266 standards.

(iii) The permittee must send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the Director and to appropriate units of Federal, State and local governments as specified in § 100.50(c)(1)(ii), (iii) and (v). This notification must be made within seven days of submission of the authorization request.

(3) The Director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Director must find:

(i) The authorized activities are in compliance with the standards of Parts 264 and 266.

(ii) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(A) To facilitate timely implementation of closure or corrective action activities;

(B) To allow treatment or storage in tanks or containers, or in containment buildings in accordance with Part 268;

(C) To prevent disruption of ongoing waste management activities;

(D) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(E) To facilitate other changes to protect human health and the environment.

(4) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(i) The reissued temporary authorization constitutes the Director's decision on a Class 2 permit modification in accordance with paragraph (b)(6)(i)(D) or (ii)(D) of this section, or

(ii) The Director determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of paragraph (c) of this section are conducted.

(f) Public notice and appeals of permit modification decisions.

(1) The Director shall notify persons on the facility mailing list and appropriate units of Federal, State and local government within 10 days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The Director shall also notify such persons within 10 days after an automatic authorization for a Class 2 modification goes into effect under § 100.63(b)(6)(iii) or (v).

(2) The Director's decision to grant or deny a Class 2 or 3 permit modification request under this section may be appealed under the permit appeal procedures of § 100.514.

(3) An automatic authorization that goes into effect under § 100.63(b)(6)(iii) or (v) may be appealed under the permit appeal procedures of § 100.514; however, the permittee may continue to conduct the activities pursuant to the automatic authorization until the appeal has been granted pursuant to § 100.514, notwithstanding the provisions of § 100.511(b).

(g) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under Part 261 of these regulations, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if:

(i) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;

(ii) The permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(iii) The permittee is in compliance with the applicable standards of Parts 265 and 264;

(iv) The permittee also submits a complete Class 2 or 3 modification request within 180 days of the effective date of the rule listing or identifying the waste, or subjecting the unit to RCRA Subtitle C management standards; and

(v) In the case of land disposal units, the permittee certifies that such unit is in compliance with all applicable requirements of Part 265 of these regulations for ground-water monitoring and with all applicable requirements of Part 266 of these regulations for financial responsibility requirements on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, he or she shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

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(h) [Reserved]

(i) **Permit modification list.** The Director must maintain a list of all approved permit modifications and must publish a notice once a year in a State-wide newspaper that an updated list is available for review.

(j) [Reserved]

(k) [Reserved]

(l) RESERVED.

§ 100.64 Termination of Permits.

(a) The Director may terminate a permit during its term or deny a permit renewal application for the following causes:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.
- (4) The permittee's failure to make timely payment as defined in § 100.32 (d) of applicable document review and activity fees.

(b) The Director shall follow the applicable procedures in § 100.5 in terminating any permit under this section.

INSERT PART 100 APPENDIX I HERE

PART 100 - Permits

PURPOSE

The fundamental purpose of the Part 100 regulations which are promulgated pursuant to C.R.S. 25-15-303 is to require a permit and establish permit conditions for the treatment, storage, or disposal of hazardous wastes because of the public health and environmental hazards that may accompany the improper treatment, storage, or disposal of hazardous wastes.

Additionally, regulations concerning the permitting of hazardous waste treatment, storage, and disposal facilities are a necessary and required component in conducting a hazardous waste management program; the State intends to obtain EPA authorization for a hazardous waste management program pursuant to C.R.S. 1973, 25-15-102. Such full state authorization to conduct the hazardous waste regulatory program can be granted only upon the determination that the State program is equivalent to that of the EPA.

BASIS FOR REGULATIONS

APPLICABILITY

These regulations establish basic permit requirements for the State Hazardous Waste Program and apply to hazardous waste treatment, storage, and disposal facilities. This part spells out in detail who must apply for a permit; contents of the applications; what conditions must be incorporated into permits; when permits may be modified, reissued, or terminated; and establishes the procedures to be followed in making permit decisions. This part also includes procedures for public participation in the permitting process, and establishes fees to be assessed against treatment, storage, and disposal facilities to offset the state costs of permitting those facilities.

Taken together with the technical performance standards contained in Part 264 and the financial assurance requirements of Part 266, these regulations establish the permit requirements for hazardous waste tank and container storage, incineration, land disposal, land treatment, waste piles, surface impoundments, and facilities that use physical treatment, chemical treatment, biological treatment, and thermal treatment.

PERMIT APPLICATION

These regulations require a State RCRA permit for the treatment, storage, or disposal of hazardous waste listed or identified in Part 261 of the regulations, unless specifically excluded under this part or Part 261. Permitting is a two-phased process. Existing facilities are required to submit Part A of the permit application and comply with the interim status standards contained in Parts 265 and 266, until such time as a complete application (Part B) is submitted or requested by the Director. Upon final administrative disposition of the Part

B application and the issuance of a permit, both new and existing facilities will be required to comply with applicable requirements contained in Parts 264 and 266. (New HWM facilities must be issued a final permit before they are allowed to operate).

The regulations in this section describe who must apply for a permit, when one must apply, and how to apply for a permit. These include requirements for both Part A and Part B of a permit application for existing and new facilities and provide for signature and certification of the permit application by the owner and operator of a facility. Applicants are required to maintain current information in their application so that the Department may carry out its responsibilities under other Parts of these regulations.

SPECIAL PERMITS

Certain facilities may be eligible for special permits and are subject to less than the full RCRA permitting requirements.

Interim Status

Under these regulations, existing hazardous waste management facilities that have complied with the notification and Part A application requirements may continue to operate until final administrative disposition of their Part B permit application is made. To achieve an adequate level of protection of public health and the environment, such facilities are required to comply with the interim status standards contained in Parts 265 and 266, until they have been issued a final State RCRA permit. Interim status facilities may not treat, store, or dispose of additional species of hazardous waste not given in the Part A application, nor add or change processes used to treat, store, or dispose of hazardous waste, nor increase or exceed the design capacity of processes used to treat, store, or dispose of hazardous wastes unless prior approval is given the Director. In addition, changes which amount to reconstruction of a hazardous waste facility are not allowed without prior approval of the Director. These requirements allow the Director to ensure that interim status facilities are properly prepared to expand and modify their operations in such a way that provides for compliance with standards and protection of public health and the environment.

Permits By Rule

Certain types of facilities are not required to apply to the Department for a full RCRA permit provided that they comply with certain other requirements contained in these regulations.

Extended Storage By Generators

Generators may qualify for a permit by rule for storage of hazardous wastes in tanks or containers. The conditions this authorization allow temporary on-site storage of

hazardous wastes by generators who are faced with the difficulty of accumulating a sufficient waste load to be practicable for transportation, or who can otherwise demonstrate a need for storage of hazardous waste beyond the 90 days allowed under § 262.34. Since extended temporary storage by generators must be done in compliance with the substantive standards that are applicable to storage facilities, there should be adequate protection of public health and the environment.

Injection Wells And POTW's

Facilities that have a federal permit for underground injection of hazardous wastes or POTWS with an NPDES permit are exempt from obtaining a State RCRA permit to the extent that they comply with the conditions of their permit; POTW's are also subject to limited reporting and other Part 264 requirements if they accept for treatment, shipments of hazardous waste that meet all applicable pretreatment requirements. This avoids duplicative permitting requirements and is consistent with the Federal Consolidated Permit Regulations.

Short Term Permits

These regulations track EPA's regulations for emergency permits, hazardous waste trial burn incinerator permits and land treatment demonstration permits.

Emergency permits allow for the immediate response activities to be undertaken with abbreviated permitting procedures in the event of a hazardous materials spill.

Sections 264.272 and 264.344 provide that a treatment demonstration must be made prior to the permitting of any land treatment unit or incinerator. The purpose of these demonstration permits is to show that hazardous constituents in the waste can be completely degraded, transformed or immobilized. The § 264.272 and § 264.344 requirements allow the owner or operator to use, among other means, field tests or laboratory analyses to make the demonstration. However, field tests and laboratory analyses can only be performed under a permit because they involve the treatment and disposal of hazardous waste.

Trial Permits

The Committee has drafted regulations which allow the Director to issue trial permits for hazardous waste treatment processes other than land treatment or incineration. The purpose of these regulations is to encourage the development of innovative hazardous waste treatment processes or adaptation of existing specialized treatment processes for Colorado's waste stream. Promising technologies (i.e., those that would appear to meet Part 264 standards in full scale operation) could then be implemented for a facility after application for a full state RCRA permit is made and a state RCRA permit issued. Protection of public health and the environment would be insured by the incorporation of specific Parts 264 and 100 requirements into the trial permit, and a limitation on the quantity of waste that would be allowed to make the demonstration.

UIC Wells

These regulations incorporate the RCRA permitting requirements for underground injection wells. EPA requires equivalent RCRA permitting requirements for Class I wells (i.e. those injecting hazardous wastes) until an Underground Injection Control (UIC) program has been implemented by the State. Since Colorado has not assumed primacy for the UIC program, these regulations are necessary to provide protection of health and the environment in the management of hazardous wastes by underground injection.

General Permits

These regulations authorize the Department to issue general class permits for similar types or classes of hazardous waste management facilities. This will serve to abbreviate permit application procedures for relatively simple permits (e.g., tank storage) and avoid duplication of effort by the Department in writing permits for similar types of facilities. All applicable standards contained in Parts 264, 266 and 100 will be incorporated into general permits, including requirements for public notice and other procedures contained in § 100.5 of these regulations.

FACILITY FEES

The committee has drafted regulations which impose fees upon treatment, storage, and disposal facilities to provide the funds necessary to offset the reasonable state program costs of permitting and regulating permitted facilities. Considerable time and attention was expended by the Committee in addressing this controversial issue.

The basis for these regulations is contained in C.R.S. Title 25 Article 15 which requires fees to be established, the amount of which "shall take into consideration the quantity and degree of hazard of the hazardous waste involved and whether it is to be treated, stored, or disposed of at the location" (Section 25-15-303(5)(a)).

Four types of fees are established under these regulations. An annual operating fee for all TSD facilities is imposed to partially offset the State's costs in compliance monitoring and other activities associated with regulating treatment, storage, and disposal activities. Facilities are assessed a fee based on the hazardous waste management method. This simple degree of hazard approach provides an incentive for practices the Department would like to encourage (i.e. resource recovery) by instituting a lesser fee. Facilities that pose a greater risk of environmental harm (e.g. injection wells) are assessed a proportionately higher fee.

A second fee is applicable to TSD's at the time the Department requests or accepts an application for a full RCRA permit (Part B). This application review fee is assessed for the Department's technical and administrative time for reviewing, writing, and issuing (or denying) a permit, and the fee is an hourly charge for time spent by Department personnel.

Ceiling fees are established for differing classes of facilities in order to provide for efficiency in the Department's review process and to allow for budgeting by the applicant. Classes of facilities are again used as a simplified degree of hazard approach and take into account both the waste management method and the type of facility (i.e. treatment, storage, or disposal). Generally, permits are to be issued for a period of 10 years. When amortized over the duration of the permit, this fee would have minimal economic impact on the majority of facilities.

The third fee type is assessed for modification of existing RCRA permits. Minor modifications are subject to a flat fee of \$25.00 for the administrative processing of the modification. Major modifications are subject to the hourly review and processing charge and the ceiling fees described for the permit application review fee, in addition to a \$25.00 administrative processing charge. This type of fee should offset the Department's expense in processing the modification.

The fourth and final fee takes into consideration the quantity of waste as mandated by the authorizing statute. All treatment, storage, and disposal facilities are required to pay a \$2.00 per ton fee for waste not shipped to another TSD facility in Colorado. Facility annual reports will be used to determine the amount of waste to be assessed this fee. By exempting wastes that are shipped to another Colorado TSD facility, there will not be duplication in the assessment of fees for wastes that are shipped offsite for further treatment or storage and subsequent disposal. Non-commercial treatment and storage facilities (i.e. facilities that handle only the wastes produced on-site) will be subject to an annual limitation on the waste volume fee. This ceiling is set at \$10,000 and reflects the Committee's opinion that there is less hazard associated with managing and transporting the limited (often only one) waste type(s) produced by a single facility.

The Committee believes that the fee structure should be revisited by the Board of Health after the Department has some experience with the collection of fees and developed a track record with administering and issuing RCRA permits. Projections of revenue that will be produced from the fees are difficult to make because of uncertain knowledge about the nature and volume of the Colorado waste stream at this time, and difficulties encountered in estimating the numbers of facilities that will apply for RCRA permits. In addition, it is anticipated that EPA will promulgate RCRA regulations for mining associated wastes within the next year. The future inclusion of high volume mining wastes may also render the fee schedule inequitable for those types of facilities.

While the Committee considered adopting a fee system based on the degree of hazard of individual waste streams, it was felt that there was too much uncertainty in this approach with the limited information available to the Committee. The Board of Health may wish to consider additional rulemaking in this area as the nature of the Colorado waste stream and waste disposal practices are more fully characterized.

PERMIT REQUIREMENTS

These regulations incorporate the information requirements to be provided by permit applicants.

Part A

Part A application requirements are applicable for TSD facilities that operate under the interim status standards contained in Parts 265 and 266. These information requirements will provide basic demographic and descriptive information concerning the nature of a hazardous waste facility and its waste/waste process stream. Information required in Part A applications is the same as that required by EPA.

Part B

Part B application requirements are applicable to facilities applying for a full State RCRA permit. These include general information requirements required of all TSD facilities and specific information required of particular types of TSD facilities that will provide the Department with information sufficient to evaluate a hazardous waste management facility's ability to meet the standards contained in Parts 264 and 266.

The Committee adopted major changes to EPA's Part 264 performance standards regarding the location of facilities in areas of seismic activity and floodplains. The general information requirements of the Part B application have been changed to accommodate the changes in the appropriate Part 264 performance standards. The remainder of the Part B application requirements (both general and specific) track EPA's Part B application requirements.

PERMIT CONDITIONS

These regulations specify generally applicable permit conditions and duties of the permittee, which will be incorporated into all RCRA permits, and make provisions for incorporating additional conditions into permits based on the case-by-case circumstances surrounding a permit application. In particular, case by case analysis of permit applications is necessary to ensure compliance with all applicable requirements of these regulations and to allow for incorporation of requirements which are unique to certain types of facilities (e.g. groundwater monitoring is required of only certain types of land disposal facilities). These regulations also provide for incorporating schedules of compliance into permits to bring a noncomplying facility into conformance with the standards contained in these regulations as a condition of their permit. The permit conditions contained in these regulations are substantively equivalent to those promulgated by EPA.

Variance Provision

The Committee adopted a variance provision to provide relief in those unanticipated circumstances where imposition of the federal permit requirements would not make sense under Colorado circumstances, and where the environmental risk as a result of the variance is low. The applicant would have the burden of demonstrating equal protection of public health and the environment under the variance. Under this provision, a variance could not be granted unless protection of public health and the environment is as stringent in effect as that provided in these regulations and other applicable Colorado law.

PERMIT REVIEW AND ISSUANCE

These regulations detail the procedures by which permits are processed. Stages in this process include review of the Part B application for completeness of information, giving notice of intent to issue a draft permit or deny the permit application, issuing a draft permit and providing public notice and opportunity for public comment (and public hearing if there is sufficient interest), and issuance (or denial) of a final permit and response to public comment. These requirements parallel EPA's requirements for the administrative processing of permit applications, except as described below. The regulations are consistent with the State Administrative Procedures Act.

EPA does not require an administrative process appeal (i.e. administrative hearing) for permit decisions made by the Director as a condition of State authorization of the hazardous waste program. Such an appeal process would allow, by way of example, a permit applicant further opportunity to contest permit conditions established in the Director's final decision. Procedures for an administrative hearing were not included in these regulations because the Committee and the Department felt that an administrative process appeal would not provide an applicant a significantly different opportunity to remedy a grievance since the administrative process would retrace the same procedural steps leading to the final permit decision. Furthermore, the administrative appeal process would delay the issuance (or denial) of a final permit and present an increased burden upon the Department's limited time and resources. It should be noted that the applicant is not precluded from requesting the Department to readdress contested issues prior to the final permit decision and it is anticipated that most situations can be resolved in this manner. The permit applicant may also avail himself to the local district court for unresolved and contested permit conditions, as provided in the State Administrative Procedures Act and these regulations.

The Committee has also incorporated regulations that require the Department to give notice of intent to deny or issue a draft permit within six months of the date of receipt of a completed Part B permit application, and to issue a final permit decision within three months of the completion of the public comment period. These regulations were incorporated to promote efficiency in the Department's review process and to avoid unnecessary procedural delay for the commencement of operations at new facilities.

CHANGES IN PERMITS

Modification, Revocation & Termination of Permits

These regulations make provision for modifying, revoking and reissuing, or terminating State RCRA permits, either at the request of the permittee or at the request of the Director. Modifications, revocation and reissuance or termination of a RCRA permit by the Director must be made for cause as listed under these regulations and must follow the procedures referenced therein. These regulations track EPA's regulations and are required for State authorization.

Minor Modifications

Permittees may request to have an existing RCRA permit modified under the special provisions of these regulations for changes that, in the Director's discretion, do not significantly alter the terms and conditions of that permit. EPA's regulations for minor modifications to RCRA permits consist of a specific list that is inclusive of all changes that can be made without the process of Section 100.5. The Committee reached a consensus that Colorado's regulations should have more flexibility, to provide for unanticipated changes (i.e. those not included in list) that do not significantly alter the conditions of a permit. Therefore, the Committee developed regulatory language that allows the Director to determine, on a case-by-case evaluation, whether proposed modifications comprise substantial changes, and should be processed under the procedures of §§ 100.5 and 100.61 or may be processed under the abbreviated procedures of this section.

Incorporated by reference in this statement are all background documents including scientific data prepared by EPA for these regulations. These documents address comments received on the interim final regulations published May 19, 1980 (40 FR 33066 et. seq.) and July 26, 1982 (40 FR 32274 et seq.)