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## Statutory and Regulatory Provisions

### RCRA

Congress enacted the Resource Conservation and Recovery Act (RCRA) in 1976 to protect human health and the environment from the potential hazards of waste disposal; to conserve energy and natural resources; to reduce the amount of waste generated; and to ensure that wastes are managed in an environmentally sound manner. RCRA is actually a combination of the first federal solid waste statutes with subsequent amendments to address hazardous waste and underground storage tanks (USTs). These three distinct yet interrelated programs exist as part of RCRA. Subtitle D is the solid waste program and its focus is on the management of household garbage and non-hazardous industrial solid waste. Subtitle C is the hazardous waste program and its focus is on the management of hazardous waste from the time it is generated until its ultimate disposal. Subtitle I is the underground storage tank program and its mission is to prevent and clean up releases of petroleum or hazardous substances from tanks.

States are an integral part of all three of RCRA's programs. The states oversee most of the Subtitle D solid waste program whereby they issue permits and ensure compliance with its requirements. "Under Subtitle C, EPA reviews state programs that consist of requirements for the generation, transportation, treatment, storage, and disposal of hazardous wastes for facilities within that state. If the state program is acceptable, EPA authorizes that state to administer the state program in lieu of the federal program and facilities must then comply with the authorized state requirements rather than the corresponding federal requirements. However, after authorization, both the state and EPA have the authority to enforce those requirements."

Past and present activities at RCRA facilities have sometimes resulted in releases of hazardous wastes into the soil, ground

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water, surface water, and air. Subtitle C of RCRA requires the investigation and cleanup of these hazardous waste releases at RCRA facilities. This program is known as corrective action. The facilities that fall under the corrective action program are generally active ones that are permitted or are seeking a permit to treat, store, or dispose of hazardous waste. As a condition of the operating permit, owners/operators are required to clean up hazardous wastes that are or have been released through current or past activities. It is, therefore, usually the current owner and operator of a facility that is held responsible for cleaning up any contamination. However, other parties may be held responsible under certain conditions.

## **RCRA Cleanup Reforms**

In order to expedite the cleanup at hazardous waste sites regulated by RCRA, EPA launched a set of administrative reforms in 1999 and 2001, known as the RCRA Cleanup Reforms. EPA developed the reforms as a comprehensive way to address the key impediments to cleanups, maximize program flexibility, and spur progress toward a set of ambitious national cleanup goals. The reforms include methods to enhance public access to cleanup information and improve opportunity for public involvement in the cleanup process; focus the program more effectively on achievement of environmental results; pilot innovative approaches; and capitalize on the redevelopment potential of RCRA facilities to expedite cleanup. (*See Appendix B*)

The RCRA Corrective Action enforcement program requires owners and operators of RCRA facilities to:

- conduct investigations
- conduct a thorough cleanup of the hazardous release
- monitor the cleanup to make sure it complies with applicable state and federal requirements

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## Statutory and Regulatory Provisions

### Underground Storage Tanks - Lender Liability Rule (40 CFR Parts 280 and 281)

September 7, 1995

Subtitle I of RCRA contains a “security interest exemption” that provides secured creditors (“lenders”) an explicit statutory exemption from corrective action for releases from petroleum USTs. Because the statute is unclear about the scope of the exemption coverage, EPA issued the UST Lender Liability Rule which specifies the conditions under which certain secured lenders may be exempted.

Both prior to and after foreclosure of a facility, a lender is eligible for an exemption from compliance with all Subtitle I requirements as an UST “owner” and “operator” if the lender: 1) holds an ownership interest in an UST, or in a property in which the UST is located, to protect its security interest (a lender typically holds property as collateral as part of the loan transaction); 2) does not engage in petroleum production, refining, and marketing; and 3) does not participate in the management or operation of the UST. A lender also must empty its UST(s) within 60 days after foreclosure and either temporarily or permanently close the UST(s) unless there is a current operator at the site who can comply with UST regulations.



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## Statutory and Regulatory Provisions

### **Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirements and Closure Process (40 CFR Parts 264, 265, 270, and 271)**

October 22, 1998

Under Subtitle C of RCRA, an owner/operator is required to obtain a permit to operate a hazardous waste treatment, storage, or disposal facility (TSDF). RCRA regulations specify the requirements that must be met when closing hazardous waste land disposal units (“units”). There are two ways to close units under RCRA. The units may either be clean closed by removal or decontamination of waste or they may be closed by leaving waste in place with post-closure care. If the facility operates under a permit, the permit should already contain a closure plan and include any post-closure requirements. If the facility does not have a permit, then a post-closure permit is needed only if waste will be left in place.

This rule, known as the Closure/Post-Closure Rule, amends RCRA’s closure and post-closure care requirements by expanding regulatory options available to EPA and authorized state programs. These options remove impediments to cleanup at hazardous waste facilities in two areas. First, regulators may either issue a post-closure permit to a facility or impose the

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same requirements in an enforceable document issued under an alternate non-permit authority. Second, EPA and authorized states may use corrective action requirements to address these units. The corrective action program, as discussed in the rule, allows EPA and authorized states to clean up under RCRA, CERCLA, or state authority authorized for this rule.

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## Statutory and Regulatory Provisions

### Hazardous Waste Identification Rule for Contaminated Media (HWIR-Media) Rule (40 CFR Part 260 et seq)

November 30, 1998

EPA issued new RCRA requirements for hazardous remediation waste that is treated, stored, or disposed of during cleanup actions. This rule, known as the HWIR-Media rule, streamlines the RCRA permit requirements for cleanup activities through the use of remedial action plans (RAPs). It also eliminates the requirement for facility-wide corrective action at sites that are only required to obtain a permit because of the cleanup activities and discusses the use of a “staging pile” for temporary cleanup waste storage.

#### **HWIR Media Rule:**

- Makes permits for treating, storing, and disposing of hazardous remediation wastes faster and easier to obtain;
- Provides that obtaining these permits will not subject the owner and/or operator to facility-wide corrective action;
- Creates a new kind of unit called a “staging pile” that allows more flexibility to temporarily store remediation waste during cleanup;
- Excludes dredging materials from RCRA Subtitle C (hazardous waste management requirements) if they are managed under an appropriate permit under the Marine Protection, Research and Protection Act or the Clean Water Act; and,
- Makes it faster and easier for states to receive authorization when they update their RCRA programs to incorporate Federal RCRA regulation revisions.

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## Statutory and Regulatory Provisions

### Corrective Action Management Unit (CAMU) CFR Amendments

Use of CAMUs was authorized in 1993 for the purpose of on-site treatment, storage, and disposal of hazardous wastes managed for implementing cleanup. When cleanup wastes are managed within a CAMU, they do not trigger certain Resource Conservation and Recovery Act requirements that apply to wastes generated by industrial processes. This gives the site cleanup manager much more flexibility to consider a broader range of cleanup options tailored to site- and waste-specific conditions, and has led to faster and more aggressive cleanups at individual sites.

The CAMU amendments are intended to provide minimum standards for operation of CAMUs. They address concerns of some stakeholders that management discretion under the original rule might lead to mistakes or abuse. EPA believes the amendments protect human health and the environment without undoing the benefits of the CAMU rule, and make the corrective action process is more consistent nationally, more explicit, and more predictable in its results.

The final CAMU amendments for the management of remediation wastes were signed by the Administrator on December 21, 2001. They establish standards governing: (1) the types of wastes that may be managed in a CAMU; (2) the design standards that apply to CAMUs; (3) the treatment requirements for wastes placed in CAMUs; (4) information submission requirements for CAMU applications; (5) responses to releases from CAMUs; and (6) public participation requirements for CAMU decisions.

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In addition, this rule “grandfathers” certain categories of CAMUs and creates new requirements for CAMUs used only for treatment or storage. States currently authorized for the CAMU rule are granted “interim authorization by rule.” Expedited authorization is provided for states authorized for corrective action, but not the CAMU rule.

In response to comments, the Agency modified staging pile rules to allow physical treatment in staging piles, expanding the universe of CAMU-eligible wastes to include buried tanks containing wastes, and giving Regional Administrators discretion to choose a leaching test other than the Toxicity Characteristic Leaching Procedure (TCLP) to assess treatment. It also adds a new provision allowing off-site placement of hazardous CAMU-eligible waste in hazardous waste landfills, if they are treated to meet modified CAMU treatment standards. States that are already authorized for the 1993 CAMU Rule have 60 days to notify EPA that they intend to use the revised Corrective Action Management Unit Standards rule as guidance.