

Revision Checklist 175 Summary

Rule Title:	Hazardous Remediation Waste Management Requirements (HWIR-Media)
Checklist Title:	HWIR-Media
Reference:	63 <u>FR</u> 65874-65947
Promulgation Date:	November 30, 1998
Effective Date:	June 1, 1999
Cluster:	RCRA Cluster IX
Provision Type:	HSWA/Non-HSWA
Linkage:	None
Optional:	Yes

Summary: EPA is streamlining permitting for treatment, storage and disposal of remediation wastes managed at cleanup sites. The new requirements: 1) make permits faster and easier to obtain, 2) provide that obtaining these permits will not subject the owner/operator to facility-wide corrective action at remediation-only facilities, and 3) allow the use of Remediation Action Plans (RAPs) as an alternative to traditional RCRA permits. EPA is also finalizing regulations regarding use of staging piles during cleanup and providing an exclusion for dredged materials managed under appropriate Clean Water Act or Marine Protection Research and Sanctuaries Act permits. In addition, this rule expands the use of Corrective Action Management Units and Temporary Unit to include implementing clean up remedies at permitted facilities that are not subject to 40 CFR 264.101.

Although they do not apply to this rule, EPA has also finalized streamlined procedures for State authorization of certain rules. A table has been added to 40 CFR 271.21 which lists the rules which may be submitted for authorization using the streamlined procedures.

State Authorization: This rule is placed in RCRA Cluster IX. The State modification deadline is July 1, 2000 (or July 1, 2001 if a State statutory change is necessary). The revisions to 260.10, 264.1(j) intro¹, 264.101(d), 264.552(a), 264.553(a), 264.554, 265.1(b), 268.2(c), 268.50(g), 270.42 Appendix I, and 270.230(e)(1) were made under HSWA authority. These regulations go into effect on the Federal effective date in all States. However, because these standards are less stringent than existing Federal standards, the implementation of the staging pile requirements will vary, depending on the authorization status of a particular State. See 63 FR 65925, Column 2 for

¹ The provision at 264.1(j) intro is HSWA as it applies to facility-wide corrective action at remediation waste management sites, and non-HSWA to the extent that it addresses the requirements relative to 40 CFR Part 264, Subparts B, C, and D.

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a detailed discussion of these implementation issues. Both interim and final authorization are available for the HSWA provisions. Interim authorization expires January 1, 2003.

The revisions to 261.4(g), 264.1(j)(1)-(13), 264.73(b)(17), 270.11(d), 270.68, 270.2, 270.73(a), and Part 270 Subpart H except 270.230(e)(1), were made under non-HSWA authority. The provision at 264.1(j) intro is also a non-HSWA provision to the extent that it addresses the requirements that remediation waste management units can meet in lieu of 40 CFR Part 264, Subparts B, C and D. EPA will implement these requirements only in States that do not have interim or final authorization. In authorized States, the non-HSWA requirements will not be applicable until the States revise their programs to adopt equivalent requirements under State law. Only final authorization is available for the non-HSWA provisions. Note that States can use as RAPs enforceable documents issued by a State program other than the State's authorized RCRA program. At 63 FR 65926, Column 2, Section D, the preamble to this rule outlines the approach the Agency expects to use when States seek authorization of such programs.

If a State chooses to adopt these optional revisions, the State Revision Application should include applicable regulations, AG statement addendum, Revision Checklist 175, other associated checklists and other application materials, i.e., a program description and an MOA, as determined by the Regional office. The streamlined authorization procedures addressed at 63 FR 65927-65931 do not apply to this current rule due to its complexity. However, the Agency is placing a high priority on authorization of States who seek to implement this rule. In addition, EPA intends to use its existing discretion under 40 CFR 271.21(b) to follow the streamlined procedure to authorize States which only adopt §264.101(d). For further information on this option, see 63 FR 65926, Column 1.

Attorney General's Statement Entries: The following entry should be placed at Subsection I (SS) in the Model Revision Attorney General's Statement.

SS. [OPTIONAL: This is a reduced requirement.] State statutes and regulations exclude dredged material from regulation as a hazardous waste provided the material is subject to the requirements of a permit issued under §404 of the Federal Water Pollution Control Act or §103 of the Marine Protection, Research, and Sanctuaries Act as indicated in Revision Checklist 175.

Federal Authority: RCRA §§ 1006(b), 2002(a) and 3001; 40 CFR 261.4(g), as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney

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The following entry should be placed at Subsection XIII (H) in the Model Revision Attorney General's Statement.

H [OPTIONAL]: This is a reduced requirement.] State statutes and regulations contain provisions exempting cleanup only remediation waste management sites from 40 CFR 264.101 facility-wide corrective action as indicated in Revision Checklist 175.

Federal Authority: §§2002(a) and 3004; 40 CFR 264.1(j) intro, 264.101(d), and 270.230(e)(1) as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

The following entries should be placed at Subsection XV (CC)-(EE) in the Model Revision Attorney General's Statement.

CC. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations provide reduced 40 CFR Part 264, Subparts B, C, and D requirements for remediation waste management sites as indicated in Revision Checklist 175.

Federal Authority: RCRA §§ 2002(a), 3004, and 3007; 40 CFR 260.10, 264.1(j), and 264.73(b)(17) as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

DD. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations contain design criteria as well as management and operating standards for the use of staging piles in storing remediation wastes as indicated in Revision Checklist 175.

Federal Authority: RCRA §§ 2002(a), 3004, 3005, and 7004; 40 CFR 260.10, 264.554, 265.1(b), 268.2(c), and 268.50(g), as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

EE. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations expand the use of Corrective Action Management Units (CAMUs) and

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Temporary Units to include implementing remedies at permitted facilities which are not subject to 40 CFR 264.101 as indicated in Revision Checklist 175.

Federal Authority: RCRA §§ 2002(a), 3004, and 3005; 40 CFR 260.10, 264.552(a) and 264.553(a), as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and AdoptionRemarks of the Attorney General

[Special Guidance Note for AG Entry Section XV (EE): Revision Checklist 121 added 40 CFR 264, Subpart S addressing Corrective Action Management Units (CAMUs) and Temporary Units. The rule addressed by that checklist limited the use of CAMUs and Temporary Units to remedies under 40 CFR 264.101 or RCRA §3008(h) (corrective action). The rule addressed by Revision Checklist 175 expands the availability for use of these units to permitted facilities that are not subject to 40 CFR 264.101. States may be authorized for Revision Checklist 175 without being authorized for Revision Checklist 121 if the authorization, relative to the use of CAMUs and Temporary Units, is limited to permitted facilities that are not subject to 40 CFR 264.101. This limitation needs to be addressed in Section XV (EE) of the Attorney General's Statement. At that entry, the State should cite its analogs to 40 CFR 260.10 ("disposal facility", "landfill", "miscellaneous unit", and "remediation waste"), 264.552(b)-(h), 264.553(b)-(g), 265.1(b), 268.2(b), 270.2 ("disposal facility"), and 270.42, Appendix I. These other provisions need to be cited by the State and reviewed by the Region to assure that all of the design and operating requirements for CAMUs and Temporary Units are included in the State's regulations and authorized. In the "Remarks of the Attorney General", the State's Attorney General must include a statement that, relative to 40 CFR 264, Subpart S, the State is not seeking authorization for the corrective action uses of CAMUs and Temporary Units. If the State is also not authorized for Revision Checklist 17L (Corrective Action), the State should also limit the use, and in turn the authorization, of staging piles in a similar fashion.]

The following entry should be placed at Subsection XVI (DD) in the Model Revision Attorney General's Statement.

DD. [OPTIONAL: This is a reduced requirement.] State statutes and regulations provide for Remedial Action Plans (RAPs) as a special form of RCRA permit for treatment, storage or disposal of hazardous remediation waste at remediation waste management sites, as indicated in Revision Checklist 175.

Federal Authority: RCRA §§ 2002(a), 3005, 3007, and 7004; 40 CFR 270.2, 270.11(d), 270.42, 270.68, 270.73(a), and 270.79-270.230, as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and AdoptionRemarks of the Attorney General

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Incorporation by Reference Guidance: Revision Checklist 175 is not a corrective action checklist. However, many of the Federal regulations that make up this rule include references to the Federal requirement for corrective action at 40 CFR 264.101. States that adopt the Federal provisions by reference and do not have an authorized corrective action program should be sure to retain all Federal references to 40 CFR 264.101 and not replace them with references to State analogs. This is appropriate since EPA administers corrective action in those States. In addition, States that incorporate by reference should take special note of prenote #3 on Revision Checklist 175 to ensure that all provisions applicable to CAMUs and temporary units have been adopted.