HW Breakout II: RCRA Permitting

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U.S. EPA | Office of Resource Conservation and Recovery

Overview

This session will include:

- The **National RCRA Permitting Priorities,**
- **Update of the 1988 RCRA Model Permit,** and
- The status and projected contents the **Permitting Updates Proposed Rule**.

National RCRA Permitting Priorities

EPA continues to implement a process, working with Regions, states and territories, for **identifying**, **prioritizing**, and **resolving** high-level issues that impact RCRA permits or permit programs nationally.

Completed Priorities

RCRA Organic Air Emissions Selected: FY 2018/2019	The "RCRA Organic Air Emission Standards for TSDFs and Generators" webpage was launched in October 2019. The RCRA/CAA compliance exemption/election provisions document was published in October 2019. Also updating RCRA Air Factsheet.
Tools for Expediting Permit Issuance Selected: FY 2020/2021	The RCRA Permit Application Checklist was completed in late 2020 and is available in the Permit Writers SharePoint site; contact Jeff Gaines to obtain access.
Improved Coordination Between RCRA Permit Writers and Inspectors Selected: FY 2020/2021	National Permit Writer and Inspector Workshops held in February 2021 and May 2022 by EPA and ASTSWMO. Planning to host workshops once a year. Materials available in Teams site, contact Lilybeth Colon for access.
CostPro Evaluation Selected: FY 2020/2021	"Go" decision obtained June 2021. CostPro functionality will be added to RCRAInfo and the cost data elements updated; projected summer 2023.
Public Notice in Newspaper/Mail Selected: FY 2020	Updated RCRA permits website to indicate the acceptability of using virtual hearings, email for mailing lists, and online newspapers. Published Federal Register notice in December 2021 and requested comment on allowing modern electronic alternatives for public notification and other notification under RCRA.
Waste Analysis Plans Compliant with Land Disposal Restrictions Selected: FY 2018/2019	The information bulletin: "Ensuring and Determining Compliance with Land Disposal Restrictions Through RCRA Permits, Waste Analysis Plans and Inspection Sampling Practices" was published in April 2022.

Ongoing Priorities

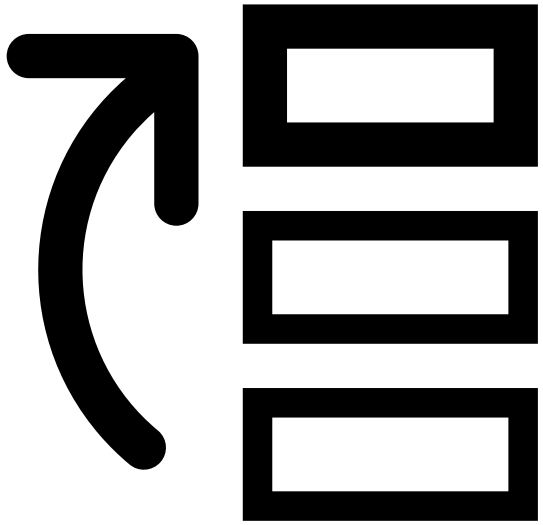
Post-Closure Care Implementation Selected: FY 2018/2019	Assisting states and Regions with post-closure care implementation. Regional/state workgroup focused on identifying issues. Developing case studies report. Updating web language on the Post-closure Rule. Planning to solicit input though the Permitting Updates Proposed Rule.
Permitting Updates Rule Selected: FY 2022	Initiated rulemaking to propose updates and clarifications for TSDF and permitting standards (40 CFR parts 264/265/270).
RCRA Model Permit Selected: FY 2022	Updating the 1988 National RCRA Model Permit and develop an accompanying RCRA Permit Writer's Standard Operating Procedure.

New Cycle of Permitting Priorities

ORCR recently started a new cycle to identify and select next round of national RCRA permitting priorities.

We have developed a list of permitting issues/questions identified with input from states and Regions.

We are now in the process of obtaining input to help us prioritize some of those issues/questions.



Priority Candidates

Issue Description	Potential Action(s) to Address Issue
A. Require More Timely Renewal Applications Clarify regulatory requirement that applications for permit renewal must be submitted a certain number of days prior to expiration date of the permit for the region or state to issue the renewal permit in a timely manner. 40 CFR 270.10(h) states that permittees "may" submit a new application at least 180 days before the expiration date of the effective permit to continue the permit under 40 CFR 270.51.	• Amend regulations to state the permit application for renewal "must" (not "may") be submitted by a certain date for facilities that will continue to operate.
B. Optimize Permit Modification Process Revise 40 CFR 270.42 to enable more efficient and timely processing of permit modifications. Several proposed actions to address efficiency have been raised to EPA in the last few years.	• Streamline Class 2 Permit Modification process. • Broaden applicability for temporary authorizations. • Make public participation requirements more efficient while maintaining effectiveness (e.g., public meetings only upon request, using electronic notifications and signage at the facility). • Reduce number of changes classified as Class 2 or 3. • Address transfer of permit ownership to improve compliance.

Priority Candidates (cont.)

Issue Description	Potential Action(s) to Address Issue
C. Recycling Exclusions/Exemptions/Non-waste Determinations Permit writers face challenges in evaluating whether a unit or material is exempt from RCRA permitting due to exemptions, exclusions or variances from the definition of solid waste. Guidance and instruction on how to collect and evaluate this information is needed to establish consistent evaluation protocols and determinations.	• Provide clarification on when a permit exemption applies and when it does not. Define criteria for HW or non-HW. • Identify information needed to satisfy criteria for variance, exemption/exclusion or non-waste determination. • Provide evaluation procedures that clearly indicate or measure degree to which the criteria are satisfied. • Clarify requirement to submit all appropriate information that supports the claim. • Create templates for information request comments, approvals, denials, conditioned approvals.
D. Hazardous Waste Determinations/Deficient Waste Analysis Plans/Deficient Waste Profiles When states require TSDFs to subject all waste accepted to waste analysis, they are finding that wastes being managed as *non-hazardous* are often, in fact, RCRA hazardous waste (characteristic or meets listing). Some of this relates to deficient waste analysis plans (WAPs), for example, that depend too heavily on generator knowledge or marketing information or in cases where companies use one waste analysis plan for multiple sites. Also, additional guidance on waste profiling and compatibility is needed.	• Assess state implementation of the 2015 Waste Analysis Plan guidance. • Conduct national audit of waste analysis plans with respect to hazardous waste determinations. • Develop guidance on waste profiling and compatibility. • Define and develop regulations/guidance for TSD profiles • Specify what must be included in a profile to meet the regulations for the proper management of the waste.

Priority Candidates (cont.)

Issue Description	Potential Action(s) to Address Issue
E. Five-Year Review of Land Disposal Facilities Clarification is needed on applicability of the five-year review to facilities in post-closure care.	• Clarification on whether the five-year review of land disposal facility permits only applies to operating land disposal facilities as opposed to those land disposal facilities conducting post-closure care, etc.
F. "Discounting" Relative to Corrective Action Financial Assurance Clarification requested on the use of "discounting." Discounting is the practice of converting a future stream of monetary values into a present value that incorporates the "time value of money." It is underpinned by the theory that a dollar today is worth more than a dollar tomorrow. In the context of RCRA corrective action, a stream of future corrective action costs at a facility could be converted into a single present value for the purposes of determining an amount of financial assurance.	• Clarification on the use of discounting (or not) relative to corrective action financial assurance. • Promote national consistency for "discounting" to help account for inflation and the potential investment returns, among other things. • May assist states and regions in implementation of corrective action financial assurance.
G. Liability Insurance At least one liability insurance policy has been found to have deviations from the national standard. Often states only receive the certificate of insurance and, even if the policy was also received, many states lack expertise to review.	• Promote the review of liability insurance policies. • Provide subject matter expert to assist with review of Liability Insurance.

Priority Candidates (cont.)

Issue Description	Potential Action(s) to Address Issue
H. Periodic Certification of Tank Systems/Updates Due to Aging Tank Systems Some "existing tank systems" are 40+ years old, while some "new tank systems" are approaching 25 years in age. The current rules require only a one-time, initial certification for all tank systems, and do not identify criteria for what is considered major repairs or modifications that would trigger a new certification. Several issues have been identified in relation to these requirements, for example: 1) Many LQGs and TSDs are not always aware of tank system (Subpart J) requirements. 2) Some tank owners believe that other regulatory programs cover them with respect to Subpart J requirements (example: state tank program or spill prevention program). 3) Some owner/operators believe that once they have assessed a tank system, they no longer have a need for professional services (example: certifications of tank inspections). 4) Many owners/operators do not think about ancillary equipment (fittings, piping, equipment, etc.) when they address "tank system."	• Evaluate and determine actions needed, whether through revised technical guidance document(s) or rule updates. Examples: ○ Develop a national protocol for the re-certification of tank systems; for all tank systems which have adequate initial assessments, establish a schedule and protocol to follow for future inspections – and methods to document (and professionally certify) those inspections. ○ Specify what repairs or modifications would require re-assessment/certification. ○ Make it clear that the inspections and certifications need to include all components of the tank system (including ancillary equipment), not just the tank itself. ○ Require periodic assessment and certification of secondary containment systems, structural members (such as pedestals or legs), lightning protection, bonding/grounding, and other issues that are "outside of" the tank system but are important for tank performance and failure prevention.

Priority Candidates (cont.)

Issue Description	Potential Action(s) to Address Issue
I. Corrective Action Permits Policy Clarification Need for guidance on how to implement Corrective-Action only permits.	• Develop policy on the use of CA permits, their duration, and criteria for use of alternative authorities in lieu of permits (e.g., When is it appropriate to use alternative authorities, under which circumstances? When a CA permit can be terminated?)

J. Recycling and Processing of Mercury (Including Mercury from Universal Wastes)
Universal Waste destination facilities are required to have RCRA storage permits but (like other permitted facilities) their recycling processes are exempt. Questions have been raised as to whether destination facilities that process spent mercury-containing lamps and facilities that recover mercury (i.e., retorters) may be releasing mercury into the workplace and environment. Additionally, there is a question as to whether the destination facilities and mercury recovery facilities meet the Land Disposal Restriction (LDR) requirements for the wastes they generate or land dispose. Finally, it is unclear the extent to which materials generated at destination facilities and mercury recovery facilities are being recycled.
	• Explore issue, including evaluation of health and safety records/exposure, environmental releases, and lifecycle management of mercury-containing lamps. Questions to be answered include:
	  ○ Is recycling occurring, and if so to what degree (mercury, phosphor powder, glass, metals)?
	  ○ Is sending UW lamp residuals for retort, when the reclaimed mercury is going into long-term/deep storage, considered recycling? If not, should retorters be permitted for treatment?
	  ○ Are LDR standards being met for generated wastes?
	• Evaluate whether actions are needed, whether through revised technical guidance document(s) or rule revisions, including the potential need for permitting requirements.

Priority Candidates (cont.)

Issue Description	Potential Action(s) to Address Issue
K. Environmental Justice As EPA continues to prioritize environmental justice and some states work to develop policies and laws governing everyday work to provide equal environmental protection, questions arise about prioritization of sites and federal funding/incentives for states, territories, and tribes.	• Explore issue, including ways to prioritize work based on EJ.

Live Voting

LIVE AUDIENCE VOTING TO INFORM THE SELECTION OF FY23/24 PRIORITIES

The RCRA Model Permit

Plan to Update the 1988 National RCRA Model Permit and to Provide an Accompanying RCRA Permit Writer's Standard Operating Procedure

Objective of the RCRA Model Permit Update

- This project was selected as one of the FY 2022 National RCRA Permitting Priorities to assist permit writers in timely issuing permits that incorporate the latest standards/guidance, promote consistency and help with succession planning.
- This project includes the development of an accompanying RCRA Permit Writer's Standard Operating Procedure.

Model Plan Approach

Model Permit Plan Coordination Team

Model Module Development	Model Webpage	Permit Writer SOP	Training
Component Coordinator	Component Coordinator	Component Coordinator	Component Coordinator
	Work Group	Work Group	Work Group: Includes: TrainEX & ERTPVU)
Contract Support	-----	PB REPA TO Support	PB REPA TO Support
Individual Module Coordinators (IMCs) Module Work Groups	Peer & Expert Reviewers (including legal and compliance reviewers.)	Peer & Expert Reviewers (including legal and compliance reviewers.)	Peer & Expert Reviewers (including legal and compliance reviewers.)
Description: ▪ Identified priority modules will be processed first as rulemaking allows.	Description: ▪ Word module downloads and quick access web viewing from webpage for cut'n'paste. ▪ Modules and SOP will be made available as they are completed – not held till all modules are completed.	Description ▪ Concurrent development with Model. ▪ Instructions for pre-application submittal through final permit issuance, denial, and modification. ▪ Integrated PW Permit Process Checklist, Application Checklists and Model correspondence. ▪ Annotations as possible.	Description ▪ Permit Writer Training concurrently with PW SOP and Priority Model Permit Modules. ▪ Training via Web-based recorded live sessions with Q & A. ▪ Recorded session for Self-Paced Training on the ERTPVU.

Updating the Model Permit Requires Regional & State Expertise

- ORCR anticipates that there are existing, effective regional and state permits with modules, language and conditions that are excellent prototypes to update the National Model.
- Finding these prototypes is key.
- Permit writer, legal, and enforcement expertise to evaluate and enhance the prototype to ensure it is comprehensive of the subject, clear, measurable and incorporates lessons learned, is critical.
- ORCR's plan to update the model permit is designed to respect the time of the participant and use the existing permits' modules and existing model permits.
- The participation of regional and state experts will facilitate timely completion of the model permit, Permit Writer's SOP and Permit Writer Training components of the RCRA Model Permit Plan.

Model Permit Modules

Priority Modules	Update Existing Modules		Establish New Modules	
Cover Page Language	Containers	Landfills	Boilers	Ind. Furnace(s)
General Permit Conditions	Tank(s)	Incinerator(s)	Miscellaneous X Unit(s)	Drip Pads
General Facility Conditions	Surface Impoundments	Waste Piles	Containment Bldgs.	RD&D
RCRA Organic Air Emission Standards (ROAES)	Land Treatment Ops/Demos	Post Closure Care & PCC Extension	Explosive Munition Storage	*FA & Cost Estimation
Open Burn/Open Detonation (OBOD)	Groundwater (GW) Detection Monitoring	HWMUs Corrective Action (CA)	*Waste Minimization	*e-Manifest
Waste Analysis Plans (WAPs)	GW Compliance Monitoring	SWMU CA	CAMU	*Climate Adaptation & Resilience
Land Disposal Restrictions (LDR)			*Environmental Justice	

* Anticipate establishing Language in Conditions or Independent Conditions in other Modules rather than Independent Modules for this subject matter.

Orange Highlight indicates we are seeking model permits or permits addressing subject and subject matter experts.

Permit Writer's SOP

- Planned to be a permit writer's step-by-step guide through the entire permit application evaluation and permitting process.
- The SOP will explain the importance of the permit application content and completeness for overall permit development and effectiveness.
- The Permit Writer's is planned to be an MS Word Table and PDF Form with integrated:
  - Permitting Process Checklist,
  - Fillable Permit Application Checklist,
  - Model Correspondence,
  - Annotation from the Module Workgroup and Experts in the PDF form version.
- Adobe Acrobat has advanced functions that are advantageous to the development of training and guidance materials. Most specifically, PDFs can be fillable forms and can have embedded photos, audio, and video recordings.
- An Annotated PDF form can capture Module Work Groups' and Experts' commentary and discussion on the subject matter, application and permit content, and permit writing capturing how they evaluate applications and develop permit conditions.

For More Information or To Participate, Contact The Model Permit Plan Coordination Team:

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Permitting Updates
Proposed Rulemaking

Background

- EPA initiated the Permitting Updates Proposed Rulemaking after this effort was selected as a National RCRA Permitting Priority for FY22.
- This action seeks to make regulatory amendments and various updates and clarifications mainly in 40 CFR parts 264/265/270 to codify established policies, reflect current information or standards, improve understanding of and compliance with the regulations, and make technical corrections and other conforming changes to address inadvertent errors and remove obsolete references.
- This action also may solicit public input on topics related to RCRA permitting to inform possible future agency actions.
- We expect to propose in summer 2023.

Sources of Ideas

Sources of Revisions for Consideration

- Permitting Integrity Team (PIT) priorities
- OECA RCRA Air National Compliance Initiative (NCI)
- McCoy
- Permit Writers call
- EPA-States Financial Assurance call
- Generator improvements rule
- Review of guidance in RCRA Online
- Public Comments submitted during regulatory reform effort
- Ideas collected through program management

Screening Ideas

1. Is the proposed change centered on permit-related issues (unless technical corrections), mainly within 40 CFR parts 264/265/270, or permit-related regulatory sections including 124, 260, and others?

2. Does the benefit of the change outweigh the potential difficulty (for example not require extensive cross-office or complex scientific analysis, not contentious?

3. Does the proposed change: codify established policies, reflect current information or standards, improve understanding and compliance with the regulations, or make technical corrections and other conforming changes to address inadvertent errors and remove obsolete references?

4. If technical correction:
   - Does the proposed change make sense (i.e. improve the regulatory text)?
   - Can a subject matter expert verify the accuracy of the change?

   If updated standard:

   Are current standards incorrect?
   Are correct standards available and supported by current policy, guidance, or preamble?

   If clarifying language or codifying current practice:

   Is the change supported by current policy, guidance, or preamble?
   Or is the change is to clarify language and does not change the intent of the regs?

Does the change have significant program benefit to outweigh challenges and have management approval?

The correction falls within the scope of the rulemaking and should be considered.

The correction does not fall within the scope of the rulemaking and should not be included.

Types of Corrections/Edits

- The proposed rulemaking is intended to contain changes of the following types:
  - **Technical Corrections** - items that fix regulatory text and would not adjust intent or implementation of the regulations from current practice.
  - **Updated Standards** - items that would update standards cited in the RCRA regulations that are established or determined by programs outside of RCRA.
  - **Clarifying Language and Codifying Policy** - items that consist of potential changes to improve clarity of a regulation. Items included in this category are generally supported by existing policy in other documents, such as EPA memoranda or guidance.

Technical Corrections

Correction Types	Example
1. Correcting Cite	Incorrect regulatory citation, for example 271.16(e) cites 265.90(d), but the correct citation is 265.90(f).
2. Correcting Reference	At 264.600, the regulations reference 52 FR 46964 (in two places), but it should be 52 FR 46946.
3. Omission	Many of these are references to LDR citations that have been removed from the regulations. For example, 270.42 Appendix I permit mod table references 268.8(a)(2)(ii), which has been removed and reserved.
4. Spelling/Typo	264.18(b)(1) reads "…maintained to prevent washout or any hazardous waste" It should read "washout of any hazardous waste"
5. Other (Correcting Text)	A missing modification class type notation for unit to transition to air regs under Part 63. It should identify it as a Class 1 based on 70 FR 59578. Page 59578 shows the intended addition to the permit mod table with [1]1 under the class column.

Updated Standards

1. Propose to Update Maximum Contaminant Levels (MCL) in 264.94 and 265 Appendix III to reflect current MCLs, which are determined by EPA's Office of Water under the Safe Drinking Water Act.
   - Appendix III is referenced in 265.92(b)(1) "Sampling and analysis" and 265.94 "Recordkeeping and reporting" relating to establishing background concentrations at a facility through groundwater monitoring
2. Propose to Update 264 Appendix VI, *Political Jurisdictions in Which Compliance With Section 264.18(a) Must Be Demonstrated*, to include more recent seismic zones.
   - 264.18(a) restricts the location of new TSD facilities within 61 meters (200 feet) of a fault which has had displacement in Holocene time.
   - A comment to the 264.18 location standards "Facilities which are located in political jurisdictions other than those listed in appendix VI of this part, are assumed to be in compliance with this requirement" effectively establishes that facilities located in political jurisdictions not listed in Appendix VI do not need to do any seismic analysis.

Clarifying Language and Codifying Policy

- Permit Application
- Permit Modification
- Contingency Plan/Incident Reporting
- Financial Assurance
- RCRA Air AA/BB/CC
- Groundwater Monitoring Requirements
- Closure/Post-closure
- Language Clarification
- Public Notice
- Others

Highlights from Clarifying Language and Codifying Policy Category

Permit Application - Modify language at 270.10(h)(1)-(2) (Reapplying for a Permit) to explicitly require renewal applications to be sent no later than 180 days (6 months) prior to permit expiration date. The existing language (i.e., use of "may" in the sentence) makes it seem that the 180-day time period is optional, and that the Agency may request less time versus more.

Contingency plan - Modify 264.50 through 264.56 (Subpart D – Contingency Plan and Emergency Procedures) to adopt contingency plan changes for Treatment, Storage and Disposal Facilities (TSDFs) similar to those made for the Large Quantity Generators in the Generator Improvements Rule, thereby enhancing internal regulatory consistency. These changes include the addition of Local Emergency Planning Committees as an entity with which the facility should make arrangements, and quick reference guides for TSDFs.

AA/BB/CC - Revise the n-hexane calibration standard of Method 21 in Subpart BB (264.1063/265.1063) to reflect a commercially available concentration (i.e., replace 10,000 ppm with 5,000 or 6,000 ppm) because the required concentration of 10,000 ppm exceeds the lower explosive limit and presents a safety risk.

Closure/post-closure - Multiple targeted changes to clarify the intended use of the post-closure rule. Clarification that certification of closure must be accepted to discontinue the post-closure care period.

Public notice - Items are related to notice "Modernizing Public Notice for RCRA Hazardous Waste Permitting and Other Actions" (86 FR 71482, 12/16/2021), and stem from the related FY20/21 national RCRA permitting priority.

Additional Topic Areas

- ORCR is planning to also use the proposed rulemaking to discuss broader policy areas.
- Items under consideration in this category include those that may be discussed for the purpose of soliciting information through public comment but will not be included as proposed changes.
- Public comment received on these items may inform future policy decisions and/or rulemakings.

Highlights from Additional Topic Areas

FY23/24 Permitting Priorities - ORCR is currently identifying the next round of national RCRA permitting priorities. Some issues collected to date include items that are already being considered under the Permitting Updates Rule (e.g., reviewing when permit applications for renewal are due). Other issues raised through this process could be included as additional items.

Post-closure - Post-closure care has been consistently ranked high by states as an area of need. There are many facets to the post-closure care issues, and soliciting input through this process will better position the Agency to evaluate policy options. Additionally, the rule provides opportunity to address some of the issues presented in the ASTSWMO position paper on post-closure care beyond 30 years at RCRA Subtitle C facilities.

Used Oil - Request comment on adding language to part 279 to address used oil and wastewater mixtures, especially for situations when used oil is only a minute fraction; how to manage wastewater after separation; how emulsions are managed, how phase-separable mixtures are managed.

Permit Mods - State agencies have been reporting to ORCR that the permit modification process could be more efficient. The work to issue modifications is often urgent and time consuming. Edits for the modification process (in 270.42) have been previously identified by states through national RCRA permitting priority process.

Environmental Justice and Climate Change

- Permitting is an area whose intersection with environmental justice and climate change is of heightened focus. This rule is just one of several mechanisms by which ORCR is addressing EJ/CC in the permitting context.
- Many of the changes being considered for the proposed rule are anticipated to have beneficial impacts for EJ or CC and will be highlighted in a separate section of the preamble.
- Some examples include:
  - Improvements for emergency/contingency planning
  - Better implementation of RCRA organic air emission standards
  - Including additional public notice options

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Questions?