

Chapter 855: INTERIM LICENSES FOR WASTE FACILITIES FOR HAZARDOUS WASTE

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Chapter 855: INTERIM LICENSES FOR WASTE FACILITIES FOR HAZARDOUS WASTE

SUMMARY: This ~~rule~~ Chapter establishes the requirements and procedures for issuance, by the Board of Environmental Protection, of interim licenses for hazardous waste facilities in existence on April 1, 1980 or in existence on the date they first become subject to regulation.

- 1. Legal Authority.** This ~~Chapter~~ rule is authorized by and adopted under 38 M.R.S.A., ~~Section §§ 1301, et seq., through 1319-Y~~ which directs the Board of Environmental Protection to implement an interim licensing program for those waste facilities for hazardous waste which were in existence on April 1, 1980, or are in existence on the effective date of statutory or regulatory changes that first render the facilities subject to hazardous waste licensing requirements, including the requirements of this Chapter, *Standards for Hazardous Waste Facilities*, 06-096 C.M.R. ch. 854, or *Licensing of Hazardous Waste Facilities*, 06-096 C.M.R. ch. 856.
- 2. Preamble.** It is the purpose of the Department of Environmental Protection (Department), consistent with legislative policy, to provide effective controls for ~~handling~~management of hazardous wastes. This ~~Chapter~~ rule establishes requirements and procedures for the issuance, by the Board of Environmental Protection, of interim licenses for hazardous waste facilities.

NOTE: Pursuant to 38 M.R.S. § 341-A, Sections (2) and (4), the term “Department” is defined to include the Board of Environmental Protection and the Commissioner of the Department of Environmental Protection (Commissioner). The term “Board” is used in this Chapter in reference to the Board or a Board action, generally related to the Board’s issuance of interim hazardous waste facility licenses. The term “Department” is generally used in this Chapter in reference to the Commissioner (or the Commissioner’s designee) and to the administration, oversight or monitoring of compliance with the standards of this Chapter and the terms and conditions of interim licenses issued by the Board.

Portions of this Chapter refer to federal regulations of the United States Environmental Protection Agency (EPA). Unless otherwise specified, the federal regulations referenced are those final regulations as amended up to July 1, 2019, as they appeared in volume 40 of the Code of Federal Regulations (C.F.R.) and are hereby incorporated by reference. Where specifically stated, the terms of a referenced federal regulation are hereby incorporated as terms of this Chapter, except that in regulations incorporated thereby, "EPA" shall mean "the Maine Department of Environmental Protection (Department)"; "Administrator", "Regional Administrator" and "Director" shall mean the Maine Board of Environmental Protection, the Commissioner of the Department of Environmental Protection or the Commissioner’s designated representative, as applicable; and the references to terms or phrases including "treat", "store", or "dispose" shall mean "handle". In addition, where the terms of federal regulations hereby incorporated by reference differ from or are inconsistent with other terms of this Chapter or Maine’s *Hazardous Waste Management Rules*, 06-096 C.M.R. chs. 850 - 860, the more stringent of the requirements apply. Other changes to regulations incorporated hereby are as expressly made in this Chapter.

- 3. Persons Who Must Obtain Interim Licenses.** Any person, as defined in 38 M.R.S.A., ~~Section § 361-A(4)~~, who, on April 1, 1980, owned or operated a hazardous waste facility or who owns or operates a hazardous waste facility which is in existence on the effective date of statutory or regulatory changes that first render the facility subject to the hazardous waste licensing requirements, including requirements of this Chapter, 06-096 C.M.R. ch. 854, or 06-096 C.M.R. ch. 856, is required to apply for and receive an interim license in order to lawfully continue the operation of such facility, except for

persons not required to obtain a license under 06-096 C.M.R. ch. 856, §§~~Section 6 or Section 18 of Chapter 856.~~

4. Definitions

- A. Alter.** "Alter" means any change in or to a waste facility for hazardous waste after an interim license for that facility has been applied for or issued including, but not limited to, changes in ownership, operational control, methods of operation and type or amount of wastes handled.
- B. Handle.** "Handle" means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose of.
- C. Hazardous waste.** "Hazardous waste" means a waste substance or material in any physical state identified as hazardous waste in *Identification of Hazardous Wastes, Chapter 06-096 C.M.R. ch. 850* of the rules of the Department of Environmental Protection as that Chapter may exist from time to time.
- D. Storage.** "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous wastes.
- E. Waste Facility for Hazardous Waste.** "Waste facility for hazardous waste" means any land area, structure, location, equipment or combination of them, including dumps, used for handling hazardous waste. A land area or structure does not become a waste facility solely because it is used to store, for 90 days or less, hazardous wastes generated on the same premises.

5. Procedure for Obtaining an Interim License

- A.** The owner or operator of a hazardous waste facility which was in existence on April 1, 1980 or is in existence on the effective date of statutory or regulatory changes that first render the facility subject to the requirement to have a license under 06-096 C.M.R. ch. Chapter 856, who intends to continue the operation of such facility, or the owner or operator of an interimly licensed facility that handles a newly listed hazardous waste, ~~must~~shall, using the form provided by the Department:

NOTE: Any owner or operator that does not intend to continue the operation of such facility is still responsible for all closure and post closure requirements, as well as any generator standards.

- (1) Notify the Department of Environmental Protection of its location; and
 - (2) Provide the Department of Environmental Protection with a detailed description of the operation of the facility; and
 - (3) Identify the hazardous waste(s) that the facility handles; and
 - (4) Indicate an intent to file an application for a license (non-interim) for the facility for hazardous waste when rules and procedures related to such licenses are promulgated by the Board of Environmental Protection.
- B.** The Board of Environmental Protection ~~shall~~will issue an interim license for a waste facility for hazardous waste when it finds that:

- (1) The hazardous waste facility was in existence on April 1, 1980 or the waste facility is in existence on the effective date of statutory or regulatory changes that first render the facility subject to the requirement to have a license under ~~Chapter~~ 06-096 C.M.R. ch. 856;
 - (2) The information required by Section 5(A) of this ~~Chapter~~ rule has been provided in full by the owner or operator of the waste facility for hazardous waste within 60 days of first becoming subject to the license requirements of 06-096 C.M.R. ch. Chapter 856;
 - (3) The waste facility for hazardous waste is being operated and will be altered or operated only in accordance with rules ~~of adopted by~~ the Board, including, where applicable, but not limited to the *Solid Waste Management Rules*, 06-096 C.M.R. ch. Chapter 400 and the *Site Location of Development Law Rules*, 06-096 C.M.R. chs. Chapters 371 through 376;
 - (4) If the waste facility for hazardous wastes has a discharge or emission license under 38 M.R.S.A., §§ ~~Sections 4134 or 5904~~, that the facility is operated in accordance with that license;
 - (5) The facility is not located in areas prohibited under ~~Section 7 of~~ 06-096 C.M.R. ch. Chapter 854, § 7;
 - (6) The facility will not manage F020-F023, F026, or F027 wastes except under the conditions specified in 40 ~~CFR~~ C.F.R. § 265.1(d)(1)(i)-(v), ~~which are hereby adopted and incorporated by reference,~~ provided, however, that references to other sections or subparts of 40 ~~CFR~~ C.F.R. Part 265 shall mean "this Chapter";
 - (7) The waste management activity is not prohibited under ~~Sections 5B-E of~~ 06-096 C.M.R. ch. Chapter 854, §§ 5(B)-5(E); and
 - (8) The facility was not previously denied a noninterim hazardous waste license, or an interim license which was issued to the facility has not expired pursuant to Section 7 of this Chapter.
- C. If an owner or operator of a hazardous waste management facility has filed an interim application with the Department pursuant to Section 5(A) of this Chapter but has not yet filed a final application pursuant to 06-096 C.M.R. ch. 856, the owner or operator shall file an amended interim application:
- (1) ~~a~~ No later than the effective date of regulatory provisions listing or designating wastes as hazardous in Maine in addition to those already listed or designated, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; -or
 - (2) ~~a~~ As necessary to comply with the provisions of Section 6 of this ~~Chapter~~ Rule.
- D. An interim license may be issued under such terms and conditions as the Board may prescribe and is valid only so long as the waste facility for hazardous waste is in compliance with such license and with the requirements of this Chapter.
- ~~E. Portions of this rule refer to federal regulations of the United States Environmental Protection Agency (EPA). Unless otherwise specified, the federal regulations referenced are those interim final or final regulations revised as of July 1, 1988, as they appeared in volume 40 of the Code of Federal Regulations (CFR). Where specifically stated, the terms of a referenced federal regulation are hereby adopted as terms of this rule, except that in regulations incorporated thereby, "EPA" shall mean "the Maine Department of Environmental Protection (DEP)"; "Administrator", "Regional Administrator" and "Director" shall mean "the Maine Board of Environmental Protection~~

~~or its designated representative"; and the phrase "treat, store, and/or dispose" shall mean "handle". In addition, where the terms of federal regulations hereby incorporated by reference differ from or are inconsistent with other terms of this Chapter or Chapters 850-860, the more stringent of the requirements shall apply. Other changes to regulations incorporated hereby are as expressly made in this rule.~~

6. Alteration of Hazardous Waste Facility. A hazardous waste facility for which an interim license has been applied for or issued may be altered only with the approval of the Board of Environmental Protection, under the following conditions:

- A. After an owner or operator submits the form provided by the Department but before the interim license sought thereby has been issued, approval of an alteration must be applied for by submission of a revised form;
- B. After an interim license for a hazardous waste facility has been issued, application for approval of an alteration to the facility must be made in writing, must describe in detail the alteration for which approval is sought and must explain the need for the alteration. Approval of a change in ownership or operational control of a facility must be sought no later than 90 days prior to the date on which the proposed change is to be made. Approval of other alterations must be sought no later than 30 days prior to the date on which the proposed alteration is to be made, except that where a licensee demonstrates that the alteration must be made because of an emergency condition, approval may be sought and granted on such shorter notice as the Department determines to be reasonable under the emergency condition. Except as provided below, the Board ~~shall~~will not approve alterations to a waste facility during interim status which amount to reconstruction of the facility. "Reconstruction" means when the capital investment in the alterations to the facility exceeds fifty (50) percent of the capital cost of a comparable entirely new waste facility for hazardous waste.

NOTE: Alterations will be handled by the Board of Environmental Protection on a case-by-case basis and the Board reserves the right to apply a more stringent test than EPA's "reconstruction" test.

Approval of an amendment to an interim license may be granted if it meets the requirements of Sections 5(A) and 5(B) ~~of this Chapter and/or the requirements of Section 5(C)~~ of this Chapter as applicable and:

- (1) ~~it~~It is necessary to prevent a threat to human health or the environment, because of an emergency situation, or
- (2) ~~it~~It is necessary to comply with Federal regulations (including the interim status standards of this ~~Chapter~~Rule) or State or local laws.

—After application and upon demonstration to the Department by a new owner or operator of compliance with all applicable interim standards, the Department may transfer the interim license to the new owner or operator; and

- C. Any proposed new, replacement, or lateral expansion of a hazardous waste pile, landfill, or surface impoundment ~~shall be~~is subject to the licensing requirements of 06-096 C.M.R. ch. Chapter 854 and 06-096 C.M.R. ch. 856 as a new facility prior to construction or operation of such a facility; and

D. If all other requirements of this eChapter are met, the following changes may be made even if they amount to reconstruction:

- (1) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.
- (2) Changes necessary to comply with an interim status corrective action order issued by EPA under Section 3008(h) of RCRA or another federal authority, by the Board or the Department under comparable state authority, or by a court in a judicial proceeding brought by EPA or the State of Maine, provided that such changes are limited to the treatment, storage, or disposal of solid waste and hazardous waste from releases that originate within the boundary of the facility.

7. Expiration of Interim Licenses. An interim license for a waste facility for hazardous waste ~~shall~~ expires on the earliest of the following dates:

- A.** The date of the final administrative disposition of the application for hazardous waste facility license (non-interim);
- B.** The date of a finding by the Board that the disposition referred to in Section 7(A) of this Chapter has not been made because of the applicant's failure to furnish information, reasonably required or requested, to process the application;
- C.** The date of expiration of the license issued under 38 M.R.S.A., Sections ~~§§ 4134 or 5904~~; or
- D.** The date on which the application for a hazardous waste facility license (non-interim) is due and the person operating under the interim license has failed to apply for the hazardous waste facility license (non-interim);
- E.** For interim licenses issued prior to November 8, 1984, unless the owner or operator of the facility has filed a complete application with the Department before one of the following dates and that application demonstrates compliance with all applicable ground water monitoring and financial responsibility requirements:
 - (1) November 8, 1985, for a land disposal facility;
 - (2) November 8, 1986, for a hazardous waste incinerator;
 - (3) November 8, 1989, for any facility other than a land disposal facility or hazardous waste incinerator; or
- F.** Twelve months after the facility first becomes subject to the licensing requirement of 06-096 C.M.R. ch. Chapter 856 unless the owner or operator of the facility has filed a complete application pursuant to 06-096 C.M.R. ch. Chapter 856 with the Department before such date and that application demonstrates compliance with all applicable ground water monitoring and financial responsibility requirements.

8. Deadlines

- A. Applications.** Application for an interim license for a waste facility for hazardous waste must be made by filing the form provided by the Department within 45 days of the effective date of rules of the Board in which a waste handled in the facility is identified as hazardous. An application is

"filed" on the date as of which it is determined by the Department to be complete, consistent with this Chapter ~~rule~~ and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2.

- B. Issuance.** Interim licenses will be issued or deemed to have been issued by the date of the second regular meeting of the Board of Environmental Protection to occur after an application is complete, unless non-issuance is due to delay ascribed to the applicant.

9. Hazardous Waste Facility Requirements

- A.** All facilities with an interim license shall comply with applicable requirements of *Land Disposal Restrictions*, 06-096 C.M.R. ch. 852 and the following requirements:

- (1) Every facility owner or operator ~~shall~~ must apply for and obtain an EPA identification number in accordance with the EPA notification procedures at 40 C.F.R. § 265.11;
- (2) ~~40 CFR C.F.R. § 265.12, Required Notices, which is hereby adopted and incorporated by reference, provided, however, except~~ that the phrase "of this Part and Part 270 of this Chapter" in 40 CFR C.F.R. § 265.12 ~~(be)~~ shall mean "of this Chapter and 06-096 C.M.R. ch. Chapter 856";
- (3) ~~40 CFR C.F.R. § 265.13, as revised on August 17, 1988 (53 FR 31211), Waste Analysis, which is hereby adopted and incorporated by reference, provided, however, except~~ that all references to 40 CFR C.F.R. Part 268 or sections or subparts thereof shall mean "06-096 C.M.R. ch. Chapter 852", all references to "this part" shall mean "this Chapter", all references to "Part 261" shall mean "06-096 C.M.R. ch. Chapter 850", the references to "40 C.F.R. §§ Sections 265.200, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, and 265.402 of this Chapter" in 40 CFR C.F.R. § 265.13(b)(6) shall mean "this Chapter", and the ~~phrase reference to "40 C.F.R. § Section 260.22 of this Chapter" in 40 CFR C.F.R. § 265.13(b)(7)(iii) shall mean~~ "06-096 C.M.R. ch. Chapter 850";
- (4) 40 CFR C.F.R. § 265.14, Security, ~~which is hereby adopted and incorporated by reference;~~
- (5) 40 CFR C.F.R. § 265.15, General Inspection Requirements, ~~which is hereby adopted and incorporated by reference, provided, however, except~~ that any references to sections of 40 CFR C.F.R. §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377 and 265.403 ~~Part 265~~ shall mean "this Chapter";
- (6) 40 CFR C.F.R. § 265.16, Personnel Training, ~~which is hereby adopted and incorporated by reference;~~
- (7) 40 C.F.R. § 265.19, Construction quality assurance program, applicable to all surface impoundments, waste piles and landfill units, except that references to 40 C.F.R. Part 270 shall mean 06-096 C.M.R. ch. 856;
- (8) ~~7) 40 CFR C.F.R. §§ 265.17, 265.31-265.37, Preparedness and Prevention, which are hereby adopted and incorporated by reference, provided, however, except~~ that references to "this part" shall mean "this Chapter". In addition, the precautions required to be taken by 40 CFR C.F.R. § 265.17 must meet applicable requirements of codes, standards and rules of the Department of Public Safety (State Fire Marshal's Office);

- (98) ~~40 CFR C.F.R. §§ 265.51-265.56, Contingency Plan and Emergency Procedures, which are hereby adopted and incorporated by reference, provided, however, that the reference in 40 CFR 265.52(b) to "Part 112 of this chapter, or Part 1510 of Chapter V" shall read "Part 112 or Part 1510 of EPA regulations";~~
- (109) The owner or operator ~~shall~~ must keep a written record at this facility. The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:
- (a) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I to 40 CFR C.F.R. § Part 265, ~~which is hereby adopted and incorporated by reference, provided except that references to Section 40 C.F.R. § 265.73 shall mean "this sub~~Section 9(A)(10) of this Chapter" (i.e., this section), and references to "40 C.F.R. Part 261 of this chapter" or sections or subparts thereof shall mean "06-096 C.M.R. ch. Chapter 850";
- (b) The information specified in 40 CFR C.F.R. § 265.73(b)(2)-(14) ~~as revised on August 17, 1988 (53 FR 31211-2), which is hereby adopted and incorporated by reference, provided, however, that all references to Part 265 or subparts or sections thereof (except for 40 C.F.R. §§ 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090) shall mean "applicable provisions of this Chapter", and all references to Part 268 or subparts or sections thereof (except 40 C.F.R. § 268.5) shall mean "applicable provisions of 06-096 C.M.R. ch. Chapter 852";~~
- (110) ~~40 CFR C.F.R. § 265.74, Availability, Retention, and Disposition of Records, which is hereby adopted and incorporated by reference, provided, however, except that the reference to "section 40 C.F.R. § 265.73(b)(2)" shall mean "sub~~Section 9(A)(109)(b) above of this Chapter";
- (124) ~~Annual Reporting and 40 CFR C.F.R. § 265.75, Annual Report, which is hereby adopted and incorporated by reference, provided, however, except that references to sections within 40 CFR Part 265 shall mean "this Chapter",~~ other comparable forms may be required by the Department, and the report must be prepared and submitted annually no later than March 1st for the preceding calendar year;
- (132) ~~40 CFR C.F.R. § 265.76, Unmanifested Waste Report, which is hereby adopted and incorporated by reference, provided, however, except that the reference to "Section 40 C.F.R. § 263.20(e)(2)" shall mean "Section 7B of Hazardous Waste Manifest Requirements, 06-096 C.M.R. ch. Chapter 857, § 8(B)" and the reference to 40 CFR 261.5 shall mean "Section 3(A)(5) of Chapter 850";~~
- (143) ~~In addition to submitting annual reports and unmanifested waste reports as specified in sub~~Sections 9(A)(124) and 9(A)(132) above of this Chapter, the owner/operator ~~shall~~ must comply with 40 C.F.R. § 265.77 and shall also report to the Department releases, fires, and explosions as specified in subSection 9(A)(98) above of this Chapter, and submit facility closures reports; and other reports as mandated in other provisions of this Chapter;
- (154) ~~06-096 C.M.R. ch. Chapter 857, Manifest Requirements, and 40 CFR C.F.R. § 265.72, Manifest Discrepancies Report; and all applicable requirements of transboundary movement of hazardous waste in accordance with 40 C.F.R. Part 262, Subpart H which is hereby adopted and incorporated by reference;~~

- (165) ~~40 CFR C.F.R. §§ 265.111-265.115 closure for all facilities, and 40 CFR C.F.R. §§ 265.116 - 265.120, post-closure for all disposal facilities, and all waste piles, surface impoundment and tanks closing as landfills, as those provisions were revised on September 2, 1988 (53 FR 34086), which are hereby adopted and incorporated by reference, provided, however, except that:~~
- (a) ~~References to other sections or subparts of 40 CFR C.F.R. Part 265 shall mean "this Chapter";~~
 - (b) ~~References to 40 CFR C.F.R. Part 270 or Part 124, or sections or subparts thereof, shall mean "06-096 C.M.R. ch. Chapter 856";~~
 - (c) ~~References to 40 CFR C.F.R. Part 262 shall mean "*Standards for Generators of Hazardous Waste*, 06-096 C.M.R. ch. Chapter 851";~~
 - (d) ~~References to "40 CFR C.F.R. Part 265, Subpart G" or "Subpart G" shall mean "this subSection 9(A)(16) of this Chapter" (i.e., this section);~~
 - (e) ~~40 CFR C.F.R. §§ 265.112(b)(8), 265.112(c)(1)(iv), 265.112(e), 265.118(c)(5), and 265.118(d)(1)(iii) shall be deleted;~~
 - (f) ~~the eCertification of closure of any unit (not just land disposal units as provided in 40 CFR C.F.R. § 265.115) used to handle hazardous waste shall be required within 60 days of completion of closure; and~~
 - (g) ~~closure plans or notifications of closure required under 40 CFR C.F.R. § 265.112(d) shall must be submitted at least 180 days prior to the date closure of the unit or facility is expected to begin;~~
- (176) ~~The financial requirements of 40 CFR C.F.R. §§ 265.141-265.143 and 40 CFR C.F.R. §§ 265.147-265.150 for all facilities and 40 CFR C.F.R. §§ 265.144-265.146 for all facilities subject to post-closure requirements, as those provisions were revised and amended on September 1, 1988 (53 FR 33959), which are hereby adopted and incorporated by reference, provided, however, except that:~~
- (a) ~~References to other sections or subparts of 40 CFR C.F.R. Part 265 shall mean "this Chapter";~~
 - (b) ~~References to sections or subparts of 40 CFR C.F.R. Part 264 shall mean "06-096 C.M.R. ch. Chapter 854";~~
 - (c) ~~References to "section 3008 of RCRA" shall mean "applicable Board or Department procedures"; and~~
 - (d) ~~References to sections or subparts of 40 CFR C.F.R. Part 124 or 270 shall mean "06-096 C.M.R. ch. Chapter 856"; and~~
- (187) ~~The air emission standards of 40 C.F.R. Part 265, Subparts AA, BB, and CC, except that references to Subparts I, J, or K and 40 C.F.R. § 265.1 shall mean this Chapter; and~~

(198) When environmental investigation or monitoring data, or reports interpreting environmental investigation or monitoring data, are submitted to the Department, the submittal must be accompanied by one or more electronic Environmental Data Deliverables (EDDs) containing all data in formats specified by the Department in accordance with Maine's Uniform Electronic Transaction Act, 10 M.R.S. § 9418 (2)(A). This applies to data for all environmental media and waste materials. The data includes but is not limited to laboratory analytical data, field analytical data and monitoring parameters, water level and water flow data.

- B.** Surface impoundments, landfills, and land treatment facilities ~~shall~~must monitor ground water to determine the facility's impact on the quality of ground water in the uppermost aquifer underlying the facility, in accordance with ~~40 C.F.R. §§ 265.90(b)-(e), 265.91-265.94, and Appendix III to 40 C.F.R. Part 265, which are hereby adopted and incorporated by reference, provided, however, except~~ that references to sections or subparts of 40 C.F.R. Part 261 shall mean "06-096 C.M.R. ch. Chapter 850". A "qualified groundwater scientist" must be independent, meet the requirements as the term is defined in 40 C.F.R. § 260.10 and meet the requirements of 06-096 C.M.R. ch. 856, § 10(A)(8).
- C.** Container storage facilities ~~shall comply~~must be in compliance with the requirements of ~~40 C.F.R. §§ 265.171-265.1787, which are hereby adopted and incorporated by reference, provided, however, except~~ that the references to 40 C.F.R. § 265.17(b) shall mean "subSection 9(A)(87) above of this Chapter", and the treatment of hazardous waste in containers is prohibited unless licensed by the Department pursuant to 06-096 C.M.R. ch. Chapter 856.
- D.** Facilities at which tanks are used to store or treat hazardous wastes ~~shall comply~~must be in compliance with the requirements of ~~40 C.F.R. §§ 265.190(a) and (c), and 265.191-265.2020, as revised on September 2, 1988 (53 FR 34087), which are hereby adopted and incorporated by reference, provided, however, except~~ that:
- (1) ~~References~~References to sections of 40 C.F.R. Part 270 shall mean "06-096 C.M.R. ch. Chapter 856";
 - (2) ~~References~~References to sections of 40 C.F.R. Part 261 shall mean "06-096 C.M.R. ch. Chapter 850";
 - (3) ~~References~~References to other sections or subparts of 40 C.F.R. Part 265 shall mean "this Chapter";
 - (4) ~~No~~No variance from secondary containment under 40 C.F.R. §§ 265.193(f)(4) and 265.193(g) shall be allowed; and
 - (5) ~~the use~~Use of open tanks not meeting the requirements of ~~Section 12B(5)-(7) of 06-096 C.M.R. ch. Chapter 854, § 12(B)(5) - (7)~~ is prohibited.
- E.** Facilities that use surface impoundments to store, treat, or dispose of hazardous waste ~~shall comply~~must be in compliance with the requirements of ~~40 C.F.R. §§ 265.2212-265.2267, 265.229, and 265.230, and 265.231, including the definition of "incompatible wastes" in 40 C.F.R. § 260.10 and examples in appendix V of 40 C.F.R. 265, except which are hereby adopted and incorporated by reference, provided, however,~~ that references to 40 C.F.R. § 265.17(b) shall mean "subSection Section 9(A)(87) above of this Chapter", references to sections of 40 C.F.R. Part 261 shall mean "06-096 C.M.R. ch. Chapter 850", references to other sections or subparts of 40 C.F.R. Part 265 shall mean "this Chapter", and 40 C.F.R. §§ 265.2212(~~g~~b) and 265.229(b) shall be deleted. In addition:

- (1) The owner or operator of a surface impoundment that does not meet the liner requirements of ~~Section 9(B) of 06-096 C.M.R. ch. Chapter 854, § 9(B)~~ shall:
- (a) ~~Include in the closure plan for the surface impoundment both a plan for complying with paragraph Section 9(E)(2) below of this Chapter and a contingency plan for complying with paragraph Section 9(E)(3) below of this Chapter in case not all contaminated subsoils can be practicably removed at closure;~~
 - (b) ~~Prepare a contingency post-closure plan for complying with paragraph Section 9(E)(3) below of this Chapter in case not all contaminated subsoils can be practicably removed at closure; and~~
 - (c) ~~Base the cost estimates for closure and post-closure care required under subSection 9(A) (165) above of this Chapter on the cost of complying with the more expensive of the two closure and post-closure scenarios.~~
- (2) The owner or operator ~~shall~~ must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless ~~Section 3(A)(3)(d) of 06-096 C.M.R. ch. Chapter 850, § 3(A)(3)(d) applies; or~~
- (3) If after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures and equipment as required in ~~paragraph Section 9(E)(2) above of this Chapter,~~ the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator ~~shall~~ must close the facility in accordance with the closure and post-closure requirements that apply to landfills ~~and comply with 40 C.F.R. § 265.228(b)(1)-(4);~~
- (4) The Department may grant a variance to ~~paragraph Section 9(E)(2) of this subsection Chapter~~ if the owner or operator demonstrates that the hazardous constituents in the waste will not migrate into ground water, surface water and air in violation of the applicable performance standards in ~~06-096 C.M.R. ch. Chapter 854~~ for as long as the waste and other materials will remain on-site. Facilities receiving a variance to ~~paragraph Section 9(E)(2)~~ shall close the facility in accordance with the closure and post closure requirements that apply to landfills;
- (5) All earthen dikes must have a protective cover order, such as grass, shale, or rock, to minimize wind and water erosion and to preserve their structural integrity; and
- (6) Surface impoundments newly regulated as described in 40 C.F.R. § 265.221(h) must shall meet the design and operating requirements of 40 C.F.R. §§ 265.19, 265.221(a)-(e), 265.222 and 265.223, except that the requirements in 40 C.F.R. § 265.221(a) apply regardless of when construction commences and references to sections of 40 C.F.R. § 264 shall mean 06-096 C.M.R. ch. 854, § 9(B)Section 3005(j) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925(j), which is hereby adopted and incorporated by reference.
- F. Facilities that treat or store hazardous waste in piles ~~shall comply must be in compliance~~ with 40 ~~CFRC.F.R. §§ 265.251-265.26058,~~ including the definition of "incompatible wastes" in 40 C.F.R. § 260.10 and examples in appendix V of 40 C.F.R. 265, ~~which are hereby adopted and incorporated by reference, provided, however~~ except that references to 40 ~~CFRC.F.R. § 265.17(b)~~ shall mean "~~subSection 9(A)(87) above of this Chapter~~", references to other sections or subparts of 40 ~~CFRC.F.R. Part 265~~ shall mean "this Chapter", ~~and~~ references to sections of 40 ~~CFRC.F.R. Part~~

261 shall mean "06-096 C.M.R. ch. ~~Chapter~~ 850", and references to 40 C.F.R. Part 268 shall mean 06-096 C.M.R. ch. 852. In addition, :

(1) ~~T~~ the owner or operator of a waste pile that does not meet the liner requirements of ~~Section 11(B)~~ of 06-096 C.M.R. ch. ~~Chapter~~ 854, § 11(B) shall:

(a1) ~~i~~ Include in the closure plan for the ~~waste pile surface impoundment~~ both a plan for complying with 40 ~~CFRC.F.R.~~ § 265.258(a) and a contingency~~t~~ plan for complying with 40 ~~CFRC.F.R.~~ § 265.258(b) in case not all contaminated subsoils can be practicably removed at closure;

(b2) ~~p~~ Prepare a contingency~~t~~ post-closure plan for complying with 40 ~~CFRC.F.R.~~ § 265.258(b) in case not all contaminated subsoils can be practicably removed at closure; and

(e3) ~~b~~ Base the cost estimates for closure and post-closure care required under ~~subs~~Section 9(A)(165) ~~above of this Chapter~~ on the cost of complying with the more expensive of the two closure and post-closure scenarios.

G. Hazardous waste land treatment facilities ~~shall comply must be in compliance~~ with the requirements of 40 ~~CFRC.F.R.~~ §§ 265.272-265.282, ~~which are hereby adopted and incorporated by reference, provided, however, except~~ that references to 40 ~~CFRC.F.R.~~ § 265.17(b) shall mean "~~subs~~Section 9(A)(87) ~~above of this Chapter~~", references to other sections or subparts of 40 ~~CFRC.F.R.~~ Part 265 shall mean "this Chapter", and references to sections or subparts of 40 ~~CFRC.F.R.~~ Part 261 shall mean "06-096 C.M.R. ch. ~~Chapter~~ 850," and references to 40 C.F.R. Part 268 shall mean 06-096 C.M.R. ch. 852.

H. Facilities that dispose of hazardous waste in landfills ~~shall comply must be in compliance~~ with the requirements of 40 ~~CFRC.F.R.~~ §§ 265.301~~2~~-265.316 ~~and including~~ the definition of "incompatible wastes" in 40 ~~CFRC.F.R.~~ § 260.10 and examples in appendix V of 40 C.F.R. Part 265, ~~which are hereby adopted and incorporated by reference, provided, however, except~~ that references to 40 ~~CFRC.F.R.~~ § 265.17(b) shall mean "~~subs~~Section 9(A)(87) ~~above of this Chapter~~", references to sections of 40 ~~CFRC.F.R.~~ Part 261 shall mean "06-096 C.M.R. ch. ~~Chapter~~ 850", references to 40 C.F.R. Part 268 shall mean 06-096 C.M.R. ch. 852, references to other sections or subparts of 40 ~~CFRC.F.R.~~ Part 265 shall mean "this ~~e~~Chapter" and references to "Section 144.3 of this chapter" shall mean "40 ~~CFRC.F.R.~~ 144.3", and the requirements of ~~Section 8C(5) of 06-096 C.M.R. ch. Chapter~~ 854, § 8(C)(5) of shall govern the disposal of liquids in lieu of 40 ~~CFRC.F.R.~~ § 265.314.

I. Facilities that incinerate hazardous waste ~~shall must~~ comply with the requirements of 40 ~~CFRC.F.R.~~ §§ 265.340(b) and 265.341-265.352, ~~which are hereby adopted and incorporated by reference, provided, however, except~~ that references to 40 ~~CFRC.F.R.~~ § 265.13 shall mean "~~sub~~section 9(A)(3) ~~above of this Chapter~~", references to "the Assistant Administrator for Solid Waste and Emergency Response" shall mean the Board or the Department, as applicable "~~the Maine Board of Environmental Protection or its delegated representative~~", references to "Subpart O of 40 C.F.R. Part 264" shall mean "~~Section 13 of 06-096 C.M.R. ch. Chapter~~ 854, § 13", and references to sections of 40 ~~CFRC.F.R.~~ Part 270 shall mean "06-096 C.M.R. ch. ~~Chapter~~ 856".

J. Facilities that thermally treat hazardous wastes in devices other than enclosed devices using controlled flame combustion (i.e., other than incinerators) ~~shall comply must be in compliance~~ with the requirements of 40 ~~CFRC.F.R.~~ §§ 265.373-265.383, ~~which are hereby adopted and incorporated by reference, provided, however, except~~ that references to 40 ~~CFRC.F.R.~~ § 265.13 shall mean "~~subs~~Section 9(A)(3) ~~above of this Chapter~~", references to "the Assistant Administrator for Solid Waste and Emergency Response" shall mean the Board or the Department, as applicable, "~~the~~

~~Maine Board of Environmental Protection or its delegated representative~~", references to "Subpart O of 40 C.F.R. Part 264" shall mean "~~Section 13 of 06-096 C.M.R. ch. Chapter 854, § 13~~", and references to sections of 40 ~~CFRC.F.R.~~ Part 270 shall mean "~~06-096 C.M.R. ch. Chapter 856~~".

K. Facilities which treat hazardous wastes by physical, chemical or biological means in other than tanks, surface impoundments, and land treatment facilities ~~shall comply must be in compliance~~ with the requirements of 40 ~~CFRC.F.R.~~ §§ 265.401-265.406, ~~which are hereby adopted and incorporated by reference, provided, however, except~~ that references to 40 ~~CFRC.F.R.~~ § 265.17(b) shall mean "~~subSection 9(A)(87) above of this Chapter~~", references to sections of 40 ~~CFRC.F.R.~~ Part 261 shall mean "~~06-096 C.M.R. ch. Chapter 850~~", and references to 40 ~~CFRC.F.R.~~ § 265.13 shall mean "~~subSection 9(A)(3) above of this Chapter~~".

L. Facilities that use new or existing "drip pads" (as defined in 40 C.F.R. § 260.10) shall comply with 40 C.F.R. §§ 265.440 - 265.445, except that 40 C.F.R. § 265.442 is deleted and any new drip pads must be designed and constructed with synthetic liners and operated as specified in 40 C.F.R. 265.443(b)(1)-(3); in addition to the requirements of 40 C.F.R. § 265.440(c), the contingency plan for responding to drippage in storage yards must meet the requirements of 38 M.R.S. § 1318-C and the facility must comply with the reporting and removal requirements of 38 M.R.S. § 1318-B; references to 40 C.F.R. §§ 265.112 and 265.118 shall mean Section 9(A)(16) of this Chapter; and references to 40 C.F.R. § 265.144 shall mean Section 9(A)(17) of this Chapter. In addition, facilities shall monitor groundwater consistent with the requirements in Section 9(B) of this Chapter.

M. Facilities that store munitions and explosive hazardous wastes shall comply with the additional standards applicable to miscellaneous units of 06-096 C.M.R. ch. 854, § 16.

~~**N.**~~ Pursuant to 38 M.R.S.A. § 1319-S, the Board may require the present or subsequent owner of the land used for a hazardous waste facility to execute and record a written instrument which imposes a restrictive covenant on the present and future uses of all or part of the land.

OM. The requirements of this ~~Chapter~~ rule shall remain in effect until all applicable closure and post-closure activities are completed and have been certified or until a license under 06-096 C.M.R. ch. Chapter 856 is issued.

10. Penalties. ~~Failure to comply with these rules shall subject the owner or operator of a waste facility for hazardous waste, to which these rules apply, who continues to operate such facility to penalties as provided in~~ Failure to comply with these rules subjects any person to civil and criminal liability pursuant to 38 M.R.S.A., §§ Section 349(1), and 349(2) and 1319-T.

~~After a public hearing on August 19, 1993 this rule as amended is adopted this 12th day of January, 1994.~~

AUTHORITY: 38 M.R.S.A., ~~§§ Section 1301; through 1319-Y et seq.~~

EFFECTIVE DATE: July 1, 1980
Amended March 23, 1983
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06-096

DEPARTMENT OF ENVIRONMENTAL PROTECTION

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996