Facilities subject to §265.121, (enforceable documents in lieu of permits)

If an alternative enforcement mechanism is used in lieu of a post-closure permit, the regulated units **must still meet the same substantive requirements that apply to units receiving post-closure permits**.

Specifically, the enforceable document must impose the requirements for **submission of information relevant** to closing facilities that need permits only for post-closure care

- (§265.121(a)(1));
- Part 264, Subpart F, requirements for groundwater monitoring and corrective action for releases to groundwater (§265.121(a)(3));
- and facility-wide corrective action requirements for releases from SWMUs under §264.101 (§265.121(a)(2)).

The requirements relating to the maintenance of the closed unit and **financial responsibility need not be addressed in the enforceable document**. Rather, **the relevant portions of Part 265, Subparts G and H will continue to apply.**

The term enforceable document includes federal enforcement orders issued under RCRA

- §§3008(a) and 3008(h),
- post-closure plans issued by EPA which are enforceable under §3008(a),
- orders issued under CERCLA §106,
- and decision documents describing Fund-financed response actions under CERCLA §104.

The use of an enforceable document provides opportunities for public participation that differ from those established in the permit issuance procedures. The new procedures reflect the Agency's efforts to provide as much public participation as possible, but also represent the awareness that most of the alternate mechanisms used to address corrective action will be enforcement orders.

EPA did not establish detailed procedural requirements, including minimum comment period times, for public involvement associated with the use of enforceable documents. EPA used this approach because it did not wish to restrict existing state or federal approaches that have proven to be successful.

When using an enforceable document, EPA **requires that meaningful opportunity for public involvement occurs at three key stages**:

1. when EPA first becomes involved in the cleanup process as a regulatory or enforcement matter,
2. when EPA is ready to approve a remedy for the site,
3. and when EPA is ready to decide that remedial action is complete at the site.

The Agency does not limit public involvement to these stages of cleanup; rather, it encourages early, open, and continuous public participation as is provided by the permitting process.

EPA requires that all public involvement be meaningful. Meaningful public participation is achieved when all impacted parties have ample time to participate in the facility cleanup decisions and have adequate access to information. Meaningful public participation may require bilingual notifications or publication of legal notices in city or community newspapers. EPA recommends that parties responsible for involving the

public update the community regularly on the progress made at cleaning up the facility through community meetings or the use of electronic bulletin board systems.

EPA can delay or waive the public participation requirements when using an enforceable document in lieu of a permit if even a short delay in the implementation of the remedy would adversely affect human health and the environment.

(c) For each hazardous waste management unit subject to the requirements of this section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(4) For facilities subject to §265.121 (enforceable documents in lieu of permits) provisions that satisfy the requirements of §265.121(a)(1) and (3)

- §265.121(a)(1) The requirements to submit information about the facility in 40 CFR 270.28;
    - §270.28: **Part B information requirements** for post-closure permits
        §270.28: Part B information requirements for post-closure permits
        - Required to submit information specified in:
            - 270.14(b)(1)
            - 270.14(b)(4)
            - 270.14(b)(5)
            - 270.14(b)(6)
            - 270.14(b)(11)
            - 270.14(b)(13)
            - 270.14(b)(14)
            - 270.14(b)(16)
            - 270.14(b)(18)
            - 270.14(b)(19)
            - 270.14(c)
            - 270.14(d)
        - And if the RA determines that additional information from the following sections is necessary:
            - 270.14
            - 270.16
            - 270.18
            - 270.20
            - 270.21
- §265.121(a)(3) The requirements of 40 CFR 264.91 through 264.100.
    - 40 CFR 264.91 through 264.100: PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES. Subpart F—RELEASES FROM SOLID WASTE MANAGEMENT UNITS

- §264.91 Required programs.
- §264.92 Ground-water protection standard.
- §264.93 Hazardous constituents.
- §264.94 Concentration limits.
- §264.95 Point of compliance.
- §264.96 Compliance period.
- §264.97 General ground-water monitoring requirements
- §264.98 Detection monitoring program.
- §264.99 Compliance monitoring program.
- §264.100 Corrective action program.

Compliance with a RCRA permit during its term is considered compliance, for purposes of RCRA enforcement, with Subtitle C of RCRA (§270.4(a)). This provision means that an owner and operator complies with the requirements specified in the permit, rather than with the corresponding regulations as promulgated in Parts 264 and 266. This is referred to as the "permit-as-a-shield" provision. A permittee must still comply with requirements that are imposed by the statute itself, the land disposal restrictions promulgated under Part 268, and the liner and leak detection requirements for certain land disposal units (57 FR 3462; January 29, 1992). In addition, the definition of permit-as-a-shield was amended to require facilities to comply with Subparts AA, BB, and CC of Part 265 (59 FR 62952; December 6, 1994).