

**Preliminary Draft Negotiated Rule (Draft No. 1)  
Docket No. 58-0106-1901, Dated July 30, 2019**

**Written comment deadline for this draft – September 12, 2019**

**Solid Waste Management Rules  
IDAPA 58.01.06**

**001. TITLE AND SCOPE.**

**01. Title.** These rules ~~shall~~ will be cited as Rules of the Department of Environmental Quality IDAPA 58.01.06, “Solid Waste Management Rules.” (4-2-03)

*[Edit restrictive words where appropriate – Red Tape Reduction Act.]*

**02. Scope.** These rules establish requirements applicable to all solid waste and solid waste management facilities in Idaho, except as specifically provided in Subsections 001.03 and 001.04. (4-2-03)

**03. Wastes Not Regulated Under These Rules.** (4-2-03)

**a.** These rules do not apply to the following solid wastes: (4-2-03)

**i.** Liquid wastes when the discharge or potential discharge of the liquid waste is regulated under a federal, state or local water pollution discharge or wastewater land application permit, including management of any solids if management of the solids are addressed in a permit term or condition; (4-2-03)

**ii.** Hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and the rules adopted thereunder; (4-2-03)

**iii.** Polychlorinated biphenyl (PCB) waste regulated under the Toxic Substance Control Act, 15 U.S.C. 2601, et seq., ~~with the exception that the PCB Waste Disposal Act, Chapter 62, Title 39, Idaho Code,~~ and these rules ~~shall~~ apply to PCB waste authorized by federal law to be disposed of at a nonhazardous waste landfill that is permitted, licensed or registered under Idaho Law; (4-2-03)

*[The PCB Waste Disposal Act has been repealed.]*

**iv.** Slash or slashing areas resulting from the harvesting of timber and the disposal of which is managed pursuant to Chapter 1, Title 38, Idaho Code or log landings or sorting sites; (4-2-03)

**v.** Wastes used, managed, stored and disposed in accordance with The Wood and Mill Yard Debris Technical Guidance Manual, as amended, published by the Department and developed pursuant to Sections 39-171 through 39-174, Idaho Code; (4-2-03)

**vi.** Clean soils and clean dredge spoils as regulated under Section 404 of the federal Clean Water Act provided that they are not hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code and the rules adopted thereunder; (4-2-03)

**vii.** Septage taken to a sewage treatment plant permitted by either the U.S. Environmental Protection Agency or the Department pursuant to IDAPA 58.01.15, “Rules Governing the Cleaning of Septic Tanks”; (4-2-03)

viii. All radioactive waste and radioactive materials regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder and radioactive waste and materials regulated under the authority of the Atomic Energy Act of 1954, as amended.; (4-2-03)

ix. Petroleum Contaminated Soils (PCS) from a leaking petroleum storage tank system managed as a one (1) time remediation pursuant to IDAPA 58.01.02, "Water Quality Standards"; or (4-2-03)

x. Asbestos as regulated by the Toxic Substances Control Act, as amended, 15 U.S.C. Sections 2601, et seq., or asbestos as regulated by the Clean Air Act, as amended, 42 U.S.C. Section 7412. (4-2-03)

xi. Nonhazardous wastes disposed in a permitted hazardous waste treatment, storage and disposal unit regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and rules adopted thereunder; (4-2-03)

xii. Waste otherwise regulated under Department authorities. (4-2-03)

***(BREAK IN CONTINUITY)***

**04. Solid Waste Management Facilities Not Regulated Under These Rules.** These Rules do not apply to the following solid waste management facilities: (4-2-03)

a. Solid waste management facilities accepting only solid waste excluded by Subsection 001.03; (4-2-03)

b. Recycling centers; or (4-2-03)

c. Backyard composting sites. (4-2-03)

~~d. Facilities which cease accepting solid waste prior to April 26, 2002 shall be required to only comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as follows: (4 2 03)~~

~~i. Grading. The entire site, including the landfill surfaces, shall be graded and provided with drainage facilities to minimize runoff onto and into the sanitary landfill to prevent erosion or washing and to prevent the collection of standing water. The grading of the final surface of the fill area must provide a slope of not less than one percent (1%), but not exceeding fifteen percent (15%), except as approved by the Department or as required in Section 39-7415(3), Idaho Code. (4 2 03)~~

~~ii. Seeding. Seeding to promote stabilization of the final soil cover shall be done as soon as weather permits seed bed preparation and planting operations and when seasonal conditions are suitable for the type of vegetation to be used. Re-seeding is mandatory until adequate vegetative cover is established to prevent erosion. (4 2 03)~~

~~iii. Site Closure. An inspection of the entire site of the completed sanitary landfill, or other solid waste management site that is to be vacated, shall be made by a representative of the District before earth moving equipment or other equipment vital to disposal of solid waste is removed from the site or used on other projects. Any necessary corrective work shall be performed before the operation is accepted as completed. (4 2 03)~~

~~(1) An official notice of closure of the site shall be sent to the District at the time the site is closed. (4 2 03)~~

~~(2) Arrangements shall be made for the repair of all cracked, eroded, and uneven areas in the final cover during the year following completion of fill operations. (4-2-03)~~  
[Special provisions for facilities existing at the time of 2003 rule promulgation are no longer necessary.]

~~**002. WRITTEN INTERPRETATIONS.**~~

~~The Department of Environmental Quality may have written statements that pertain to the interpretation of the rules in this chapter. Any such written statements shall be available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (4-2-03)~~  
[Delete Section 002 for consistency with Office of Admin Rules cleanup of IDAPA rules - Red Tape Reduction Act.]

**002. RESERVED.**

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” (4-2-03)

**004. APPLICABILITY.**

These rules apply to all solid waste unless excluded by Subsection 001.03 and to all ~~existing, new or modified~~ solid waste management sites in Idaho ~~identified in Subsection 004.01 and 004.02~~, unless excluded by Subsection 001.04. Compliance with these rules ~~shall~~ **does** not relieve owners and operators from the obligation to comply with other applicable state or federal laws, including but not limited to the IDAPA 58.01.02, “Water Quality Standards,” IDAPA 58.01.11, “Ground Water Quality Rule,” and IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho.” (4-2-03)

**01. Solid Waste Facility Other Than Municipal Solid Waste Landfills (MSWLF) Applicability.**

Sections 000 through 060 and Section 999 apply to all solid waste facilities other than MSWLF, as specified therein. (4-2-03)

**02. Municipal Solid Waste Landfill Applicability.** Sections 000 through 007, and Sections 994 through 999 apply to all MSWLFs, as specified therein. (4-2-03)

**005. DEFINITIONS.**

**01. Active Portion.** That part of a ~~new or existing facility or~~ unit where waste had been, or may be, disposed of, treated, or otherwise managed, and that has not been closed in accordance with applicable rules. (4-2-03)

*(BREAK IN CONTINUITY)*

**03. Beneficial Use.** Various uses of ground water in Idaho including, but not limited to, domestic water supplies, ~~industrial water supplies~~, industrial water supplies, and agricultural water supplies. A beneficial use is defined as actual current and projected future uses of ground water. (4-2-03)  
[Delete repetition.]

*(BREAK IN CONTINUITY)*

**06. ~~Conditionally Exempt Very~~ Small Quantity Generator (~~CESQG~~**VSQG**) Hazardous Waste.** As defined in 40 CFR Part ~~261.5~~**260.10**. (4-2-03)

**07. ~~Conditionally Exempt Very~~ Small Quantity Generator (~~CESQG~~**VSQG**) Management Facility.** A facility or portion thereof where household hazardous waste or ~~CESQG~~**VSQG** wastes are transferred from a vehicle or container and subsequently transported to another facility. A ~~CESQG~~**VSQG**

management facility does not include temporary drop off locations or other facilities where individuals or businesses are authorized to store waste for ultimate collection and disposal. (4-2-03)  
[Revised for consistency with current law.]

**08. Contamination.** The introduction of a substance into the surface or ground water causing: (4-2-03)

**a.** At or beyond the point of compliance, the concentration of that substance in ground water to result in significant ~~degradation~~ degradation, as determined pursuant to Section 400.02.b of the ~~Idaho~~ “Ground Water Rule,” IDAPA 58.01.11, or in an exceedance of the maximum contamination level (MCL) specified in the ~~Idaho~~ Ground Water Rule; (4-2-03)

**b.** The concentration of that substance in surface water exceeds a numerical criteria or fails to protect designated beneficial uses specified in the ~~Idaho~~ “Water Quality Standards,” IDAPA 58.01.02; (4-2-03)

**c.** A statistically significant increase in the concentration of that substance in the ground water at or beyond the point of compliance, or in surface water, where the existing concentration of that substance exceeds the contamination level specified in Subsections 005.08.a. or 005.08.b. of this rule; or (4-2-03)

**d.** A statistically significant increase in the concentration of that substance in ground water at the point of compliance, or in surface water, above background of a substance which; (4-2-03)

**i.** Is not specified in Subsections 005.08.a. or 005.08.b. of this rule; and (4-2-03)

**ii.** Is a result of the disposal of solid waste; and (4-2-03)

**iii.** Has been determined by the department to present a substantial risk to human health or the environment in the concentrations found in the ground water at the point of compliance, or in surface water. (4-2-03)

**(BREAK IN CONTINUITY)**

~~**13. Existing Facility.** A facility operating and receiving solid waste on or before April 26, 2002. (4-2-03)~~

**14. Facility.** Any area used for any solid waste management activity, including but not limited to: (4-2-03)

~~**a.** Storage; (4-2-03)~~

~~**b.** Transfer; (4-2-03)~~

~~**c.** Processing; (4-2-03)~~

~~**d.** Separation; (4-2-03)~~

~~**e.** Incineration; (4-2-03)~~

~~**f.** Treatment; (4-2-03)~~

~~**g.** Salvaging; or (4-2-03)~~

~~**h.** storage, transfer, processing, separation, incineration, treatment, salvaging, or ~~D~~ disposal of solid waste. (4-2-03)~~

15. **Garbage.** Any waste consisting of ~~putrescible~~putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food, including wastes materials from households, markets, storage facilities, handling and sale of produce and other food products. (4-2-03)

(BREAK IN CONTINUITY)

19. **Inert Waste.** Noncombustible, nonhazardous, and non ~~putrescible~~putrescible solid wastes that are likely to retain their physical and chemical structure and have a de minimis potential to generate leachate under expected conditions of disposal, which includes resistance to biological attack. “Inert waste” includes, but is not limited to, rock, concrete, cured asphaltic concrete, masonry block, brick, gravel, dirt, inert coal combustion by-products, inert precipitated calcium carbonate and inert component mixture of wood or mill yard debris. (4-2-03)

(BREAK IN CONTINUITY)

24. **Municipal Solid Waste Landfill Unit (MSWLF).** As regulated under Chapter 74, Title 39, Idaho Code, a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR 257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, ~~conditionally exempt~~very small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. (4-2-03)

(BREAK IN CONTINUITY)

42. **Site.** Any contiguous geographic area with one (1) or more facilities owned or operated by the same person ~~for any of the following activities:~~ (4-2-03)

a. ~~Storage;~~ (4-2-03)

b. ~~Transfer;~~ (4-2-03)

e. ~~Processing;~~ (4-2-03)

d. ~~Separation;~~ (4-2-03)

e. ~~Incineration;~~ (4-2-03)

f. ~~Treatment;~~ (4-2-03)

g. ~~Salvaging; or~~ (4-2-03)

~~h. used for any solid waste management activity, including but not limited to, storage, transfer, processing, separation, incineration, treatment, salvaging, or D~~ disposal of solid waste. (4-2-03)

(BREAK IN CONTINUITY)

48. **Tipping Floor.** An area at a transfer station, processing facility, ~~CESQG~~VSQG management facility or incinerator that receives and contains all waste materials. (4-2-03)

(BREAK IN CONTINUITY)

**50. Transfer Station.** A facility or portion thereof where solid wastes are transferred from a vehicle or container and subsequently transported off-site to another facility. A transfer station does not include an authorized rural drop-box or other facilities where persons are authorized to store individual waste for ultimate collection and disposal, or any other facility that stores solid waste generated at the facility for collection and disposal off-site. ~~A transfer station shall include waste tire collection sites as defined in Section 39-6501, Idaho Code.~~ (4-2-03)

*[Provisions relating to waste tires are no longer necessary after enactment of the Waste Tire Disposal Act.]*

*(BREAK IN CONTINUITY)*

~~**008. OFFICE OFFICE HOURS MAILING ADDRESS AND STREET ADDRESS.**~~

~~The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday.~~ (4-2-03)

*[Delete Section 008 for consistency with Office of Admin Rules cleanup of IDAPA rules - Red Tape Reduction Act.]*

**008. RESERVED.**

**009. SOLID WASTE MANAGEMENT FACILITY CLASSIFICATION.**

*(BREAK IN CONTINUITY)*

**03. Tier II Facility.** Tier II facilities shall comply with the Tier II general siting, operational and closure requirements and any applicable Tier II facility specific requirements. Tier II facilities are not required to install ground water monitoring wells, leachate collection systems or liners. Facilities shall be classified as a Tier II facility if the Department determines the facility is not: (1) landfilling or disposing of ~~CESQG~~**VSQG** hazardous waste; (2) landfilling or disposing of materials with a high human pathogenic potential; (3) managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. A Tier II facility is one that meets the four (4) above criteria and is identified below: (4-2-03)

**a.** A NMSW landfill which has a total disposal capacity greater than two thousand (2000) cubic yards; or (4-2-03)

**b.** A processing facility or incinerator that has a cumulative volume of wastes at the facility at any one time that is greater than six hundred (600) cubic yards; or (4-2-03)

**c.** A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix or pumpable wastes and the cumulative volume of material at the facility at any one (1) time is greater than two hundred (200) cubic yards; or (4-2-03)

**d.** A transfer station or ~~CESQG~~**VSQG** waste management facility. (4-2-03)

**04. Tier III Facility.** Tier III facilities shall comply with the Tier III general siting, operating and closure requirements, ground water monitoring requirements, install leachate collection systems, liners, air contaminant control systems and any applicable Tier III facility specific requirements. Facilities shall be classified as a Tier III facility if the Department determines the facility is: (1) a facility landfilling or disposing of ~~CESQG~~**VSQG** hazardous waste; (2) a facility landfilling or disposing of materials with a high human pathogenic potential; (3) a facility managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) a facility managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. (4-2-03)

**05. Wood or Mill Yard Debris Facilities.** ~~For the period of one (1) year after April 1, 2003, all Wood or Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities. Thereafter, a~~All Wood and Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities unless, based on site-specific criteria including but not limited to site geology, site soils, groundwater characteristics, distance to surface waters, and site climatic data, the Department determines the facility is more appropriately regulated under a different tier classification. Facilities not regulated as a Tier I Facility shall be regulated as a Tier II Facility unless the Department determines the facility manages waste in a manner that will form toxic leachate or gas. (4-2-03)

*(BREAK IN CONTINUITY)*

**010. BELOW REGULATORY CONCERN FACILITIES.**

**01. Applicable Requirements.** The owner and operator of a new BRC facility shall comply with the following requirements prior to accepting waste. ~~The owner and operator of an existing BRC facility shall comply with the following requirements within two (2) years from April 26, 2002. During the two year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan and 40 CFR 257.1 through 257.3:~~ (4-2-03)

a. Prohibited Activities. The following activities are prohibited: (4-2-03)

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 010 ~~shall will~~ have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)

ii. Speculative accumulation, unless otherwise approved by the Department in writing; and (4-2-03)

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)

*(BREAK IN CONTINUITY)*

c. Bird Hazards to Aircraft. No facility may handle ~~putrescible-putrescible~~ wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft; and (4-2-03)

d. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by ~~these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ Section 061. (4-2-03)

~~i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ (4-2-03)

~~ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural~~

vegetation) that when burned releases toxic emissions, dense smoke or strong odors. (4-2-03)

~~iii. Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location. (4-2-03)~~  
[Consolidate language into generally applicable new Section 061, Open Burning and Fires.]

**(BREAK IN CONTINUITY)**

**011. APPLICABLE REQUIREMENTS FOR TIER I FACILITIES.**

**01. Applicable Requirements.** The owner and operator of a new Tier I facility shall comply with the following requirements prior to accepting waste. ~~The owner and operator of an existing Tier I facility shall comply with the following requirements within two (2) years from April 26, 2002. During the two year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan, if any, and 40 CFR 257.1 through 257.3: (4-2-03)~~

a. Prohibited Activities. The following activities are prohibited: (4-2-03)

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 011 ~~shall will~~ have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)

ii. Speculative accumulation, unless otherwise approved by the Department in writing; and (4-2-03)

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)

**(BREAK IN CONTINUITY)**

e. Bird Hazards to Aircraft. No facility may handle ~~putrescible~~ putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-2-03)

f. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by ~~these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ Section 061. (4-2-03)

~~i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ (4-2-03)

~~ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors. (4-2-03)~~

~~iii. Open burning shall be conducted pursuant to conditions set forth by the Department or local~~

~~fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.~~ (4-2-03)

**(BREAK IN CONTINUITY)**

**012. APPLICABLE REQUIREMENTS FOR TIER II FACILITIES.**

The owner and operator of a ~~new~~ Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.02 before beginning construction and Subsection 012.04 prior to accepting waste. ~~The owner and operator of an existing Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.04 within two (2) years from April 26, 2002, and Subsection 012.02 within five (5) years from April 26, 2002. During the two (2) year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan, if any, and 40 CFR 257.1 through 257.3. In lieu of submitting an application, the owner and operator of existing facilities may demonstrate to the Department, compliance with Section 012 by submitting copies of existing permits and other approvals that establish compliance with the applicable siting, design, operating, closure, and post closure requirements of Section 012 and Subsection 032.01.~~ The owner and operator of a Tier II facility shall meet the requirements of Subsection 012.05 prior to facility closure; ~~except that owners and operators closing Tier II facilities within eighteen (18) months from April 26, 2002 shall comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as enumerated in Subsection 001.04.d. of these rules.~~ (4-2-03)

**01. General Siting Requirements.** The owner and operator of a Tier II facility shall comply with the following siting requirements: (4-2-03)

**(BREAK IN CONTINUITY)**

**e.** Variance from Siting Requirement. An owner or operator of ~~an existing or planned~~ facility that cannot meet the siting requirements of Section 012 may apply for a variance from the Department. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 012. (4-2-03)

**(BREAK IN CONTINUITY)**

**03. General Operating Requirements.** The owner and operator of a Tier II facility shall comply with the following operating requirements: (4-2-03)

**a.** Prohibited Activities. The following activities are prohibited: (4-2-03)

**i.** Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 012 ~~shall~~ will have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)

**ii.** Speculative accumulation, unless otherwise approved in an operating plan; and (4-2-03)

**iii.** Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)

**(BREAK IN CONTINUITY)**

**j.** Bird Hazards to Aircraft. No facility may handle ~~putrescible~~ putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located

within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-2-03)

**k.** Open Burning and Fires. Open burning is prohibited at facilities except as authorized by ~~these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ Section 061. (4-2-03)

~~i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ (4-2-03)

~~ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors.~~ (4-2-03)

~~iii. Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.~~ (4-2-03)

**l.** Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface and ground water and prevent the spread and impact of contamination beyond the boundary of the facility. (4-2-03)

**m.** Variance Request. An owner and operator of an ~~existing or planned~~ facility may submit to the Department a written variance request for a variance from the operating requirements listed in Section 012. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 012. (4-2-03)

*(BREAK IN CONTINUITY)*

**10. Tier II Incinerators, CESQGVSQG Management Facility and Transfer Stations.** In addition to the requirements in Subsections 012.01 through 012.04 and Subsections 012.07 and 012.08, the owner and operator of a Tier II incinerator, CESQGVSQG management facility or transfer station shall comply with the following requirements: (4-2-03)

**a.** Design Requirements. The owner and operator shall comply with the following design requirements: (4-2-03)

i. A tipping floor design constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system. ~~Any transfer station that accepts only waste tires will not be required to construct a tipping floor;~~ and (4-2-03)

ii. A leachate storage or management system. (4-2-03)

*(BREAK IN CONTINUITY)*

**d.** ~~Waste Tire Collection Site Requirements. Individual tire piles shall not exceed five thousand (5000) square feet of continuous area, nor fifty thousand (50,000) cubic feet in volume or ten (10) feet in~~

~~height.~~ (4-2-03)

~~e.~~ Closure Requirement. The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements: (4-2-03)

i. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted at least thirty (30) days prior to closure.; (4-2-03)

ii. Facility Closure. The owner and operator shall close the facility by removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste; ~~and~~ (4-2-03)

iii. Closure Time Period. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within two (2) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan.; ~~and~~ (4-2-03)

iv. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility. (4-2-03)

~~f.e.~~ Closure Plan Application. The owner and operator shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes: (4-2-03)

i. A complete and accurate legal description of the facility; (4-2-03)

ii. A map of the facility, showing pertinent facility features, including facility boundaries, drainage patterns, and location of access control measures; (4-2-03)

iii. Estimated date of last receipt of waste; (4-2-03)

iv. A description of how public access to the closed facility will be controlled; (4-2-03)

v. Closure equipment and procedures to be used; (4-2-03)

vi. Anticipated future uses for the facility; ~~and~~ (4-2-03)

vii. Other closure information the Department determines is necessary to protect human health and the environment. (4-2-03)

**11. Tier II NMSWLF.** In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II NMSWLF shall also comply with the following requirements: (4-2-03)

*(BREAK IN CONTINUITY)*

~~h.~~ ~~Deed Notation~~ Environmental Covenants: (4-2-03)

i. After completion and certification of closure of a NMSWLF, the owner and operator shall record ~~a notation on the deed to the landfill facility property, or some other recorded instrument that is~~

~~normally examined during title search and is commonly recorded in the County where the landfill facility property is located, to provide notice to any potential purchaser that an environmental covenant, pursuant to the Uniformed Environmental Covenants Act (UECA) Chapter 30, Title 55, Idaho Code, on the property has been used as a solid waste processing or disposal facility where the landfill facility is located and its future use may be restricted in accordance with a post-closure care plan. A copy of the notated deed, or other recorded instrument environmental covenant~~ shall be sent to the Department after recording with the county clerk;

(4-2-03)

ii. The owner may request permission from the Department to remove the ~~notation from the deed, or to remove the other recorded instrument,~~ environmental covenant if all wastes are removed from the facility;

(4-2-03)

iii. Federal agencies with responsibility for management of landfills on federal property shall make a an environmental covenant or notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made.

(4-2-03)

*[Deed notations are now addressed through environmental covenants. The UECA was enacted in 2006.]*

*(BREAK IN CONTINUITY)*

### **013. APPLICABLE REQUIREMENTS FOR TIER III FACILITIES.**

The owner and operator of a new Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.02 before beginning construction and Subsection 013.04 prior to accepting waste. ~~The owner and operator of an existing Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.04 within two (2) years from April 26, 2002, and Subsection 013.02 within five (5) years from April 26, 2002. During the two (2) year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan and 40 CFR 257.1 through 257.3. In lieu of submitting an application, the owner and operator of existing facilities may demonstrate to the Department, compliance with Section 013 by submitting copies of existing permits and other approvals that establish compliance with the applicable siting, design, operating, closure, and post closure requirements of Section 013 and Subsection 032.01. The owner and operator of a Tier III facility shall meet the requirements of Subsection 012.07 prior to facility closure; except that owners and operators closing Tier III facilities within eighteen (18) months from April 26, 2002 shall comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as enumerated in Subsection 001.04.d. of these rules.~~

(4-2-03)

**01. General Siting Requirements.** The owner and operator of a Tier III facility shall comply with the following siting requirements:

(4-2-03)

*(BREAK IN CONTINUITY)*

**h.** Variance from Siting Requirement. Any ~~existing or planned~~ facility that does not meet the siting requirements of Section 013 may apply for a variance from the Department. The Department may approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 013.

(4-2-03)

*(BREAK IN CONTINUITY)*

**03. General Operating Requirements.** The owner and operator of a Tier III facility shall comply with the following operating requirements:

(4-2-03)

a. Prohibited Activities. The following activities are prohibited: (4-2-03)

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 013-~~shall~~ will have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)

ii. Speculative accumulation, unless otherwise approved in an operating plan; and (4-2-03)

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)

**(BREAK IN CONTINUITY)**

k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by ~~these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ Section 061. (4-2-03)

~~i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ (4-2-03)

~~ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors.~~ (4-2-03)

~~iii. Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.~~ (4-2-03)

**(BREAK IN CONTINUITY)**

**04. Operating Plan.** The owner and operator of a Tier III facility shall submit to the Department an Operating Plan containing that information required by Subsection 013.03, within the time frames stated in Section 013. An Operating Plan shall ~~included~~ include a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 013.03, and complies with any applicable facility specific requirements found in Subsections 013.11 through 013.13. (4-2-03)

**05. Ground Water Monitoring Requirements.** The owner and operator of a ~~new~~ Tier III facility shall comply with the following ground water monitoring requirements: (4-2-03)

**(BREAK IN CONTINUITY)**

**12. Tier III Incinerators.** In addition to the requirements in Subsections 013.01 through 013.04 and Subsections 013.09 and 013.10, the owner and operator of a Tier III incinerator shall comply with the following requirements: (4-2-03)

a. Design Requirements. The owner and operator of an incinerator comply with the following

design requirements: (4-2-03)

i. A tipping floor constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system. ~~Any facility that accepts only waste tires will not be required to construct a tipping floor.~~ (4-2-03)

ii. A storage or leachate management system. (4-2-03)

**(BREAK IN CONTINUITY)**

~~d. Waste Tire Collection Site Requirements. Individual tire piles shall not exceed five thousand (5000) square feet of continuous area, nor fifty thousand (50,000) cubic feet in volume or ten (10) feet in height. (4-2-03)~~

~~e. If it is determined that the tipping floor or leachate management system integrity has been breached, or waste has been handled or stored outside of the containment of the tipping floor, unless allowed in the facility Operating Plan, the owner and operator of the Tier III incinerator shall comply with Subsections 013.05 through 013.08. (4-2-03)~~

**13. Tier III NMSWLFs.** In addition to the requirements in Subsection 013.01 through 013.10, the owner and operator of a Tier III NMSWLF shall comply with the following requirements: (4-2-03)

a. Siting Requirements: A facility shall not be located in wetlands, except as provided in 40 CFR 257.9; (4-2-03)

b. Siting Application. The owner and operator shall include in the Siting Application documentation demonstrating compliance with the requirement specified in Subsection 013.13.a.; (4-2-03)

c. Design and Construction Requirements: The owner and operator of a ~~new~~ NMSWLF shall comply with the following design and construction requirements: (4-2-03)

i. Leachate Collection and Control System. A leachate collection and control system shall be constructed to prevent ground and surface water contamination; (4-2-03)

ii. Liner. A liner designed to prevent ground or surface water contamination shall be installed. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contamination to ground or surface water; (4-2-03)

iii. Landfill Emission Control System. Appropriate toxic and flammable gas monitoring devices shall be installed where the location, geophysical condition, and waste characteristics indicate that there is a reasonable probability that the facility will generate toxic and flammable gas: exceeding twenty-five (25) percent of the lower explosive limit for gases in facility structures (excluding gas control or gas recovery system components); exceeding the lower explosive limit at the property boundary; or otherwise presenting a potential threat to public health or the environment; and (4-2-03)

iv. An owner or operator may submit a written request for a variance from the leachate collection and control system, liner, or emission control system requirements. The Department may approve the variance upon demonstration by the owner or operator that the variance is at least as protective of human health and the environment as the leachate collection and control system, liner, or emission control system. (4-2-03)

**(BREAK IN CONTINUITY)**

h. ~~Deed Notation~~ Environmental Covenants: (4-2-03)

i. After completion and certification of closure of a NMSWLF, the owner and operator shall record ~~a notation on the deed to the landfill facility property, or some other recorded instrument that is normally examined during title search and is commonly recorded in the County where the landfill facility property is located,~~ to provide notice to any potential purchaser that an environmental covenant, pursuant to the Uniformed Environmental Covenants Act (UECA) Chapter 30, Title 55, Idaho Code, on the property ~~has been used as a solid waste processing or disposal facility where the landfill facility is located~~ and its future use may be restricted in accordance with a post-closure care plan. A copy of the ~~notated deed, or other recorded instrument~~ environmental covenant shall be sent to the Department after recording with the county clerk;

(4-2-03)

ii. The owner may request permission from the Department to remove the ~~notation from the deed, or to remove the other recorded instrument,~~ environmental covenant if all wastes are removed from the facility;

(4-2-03)

iii. Federal agencies with responsibility for management of landfills on federal property shall make a an environmental covenant or notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made.

(4-2-03)

*(BREAK IN CONTINUITY)*

**061. OPEN BURNING AND FIRES.**

Open burning is prohibited at facilities except as authorized by IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho," and the following:

01. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho";

02. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors; and

03. Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.