The SHOSHONE-BANNOCK TRIBES

FORT HALL INDIAN RESERVATION
PHONE (208) 478-3903
(208) 478-3905
FAX (208) 478-3909

ENVIRONMENTAL WASTE
MANAGEMENT PROGRAM
PIMA DRIVE
P.O. BOX 306
FORT HALL, IDAHO 83203

SHOSHONE-BANNOCK WASTE MANAGEMENT ACT

CLOSURE AND POST-CLOSURE REGULATIONS FOR WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

FINAL REGULATIONS
March 7, 2023

SHOSHONE-BANNOCK TRIBES
ENVIRONMENTAL WASTE MANAGEMENT PROGRAM
P.O. Box 306, Pima Drive
Fort Hall, ID 83203

SHOSHONE-BANNOCK WASTE MANAGEMENT ACT
CLOSURE AND POST-CLOSURE REGULATIONS FOR WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

TABLE OF CONTENTS

INTRODUCTION iii

CHAPTER 1

GENERAL PROVISIONS 1

101. Purpose 1

102. Authority 1

103. Applicability 2

104. Incorporation by Reference 2

105. Definitions 2

CHAPTER 2

PERFORMANCE STANDARDS FOR CLOSURE OF ALL WASTE MANAGEMENT FACILITIES AND UNITS 4

201. General Performance Standards for Closure of all Waste Management Facilities . 4

202. Closure and Post-Closure Maintenance Standards for Disposal of Hazardous Waste in Landfills 5

203. Closure and Post-Closure Maintenance Standards for all Other Units 6

CHAPTER 3

CLOSURE AND POST-CLOSURE PROCEDURES 9

301. General Provisions 9

302. Permit Application Process 9

303. Financial Assurances 9

304. Closure Plan 10

305. Closure Procedures 12

306. Post-Closure Plan 13

307. Post-Closure Procedures 14

308. Contingent Closure and Post-Closure Plans 15

309. Notification Prior to Closure 16

310. Post-Closure Notices 17

INTRODUCTION

The Shoshone-Bannock Tribes ("Tribes") Closure and Post-Closure Regulations for Waste Treatment, Storage, and Disposal Facilities ("Regulations") were developed pursuant to § 22-6-9 of the Shoshone-Bannock Tribes Waste Management Act, codified in Shoshone-Bannock Tribes Law & Order Code, Title 22 – Environment, Natural Resources, Health & Safety, Ch. 6 – Waste Management Act ("WMA"), § 22-6-9 ~~as codified in~~ (Municode), which authorizes the Environmental Waste Management Program ("EWMP," or "Program") to promulgate regulations necessary to carry out the purposes of the WMA. In WMA § 22-6-1, the Fort Hall Business Council states its policy to "preserve, protect, and enhance the environmental quality of the Tribal homeland, Fort Hall Reservation, for present and future generations," § 22-6-1(a), and to "restore and maintain environmental quality on the Reservation," § 22-6-1(d)(5). *See also* WMA §§ 22-6-3 to 22-6-4 (providing for the management and cleanup of wastes within the Fort Hall Reservation and on all trust lands that may exist outside the reservation).

The Regulations also are promulgated pursuant to WMA §§ 22-6-34(a) and 22-6-35(a), which authorize the EWMP to promulgate regulations regarding closure and post-closure care at waste disposal facilities. The Closure and Post-Closure Regulations are intended to prevent threats to human health and the environment and to natural and cultural resources within the Reservation and on any Tribal trust lands outside the formal Reservation boundaries. *See* WMA §§ 22-6-3; 22-6-19 (regulations to protect human health, natural and cultural resources, and the environment).

One of the Tribes' goals in promulgating the Regulations is to restore all land within the Reservation to its original state, that is, prior to the contamination at the facilities that the Regulations are designed to address, in order to protect the original purposes and uses of the Tribes' land. The Reservation was set aside for the absolute and undisturbed use and occupation of the Tribes, as a home in perpetuity for Tribal members, pursuant to the Treaty with the Eastern Band Shoshoni and Bannock of 1868, made at Fort Bridger, 15 Stat. 673, by the United States. The traditional and agricultural uses of the land and natural resources of the Reservation are the lifeblood of the Shoshone-Bannock Tribes and must be preserved. The Tribes' deeply rooted traditional and cultural connection with the land is, moreover, integrally related to the well-being of Tribal members and overall Tribal morale. The WMA recognizes this integral connection and consequently states that "traditional, religious and cultural uses dependent upon Reservation lands and water must be protected to maintain the way of life and traditional activities of the Tribes," WMA § 22-6-1(b)(6).

The Tribes recognize that waste treatment, storage, and disposal facilities are subject to federal requirements under the Resource Conservation and Recovery Act ("RCRA"). These Regulations are designed to not interfere with those obligations but rather to supplement them where needed to prevent threats to human health and the environment and to natural and cultural resources within the Reservation. When federal regulations are incorporated by reference, EWMP

will make sure they are complied with as part of the Program's overall implementation of these Regulations. When a requirement in these Regulations is more stringent than its federal counterpart, the more stringent requirement will apply, for the reasons discussed above.

CHAPTER 1

GENERAL PROVISIONS

101. Purpose

The Shoshone-Bannock Tribes' Environmental Waste Management Program ("EWMP") has developed these Closure and Post-Closure Regulations for Waste Facilities ("Regulations") for the purpose of establishing standards and procedures for the closure and post-closure monitoring of waste treatment, storage and disposal facilities to ensure the protection of the environment and the health and safety of the community.

(a) Owners and operators of waste treatment, storage and disposal facilities are required to close a facility in a safe and timely manner that minimizes the need for care after closure and reduces any solid and hazardous waste concerns. Closure of a waste treatment, storage or disposal facility means to "shutdown, suspend, end or terminate a business, operation, or activity that has generated, treated, stored, or disposed of hazardous, solid, and/or industrial solid waste." (Ord. No. ENVR-09-S8 (11-24-2009), Waste Management Act § 105(G), codified in Shoshone-Bannock Tribes Law & Order Code, Title 22 – Environment, Natural Resources, Health & Safety, Ch. 6 – Waste Management Act ("WMA"), § 22-6-5 (Municode)).

(b) Waste disposal facilities undergoing any type of closure activities are required to obtain a Closure and/or Post-Closure Permit pursuant to WMA §§ 22-6-18(a) and 22-6-35(b).

(c) Closure and post-closure of a waste disposal facility within the external boundaries of the Fort Hall Indian Reservation requires providing timely notification to EWMP and obtaining a Closure and/or Post-Closure Permit in accordance with the WMA and these Regulations. These Regulations provide standards and procedures to ensure safe closure, appropriate post-closure maintenance, and adequate financial responsibility assurances pertaining to closure and post-closure activities at a waste disposal facility.

102. Authority

Pursuant to WMA § 22-6-1(a), it is the policy of the Fort Hall Business Council to "preserve, protect, and enhance the environmental quality of the Tribal homeland, Fort Hall Reservation, for present and future generations." WMA § 22-6-1(d)(3), calls for the establishment of procedures, standards, rules and regulations for the safe generation, storage, treatment, disposal and siting of wastes to ensure waste facilities do not pose a future threat to present and future generations and the environment. These Regulations are established pursuant to EWMP's exclusive duty and authority to promulgate, administer, and enforce

regulations under WMA § 22-6-9(b) and EWMP's duty to promulgate regulations regarding the partial and final closure of a waste management facility and its post-closure care and use pursuant to WMA §§ 22-6-34(a) and 22-6-35(a).

103. Applicability

(a) These Closure and Post-Closure Regulations apply to partial and final closure of all waste management facilities within the external boundaries of the Fort Hall Reservation and any other lands within the Shoshone-Bannock Tribes' jurisdiction. A facility may consist of ~~several~~ multiple treatment, storage, or disposal operational units: landfills, surface impoundments, waste piles, containers, incinerators, containment buildings, and any combination of these units.

(b) Closure and Post-Closure Permits are required for owners and operators of all waste disposal facilities prior to the partial or final closure of such a facility within the boundaries of the Reservation.

(c) Requirements in these Regulations that pertain to activities that have already begun at a waste management facility or unit as of the effective date of these Regulations will not apply to that facility or unit, but requirements that pertain to future activities or are otherwise relevant will apply. For example, a closure plan will not be required for a facility that has already begun closure pursuant to an approved closure permit and/or plan as of the effective date of these Regulations, but the requirement in Regulations § 305(d) to submit a certificate of closure and survey plat to the EWMP still applies. Relevant post-closure plan and care requirements, including those which otherwise would be part of closure procedures, will apply to units that have not completed at least 30 years of post-closure care as of the effective date of these Regulations.

104. Incorporation by Reference

Unless specified otherwise in these Regulations or the WMA, when a provision of the Code of Federal Regulations ("C.F.R.") is incorporated by reference into these Regulations all notes, comments, appendices, diagrams, tables, forms, figures, and publications are also incorporated by reference. In addition, any provision of federal law or regulation incorporated by reference into these Regulations shall be deemed automatically updated when the federal law or regulation is updated, in order to maintain consistency with the most current federal laws and rules. Any changes brought about by ~~either~~ judicial ~~or administrative~~ action and adopted by the EPA shall also be incorporated by reference. When incorporated requirements reference EPA as the regulatory agency, EWMP shall be substituted in its place wherever appropriate.

105. Definitions

As used in these Regulations, the following terms shall have the meaning ascribed to them below unless the context clearly indicates otherwise. If there is a discrepancy between the sections, the Program Manager shall resolve the discrepancy. Terms used in these Regulations for which definitions do not appear in this section shall have the meanings ascribed to them in WMA § 22-6-5. References to "Section" (or "§") and "Subsection" refer to sections and subsections in these Regulations unless otherwise noted.

(a) "Containment Building" means a hazardous waste management unit completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes designed and operated under 40 C.F.R. § 264.1101 that is used to store or treat hazardous waste.

(b) "Final closure" means the closure of all waste management units at a facility in accordance with all applicable closure requirements so that waste management activities are no longer conducted at the facility.

(c) "Free Liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(d) "Incinerator" means any enclosed device that uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit nor is listed as an industrial furnace; this term may include infrared incinerators or plasma arc incinerators.

(e) "Partial Closure" means closure of one or more waste management units at a facility where other waste management units remain active.

(f) "Surface Impoundment" means a facility or part of a facility that is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and that is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(g) "Waste Pile" means an accumulation of solid waste in a specific location.

(h) "Waste Management Facility" or "Waste Facility" means a facility used for treating, storing, or disposing of waste pursuant to the definition of "Facility" in the WMA § 22-6-5.

CHAPTER 2

PERFORMANCE STANDARDS FOR CLOSURE OF ALL WASTE MANAGEMENT FACILITIES AND UNITS

201. General Performance Standards for Closure of all Waste Management Facilities

(a) A waste management facility or unit must be closed by its owner or operator in a manner that:

(1) Minimizes the need for further maintenance;

(2) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of waste, hazardous constituents or pollutants, leachate, contaminated run-off, or waste decomposition products to the ground or surface waters or to the atmosphere; and

(3) Complies with the closure requirements of the WMA, these Regulations, and the applicable closure requirements of 40 C.F.R. Part 264.

(b) The performance standards applicable to partial and final closure of a facility or unit are as follows:

(1) Clean-Closure. Clean-closure requires physically removing or decontaminating all waste and contaminated materials from the facility or unit, including all equipment, structures, and surrounding soils, such that waste no longer poses a threat to soils, surface or ground water, or air quality. Clean-closure is the preferred method of closure for all waste facilities. Successful completion of clean-closure will require minimal post-closure monitoring and maintenance duties.

(2) Waste-in-place Closure. Waste-in-place closure is used for units that cannot meet the clean-closure requirements and involves at least some waste being left on-site. Waste-in-place closure may only be used if an owner or operator demonstrates to EWMP that clean-closure is not practicable and that the waste-in-place closure ensures adequate protection of health and safety and the environment. Waste-in-place closure includes, but is not limited to, the installation of a final cover to minimize infiltration of water into the waste, thereby minimizing the production of leachate ~~and gas~~. The cover will serve as the primary waste containment feature for the unit and must meet or exceed the requirements of Section 202. Waste-in-place closure will require post-closure permitting, planning, monitoring, operation and maintenance, and care to ensure adequate protection of health and safety and the environment.

(3) To determine whether clean-closure is practicable, EWMP will consider factors such as available technologies, risks to human health and the environment, costs, and any other information the owner or operator presents to EWMP, with no one factor being outcome-determinative.

(c) The performance standards for post-closure maintenance are applicable to waste-in-place closure until final certification pursuant to WMA § 22-6-35(e) and Section 307(f).

202. Closure and Post-Closure Maintenance Standards for Disposal of Hazardous Waste in Landfills

(a) The regulations in this subsection apply to owners and operators of facilities that dispose of hazardous waste in landfills, in accordance with the WMA and 40 C.F.R. Part 264, Subpart N.

(b) At final closure of the landfill or upon partial closure, the owner or operator must cover the landfill or portion of the facility to be closed with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Meet all applicable construction standards;

(4) Promote drainage and minimize erosion or abrasion of the cover;

(5) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(6) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(c) After final closure, the owner or operator must comply with all post-closure requirements contained in these Regulations, WMA § 22-6-35, and 40 C.F.R. §§ 264.117 through 264.120, including maintenance and monitoring throughout the post-closure care period. The owner or operator must:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Continue to operate the leachate collection and removal system until leachate is no longer detected;

(3) Maintain and monitor the leak detection system in accordance with 40 C.F.R. §§ 264.301(c)(3), (4) and 264.303(c), and comply with all other applicable leak detection system requirements of EWMP and 40 C.F.R. Part 264;

(4) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of 40 C.F.R. Part 264, Subpart F;

(5) Conduct soil gas monitoring at locations and frequency provided in a post-closure plan for all gasses that EWMP determines in its discretion may be a threat to public health and safety or the environment, and maintain such monitoring system consistent with that plan;

(6) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(7) Protect and maintain surveyed benchmarks used in complying with the surveying and recordkeeping requirements of 40 C.F.R. § 264.309.

203. Closure and Post-Closure Maintenance Standards for all Other Units

(a) Removal or decontamination activities required under this section may result in the owner or operator generating hazardous waste in amounts that trigger the requirements applicable to Hazardous Waste Generators under WMA § 22-6-16.

(b) Containers

(1) The requirements of this subsection apply to owners and operators of all waste management facilities that store containers of hazardous waste in accordance with 40 C.F.R. § 264.170.

(2) At closure, all hazardous waste and hazardous waste residues must be removed from containers. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed from the site in accordance with 40 C.F.R. § 264.178.

(c) Tank Systems

(1) The requirements of this subsection apply to owners and operators of all waste facilities that use tank systems to store or treat hazardous waste in accordance with 40 C.F.R. § 264.190.

(2) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste. If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure, post-closure and financial responsibility requirements that apply to landfills. Closure and post-closure care of tank systems used to store or treat hazardous waste must comply with 40 C.F.R. § 264.197.

(d) Surface Impoundments

(1) The requirements of this subsection apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste in accordance with 40 C.F.R. § 264.220.

(2) At closure, the owner or operator 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; or comply with the waste-in-place closure requirements listed at 40 C.F.R. § 264.228(a)(2), (b), and (c).

(e) Waste Piles

(1) The requirements of this subsection apply to owners and operators of facilities that store or treat hazardous waste in piles in accordance with 40 C.F.R. § 264.250. This subsection does not apply to owners or operators of waste piles that are closed with wastes left in place. Such waste piles are subject to regulation in the same manner as a landfill under Section 202.

(2) At closure, the owner or operator 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. 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, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills. Closure and post-closure care of waste piles must comply with the requirements of 40 C.F.R. § 264.258.

(f) Land Treatment

(1) The requirements of this subsection apply to owners and operators of facilities that treat or dispose of hazardous waste in land treatment units in accordance with 40 C.F.R. § 264.270.

(2) During the closure period, the owner or operator must comply with the requirements of 40 C.F.R. § 264.280; except that "EWMP Director" shall be substituted for "Regional Administrator."

(g) Incinerators

(1) The requirements of this subsection apply to owners and operators of hazardous waste incinerators in accordance with 40 C.F.R. § 264.340.

(2) At closure the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the incinerator site in accordance with 40 C.F.R. § 264.351.

(h) Containment Buildings

(1) The requirements of this subsection apply to owners or operators who store or treat hazardous waste in containment buildings, which are units designed and operated under 40 C.F.R. § 264.1101 and not considered to be land disposal units pursuant to 40 C.F.R. § 264.1100.

(2) At closure of a containment building, the owner or operator 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. 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, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills. Closure and post-closure care of containment buildings must comply with 40 C.F.R. § 264.1102.

(i) Miscellaneous

(1) The requirements of this subsection apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units in accordance with 40 C.F.R. § 264.600.

(2) A miscellaneous unit that is a disposal unit must be closed and maintained during the post-closure care period in a manner that will ensure protection of human health and the environment in accordance with 40 C.F.R. §§ 264.601 and 264.603.

CHAPTER 3

CLOSURE AND POST-CLOSURE PROCEDURES

301. General Provisions

Prior to initiating partial or final closure of a waste disposal facility or unit, an owner or operator is required to obtain a closure permit and a post-closure permit in accordance with WMA §§ 22-6-34 and 22-6-35 and the WMA Permit Regulations.

302. Permit Application Process

(a) Requirements. At least 180 days prior to the anticipated date of partial or final closure of a waste disposal facility or unit, an owner or operator must submit an application to EWMP for a closure and/or post-closure permit consistent with WMA Permit Regulations § 201(d).

(b) Elements of Closure and Post-Closure Permit Application. A Closure and/or Post-Closure Permit Application must consist of two copies of the following elements:

(1) Closure, post-closure, and/or contingent post-closure plan, if applicable.

(2) Permit Application Form and Siting Certificate Application Form.

(3) Environmental Site Assessment in accordance with WMA § 22-6-23 and WMA Permit Regulations § 202(a)(3).

(4) Financial Assurances in accordance with Section 303.

(5) Schedule for partial and final closure of the facility or unit.

In addition, the owner or operator shall submit ~~T~~the appropriate permitting fees, pursuant to Chapter 6 of the WMA Permit Regulations. The permit application fees shall be submitted together with the permit application. Other fees shall be submitted when and as provided in the WMA Permit Regulations.

303. Financial Assurances

(a) Pursuant to the Financial Assurance and Disclosure requirements of WMA § 22-6-24(c), the owner or operator must provide a cost estimate for properly closing the facility and costs associated with the post-closure care period.

(b) An owner or operator must comply with the Financial Assurance requirements of WMA Permit Regulations § 203.

(c) Financial Assurance requirements for closure and post-closure care must, at a minimum, be equivalent to the Financial Assurance requirements required under 40 C.F.R. Part 264, Subpart H.

304. Closure Plan

(a) Written plan

(1) The owner or operator of a waste management facility must have a written closure plan. The plan must be submitted with the closure permit application that is submitted in accordance with WMA § 22-6-21 and WMA Permit Regulations §§ 201 and 202 for review and approval by EWMP.

(2) The closure plan must be consistent with 40 C.F.R. §§ 264.111 through 264.115 and the applicable requirements of 40 C.F.R. Part 264, Subpart F and §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601, and 264.1102. Until final closure is completed and certified in accordance with § 305(e), a copy of the approved plan and all approved revisions must be furnished to EWMP upon request, including requests by mail.

(b) Content of plan. The plan must identify steps necessary to perform partial and/or final closure of the facility. The closure plan must include, at a minimum:

(1) A description of how each waste management unit at the facility will be closed;

(2) A description of how final closure of the facility will be conducted;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of the off-site hazardous waste management units to be used, if applicable;

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

(5) A detailed description of all chemical processes that could occur and generate new waste streams and the information that description is based on;

(6) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and

(7) A schedule for closure of each waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, the schedule shall include estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover.)

(c) Amendment of plan. The owner or operator of a waste management facility must submit to EWMP for approval a written request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures for permit modification in WMA § 22-6-21(h) and WMA Permit Regulations §§ 201 and 202. The written request must include a copy of the amended closure plan. A request for a permit modification to amend the closure plan may be submitted at any time prior to the notification of partial or final closure of the facility.

(d) A written request for a permit modification to authorize a change in the approved closure plan is required whenever: (1) changes in operating plans, facility design, or operation and maintenance that affect the closure plan, (2) there is a change in the expected year of closure, if applicable, or (3) in conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

(e) The owner or operator of a waste management facility must submit for approval by EWMP a written request for a permit modification, including a copy of the amended closure plan, at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred that has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must notify the EWMP within 24 hours after the owner or operator knows or should know or have reason to believe that the unexpected event affected the closure plan and request a permit modification no later than 30 days after the unexpected event.

(f) An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan must submit an amended closure plan to EWMP no later than 60 days from the date that the owner or operator or EWMP determines that the facility or unit must be closed as a landfill, subject to the requirements of 40 C.F.R. § 264.310, or no later than 30 days from that date if the determination is made during partial or final closure. EWMP will approve, disapprove, or modify this amended plan in accordance with the procedures in WMA § 22-6-21(h) and WMA Permit Regulations §§ 201 and 202.

(g) EWMP may request modifications to the plan under the conditions described in § 304(d). The owner or operator must submit the modified plan within 60 days of EWMP's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by EWMP will be approved in accordance with the procedures in WMA § 22-6-21(h) and WMA Permit Regulations §§ 201 and 202.

305. Closure Procedures

(a) Within 90 days after receiving the final volume of wastes at a waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. If additional time is necessary, a longer period may be approved by EWMP if the owner or operator requests additional time in the permit application and the request meets the requirements under 40 C.F.R. § 264.113(a)(1) and (2).

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes. If additional time is necessary, a longer period may be approved by EWMP if the owner or operator requests additional time in the permit application or requests modification and the request meets the requirements under 40 C.F.R. § 264.113(b)(1) and (2).

(c) In addition, an owner or operator of a surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. §§ 6924(o)(1) (except as provided in § 6924(o)(2) or (3)) and 6925(j)(1) (except as provided in § 6925(j)(2), (3), (4), or (13)) must comply with the requirements of 40 C.F.R. § 264.113(e).

(d) Certificate of Closure. Within 60 days of completion of the partial or final closure, the permittee shall submit a Certificate of Closure and a survey plat in accordance with WMA § 22-6-34(d) and (e).

306. Post-Closure Plan

(a) Written Plan

(1) The owner or operator of a waste disposal facility or unit must have a written post-closure plan. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under § 308 must submit a post-closure plan to EWMP within 90 days from the date that the owner or operator or EWMP determines that the waste management facility or unit must be closed as a landfill, subject to the requirements of 40 C.F.R. §§ 264.117 through 264.120. The plan must be submitted with the permit application that is submitted in accordance with WMA § 22-6-21 and WMA Permit Regulations §§ 201 and 202 for review and approval by EWMP.

(b) For each facility or 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:

(1) A description of the planned monitoring activities and frequencies at which they will be performed.

(2) A description of the planned maintenance activities and frequencies at which they will be performed, to ensure: (i) the integrity of the cap and final cover or other containment systems; and (ii) the function of the monitoring equipment.

(3) The name, address, and phone number of the person or office to contact about the unit or facility during the post-closure care period.

(c) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to EWMP upon request, including request by mail. After final closure has been certified, the person or office specified in § 306(b)(3) must keep the approved post-closure plan during the remainder of the post-closure period.

(d) Amendment of Plan. The owner or operator of the facility or unit must submit to EWMP for approval a written request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable procedures for permit modification in WMA § 22-6-21(h) and WMA Permit Regulations §§ 201 and 202. The written request must include a copy of the amended post-closure plan. A request for a permit modification to amend the post-closure plan may be submitted at any time during the active life of the facility or during the post-closure care period.

(e) A written request for a permit modification to authorize a change in the approved post-closure plan is required whenever: (1) changes in operating plans or facility

design affect the approved post-closure plan, (2) there is a change in the expected year of final closure, if applicable, or (3) events that occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan.

(f) The owner or operator of the facility or unit must submit for approval by EWMP a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred that has affected the post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent post-closure plan under § 308 must submit a post-closure plan to EWMP no later than 90 days after the date that the owner or operator or EWMP determines that the facility or unit must be closed as a landfill, subject to the requirements of 40 C.F.R. § 264.310. The EWMP will approve, disapprove, or modify this plan in accordance with the procedures in WMA § 22-6-21(h) and WMA Permit Regulations §§ 201 and 202.

(g) EWMP may request modifications to the plan under the conditions described in § 306(e). The owner or operator must submit the modified plan no later than 60 days after EWMP's request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by EWMP will be approved in accordance with the procedures in WMA § 22-6-21(h) and WMA Permit Regulations §§ 201 and 202.

307. Post-Closure Procedures

(a) Post-closure care for each waste management unit or facility must begin after completion of closure of the unit and continue for 30 years after that date, or a greater timeframe determined by EWMP based on the waste characteristics, and must consist of at least the following:

(1) Monitoring and reporting in accordance with the requirements of 40 C.F.R. Part 264, Subparts F, K-N, and X, as applicable.

(2) Maintenance and monitoring of waste containment systems in accordance with the requirements of 40 C.F.R. Part 264, Subparts F, K-N, and X, as applicable.

(b) Any time preceding partial closure of a waste management unit or facility subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, EWMP may, in accordance with the permit modification procedures in WMA § 22-6-21(h):

(1) Shorten the post-closure care period applicable to the waste management unit or facility if all disposal units have been closed, if EWMP finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the unit or facility is secure); or

(2) Extend the post-closure care period applicable to the waste management unit or facility if EWMP finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes or pollutants at levels which may be harmful to human health and the environment).

(c) The EWMP may require, at partial and final closure, continuation of any security requirements during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or livestock may pose a hazard to human health.

(d) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless EWMP finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(e) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan.

(f) No later than 60 days after completion of the established post-closure period, the owner or operator shall submit to EWMP a Certification of Completion in accordance with WMA § 22-6-35(e).

308. Contingent Closure and Post-Closure Plans

(a) Certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by WMA § 22-6-35(c) and 40 C.F.R. §§ 264.228(c)(1)(i) and 264.258(c)(1)(i) to have contingent closure plans and contingent post-closure plans.

(b) For such facilities, the closure plan must include both a plan for complying with clean-closure performance standards under § 201(b)(1) and a contingent plan for complying with the waste-in-place performance standards under § 201(b)(2) in case not all contaminated subsoils can be practicably removed at closure.

(c) The owner or operator of a surface impoundment or waste pile subject to this section must prepare a contingent post-closure plan under § 306 for complying with § 202 in case not all contaminated subsoils can be practicably removed at closure.

(d) The cost estimates for closure and post-closure care of an impoundment or waste pile subject to this section must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of clean-closure.

(e) Facilities required to submit contingency plans must follow the post-closure procedures listed at Section 306.

309. Notification Prior to Closure

(a) The owner or operator must notify EWMP in writing at least 60 days prior to the date on which closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit is expected to begin. The owner or operator must notify EWMP in writing at least 45 days prior to the date on which final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed is expected to begin. The owner or operator must notify EWMP in writing at least 45 days prior to the date on which partial or final closure of a boiler or industrial furnace is expected to begin, whichever is earlier.

(b) The date when "closure is expected to begin" must be either:

(1) No later than 30 days after the date on which any waste management unit receives the known final volume of wastes, or if there is a reasonable possibility that the waste management unit will receive additional wastes, no later than one year after the date on which the unit received the most recent volume of wastes. If the owner or operator of a waste management facility can demonstrate to EWMP that the unit or facility has the capacity to receive additional wastes and the facility has taken all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, EWMP may approve an extension to this one-year limit; or

(2) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order, to cease receiving wastes or to close, then the

requirements of this paragraph do not apply. However, the owner or operator must close the facility in accordance with the deadlines established herein.

(c) Removal of wastes and decontamination or dismantling of equipment. Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

310. Post-Closure Notices

(a) No later than 60 days after certification of closure of each waste disposal unit, the owner or operator must submit to EWMP and the tribal zoning authority, or the authority with jurisdiction over local land use, a record of the type, location, and quantity of wastes disposed of within each cell or other disposal unit of the facility and any known decomposition products from that waste or new waste streams that may occur. For wastes disposed of before January 12, 1981, the owner or operator must identify, as nearly as possible, the type, location, and quantity of the wastes in accordance with any records the facility has retained.

(b) Within 60 days of certification of closure of the first waste disposal unit and within 60 days of certification of closure of the last waste disposal unit, the owner or operator must:

(1) Record, in accordance with tribal or other applicable law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that: (i) the land has been used to manage wastes; (ii) its use is restricted under 40 C.F.R. Part 264, Subpart G; and (iii) the survey plat and record of the type, location, and quantity of wastes disposed of within each cell or other waste disposal unit of the facility required by §§ 305(d) and 307(f) have been filed with EWMP and the tribal zoning authority or the authority with jurisdiction over local land use; and

(2) Submit to EWMP a certification, signed by the owner or operator, that the notation specified in paragraph (b)(1) of this section has been recorded, including a copy of the document in which the notation has been placed. This certification may be included with the Post-Closure Certification of Completion required under § 307(f).

(c) If the owner or operator or any subsequent owner or operator of the land upon which a waste disposal unit is located wishes to remove wastes and waste residues, liners, if any, or contaminated soils, he must request a modification to the post-closure

permit in accordance with the applicable requirements in WMA § 22-6-21(h) and WMA Permit Regulations §§ 201 and 202. The owner or operator must demonstrate that the removal of wastes will satisfy the requirements of § 307(d). By removing waste, the owner or operator may become a generator of hazardous waste under WMA § 22-6-16 and must manage it in accordance with all applicable requirements of the WMA and these Regulations. If EWMP approves a permit modification or otherwise grants approval for such removal activities to be conducted, the owner or operator may request that EWMP approve or facilitate the approval of either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.