

§ 257.3

40 CFR Ch. I (7-1-00 Edition)

dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Surface impoundment or *impoundment* means a facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-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.

Waste pile or *pile* means any non-containerized accumulation of solid, nonflowing waste that is used for treatment or storage.

[44 FR 53460, Sept. 13, 1979; 44 FR 58910, Oct. 12, 1979; 56 FR 51016, Oct. 9, 1991; 58 FR 9385, Feb. 19, 1993]

§ 257.3 Criteria for classification of solid waste disposal facilities and practices.

Solid waste disposal facilities or practices which violate any of the following criteria pose a reasonable probability of adverse effects on health or the environment:

§ 257.3-1 Floodplains.

(a) Facilities or practices in floodplains shall not restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources.

(b) As used in this section:

(1) *Based flood* means a flood that has a 1 percent or greater chance of recurring in any year or a flood of a mag-

nitude equalled or exceeded once in 100 years on the average over a significantly long period.

(2) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the base flood.

(3) *Washout* means the carrying away of solid waste by waters of the base flood.

[44 FR 53460, Sept. 13, 1979; 44 FR 54708, Sept. 21, 1979]

§ 257.3-2 Endangered species.

(a) Facilities or practices shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife.

(b) The facility or practice shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR part 17.

(c) As used in this section:

(1) *Endangered or threatened species* means any species listed as such pursuant to section 4 of the Endangered Species Act.

(2) *Destruction or adverse modification* means a direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(3) *Taking* means harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing, or collecting or attempting to engage in such conduct.

§ 257.3-3 Surface water.

(a) For purposes of section 4004(a) of the Act, a facility shall not cause a discharge of pollutants into waters of the United States that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act, as amended.

(b) For purposes of section 4004(a) of the Act, a facility shall not cause a discharge of dredged material or fill material to waters of the United States that is in violation of the requirements under section 404 of the Clean Water Act, as amended.