

RCRA, SUPERFUND & EPCRA HOTLINE MONTHLY REPORT
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1. Retroactivity of Land Disposal Restrictions (LDR) Recordkeeping Requirements

Under the RCRA land disposal restrictions (LDR), generators are required to retain a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to the LDR requirements (40 CFR §268.7(a)(8)). The Phase IV LDR final rule changed the required record retention time for such documents from five years to three years (62 FR 26004; May 12, 1997). Does this new three-year recordkeeping requirement apply retroactively, such that LDR records generated during the period of the five-year record retention must only be retained for three years?

EPA intended for the new recordkeeping requirement to apply retroactively. Records generated during the five-year record retention period only need to be retained for three years as of August 11, 1997, the effective date of the record retention portion of the LDR Phase IV rule. Thus, if a facility began retaining records pursuant to LDR requirements on August 11, 1994, the facility would have fulfilled the record retention requirement on August 11, 1997. If a facility began retaining LDR records on August 11, 1996, the facility would be required to retain those records for two years after the effective date of the Phase IV rule, and would fulfill the record retention requirement on August 11, 1999 (§268.7(a)(8)). The rule changed the record retention period in §268.7(a)(8) in order to make the requirements more consistent with other RCRA recordkeeping requirements, specifically the record retention requirements for the manifest system in §262.40(a) (62 FR 26004, 26021; May 12, 1997).