WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #3

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NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: W.Va. Code §§22-5-1 et seq. & §§22-18-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X , NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

John A. Echard

Authorized Signature

$10.40 w/out fed. reg's
$26.00 w/fed. reg's

CECIL H. UNDERWOOD
GOVERNOR

BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

MICHAEL P. MIANO
COMMISSIONER

July 24, 1998

Ms. Judy Cooper
Director
Administrative Law Division
Capitol Complex
Charleston, WV 25305

RE: 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage or Disposal Facilities"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office and Legislative Rule-Making as an agency-approved rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers in my Office at 759-0515.

Sincerely yours,

Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Carrie Chambers
Karen Watson, OAQ

Questionnaire

DATE: August 3, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311-2599
Phone: 304-558-4022

LEGISLATIVE RULE TITLE: 45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

1. Authorizing statute (s) citation: W.Va. Code §§22-5-1 et seq. & §§22-18-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 16, 1998

b. What other notice, including advertising, did you give of the hearing?
I. Class I legal advertisement, Charleston Daily Mail and Charleston Gazette
II. Sent a copy of the Public Notice to our agency mailing list.
III. DEP's 'Public Notice Bulletin' and DEP's 'In Depth' (July's issues)
IV. Public Notice placed on agency's Web site:
http://wvnvm.wvnet.edu/~Jmorgan/index.htm

c. Date of Public Hearing (s) or Public Comment Period ended:

July 21, 1998

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (Be exact)

August 3, 1998

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John H. Johnston, Chief
1558 Washington Street, East
Charleston, WV 25311-2599
Phone: 304-558-4022
Fax: 304-558-3287
E-Mail: internet:"jjohnston@mail.dep.state.wv.us"

g. **IF DIFFERENT from item 'f',** please give Name, title, address and phone number (s) of agency person (s) who wrote and/or has responsibility for the contents of this rule: (Please type)

See 'f' above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq. and §§22-18-1 et seq.

B. SUMMARY OF RULE:

The current version of 45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The proposed rule changes are required to maintain consistency with the Office of Waste Management's current rule (33CSR20) and with the current federal regulations. Amendment of this rule is sought to adopt by reference the specific permit requirements for air emission controls for tanks, surface impoundments, and containers. The consistency of 45CSR25, 33CSR20 and federal rules is important for final authorization of the WV State RCRA Hazardous Waste Management Program.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

A federal counterpart to this proposed rule exists. In accordance with the Director's recommendation, and with limited exception, the Office of Air Quality proposes that the rule incorporate by reference the federal counterparts.

Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At their July 22, 1998 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule - there were no substantive changes as a result of their discussion. (See attached minutes of that meeting.)

MINUTES

DIVISION OF ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 22, 1998, DIRECTOR'S CONFERENCE ROOM, NITRO HEADQUARTERS

The eleventh meeting of the DEP Advisory Council was held Wednesday, July 22, 1998, in the Director's Conference Room, Nitro Headquarters' Offices. The meeting was called to order at 1:00 p.m. by Chairman Mike Miano.

ATTENDING:

Advisory Council Members:

Michael P. Miano, Chairman
Jacqueline Hallinan
Larry Harris
William Raney
Rick Roberts
William Samples

Environmental Protection:

John Ailes	**Jennifer Pauer**
John Benedict	**Pete Pitsenbarger**
Dick Cooke	**Ken Politan**
Mike Dorsey	**Cap Smith**
Andy Gallagher	**Barb Taylor**
Randy Huffman	**Karen Watson**
Pat Park	**Mike Zeto**

1) **Introduction of A. V. Gallagher, DEP's Chief Communications Officer.**

Chairman Miano introduced DEP's new Chief Communications Officer, A. V. Gallagher. Council Members welcomed Mr. Gallagher and wished him well in his new job.

2) **Review and Approval of Minutes of April 30, 1998.**

The minutes of the April 30 meeting were approved with the correction of two typos. Mr. Roberts brought to everyone's attention the discussion in the April 30 minutes of AML funding issues in the last meeting, and the Council's desire to send letters to West Virginia's Congressional delegation to identify West Virginia's share of the AML funds that need to be

released by the US Congress. Separate letters would go to West Virginia's legislative leadership informing them of the problems created by not having the AML funds available, with a copy of the letters sent to the Congressional delegation attached to them.

Randy Huffman asked if the Council members would like to sign each letter individually. They each expressed their desire to do so. Pat Park, AML, distributed a copy of the draft letters to Council for their review. After several minutes of discussion, it was decided the draft letters would be edited and made available to the Council members for their signature before the end of the meeting.

Mr. Miano said that Pete Pitsenbarger would like a few minutes of the Council's time before they continued with the agenda.

Mr. Pitsenbarger informed the Council of his retirement plans for the end of August. He said he would like to express his heartfelt thanks to the Council for their letter of appreciation they had sent him thanking him for his many years of service to the State of West Virginia. Mr. Pitsenbarger said his years in state government had been a wonderful opportunity, and he will miss both the work and the people.

3) **Review of Proposed DEP Rules in Accordance with WV Code §22-1-3(c).**

Mr. Miano asked if there were any other issues to be discussed before continuing with the Agenda and the review of DEP proposed rules for the 1999 session.

Mr. Roberts said he would like to express his concern with the approach DEP has taken in involving the Council members in the rulemaking process -- not only this year, but in the past. He said the rules are not sent to the Council members until the last minute and they are not given adequate time to review and comment on them.

It was pointed out that the law [22-1-1(c)] specifically requires the Council to be consulted prior to the proposal of any new rule.

Mr. Raney said he would like to go on record wholeheartedly in agreement with the concerns of Mr. Roberts. He said he has great concerns with giving advice or recommendations to the Director on development of rules (or amendments to rules) the Council members were not involved in before they were filed with the Secretary of State's Office for Public Hearing and Comments. He said he believes there definitely needs to be improvement in this process in the future.

A discussion was then held on possible ways to bring the Council into the rulemaking process in an earlier stage of rule development. Several DEP staff members expressed their frustrations with the rulemaking process, and gave one example as the short period of time between the signature of bills by the Governor and the early filing date of the rules with the

Legislative Rulemaking Review Committee. Another example that was given was turnaround time with federal agencies, i.e., EPA and OSM, which are also involved in the process.

After several minutes of discussion, Mr. Huffman stated, with the Chairman's approval, that he would put together a committee to discuss the Council's concerns and get back to the Council with their recommendations by the first of September.

Mr. Miano also expressed his desire to improve the involvement of the Council in the rulemaking process, and assured the Council that everything possible would be done in the future to comply with the Council's recommendations.

[It should be noted that at this time Ms. Hallinan left the Advisory Council Meeting because of a previously-scheduled commitment].

Continuing with the agenda, Mr. Miano said that staff would be available from each program office to give a brief description of the proposed new rules or rule amendments and to answer any questions the Council members might have. If a question should come up that couldn't be answered during the meeting, we would make note of it and get back with an answer to the Council as soon as possible. The first rule on the agenda is 60CSR4, filed under the Director's Office.

60CSR4 -"AWARDING OF WEST VIRGINIA STREAM PARTNERS PROGRAM GRANTS RULE"

Jennifer Pauer, AML, said 60CSR4 is a new rule that is being proposed by the West Virginia Stream Partners Program to provide requirements and guidance concerning the awarding of grants to broad-based community organizations for watershed improvement projects. Ms. Pauer stated that the program is a joint effort of DEP, Forestry, Natural Resources, and the West Virginia Soil Conservation Agency.

A brief discussion was held concerning the source of the funding, availability of the funds, guidelines for criteria, and possible additional funding. Mr. Samples asked if there could also be additional funding sources, for example contributions from supplemental environmental projects used to offset proposed penalties. Ms. Pauer stated that as the rule now stands, it's only purpose is to distribute the funds, but she would check into the law and let the Council know if language could be added to also implement provisions for additional funding from penalty collections or other sources. Mr. Raney moved to recommend to the Chairman (in his capacity as Director of DEP) the filing of 60CSR4 with the condition that Mr. Samples' recommendation be considered. The motion was seconded and passed unanimously.

The following Air Quality rules were discussed by Karen Watson, OAQ, with assistance from John Benedict, also from the OAQ office:

45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"

45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE OR DISPOSAL FACILITIES"

45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"

45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"

45CSR24 - "TO PREVENT AND CONTROL EMISSIONS FROM HOSPITAL/MEDICAL/ INFECTIOUS WASTE INCINERATORS"

45CSR36 - "CONFORMITY TO STATE OR FEDERAL IMPLEMENTATION PLANS OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. TO THE FEDERAL TRANSIT LAWS, TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS (TRANSPORTATION CONFORMITY)"

45CSR8 - "AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES AND PARTICULATE MATTER"

45CSR9 - " RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE AND OZONE"

Ms. Watson gave the Council a brief explanation of the proposed OAQ rules. She explained that seven rules (45CSR33, 25, 34, 16, 36, 8, and 9) were being amended to conform to federal regulations, and 45CSR24 is a proposed new rule to adopt federal New Source Performance Standards for new and existing hospital/medical/infectious waste incinerators. This rule also incorporates by reference the federal standards, with limited exception.

Mr. Raney said he had always questioned the validity of the Appendix B Fiscal Note that is attached to each rule that is filed; in particular the section that relates to the effect of the proposed rule which usually contains all zeros.

John Benedict explained that is a question that has come up several times in the past, and the agency has always taken the position that the numbers are reflective of the cost to the state of implementing the new rule or the proposed amendments to an existing rule.

After a brief question and answer session of the OAQ rules, Mr. Raney moved that recommendation be made to the Director that all eight (8) rules be filed, as proposed, with the exception that 45CSR34, subdivision 4.1.b, be revised to clarify that 45CSR30 includes certain requirements relating to Section 112(r) of the Clean Air Act. The motion was seconded and passed unanimously by the Council.

38CSR2 - "SURFACE MINING AND RECLAMATION RULE"

John Ailes, Chief of OMR, said the amendments to this year's submission of the Surface Mining and Reclamation rule were few in number. Two new definitions were added,

"mountaintop mining operation" and "area mining operation," and only minor cleanup to correct typographical errors and update and clarify other sections within the rule. Mr. Raney moved recommendation be made to the Chairman that the rule be filed as proposed. The motion was seconded and passed unanimously by the Council.

Mike Dorsey and Dick Cooke from the Office of Waste Management described the following Waste Management rules:

33CSR20 - "HAZARDOUS WASTE MANAGEMENT RULE"

33CSR1 - "SOLID WASTE MANAGEMENT RULE"

33CSR2 - "SEWAGE SLUDGE MANAGEMENT RULE"

Mike Dorsey explained the amendments to 33CSR20 - Hazardous Waste Management Rule. Along with other federally-required amendments to this rule, Section 11 contains a major rewrite to conform with the federal requirements of 40 CFR Part 124.

Mr. Samples asked why it takes up to 120 days to receive approval from the state to exclude a waste at a particular generating facility when EPA has already approved the petition - could the time be changed from 120 days to 60 days?

Cap Smith, Chief, OWM, said the time of 60 to 120 days is just a general number. He stated that he didn't see a problem with changing the time from 120 days to 60 days. He said it rarely takes anywhere close to that time to approve or deny the petition - it is usually taken care of in a matter of days.

There was some discussion as to whether this amendment should be proposed in this legislative session. The Council decided to wait until the rule is modified and filed in the 2000 Legislative Session to propose the amendment.

Dick Cooke, OWM, briefed the Council on 33CSR1. He said the revision is necessary to ensure consistency between the WV Code and 33CSR1. The emergency rule will establish criteria in determining a commercial solid waste facility's monthly tonnage limits, as required by Chapter 22, Article 15, as amended by Senate Bill No. 178.

Mike Zeto, Environmental Enforcement Office, then discussed 33CSR2 and explained the proposed emergency rule is necessary to update the Sewage Sludge Management rule to comply with mandates of Senate Bill 178. The revisions and inclusions are necessary to ensure consistency between the WV Code and 33CSR2. The emergency rule will also impose new requirements relating to the management of sewage sludge as required by Chapter 22, Article 15, as amended by Senate Bill 178, specifically as it relates to the control of off-site odors, and the protection of waters of the state.

After discussion was completed on the Waste Management rules, Mr. Raney moved to recommend that the Chairman file the Waste rules as proposed. The motion was seconded and passed unanimously.

The following Office of Water Resources rules were reviewed by Barb Taylor and Ken Politan.

47CSR31 - " STATE WATER POLLUTION CONTROL REVOLVING FUND"

47CSR33 - "STATE CONSTRUCTION GRANTS PROGRAM RULE"

47CSR3 - " POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE"

47CSR4 - "STATE CERTIFICATION OF ACTIVITIES REQUIRING NATIONWIDE PERMITS NO. 21 AND NO. 26"

Barb Taylor, Chief, OWR, explained the amendments contained in 47CSR31, 33, and 3. She said 47CSR31 is being amended to comply with the latest revisions of the Clean Water Act and current design practices; 47CSR33 is a proposed new rule which allows DEP to make grants to communities to provide adequate wastewater collection and/or treatment services; and 47CSR3 is a new proposed rule to implement the provisions of HB 4693 passed during the 1998 Session to promote pollution prevention by encouraging reduction or elimination of pollutants at the source through process modification, material substitution, in-process recycling, reduction of raw material use or other source reduction opportunities.

Mr. Roberts asked if the proposed amendments to prohibit the use of closed-vessel ultraviolet disinfection and inverted siphons in "Appendix B" under "Design Standards for Collection Systems and Treatment Works" is one recommended by EPA or by the state.

Ms. Taylor replied that she would need to check with Bob Coontz in Water Resources' Construction Assistance Office who drafted the proposed rule amendments, and have Mr. Coontz get back with Mr. Roberts with an answer as soon as possible.

The last rule to be addressed by the Council, 47CSR4, was reviewed by Ken Politan from the Office of Mining and Reclamation. Ken stated that this is a new proposed rule that will establish a water certification program for surface mining operations and will implement the provisions of SB 145 passed during the 1998 Session.

Mr. Raney asked if implementation of this rule was specifically mandated in SB 145.

Mr. Politan said no, but the agency felt the proposed rule is needed to give some guidance in the implementation of the Senate bill.

Mr. Raney voiced his concern over the rule. He said he did not believe it was a workable

rule, and he had received several comments from others indicating the same concerns. He said that one of his biggest objections to the proposed rule was lack of input from outside DEP when the rule was written. Mr. Raney stated that SB 145 indicates the Director shall confer with representatives of the surface coal mining industry and representatives of environmental organizations who have an interest in water quality, before such a manual is developed and DEP staff did not do this.

After several minutes of discussion concerning 47CSR4, Mr. Raney made a motion to recommend that the Chairman file 47CSR3, 31, and 33 as proposed, with the condition that Mr. Roberts' questions are addressed in 47CSR31; that the comment period be extended after the end of the public hearing for 47CSR4, and any actions to implement the proposed rule be delayed until such time as a more workable rule can be drafted with the opportunity for input from interested parties. The motion was seconded and passed with a 3 to 1 vote.

Due to the length of time taken to review the proposed rules, there was no open discussion by the Council members. The meeting was adjourned at 5:15 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	$ -0-	$ -0-	$ -0-	$ -0-	$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: The above estimates reflect that there are no anticipated changes in costs to administer this rule.

3. Objectives of these rules: Amendment of this rule is sought to adopt by reference the following federal rules: (a) the specific permit requirements for air emission controls for tanks, surface impoundments, and containers, and (b) RCRA comparable fuels exclusion, permit modifications for hazardous waste combustion units trying to comply with the MACT, Notification of Intent to Comply for MACT, and waste minimization and pollution prevention criteria for compliance extension. The proposed rule changes are required to maintain consistency with the Office of Waste Management's current rule (33CSR20) and with the current federal regulations. The consistency of 45CSR25, 33CSR20 and federal regulations is important for final authorization of the WV State RCRA Hazardous Waste Management Program.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

No impact above that resulting from the currently applicable federal control and reporting requirements. However, approximately 25 facilities that are subject to the proposed rule and requirements will also be affected by the Class 1 modification fee as specified under section 9 of the proposed rule.

C. Economic Impact on Citizens/Public at Large.

No impact above that resulting from the currently applicable federal requirements.

Date: July 31, 1995

Signature of Agency Head or Authorized Representative

John R. Stout

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

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FILED

JUN 16 10 35 AM '98

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative ; CITE AUTHORITY W. Va. Code §§22-5-1et seq. & §§22-18-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

RECEIVED

JUN 16 1998

Legislative Rule Making Review Committee

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Streeet East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL ____, WRITTEN ____, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnston, Chief
Office Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

CECIL H. UNDERWOOD
GOVERNOR

BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

Michael P. Miano
COMMISSIONER

June 15, 1998

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

RE: 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste, Tretment, Storage or Disposal Facilities"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your office as notice of public hearing/comment period.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please contact Carrie Chambers in my office at 759-0515.

Sincerely yours,

Michael P. Miano
Commissioner

MPM:cc

cc: Carrie Chambers
Karen Watson, OAQ

45CSR25

TITLE 45
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

SERIES 25
TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

§45-25-1. General.

1.1. Scope.

1.1.a. The intent and purpose of this rule is to establish a program of regulation over air emissions from the treatment, storage and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes. Further, all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such any hazardous waste or constituent thereof in such quantities as to cause ambient air concentrations which may be injurious to human health or welfare which would interfere with the enjoyment of life or property.

1.1.b. The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities as provided in the federal rules that are incorporated by reference herein.

1.1.c. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonement of any emission which is released in any locality in such manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse anyone from complying with other applicable laws, ordinances, regulations, or orders of governmental entities having jurisdiction over hazardous waste treatment, storage or disposal facilities.

1.1.d. This rule is promulgated pursuant to W.Va. Code §§22-18-1 et seq., and §§22-5-1 et seq. Recognizing that each Chapter has its own enforcement sections, it is the intent of the Director that enforcement shall be implemented in accordance with W. Va. Code §§22-18-1 et seq., where practicable.

1.1.e. Permit applications filed pursuant to this rule shall be processed in accordance with the permitting procedures as set forth in W. Va. Code §§22-18-1 et seq., 33CSR20, and this rule.

1.2. Authority. -- W.Va. Code §§22-5-1 et seq. and §§22-18-1 et seq.

1.3. Filing Date. -- ~~May 1, 1998~~

1.4. Effective Date. -- ~~May 1, 1998~~

1.5. Incorporation By Reference.

1.5.a. This rule incorporates by reference the provisions contained in the Code of Federal Regulations as listed in Table 25-A. Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will for purposes of this rule, be construed as that version which was in effect as of July 1,1997.

1.5.b. This rule also incorporates by reference the provisions contained in ~~47~~ 33 CSR 20, effective July 1, 199~~7~~8, except for the provisions of 33 CSR 20 which incorporate by reference the Code of Federal Regulations.

1.5.c. In addition to Table 25-A, this rule also incorporates by reference the provisions of 40 CFR Part 264, 265 and 270, subparts AA, BB, CC, as amended on December 8, 1997, at Federal Register 64636.

§45-25-2. Definitions.

2.1. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air Pollution", 'statutory air pollution' has the meaning ascribed to it in W. Va. Code §22-5-2.

2.3. "Air Pollution Control Equipment" means any equipment used for collecting or converting hazardous waste emissions for the purpose of preventing or reducing emissions of these materials into the open air from hazardous waste treatment, storage, or disposal facilities.

2.4. "BACT", 'Best Available Control Technology' means an emissions limitation based on the maximum degree of reduction for each pollutant which would be emitted from any hazardous waste treatment, storage or disposal facility which the Director, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such facility through application of production processes or available methods, systems, or techniques. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions

reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

2.5. "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. §7401 et seq.

2.6. "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

2.7. "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), Public Law 92-500, as amended by Public Law 95-217 and Public Law 95-576; 33 U.S. C. §1251 et seq.

2.8. "Director" means the Director of the West Virginia Division of Environmental Protection or such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

2.9. "Division of Environmental Protection" or "DEP" means that Division of the West Virginia Division of Environmental Protection which is created by the provisions of W. Va. Code §§22-1-1 et seq.

2.10. "EPA" means the United States Environmental Protection Agency.

2.11. "Facility mailing list" means the mailing list for a facility maintained by EPA in accordance with 40 CFR 124.10(c)(1)(ix).

2.12. "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (June 11, 1993), promulgated by the Division of Health.

2.13. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.14. "Pathological Waste Incinerator" means an incinerator used to thermally treat infectious medical waste.

2.15. "RCRA" means the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended; 42 U.S.C. §6901 et seq.

2.16. "RCRA Permit" means "West Virginia hazardous waste permit". The following additional requirements shall apply to obtain a hazardous waste management permit in West Virginia. All references in 40 CFR Part 270 to 40 CFR Part 124 shall be deemed to be references to the applicable provisions of subsections 5.1. through 5.14. of this rule. To the extent of any inconsistency with 40 CFR Part 270, the specific provisions contained herein shall control.

2.16 7. "Steady State" means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

Other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W. Va. Code §§22-5-1 et seq., or W. Va. Code §§22-18-1 et seq., or 33 CSR 20 "Hazardous Waste Management Regulations" governing the State Hazardous Waste Management Act.

§45-25-3. Adoption By Reference.

3.1. Definitions, lists, tables, appendices, conditions, or requirements from 33 CSR 20 "Hazardous Waste Management Rule", effective July 1, 1997~~8~~ are hereby adopted by reference, except for the provisions of 33 CSR 20 which incorporate by reference the Code of Federal Regulations..

3.1.a. In case of a conflict between the Office of Air Quality and the Office of Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Director has final administrative authority to resolve the conflict.

3.2. Unless otherwise indicated, the provisions contained in the Code of Federal Regulations, ~~(~~effective ~~on~~ July 1, 1997, ~~except as otherwise provided by section 1.5 of this rule)~~, as listed in Table 25-A, are hereby adopted by reference, with the following modifications:

3.2.a. Whenever the term "United States" is used it shall also mean the State of West Virginia.

3.2.b. Whenever the terms "Administrator" or "Regional Administrator", "The Assistant Administrator for Solid Waste and Emergency Response" or "Director" is used, the term means the Director of the West Virginia Division of Environmental Protection.

3.2.c. Whenever the term "Environmental Protection Agency" is used ~~in 40 CFR 266,~~ the term also means the West Virginia Division of Environmental Protection.

3.2.d. The distance provisions of 40 CFR 265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial Explosives, effective June 19, 1991, and of the Department of Defense Contractors Safety Manual for Ammunition and Explosives (DOD 4145.26-M), as amended April 11, 1988, apply otherwise.

§45-25-4. Facility Requirements.

4.1. Owners and operators of hazardous waste treatment, storage, and disposal facilities regulated by the provisions of this rule shall maintain a listing of all permits or construction

approvals received or applied for under any of the following programs and their counterpart programs administered by the State, where appropriate:

4.1.a. Hazardous Waste Management Program under RCRA and 33 CSR 20;

4.1.b. Prevention of Significant Deterioration (PSD) Program under 45 CSR 14 or the Federal Clean Air Act;

4.1.c. Nonattainment program under West Virginia DEP, Office of Air Quality or the Federal Clean Air Act and 45 CSR 19;

4.1.d. National Emission Standards for Hazardous Pollutants (NESHAP) preconstruction approval under 45 CSR 15 or the Federal Clean Air Act;

4.1.e. Standards of Performance for New Stationary Sources under 45 CSR 16 or the Federal Clean Air Act; and

4.1.f. Other relevant air pollution control permits including local permits.

4.2. Owners and operators of hazardous waste treatment, storage and disposal facilities covered under this rule shall comply with the personnel training requirements as specified by 40 CFR 264.16. An outline of the training program and a description of how the training program is designed to meet actual job tasks must be submitted to the Director with Part B of the permit application.

4.3. Owners and operators of hazardous waste tanks, containers, surface impoundments, landfills, waste piles, land treatment, miscellaneous units, thermal treatment units, incinerators, and boiler and industrial furnace facilities must design, construct, maintain, and operate such facilities to minimize the possibility of a fire, explosion, or any unplanned, sudden, or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

4.4. Owners and operators of hazardous waste management facilities that treat, store, or dispose of ignitable or reactive wastes, or mix incompatible waste or incompatible wastes and other materials, must prevent reactions which:

4.4.a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment, and

4.4.b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

4.5. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a container in accordance with the applicable

air emission ~~standard~~ requirements ~~of 40 CFR 264 and 265 including but not limited to subpart CC~~ as listed in Table 25-A.

4.6. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a tank in accordance with the applicable air emission ~~standard~~ requirements ~~of 40 CFR 264 and 265 including but not limited to subparts AA, BB and CC~~ as listed in Table 25-A.

4.7. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable air emission ~~standard~~ requirements ~~of 40 CFR 264 and 265 including but not limited to subpart CC~~ as listed in Table 25-A.

4.8. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a miscellaneous unit in accordance with the applicable air pollution standard requirements of 40 CFR 264 including but not limited to subparts AA, BB, and CC.

4.9. A hazardous waste pile must be fully enclosed or otherwise designed to prevent dispersal of the waste by wind.

4.10. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

4.11. All landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment shall include prevention of adverse effects on air quality considering:

4.11.a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;

4.11.b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

4.11.c. The potential for health risks caused by human exposure to waste constituents;

4.11.d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

4.11.e. The potential for interference with the enjoyment of life or property; and

4.11.f. The persistence and permanence of such potential adverse effects.

4.12. Owners and operators of hazardous waste treatment, storage, or disposal facilities shall utilize best available control technology ("BACT") to limit the discharge of hazardous waste constituents to the atmosphere during:

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

4.12.d. Tank truck, railroad tank car, and barge cleaning.

4.13. The Director may, on a case-by-case basis, establish performance standards for hazardous waste incinerators for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that such standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and environment. The Director may require the following data from the permit applicant:

4.13.a. Emissions of POHCs, hazardous combustion by-products, metals and hydrogen halides, including:

4.13.a.1. Mass emission rates from the stack, and

4.13.a.2. Concentration in the gas stream exiting the stack; and

4.13.b. Air dispersion estimates for those substances, including:

4.13.b.1. Meteorological data, and

4.13.b.2. Description of the air dispersion models, and

4.13.b.3. Assumptions underlying the air dispersion models used; and

4.13.c. Expected human and environmental exposure, including:

4.13.c.1. Topographic considerations,

4.13.c.2. Population distributions,

4.13.c.3. Population activities, and

4.13.c.4. Modes, intensity, and duration of exposure; and

4.13.d. Consequences of exposure, including:

4.13.d.1. Dose-response curves for carcinogens,

4.13.d.2. Health effects based on human or animal studies for other toxic constituents,

4.13.d.3. Potential for accumulation of toxic constituents in the human body, and

4.13.d.4. Statements of expected risk to individuals or populations.

4.14. ***Emergency Permit.*** Notwithstanding any other provision in 40 CFR 270.61, in the event the Director finds an imminent and substantial danger to human health or the environment, the Director may issue a temporary permit to a facility to allow treatment, storage, or disposal of hazardous waste at a non-permitted facility, or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

4.14.a. May be oral or written. If oral, it shall be followed within five (5) days by written emergency permit;

4.14.b. Shall not exceed ninety (90) days in duration;

4.14.c. Shall clearly specify the hazardous wastes to be received, and the manner and location of the treatment, storage, or disposal;

4.14.d. May be terminated by the Director at any time without prior notice if it is determined that termination is appropriate to protect human health or the environment; and

4.14.e. Shall be accompanied by public notice as described under section 7 of this rule and shall include the following:

4.14.e.1. Name and address of the office granting the emergency authorization,

4.14.e.2. Name and location of the permitted hazardous waste management facility,

4.14.e.3. A brief description of the wastes involved,

4.14.e.4. A brief description of the action authorized and reasons for authorizing it,

4.14.e.5. Duration of the emergency permit; and

4.14.f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

4.15. Pathological Waste Incinerators. The owner and operator of a pathological waste incinerator is not subject to the requirements of this regulation. However, mixtures of infectious medical waste and hazardous waste listed in 40 CFR 261 Subpart D are subject to the requirements of this rule and the owner and operator of such a facility shall design, construct and operate the facility in accordance with all other applicable regulations promulgated by the Director, including, but not limited to, 45 CSR 6 and 45 CSR 13.

§45-25-5. Permit Process

5.1. Pre-application Public Meeting and Notice

5.1.a. ***Applicability.*** The requirements of this section 5.1. shall apply to West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to West Virginia hazardous waste management Part B permit applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a Class 3 permit modification (See 40 CFR 270.42 for a description of permit modifications). The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.1.b. Prior to the submission of a West Virginia hazardous waste management Part B permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

5.1.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 5.1.b. of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the Part B application, in accordance with 40 CFR 270.14(b).

5.1.d. The applicant must provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

5.1.d.1. The applicant shall provide public notice in all of the following forms:

5.1.d.1.A. ***A newspaper advertisement.*** The applicant shall publish a notice, fulfilling the requirements in subsection 5.1.d.2. of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Director shall instruct the applicant to publish the notice in newspapers of general circulation in

adjacent counties or equivalent jurisdictions, where the Director determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

5.1.d.1.B. ***A visible and accessible sign.*** The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subsection 5.1.d.2. of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

5.1.d.1.C. ***A broadcast media announcement.*** The applicant shall broadcast a notice, fulfilling the requirements in subsection 5.1.5.d.2. of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Director.

5.1.d.1.D. ***A notice to the permitting agency.*** The applicant shall send a copy of the newspaper notice to the permitting agency and the Director shall forward copies to the appropriate units of State and local government having jurisdiction over the area where the facility is, or is proposed to be, located; and to each state agency having any authority under State law with respect to the construction or operation of the facility.

5.1.d.2. The notices required under subsection 5.1.d.1. of this section must include:

5.1.d.2.A. The date, time, and location of the meeting;

5.1.d.2.B. A brief description of the purpose of the meeting;

5.1.d.2.C. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

5.1.d.2.D. A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

5.1.d.2.E. The name, address, and telephone number of a contact person for the applicant.

5.2. Public Notice Requirements at the Application Stage

5.2.a. ***Applicability.*** The requirements of this section 5.2. shall apply to all West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to hazardous waste management Part B permit applications seeking renewal of permits for such units upon the expiration of the existing permit. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.2.b. ***Notification.*** The Director shall provide public notice as required in this section 5.2. when a Part B permit application has been submitted. The Director shall provide public notice to:

5.2.b.1. The applicant;

5.2.b.2. All persons on a mailing list developed under 5.8.d.1.D., and

5.2.b.3. The appropriate units of state and local government having jurisdiction over the area where the facility is proposed to be located; and to each state agency having any authority under State law with respect to the construction or operation of the facility, that a Part B permit application has been submitted to the Director and is available for review.

5.2.b.4. Any person otherwise entitled to receive notice under subsection 5.2.6.b. of this rule may waive the right to receive notice for any classes and categories of permits.

5.2.c. The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

5.2.c.1. The name and telephone number of the applicant's contact person;

5.2.c.2. The name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

5.2.c.3. An address to which people can write in order to be put on the facility mailing list;

5.2.c.4. The location where copies of the permit application and any supporting documents can be viewed and copied;

5.2.c.5. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

5.2.c.6. The date that the application was submitted.

5.2.d. Concurrent with the notice required under section 5.2.b. of this section, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

5.3. Information Repository

5.3.a. ***Applicability.*** The requirements of this section apply to all applications seeking

West Virginia hazardous waste management permits for hazardous waste management units.

5.3.b. The Director may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director shall notify the facility that it must establish and maintain an information repository.

5.3.c. The information repository shall contain all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established. The Director shall have the discretion to limit the contents of the repository.

5.3.d. The information repository shall be located and maintained at a site chosen by the facility. If the Director finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Director shall specify a more appropriate site.

5.3.e. The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

5.3.f. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director. The Director may close the repository at his or her discretion, based on the factors in section 5.3.b. of this section.

5.4. Application for a Permit

5.4.a. Any person who requires a permit under this rule shall complete, sign, and submit to the Director an application for each permit required under this rule. Applications are not required for hazardous waste permits by rule pursuant to 40 CFR § 270.60. The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Permit applications must comply with the signature and certification requirements of 40 CFR § 270.11.

5.4.b. The Director shall review for completeness every application. Each application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Director within 30 days of its receipt. Each application submitted by an existing hazardous waste management facility (both Part A and Part B of the application), should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the

Director shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from the applicant but only when necessary to clarify, modify or supplement previously submitted materials. Request for such additional information will not render an application incomplete.

5.4.c. If the applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provisions of W. Va. Code §§22-18-1 et seq. and W. Va. Code §§22-5-1 et seq.

5.4.d. If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

5.4.e. The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided for in 5.4.b. of this section.

5.4.f. For each application the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to:

5.4.f 1. Prepare a draft permit;

5.4.f.2. Give public notice;

5.4.f.3. Complete the public comment period, including any public hearing;

5.4.f.4. Issue a final permit.

5.5. Modification, Revocation and Reissuance, or Termination of Permits

5.5.a. Permits may be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR §§ 270.41 or 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

5.5.b. If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Director may be appealed to the Air Quality Board in accordance with W. Va. Code §§22B-1-1 et.seq.

5.5.b.1. If the Director tentatively decides to modify or revoke and reissue a permit under 40 CFR §§270.41 or 270.42 (c), he or she shall prepare a draft permit under section 5.6. incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the Director shall require the submission of a new application.

5.5.b.2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

5.5.b.3. "Classes 1 and 2 Modifications" as defined in 40 CFR §270.42 (a) and (b) are not subject to the requirements of this subsection.

5.5.c. If the Director tentatively decides to terminate a permit under 40 CFR § 270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any draft permit prepared under section 5.6.

5.5.d. The provisions of 40 CFR § 270.42(j) and 40 CFR §270.72(b)(8) shall apply to permit modifications for hazardous waste combustion units to meet standards under 40 CFR Part 63 subpart EEE as amended in 63 Federal Register 33781 (June 19, 1998).

5.6. Draft Permits.

5.6.a. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

5.6.b. If the Director tentatively decides to deny the permit application, he or she shall issue a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. If the Director's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

5.6.c. If the Director tentatively decides to issue a permit, he or she shall prepare a draft permit that contains the following information:

5.6.c.1. All conditions under 40 CFR §§270.30 and 270.32;

5.6.c.2. All compliance schedules under 40 CFR § 270.33;

5.6.c.3. All monitoring requirements under 40 CFR §270.31; and,

5.6.c.4. Standards for treatment, storage, and/or disposal and other permit conditions under 40 CFR §270.30.

5.6.d. All draft permits prepared by the Director under this section shall be accompanied by a fact sheet if required under subsection 5.7.a. and shall be based on the administrative record, publicly noticed and made available for public comment.

5.6.e. In addition to the requirements of subsection 5.6., public notice of the preparation of a draft permit shall be given by the methods contained in 40 CFR 270.2, 270.14, 270.30, 270.62, and 270.66.

5.7. Fact Sheet

5.7.a. A fact sheet shall be prepared for each draft permit which the Director finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in preparing the draft permit. The Director shall send the fact sheet to the applicant and, on request, to any other person.

5.7.b. The fact sheet shall include when applicable:

5.7.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;

5.7.b.2. The type and quantity of waste, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

5.7.b.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

5.7.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5.7.b.5. A description for reaching a final decision on a draft permit including:

5.7.b.5.A. The beginning and the ending dates of the comment period and the address where comments will be received;

5.7.b.5.B. Procedures for requesting a hearing and the nature of that hearing; and

5.7.b.5.C. Any other procedures by which the public may participate in the final decision.

5.7.b.6. Name and telephone number of a person to contact for additional information.

5.8. Public Notice of Permit Actions and Public Comment Period

5.8.a ***Scope.*** The Director shall give public notice if the following actions have occurred:

5.8.a.1. A draft permit has been prepared.

5.8.a.2. A hearing has been scheduled.

5.8.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under section 5.5. Written notice of that denial shall be given to the requester and to the permittee.

5.8.c. ***Timing.*** Public notice of the preparation of a draft permit (including a Notice of Intent to Deny a Permit Application) required under section 5.8.a. shall allow at least forty-five (45) days for public comment. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

5.8.d. ***Methods.*** Public notice of activities described in section 5.8.a. of this section shall be given by the following methods:

5.8.d.1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

5.8.d.1.A. The applicant.

5.8.d.1.B. Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act or West Virginia Code §22-5-1 et. seq., NPDES, 33 U.S.C. §1344, or sludge management permit for the same facility or activity;

5.8.d.1.C. Federal and state agencies with jurisdiction over fish, shell fish and wildlife resources and over coastal zones management plans, the advisory council on historic preservation, and the state historic preservation office, as applicable.

5.8.d.1.D. Persons on a mailing list developed by:

5.8.d.1.D.i. Including those who request in writing to be on the list;

5.8.d.1.D.ii. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

5.8.d.1.D.iii. Notifying the public of the opportunity to be put on the mailing list through periodic public in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. (The Director may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Director may delete from the lists the name of any person who fails to respond to such request.)

5.8.d.1.E.i. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

5.8.d.1.E.ii. To each state agency having any authority under state law with respect to the construction or operation of such facility.

5.8.d.2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

5.8.d.3. In a manner constituting legal notice to the public under state laws; and

5.8.d.4. Any other method reasonably calculated to give actual notice of the action in question to the person potentially effected by it, including press releases or any other forum or medium to elicit public participation.

5.8.e. ***All public notices.*** All public notices issued under this section shall contain the following minimum information:

5.8.e.1. Name and address of the office processing the permit action for which notice is being given;

5.8.e.2. Name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit.

5.8.e.3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

5.8.e.4. Name, address and telephone number of a person from who interested persons may obtain further information, including copies of the draft permit and fact sheet and the application; and

5.8.e.5. A brief description of the comment procedures required by sections 5.9. and 5.10. and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which

the public may participate in the final decision.

5.8.e.6. The location of the administrative record, the times that which the record will be open for public inspection;

5.8.e.7. Any additional information considered necessary or proper.

5.8.f. ***Public notices for hearings.*** In addition to the general public notice described in section 5.8.e. of this section, the public notice of a hearing shall contain the following information:

5.8.f.1. Reference to the date of previous public notices relating to the permit;

5.8.f.1.A. Date, time, and place of the hearing;

5.8.f.1.B. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

5.8.g. In addition to the general public notice described in section 5.8.e. of this section, all persons identified in section 5.8.d.1.A, 5.8.d.1.B, and 5.8.d.1.C of this section shall be mailed a copy of the fact sheet, the permit application and the draft permit, as applicable.

5.9. Public Comments and Requests for Public Hearings

During the public comment period provided under section 5.8., any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in section 5.13.

5.10 Public Hearings

5.10.a. The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit.

5.10.b. The Director may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

5.10.c. The Director shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under section 5.8.c.; whenever possible the Director shall schedule a hearing under this section at a location in convenient to the nearest population center to the proposed facility.

5.10.d. Public notice of the hearing shall be given as specified in section 5.8.

5.10.e. Whenever a public hearing will be held the Director shall designate a presiding officer for the hearings who shall be responsible for its scheduling and orderly conduct.

5.10.f. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under section 5.8. shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

5.10.g. A tape recording or written transcript of the hearing shall be made available to the public.

5.11. Reopening of the Public Comment Period

5.11.a. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:

5.11.a.1. Prepare a new draft permit, appropriately modified, under section 5.6. of these rules.

5.11.a.2. Prepare a revised fact sheet under section 5.7. of these rules and reopen the comment period.

5.11.a.3. Reopen or extend the comment period under section 5.11. of these rules to give interested persons an opportunity to comment on the information or arguments submitted.

5.11.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under section 5.8. of these rules shall define the scope of the reopening.

5.11.c. Public notice of any of the above actions shall be issued under section 5.8 of these rules.

5.12. Issuance and Effective Date of Permit

5.12.a. After the close of the public comment period on a draft permit the Director shall issue a final permit decision. The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice shall include reference to the procedures for appealing a decision on the permit. For purposes of this section the final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

5.12.b. A final permit decision shall become effective thirty (30) days after the service of

Notice of Decision unless:

5.12.b.1. A later effective date is specified in the decision; or

5.12.b.2. Review is requested or an evidentiary hearing is requested; or

5.12.b.3. No comments requested change in the draft permit, in which case the permit shall become effective immediately upon issuance.

5.13. Response to Comments

5.13.a. At the time that any final permit decision is issued, the Director shall issue a response to comments. This response shall:

5.13.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

5.13.a.2. Briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period, or during any hearing.

5.13.b. The response to comments shall be available to the public.

5.14. Administrative Record

5.14.a. The provisions of a draft permit prepared under subsection 5.6. of this rule shall be based on the administrative record consisting of:

5.14.a.1. The application and any supporting data furnished by the applicant;

5.14.a.2. The draft permit or notice of intent to deny the application or to terminate the permit;

5.14.a.3. The fact sheet if required;

5.14.a.4. All documents cited in the fact sheet; and

5.14.a.5. Other documents contained in the supporting file for the draft permit.

5.14.b. The Director shall base final permit decisions on the administrative record consisting of:

5.14.b.1. Administrative record for the draft permit;

5.14.b.2. All comments received during the public comment period provided under subsection 5.5. of this rule (including any extension or reopening under subsection 5.11. of this rule);

5.14.b.3. The tape or transcript of any hearing(s) held under subsection 5.10. of this rule;

5.14.b.4. Any written material submitted at such hearing;

5.14.b.5. The response to comments required by subsection 5.13. of this rule which identified and supports any change made in the draft permit and any new material placed in the record under that subsection;

5.14.b.6. Other documents contained in the supporting file for the permit;

5.14.b.7. An addendum to the fact sheet if needed; and

5.14.b.8. The final permit.

5.14.c. The administrative record shall be complete on the date the final permit is issued.

5.14.d. Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 5.14.a. and 5.14.b. of this rule, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

5.15. Public Access to Information.

5.15.a. Any records, reports, or information and any permit, permit applications, and related documentation within the Director's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the Director that such records, reports, permit documentation, or information, or any part hereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the Director shall consider, treat, and protect such records as confidential pursuant to W.Va. Code §§22-18-1-et.seq. and W.Va. Code §§22-5-1-et.seq.

5.15.b. It shall be the responsibility of the person claiming any information as confidential under the provision of subsection 5.15. of this rule to comply with the requirements of 45CSR31.

5.16. The provisions of 40 CFR §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W. Va. Code, §§22-18-1 et.seq. and W. Va. Code, §§22-5-1 et.seq.

§45-25-56. Exclusions and Exemptions.

56.1. Wastes and/or materials excluded in 33 CSR 20, are also excluded from the requirements of this rule.

56.2. Except for recyclable materials exempt pursuant to section 3 of 33 CSR 20, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of section 4 of this rule.

6.3. The provisions of 40CFR§261.4 and 40CFR§261.38 regarding the exclusion of comparable fuels from being considered a solid waste as amended in 63 Federal Register 33781 (June 19, 1998) are hereby incorporated by reference.

~~**§45-25-6. Confidential Information.**~~

~~**6.1.** Any records, reports, or information and any permit, permit applications, and related documents within the Director's possession shall be available to the public for inspection and copying: provided, however, that upon satisfactory showing to the Director that such records, reports, permit documentation, or information, or any part thereof would, if made public, divulge methods or processes, or activities, entitled to protection as trade secrets, the Director shall consider, treat, and protect such records as confidential pursuant to W. Va. Code §22-18-1 et seq., and §22-5-1 et seq.~~

~~**§45-25-7. Public Participation.**~~

~~Public notice of the preparation of a draft permit shall be given by the methods contained in 33 CSR 20 Section 11, and 40 CFR 270.2, 270.14, 270.30, 270.62, and 270.66.~~

§45-25-87. Application Fees.

8 7.1. Any person who applies for a permit for the construction and/or operation of an air emitting hazardous waste treatment, storage, or disposal facility shall submit as part of said application a money order or cashier's check payable to the "Air Pollution Control Fund" of the State Treasury. Such fee shall be determined by the schedule set forth below:

ACTIVITY FEES

a. Hazardous Waste Management Facilities

Treatment design capacity more than 1,000 ton/yr	$5,000
Treatment design capacity less than 1,000 ton/yr	$5,000

b.	~~Major~~ Class 2, 3 Modifications or Renewals of Permits and 40 CFR 270.41 for Hazardous Waste Management Facilities	$1,000
c.	Class 1 Modifications	$ 500.00

All fees required under this section shall be in addition to fees required under any other rule of the West Virginia Division of Environmental Protection.

§45-25-9~~8~~. Inconsistency Between Rules.

In the event of any inconsistency between this rule and any other rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method and rule.

45CSR25

TABLE 25-A

Item No.	CFR No.		Part No.		Subpart No.		Title
1.	40 CFR	-	264, 265	-	O	-	Incinerator
2.		-	270.19	-	B	-	Specific Requirements for Incinerators
			270.42(j)	-	D	-	Permit Modification at The Request of the Permittee
3.		-	270.62, 270.62(b)(6) 270.62(d)		F	-	Hazardous Waste Incinerator Permits
		-	270.72(b)(8)	-	G	-	Changes During Interim Status
4.	40 CFR	-	264	-	X	-	Miscellaneous Units
5.		-	270.23	-	B	-	Specific Requirements for Miscellaneous Units
6.	40 CFR	-	264, 265	-	AA	-	Air Emission Standards for Process Vents
7.		-	270.24	-	B	-	Specific Requirements for Process Vents
8.	40 CFR	-	264, 265	-	BB	-	Air Emission Standards for Equipment Leaks
9.		-	270.25	-	B	-	Specific Requirements for Equipments Leaks
10.	40 CFR	-	264, 265, ~~270~~ 264.179, 265.178 264.200, 265.202 264.232, 265.231 265	-	CC I J K Appendix	-	Organic Air Emission Standards for Tanks Surface Impoundments, and Containers Appendix VI

Item No.	CFR No.		Part No.		Subpart No.		Title
11.	40 CFR	-	270.14(b)(5) 270.27		B	-	Specific Requirements for Air Emissions Control for Tanks, Surface Impound-ments and Containers
12.	40 CFR	-	265	-	P	-	Thermal Treatment
13.	40 CFR	-	266	-	H	-	Hazardous Waste Burned in Boilers and Industrial Furnaces
				-	Appendices	-	Appendix 1 to XIII
14.	40 CFR	-	270.22	-	B	-	Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
15.	40 CFR	-	270.66 270.66(d)(3) 270.66(g)	-	F	-	Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
16.	40 CFR	-	279.23	-	C	-	On-site Burning In Space Heater
17.	40 CFR	-	279.60 279.61	-	G	-	Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
		-	279.62 279.63				
18.	40 CFR	-	270.14(b)(22) 270.24(b)(5)	-	B	-	Part B application General Requirements
		=	270.1(c)(viii)(C)		A	=	General Information
19.	40 CFR	-	270.30(m)	-	B	-	Information repository
20.	40 CFR	-	261.6(c)(1)	-	A	-	Requirements for Recyclable Materials
21.	40 CFR	-	262.34(a)(1)(i) &(ii)		C	-	Accumulation Time
22.	40 CFR	-	260.11	-	B	-	References

Federal Register

Monday
December 8, 1997

Part II

Environmental Protection Agency

40 CFR Part 264, et al.
Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, and 270

[IL–64–2–5807; FRL–5931–7]

RIN 2060–AG44

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarification and technical amendment.

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA has promulgated standards (59 FR 62896, December 6, 1994) to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment. (The standards are known colloquially as the "subpart CC" standards due to their inclusion in subpart CC of parts 264 and 265 of the RCRA subtitle C regulations). These air standards control organic emissions from certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment.

Since publication of the final standards on December 6, 1994, the EPA has given public notice and taken comment on several proposed revisions to the final rule, and has made corresponding amendments. In response to public comments and inquiries, today's action makes clarifying amendments to certain regulatory text, and provides clarification of certain preamble language that was contained in previous documents for this rulemaking.

DATES: These amendments are effective December 8, 1997

ADDRESSES: This document is available on the EPA's Clean-up Information Bulletin Board (CLU–IN). To access CLU–IN with a modem of up to 28,800 baud, dial (301) 589–8366. First time users will be asked to input some initial registration information. Next, select "D" (download) from the main menu. Input the file name "RCRA–FIN.ZIP" to download this document. Follow the on-line instructions to complete the download. More information about the download procedure is located in Bulletin 104; to read this type "B 104" from the main menu. For additional help with these instructions, telephone the CLU–IN help line at (301) 589–8368.

Docket. The supporting information used for the subpart CC rulemaking is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to this rulemaking are F–91–CESP–FFFFF, F–92–CESA–FFFFF, F–94–CESF–FFFFF, F–94–CE2A–FFFFF, F–95–CE3A–FFFFF, F–96–CE3F–FFFFF, and F–96–CE4A–FFFFF. The RCRA docket is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Review of docket materials is conducted at the Virginia address; the public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA docket office is RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information about the RCRA Air Rules, or specific rule requirements of RCRA rules, please contact the RCRA Hotline, toll-free at (800) 424–9346. Contacts for specific information are listed in the **SUPPLEMENTARY INFORMATION** section of this preamble.

SUPPLEMENTARY INFORMATION:

Regulated Entities: The entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Businesses that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).
Federal Government	Federal agencies that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in the amendments to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 264.1030 and § 265.1030 of the RCRA subpart AA rules, § 264.1050 and § 265.1050 of the RCRA subpart BB rules, and § 264.1080 and § 265.1080 of the RCRA subpart CC air rules.

Informational Contacts

If you have questions regarding the applicability of this action to a particular situation, or questions about compliance approaches, permitting, enforcement and rule determinations, please contact the appropriate regional representative below:

Region I

Stephen Yee, (617) 565–3550; Jim Gaffey, 565–3437; U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203–0001

Region II

Abdool Jabar, (212) 637–4131; John Brogard, 637–4162; Jim Sullivan, 637–4138; U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866

Region III

Linda Matyskiela, (215) 566–3420; Andrew Clibanoff, 566–3391; U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107

Region IV

Denise Housley, (404) 562–8495; Rick Gillam, 562–8498; Jan Martin, 562–8593; Anita Shipley, 562–8466; Donna Wilkinson, 562–8490; Judy Sophianolpoulos, 562–8604; David Langston, 562–8588; U.S. EPA, Region IV, 61 Forsyth Street, Atlanta, GA 30303

Region V

Jae Lee, (312) 886–3781; Uylaine McMahan, 886–4454; Mike Mikulka, 886–6760; Ivonne Vicente, 886–4449; Wen Huang, 886–6191; U.S. EPA, Region V, 77 West Jackson Street, Chicago, IL 60604

Region VI

Michelle Peace, (214) 665–7430; Teena Wooten, 665–2279; U.S. EPA, Region

VI. 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733

Region VII

Ed Buckner, (913) 551–7621; Ken Herstowski, 551–7631; U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101

Region VIII

Mindy Mohr, (303) 312–6525; Janice Pearson, 312–6354; U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466

Region IX

Stacy Brave, (415) 774–2056; Jean Daniel, 774–2128; U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Region X

Linda Liu, (206) 553–1447; David Bartus, 553–2804; U.S. EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101

For questions about testing or analytical methods mentioned in this document, please contact Ms. Rima Dishakjian, Emission Measurement Center (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443. For information concerning the analyses performed in developing this rule, contact Ms. Michele Aston, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2363, electronic mail address, "aston.michele@epamail.epa.gov."

Background

Section 3004(n) of RCRA requires EPA to develop standards to control air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF) as may be necessary to protect human health and the environment. This requirement echoes the general requirement in RCRA section 3004(a) and section 3002(a)(3) to develop standards to control hazardous waste management activities as may be necessary to protect human health and the environment. The Agency has issued a series of regulations to implement the section 3004(n) mandate; these regulations control air emissions from certain process vents and equipment leaks (part 264 and part 265, subparts AA and BB), and emissions from certain tanks, containers, and surface impoundments (the subpart CC standards, which are the primary subject of today's action).

The EPA today is making technical amendments to the final subpart AA, BB, and CC standards, and providing interpretations for certain provisions of those rules. Since the publication of the final subpart CC rule (59 FR 69826, December 4, 1994), the EPA has published four Federal Register documents that delayed the effective date of that rule. The first (60 FR 26828, May 19, 1995) revised the effective date of the standards to be December 6, 1995. The second (60 FR 56952, November 13, 1995) revised the effective date of the standards to be June 6, 1996. The third (61 FR 28508, June 5, 1996) further postponed the effective date for the rule requirements until October 6, 1996, and the fourth (61 FR 59931, November 25, 1996) established the ultimate effective date of December 6, 1996. The EPA has also issued an indefinite stay of the standards specific to units managing wastes produced by certain organic peroxide manufacturing processes (60 FR 50426, September 29, 1995).

On August 14, 1995, the EPA published a Federal Register document entitled, "Proposed rule; data availability" (60 FR 41870) and opened RCRA docket F–95–CE3A–FFFFF to accept comments on revisions that the EPA was considering for the final subpart CC standards. The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995. Throughout 1995 and into the present year, the EPA also engaged in repeated discussions with representatives of the groups filing petitions for review challenging the subpart CC standards.

To further inform the affected public of the major clarifications, compliance options, and technical amendments being considered, the EPA conducted a series of seminars during August and September of 1995. At that time, a total of six seminars were held nationally. An updated series of six seminars was held in September through December 1996 and two additional seminars were held March and April of 1997 in conjunction with an industry trade association. (Refer to EPA RCRA Docket No. F–95–CE3A–FFFFF.) During these seminars, additional comments were received on the RCRA air rules for tanks, surface impoundments, and containers. These comments were also considered by the EPA in developing this final action.

On February 9, 1996, the EPA published a Federal Register document (61 FR 4903), "Final rule; technical amendment," which made clarifying amendments in the regulatory text of the final standards, corrected typographical and grammatical errors, and clarified certain language in the preamble to the final rule to better convey the EPA's original intent.

On November 25, 1996, the EPA published a Federal Register document (61 FR 59932), "Final rule" that amended provisions of the final subparts AA, BB, CC rules to better convey the EPA's original intent, to provide additional flexibility to owners and operators who must comply with the rules, and to change the effective date of the requirements contained in the subpart CC rules to be December 6, 1996.

Today's action makes technical amendments to the final subparts AA, BB, CC rules in order to clarify the regulatory text of the final standards; interpret those standards; correct typographical, printing, and grammatical errors; and clarify certain language published in the preambles of previous Federal Register documents, to better convey the EPA's original intent.

Today's amendments include one change to 40 CFR Part 270, to correct a typographical error made in the December 6, 1994 final rule. The text listing the sections of regulatory requirements that must be included in the general inspection schedule incorrectly listed "245.193(i)" where section 264.193(i) was intended. This was obviously a typographical error, as all of the sections listed in that provision are from 40 CFR part 264; the sections are listed in numeric order, and "245.193(i)" was very obviously out of place. Further, no section 245.193(i) exists; in fact, no 40 CFR 245 exists. Today's amendment corrects this typographical error.

Outline

The information presented in this preamble is organized as follows:

I. Subpart B—General Facility Standards

Today's action removes §§ 264.1091(b) and 265.1091(b) from the list of sections in §§ 264.15 and 265.15, respectively. Sections 264.15 and 265.15 contain a list of provisions from which inspection items and frequencies are required to be included in the general facility inspection schedule. The inspection requirements for floating roof tanks that were in §§ 264.1091(b) and 265.1091(b) of subpart CC as promulgated, were incorporated into §§ 264.1084 and 265.1085 by the November 25, 1996, final rule amendments (61 FR 59944). That action also removed and reserved §§ 264.1091(b) and 265.1091(b). Therefore, the EPA is revising this provision to reference the paragraphs that now contain the inspection requirements. The EPA is also correcting a previous omission, by including a reference to the sections of subpart CC that include inspections requirements.

II. Subpart E—Manifest System, Recordkeeping, and Reporting

Today's action also removes §§ 264.1091(b) and 265.1091(b) from the list of sections from which monitoring, testing, or analytical data, and corrective action requirements must be included in the facility operating record. The monitoring and testing requirements for floating roof tanks that were in §§ 264.1091(b) and 265.1091(b) of subpart CC as promulgated, were incorporated into §§ 264.1084 and 265.1085 by the November 25, 1996 final rule amendments (61 FR 59944) and, as just noted, §§ 264.1091(b) and 265.1091(b) were removed and reserved. Therefore, the EPA is revising this provision to reference the paragraphs that now contain the appropriate requirements, and including a reference to provisions of subpart CC that were previously omitted through an oversight.

III. Subpart AA—Air Emission Standards for Process Vents

A. Applicability

In today's action, the EPA is amending §§ 264.1030(b)(3), 264.1050(b)(3), 265.1030(b)(3), and 265.1050(b)(3) to make clear the EPA's original intent as to when recycling units are subject to the subpart AA and BB rules. The EPA made clear in the November 25, 1996 preamble that recycling units which are otherwise exempt from RCRA subtitle C regulation under 40 CFR 261.6(c)(1) are not subject to subpart AA and BB standards unless some other unit at the facility has to obtain a RCRA permit. See 61 FR at 59932–33, and 59935. The Agency also showed how the existing regulation could be interpreted to give this result. *Id.* at 59935. Put another way, Subparts AA and BB are applicable to recycling units at permitted TSDF and interim status TSDF. Also, at both TSDF and generator facilities (generators' 90-day accumulation units), subparts AA and BB are applicable to units that are not recycling units. However, the EPA believes that the rule language can be drafted to make this point more clearly, and is doing so in today's rule, for both subpart AA and BB.

The EPA is further clarifying that the RCRA "permit-as-shield" provisions do not apply to the subpart AA (or the subpart BB or CC standards); see Section VI.E of the preamble to the final rule, 59 FR 62910, December 6, 1994. This means that owners and operators receiving permits before the date those rules became effective must nevertheless comply with the subpart AA (and the subpart BB and CC) regulatory standards. The EPA is adding a sentence to § 264.1030(c) which essentially cross-references the existing § 270.4(d) provision stating that "permit-as-a shield" does not apply to these units.

The EPA has previously amended 40 CFR 270.4 (see 59 FR 62952, December 6, 1994) to require that owners and operators of TSDF that have been issued final permits prior to December 6, 1996, comply with the air standards under 40 CFR part 265, subparts AA, BB, and CC until the facility's permit is reviewed or reissued by the EPA. As was explained in Section VIII.A of the preamble to the final rule (59 FR 62920, December 6, 1994), this amendment eliminates application of the "permit-as-a-shield" practice for these air standards but does not require that the EPA or the TSDF owner or operator initiate a permit modification to add the requirements of 40 CFR part 264, subparts AA, BB, or CC. The EPA believes that this minimizes the administrative burden on the TSDF owner or operator as well as limits the additional burden on the permitting resources of the EPA. However, when a permit is reopened or subject to renewal, or when a TSDF owner or operator submits a Class 3 modification request pertaining to an existing unit or addition of a new unit subject to these standards, then the applicable requirements of 40 CFR part 264, subparts AA, BB, and CC will be incorporated into the modified permit conditions.

The EPA is also amending the applicability provision of subpart AA by adding a new § 264.1030(d) and § 265.1030(d). This provision states that a process vent is not subject to the subpart AA standards provided the owner or operator certifies that all subpart AA-regulated process vents at the facility are equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified in Part 60, 61, or 63. The EPA adopted a similar provision for units subject to subpart CC as part of the November 1996 amendments (see § 264.1080(d) and § 265.1080(d) of subpart CC) and the logic for applying the same exemption in the same manner to subpart AA process vents is identical. The preamble discussion at Section IV.C, 61 FR 59938–59939 (November 25, 1996) explains at length why this exemption avoids unnecessary duplication with CAA requirements, all of which discussion applies equally here. The EPA in fact intended that the exemption apply to subpart AA process vents as well (since there is no basis for distinguishing between subpart AA and CC units for this purpose), but inadvertently omitted the exemption from subpart AA when it codified the subpart CC exemption. Today's amendment corrects that oversight.

This exemption is, however, implemented slightly differently from the parallel exemption for subpart CC units. Both of the compliance approaches allowed under the existing subpart AA rules require emission control or emission limits on a facility-wide basis. See 40 CFR 264.1032(a)(1) and (a)(2). Thus, to be equally protective of human health and the environment, the EPA considers it necessary that any alternative compliance demonstration require control of all of the process vents at the facility that would have otherwise been regulated under subpart AA. Therefore, today's exemption is only available at a facility where each and every process vent that would otherwise be subject to subpart AA is equipped with, and operating air

emission controls, in compliance with an applicable CAA standard under Parts 60, 61, or 63. As with the similar provisions in subparts BB and CC, to comply with the requirements at paragraphs § 264.1030(d) or § 265.1030(c), the emissions from each subpart AA process vent must be routed through an air emission control device: a vent that is in compliance with a CAA standard under an exemption from control device requirements is not in compliance with those provisions of subpart AA. Despite this minor restriction, the EPA considers this alternative to provide the facility owner or operator with a broader degree of compliance flexibility, and less extensive monitoring, recordkeeping and reporting requirements under RCRA, and therefore to warrant promulgation.

The EPA has received inquiries as to whether portable equipment that otherwise meets the definition of a unit subject to the subpart AA, BB, or CC regulations, is subject to the requirements of subparts AA, BB and CC. The literal language of the regulations clearly applies, since there is no exemption for portable equipment in the regulations. Nor does the EPA consider that such an exemption is appropriate. Portable equipment that is used to manage hazardous waste consistent with the applicability requirements of those subparts would emit the same volume of organics that stationary equipment would emit. The EPA therefore considers it appropriate to subject portable equipment to the same control requirements as stationary, or non-portable equipment. By this interpretation, the EPA is not extending the applicability of the AA, BB, or CC standards; rather, the EPA is merely clarifying that these standards do not contain any exemption or special criteria for portable equipment. Moreover, the fact that such portable equipment may also be used for non-hazardous waste applications has no bearing on the EPA's intent to regulate the portable equipment during instances when it is used for hazardous waste applications. The EPA does not consider that fact to affect the need to control the equipment when it is in hazardous waste service.

B. Definitions

"In light liquid service" was defined in § 264.1031 to be consistent with the definition of "in light liquid service" in the NSPS for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (40 CFR part 60, subpart VV). It was the EPA's intent that the determination of "in light liquid service" be based on the organic content of a liquid. However, questions have been raised by the regulated community regarding how to account for water in the determination of "in light liquid service." In response to the questions, the definition of "in light liquid service" in § 264.1031 is revised by changing "* * * the vapor pressure of one or more of the components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 °C is equal to or greater than 20 percent by weight * * *" to read as follows "* * *the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 °C is equal to or greater than 20 percent by weight* * *" This revision clarifies that the definition applies only to the organic components of the waste stream; not to non-organic chemicals that meet the vapor pressure criteria (e.g., water). The revised definition is consistent with the definition of "in light liquid service" in the recently promulgated NESHAP for equipment leaks (40 CFR part 63, subpart H).

C. Standards, Closed-Vent Systems and Control Devices

The final subpart AA air emission standards for process vents provided up to an 18-month implementation schedule after the effective date that a facility becomes subject to the provisions of subpart AA, for installation and operation of closed-vent systems and control devices. The February 9, 1996 (61 FR 4911) revisions to §§ 264.1033(a)(2) and 265.1033(a)(2) extended the implementation schedule to as much as 30 months, consistent with the requirements of subpart CC. Consistent with this existing provision, today's revisions clarify that units which become newly subject after the subpart AA effective date of December 21, 1990 as a result of an EPA regulatory change or statutory change, are also provided a 30-month implementation schedule. The provision is also amended to clarify that units which become newly subject to subpart AA after that effective date due to any reason other than an EPA regulatory change or statutory amendment are not allowed to comply using an implementation schedule; they must be in compliance on the date that the unit first becomes subject to subpart AA.

A printing correction is also being made to this section in § 265.1033(f)(2)(vi)(B). The degree symbol was inadvertently printed in lower case rather than as a superscript; today's action corrects this.

The November 25, 1996, amendments to the subpart CC standards (at § 265.1088(c)(2)(i)) for control devices and closed-vent systems, added provisions to allow up to 240 hours per year for periods of planned, routine maintenance of a control device; during such time, the control device is not required to meet the performance requirements for emission reductions specified in the rule. The EPA's rationale for adding this allowance to subpart CC is explained in the preamble to those amendments at 61 FR 59948. The EPA has determined that based on the nature of the affected operation or the type of unit that is being served by the control device, there are circumstances in which a limited allowance for control device down-time during maintenance is reasonable. For example, the EPA made a similar allowance of up to 240 hours for control device performance in the HON requirements for storage vessels, i.e., tanks, (see § 63.119(e)(3)); this allowance was made based on consideration of the fact that a HON facility with affected storage vessels normally would not have adequate excess storage tank capacity to handle emptying an affected tank(s) each time the control device serving the vessel(s) is shut down for routine maintenance. It is also important to note that the HON regulation did not extend this same routine maintenance allowance for control devices to other types of units, or to affected process vents; the HON allowance is only for control devices serving storage vessels. The EPA has judged that the operational practices of process vents are significantly different from those of storage vessels, and thus do not warrant a similar allowance for control device down-time.

In the amendments to the subpart CC rule that were published in November 1996, the EPA adopted the provision from the HON, and further extended and broadened the control device allowance in applying it to control devices that serve not only tanks but also surface impoundments and containers (see § 264.1087(c)(2)(i)). The decision to extend the allowance to the subpart CC hazardous waste management units was also based on the consideration of typical operational practices of affected TSDF. Within the waste management industry, the quantities and compositions of the waste managed vary widely over time; also, many regulated waste management units (i.e., tanks and impoundments)

have vent flow rates low enough that several units are controlled using a single device. For several waste management units served by a single control device, it is not feasible in most cases to have enough excess storage capacity to handle all the units that would be served by a single control device. Therefore, the EPA included the control device maintenance allowance in the subpart CC standards for containers and surface impoundments, as well as for tanks. As in the case of the HON, the EPA does not consider it appropriate to extend the control device allowance for maintenance time to control devices serving process vents. Therefore, the EPA is not extending the control device maintenance allowance to subpart AA process vents.

It also has come to the attention of the EPA that some commenters have misinterpreted the language relating to the accuracy of the temperature monitoring devices that the EPA specified in the subpart AA standards for closed-vent systems and control devices, found at §§ 264.1033(f) and 265.1033(f). As these commenters interpret the rule language, the EPA has specified a degree of accuracy that precludes monitoring devices with greater accuracy than is specified in the regulations. This is not the EPA's intent, and the Agency does not consider this to be a reasonable interpretation of the rule. At numerous places in this rule and other rules, the EPA has specified the accuracy of temperature monitoring devices by requiring "an accuracy of ±1 percent of the temperature being monitored in degrees Celsius (°C) or ±0.5°C, whichever is greater." It is implicit in the use of this language that the EPA is providing a range of accuracy with which the monitoring device must comply or conform. For example, the term "±1 percent" indicates that the accuracy of the device must fall within the range from plus 1 percent to minus 1 percent. Any device that has an accuracy within this range complies with the rule requirement. It was not the intent of the EPA to preclude the use of devices with greater (i.e., better) accuracy than the absolute value specified.

D. Recordkeeping Requirements

Commenters have stated that the requirement at § 265.1035(c)(10)(iv) to record the maximum instrument reading measured by Method 21 after a leak has been successfully repaired or determined to be not repairable is unnecessary. They contend that because other rules which require use of EPA Method 21, such as the Off-Site Waste and Recovery Operations NESHAP (40 CFR part 63, subpart DD), do not require this instrument reading, the requirement should be removed. Although subpart DD to part 63 does not contain a similar recordkeeping requirement for the instrument reading, as part of the information recorded when a leak is detected using Method 21, various other regulations do have similar requirements (see § 63.181(d)(4) of 40 CFR part 63, subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks). The EPA continues to believe that this information is useful in the implementation and enforcement of the air emission regulations. Instrument monitoring after a repair is an indication of the success of the repair, information which EPA considers commensurate with the initial leak monitoring requirements at § 265.1033(k)(1)(i). Instrument monitoring upon determination that a leak is not repairable is an indication of the severity of the organic emissions that will continue to be emitted from the non-repairable equipment, which EPA considers valuable information for the implementation and future review of its organic air emissions standards. Therefore, EPA will maintain this recordkeeping requirement

IV. Subpart BB—Air Emission Standards for Equipment Leaks

A. Applicability

Today's action adds appropriate language to the subpart BB applicability provisions to cross reference and clarify that the EPA has modified the "permit-as-a-shield" practice for implementation of the subpart BB (as well as the subpart AA and CC) RCRA air rules. The modification of this practice affects owners and operators of existing TSDF for which final RCRA permits have been issued by the EPA. Paragraph (c) in § 264.1050 and § 265.1050 is being revised to clarify that the owner or operator is subject to the requirements of 40 CFR part 265, subpart BB until such date that the owner or operator receives a final RCRA permit incorporating the requirements of 40 CFR part 264, subpart BB.

The EPA has previously amended 40 CFR 270.4 (see 59 FR 62952, December 6, 1994) to require that owners and operators of TSDF that have been issued final permits prior to December 6, 1996, comply with the air standards under 40 CFR part 265, subparts AA, BB, and CC until the facility's permit is reviewed or reissued by the EPA to include the part 264 standards. As is explained in Section VIII.A of the preamble to the final rule (59 FR 62920, December 6, 1994), this amendment eliminates application of the "permit-as-a-shield" practice for these air standards, but does not require that the EPA or the TSDF owner or operator initiate a permit modification to add the requirements of 40 CFR part 264, subparts AA, BB, or CC. The EPA considers the existing regulatory text to accurately convey this intent, and is providing this preamble discussion in response to commenters' requests.

B. Standards: Closed-Vent Systems and Control Devices

The final subpart BB air emission standards for equipment leaks referenced the subpart AA closed-vent system and control device requirements to provide up to an 18-month implementation schedule after the effective date that a facility becomes subject to the provisions of subpart BB, for installation and operation of closed-vent systems and control devices. The February 9, 1996 (61 FR 4911) revisions to §§ 264.1060 and 265.1060 added a paragraph to extend the implementation schedule to as much as 30 months, consistent with the requirements of subpart CC. Today's amendments clarify that units that begin operation after the subpart BB effective date of December 21, 1990, and that become subject to the requirements of subpart BB because of an EPA regulatory change or a statutory change after December 21, 1990, are also provided a 30-month implementation schedule. The provision is also amended to clarify that units which become newly subject to subpart BB after that effective date due to any reason other than an EPA regulatory change or a statutory amendment are not allowed to comply using an implementation schedule; they must be in compliance on the date that the unit first becomes subject to subpart BB. In recognition that facilities have been on notice since 1990 of the applicability of subparts AA and BB, and since 1991 of the applicability of subpart CC, the EPA considers it reasonable to expect facilities that become newly-subject to these subparts, through other than a statutory or EPA regulatory change, to be in compliance with the provisions on the date that they become newly subject.

C. Alternative Standards for Valves

Clarifying language is being added to the alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair. The EPA has received comments on the ambiguity of the skip period leak detection and repair provisions as codified. The codified language is ambiguous because it gives no

indication of how the alternative work practice that involves two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent which allows the owner or operator to skip one of the quarterly leak detection periods [§ 264.1062(b)(2) or § 265.1062(b)(2)] interacts with the alternative work practice that involves five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent which allows the owner or operator to skip three of the quarterly leak detection periods [§ 264.1062(b)(3) or § 265.1062(b)(3)]. Nor is the codified language clear on whether the periods with the percentage of valves leaking equal to or less than 2 percent need to be repeated after the initial skipped periods, or if the owner or operator is allowed to continue on the skip period schedule once the criteria have been met for one period.

In order to clarify the EPA's intent regarding the skip monitoring alternatives, paragraphs in § 264.1062(b) and § 265.1062(b) are being amended to more fully explain that, if the specified criteria are met under the alternatives, the owner or operator can monitor for leaks once every six months (i.e., under § 264.1062(b)(2)) or once every year (i.e., under § 264.1062(b)(3)). If an owner or operator is monitoring equipment every six months, under § 264.1062(b)(2), he is not complying with the five consecutive quarterly leak detection requirements of § 264.1062(b)(3), and thus does not qualify to begin monitoring once every year. Essentially, if an owner or operator meets the requirements of subsection (b)(2), he may choose to either begin monitoring every six months or he may choose to continue quarterly monitoring in an attempt to meet the requirements of subsection (b)(3); complying with the provision of subsection (b)(2) excludes the opportunity to comply with the requirements of subsection (b)(3).

Once an owner or operator meets the qualifications of either subsection (b)(2) or subsection (b)(3), he is then allowed to continue the skip monitoring of that provision as long as the percentage of valves found leaking by the semiannual or annual monitoring is equal to or less than 2 percent. These clarifying amendments reflect the Agency's prior intent regarding the implementation of the alternative standards for valves.

D. Recordkeeping Requirements

The recordkeeping provisions of subpart BB are being amended to eliminate any owner or operator burden caused by regulatory overlap. The subpart BB recordkeeping provisions in § 264.1064(m) and § 265.1064(m) are being amended to allow any equipment that contains or contacts hazardous waste that is subject to subpart BB and also subject to regulations in 40 CFR part 60, 61, or 63 to determine compliance with subpart BB by documentation of compliance with the relevant provisions of the Clean Air Act rules codified under 40 CFR part 60, part 61, or part 63. Because compliance with subpart BB is demonstrated through recordkeeping, this recordkeeping revision has the effect of exempting equipment that would otherwise be subject to subpart BB from subpart BB requirements, provided the equipment is operated, monitored and repaired in accordance with an applicable CAA standard, and appropriate records are kept to that effect.

As is described in Section III.A of this preamble regarding the potential regulatory overlap of the RCRA air rules and Clean Air Act regulations, the EPA is providing this exemption to reduce the possibility of duplicative or conflicting requirements for those TSDF units using organic emission controls in compliance with a NESHAP but which are also subject to requirements under the RCRA standards. The EPA considers this to be the most appropriate approach to ensure that air emissions from equipment managing hazardous waste are controlled to the extent necessary to protect human health and the environment. This exemption was originally included with the promulgation of subpart BB on June 21, 1990 (55 FR 25454), in the same format, but with more specificity as to the CAA regulations. As discussed in Section III.A. of this preamble, it was clearly the Agency's intent to apply the same rationale explained in the November 25, 1996 preamble at 61 FR 59938, to extend the applicability exemption to subpart BB equipment operated, monitored and repaired in accordance with an applicable CAA standard under 40 CFR part 60, 61, or 63.

The November 25, 1996 final rule amendments added a provision to the applicability of subpart BB that excludes equipment that contains or contacts affected hazardous waste for a period of less than 300 hours per calendar year. See 61 FR at 59937. One commenter has requested that the Agency clarify whether equipment which is not in service, but contains hazardous waste residue, is considered to be in contact with hazardous waste. The EPA considers the language of the provision explicit on this point; the amount of time that equipment contains hazardous waste, whether at operating capacity or as a residue, is considered time that the equipment "contains or contacts" hazardous waste. Thus, if subpart BB equipment contains subpart BB-regulated hazardous waste residues for more than 300 hours during a calendar year, that equipment would not be exempt from subpart BB under the provisions at § 264.1050(f) or § 265.1050(f). The EPA purposefully worded the provision to say, "contains or contacts" because the emissions from the equipment are related to the organic hazardous waste that is in the equipment; even if the process or equipment is not in service, the organic hazardous waste in contact with the equipment has the potential to volatilize, and EPA considers it necessary to subject the equipment to the requirements of subpart BB. Thus, EPA is today reiterating that the regulation at § 264.1050(f) and § 265.1050(f) requires the equipment to be void of subpart BB-regulated waste for a minimum of 300 hours per calendar year.

The same commenter inquired whether, for the purposes of this same provision, the period of time which the equipment contains or contacts subpart BB-regulated waste must be consecutive (e.g. 290 consecutive hours), or if it could be the sum of shorter periods (e.g., ten periods of 29 hours each). The provision was intended to exempt equipment that does not contain or contact subpart BB-regulated waste a total of 300 hours of more during a calendar year. This provision was adopted from similar provisions of the Hazardous Organic NESHAP promulgated under 40 CFR 63.160. See preamble discussion at 61 FR 59937, November 25, 1996. It is implicit in reading the language at 40 CFR 63.160(a) that the EPA intended the requirement to refer to a sum, or total, of 300 hours per calendar year, as opposed to a single period of 300 hours. The EPA is today amending regulatory text at 264.1050(f) and 265.1050(e) and the associated recordkeeping requirements at 264.1064(g)(6) and 265.1064(g)(6) to remove the phrase, "a period of" and thus, remove any ambiguity as to the Agency's intent that for this regulatory requirement, instances during which equipment contains or contacts subpart BB-regulated waste need not be consecutive; it is only required that the sum of all time that the equipment contains or contacts subpart BB-regulated waste is less than 300 hours per calendar year.

E. Open-Ended Valves and Lines

Several comments have been received regarding the requirements for open-

ended lines or valves as they relate to gravity piping. Commenters expressed concern that gravity feed piping that is equipped with an open valve or line does not meet the requirements of the subpart BB standards. Subpart BB requires that each open-ended valve or line be equipped with a cap, blind flange, plug, or a second valve when managing hazardous wastes with an organic content equal to or greater than 10 percent by weight. The commenters have suggested that the EPA amend the subpart BB requirements to state that the EPA considers a drain system that meets the requirements of 40 CFR part 63, subpart RR, National Emission Standards for Individual Drain Systems to be a closed system. The EPA has examined this issue and has found no technical basis for making a change to the existing rule. Moreover, the Part 63 subpart RR requirements are intended for control of waste in organic concentrations on the order of magnitude with the 500 ppmw action level of the subpart CC standards, whereas the subpart BB standards in parts 264 and 265 are applicable to equipment that contacts waste with an organic concentration of 10 percent by weight. There is a significant difference in the level of required control between the two standards. The EPA does not consider it appropriate to allow the subpart RR drain system requirements to substitute for the more extensive open-ended valve and line requirements of subpart BB, because application of the subpart RR standards to subpart BB equipment would not provide an equivalent level of organic emission control as would be achieved by compliance with the applicable subpart BB requirements. Facility owners or operators with gravity feed piping that requires a vent to facilitate draining can comply with the subpart BB and CC standards by installing organic emission control equipment on the pipe vent. The control requirements in subpart BB are appropriate and adequate for control of open-ended lines and valves.

V. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

A. Applicability and Definitions

In §§ 264.1080 and 265.1080, the EPA is revising the effective date of the subpart CC rules to be December 6, 1996. This revised effective date was established in the November 25, 1996 amendments, but this regulatory change was inadvertently omitted from that action. Today's revision corrects this oversight.

In § 265.1081, the definition of "in light material service" is revised to correct a typographical error to capitalize the T in "the" as follows, "* * *The vapor pressure of one or more of the organic constituents * * *"

B. Schedule for Implementation of Air Emission Standards

The final subpart CC standards allow the owner or operator to prepare an implementation schedule for installation of control equipment that cannot be installed and in operation by the effective date of the rule (See § 265.1082(a)(2)). The EPA intended that the implementation schedule apply to any capital projects implemented by the owner or operator to comply with the subpart CC requirements. (See 61 FR at 4905, February 9, 1996.) This intent was expressed in the 1994 final rule; see Hazardous Waste TSDF Background Information for Promulgated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, EPA–453/R–94–076b ("BID") page 9–7, which states that the owner's or operator's approach to complying with the air emission control requirements under the subpart CC standards may involve a major design and construction project which requires longer than 18 months to complete (e.g., replacing a large open surface impoundment with a series of covered tanks). To further clarify this intent, § 265.1082 is revised by today's action to specify that compliance can be demonstrated through an implementation schedule when either: (1) control equipment or waste management units can not be installed and in operation by the rule effective date; or (2) modifications of production or treatment processes to satisfy subpart CC exemption criteria in accordance with § 265.1083(c) can not be completed by the rule effective date. In either case, the implementation schedule must be entered into the facility record, and must contain information demonstrating that the facility will be in compliance with all of the requirements of subpart CC, no later than December 8, 1997. The revisions to the schedule for implementation also incorporate the revised effective date of December 6, 1996.

Commenters have questioned whether compliance activities other than those involving the installation of equipment or the modification of processes may be accomplished under an implementation schedule. For example, whether a facility can delay compliance past the rule effective date for monitoring or testing requirements. The preamble to the February 9, 1996 **Federal Register** document clarified that "The EPA expects such instances to be rare, but in the event a facility cannot implement any technical requirement of subparts AA, BB, or CC, it is the EPA's intent that the owner or operator document the necessity for a delay in the facility operating record. To be in compliance with the rule, the necessary documentation must be in place by [the rule effective date]." See 61 FR at 4905, February 9, 1996. The EPA maintains that there may be circumstances in which a facility owner or operator can not be in compliance with certain monitoring or testing requirements by the effective date of the standards. For example, if a facility owner or operator is unable to begin operation of a control device prior to the rule effective date, he would not be able to perform the required monitoring of that device by that date either. However, to be in compliance with the subpart CC rules, the owner or operator must be in compliance with all the rule requirements as soon as is practicable, but no later than December 8, 1997.

(Note: The only exceptions to this final compliance date are those requirements applicable to certain tanks in which stabilization operations are performed, which must be in compliance no later than June 8, 1998 (see 59 FR at 62912, December 6, 1994) and requirements delayed by the Regional Administrator, as discussed below in this section of today's preamble.)

Today's action is also amending regulatory language to clarify that owners or operators of facilities and units that become newly subject to the requirements of subpart CC after December 8, 1997, because of an action other than an EPA regulatory change or a statutory change under RCRA, must comply with all applicable rule requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to subpart CC); the 30-month implementation schedule does not apply in this case. The EPA considered this to be implicit in the existing language of paragraph (b) of § 265.1082. The Agency is adding new language in response to questions and comments from affected facilities regarding interpretation of the rule requirements regarding implementation schedules. The new provision will be codified as paragraph 265.1082(c).

One commenter expressed concern regarding the initial monitoring of closed-vent systems. They noted that delayed compliance is allowed under the rules for routine monitoring of those systems that are either inaccessible or unsafe to monitor, and requested that similar provision be allowed for initial monitoring that may be delayed due to

weather or process conditions. The EPA has examined this issue and has concluded that a change in the rule is not appropriate. The industry has been on notice for several years that the subpart CC rules would require these monitoring inspections. Any facilities that become newly subject to the subpart through an EPA regulatory amendment or statutory amendment are typically allowed at least 6 months from the date of publication of the action; the EPA considers this to have been sufficient notice to adequately prepare for, and perform, the necessary monitoring.

As published in the December 6, 1994, final rule, paragraph (c) of § 265.1082 allowed the EPA Regional Administrator to "extend the implementation date for control equipment at a facility, on a case by case basis * * *." In the preamble to the final rule (see 59 FR 62919, December 6, 1994, and the amendments to the rule published November 25, 1996, (see 61 FR 59938), the EPA stated its intent to include the provision to allow the Regional Administrator to extend the implementation date in situations beyond the owner or operators's control, and that this extension would be available only in "situations such as delays in State permit processing." The Agency went even further in placing constraints on these limited conditions by identifying situations associated with permit processing where the allowance would not apply (see 59 FR 62919). It is clear from the literal reading of the provision that the EPA fully intends that the Regional Administrator's extension of an implementation schedule is only allowable for a capital project implemented by a facility owner or operator to comply with the subpart CC air emission control requirements. It is also clear that the Agency does not intend that this Regional Administrator allowance for implementation schedule extensions apply to anything other than the installation of air emission control equipment. Today's action re-designates this provision as paragraph 265.1082(d) to allow the regulatory amendment described above in this section of today's preamble to be codified as subsection (c); however, the provision for Regional Administrator extensions of the final rule compliance date is not changed.

C. Standards: General

Today's amendments are further clarifying that the subpart CC RCRA air rules apply only to units managing a hazardous waste; to this effect, the EPA is adding the word "hazardous" in front of the word "waste" in §§ 264.1082(b) and 265.1083(b). This point has been made by the EPA throughout the proposal and promulgation of the subpart CC rules (see 59 FR 62896, December 6, 1994, and 61 FR 4906, February 9, 1996); however, there have remained some questions and uncertainties regarding applicability of the rules to non-hazardous wastes. The changes being made today are intended to provide additional emphasis that only hazardous wastes are subject to the subpart CC controls.

Paragraph 265.1083(c)(2)(i) is revised to correct a typographical error in the symbol for the exit concentration limit; the symbol should be C subscript t "(C_t)."

In addition, §§ 264.1082(c)(3) and 265.1083(c)(3) have been revised to add as an exempt unit a surface impoundment used for biological treatment of hazardous waste in accordance with subpart CC requirements. The EPA intended to exempt surface impoundments used for biological treatment from the subpart CC control requirements. The preamble to the final rule in Section VII(A)(5) (59 FR 62917, December 6, 1994) clearly states "* * * air emission controls are not required for a surface impoundment in which biological treatment of a hazardous waste is performed under the same conditions specified in the rule for tanks." However, surface impoundments performing biological treatment were inadvertently left out of the biological treatment unit exemption in the November 25, 1996, final rule amendments (61 FR 59954).

The EPA has received a number of inquiries asking for interpretations of the provision of the subpart CC rules which states that wastes that meet applicable Land Disposal Restriction (LDR) treatment standards for organic hazardous constituents are exempt from the subpart CC air emission standards. Section 264.1082(c)(4) exempts from the RCRA subpart CC air emission standards:

"A tank, surface impoundment, or container for which all hazardous wastes placed in the unit * * *

"(i) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions under Table "Treatment Standards for Hazardous Waste" in 40 CFR 268.40 * * *"

A parallel exemption for interim status facilities is found at § 265.1083(c)(4). Under these provisions, tanks, surface impoundments, and containers receiving hazardous wastes that meet the concentration limits for organics applicable to the waste under the generally-applicable treatment standards of the LDR program are not subject to the subpart CC air emission control regulations. See 61 FR 59941 in the preamble and 59954 in the rule (Nov. 25, 1996).

A number of members of the regulated industry (including the Environmental Technology Council, Chemical Waste Management, and the Chemical Manufacturers Association) have inquired as to how this provision applies to situations where the wastes in question are not yet prohibited from land disposal or consist of mixtures of different hazardous wastes. This preamble answers those questions. Copies of correspondence between EPA and these entities have been placed in the public docket for the rule.

The key phrase in the above exemption is what treatment standards are "applicable to the waste." EPA interprets this phrase expansively to include the treatment standard for organics that would apply to the waste whether or not the waste is currently prohibited, so that the exemption may apply to wastes not yet required to be treated for organics as a precondition to land disposal. Under this interpretation, hazardous wastes could be exempt from subpart CC regulation if they meet the treatment standards for organics that would ultimately be required as a precondition to land disposal. This is a reasonable construction of the rule's language (the phrase "applicable to the waste" is ambiguous as to its precise scope), and is supported by the preamble to the rule (which says that the exemption can apply to wastes that are not prohibited, see 61 FR 59941). In addition, this reading is consistent with the exemption's underlying principle: if hazardous wastes meet generally-applicable LDR treatment standards for organics, their concentrations of organics are in virtually every case going to be less than warrants control under the subpart CC rules (i.e., volatile organic concentrations will be less than 500 ppmw).

The EPA recognizes that it could interpret the language to apply only to hazardous wastes that are prohibited and actually subject to a treatment standard for organics. This more restrictive interpretation does not seem desirable because hazardous wastes which actually meet treatment standards for organics are likely to have been treated to remove or destroy the organics and thus not warrant regulation under subpart CC. On the other hand, it is EPA's further interpretation that this exemption does not apply to hazardous

wastes for which there would be no treatment standards for organics, namely wastes that are listed solely because of inorganic content. There is no potentially "applicable" organic treatment standard for such wastes, and the exemption thus does not apply. In addition, such wastes would not likely be treated for organic constituents; so in the event they contain higher concentrations of organics, this particular LDR exemption should not apply. Such wastes may, however, be exempt from the subpart CC rules because they contain less than 500 ppmw volatile organics at the point of waste origination (40 CFR 264.1082(c)(1)).

The following principles set out how the EPA interprets the rule for this subpart CC exemption in specific situations:

1. Listed Waste

(A) If the waste is already subject to an LDR treatment standard for organics (for example, the organic spent solvent listed as F001), the waste is not subject to subpart CC if it meets the treatment standards for organic hazardous constituents in that waste (e.g. the treatment standards for organics in F001 set out in § 268.40);

(B) If the waste is newly listed so that no treatment standard under § 268.40 has yet been established, determine if the waste was listed for organic constituents in Part 261 Appendix VII and if so, if the waste meets the Universal Treatment Standards (UTS) for those constituents (set out in § 268.40) then the waste is exempt from subpart CC. The EPA considers the UTS to be "applicable" because it is clear that this is the standard which will apply when the waste is prohibited;

(C) If the waste is listed only because it contains inorganic constituents (e.g. electroplating wastewater treatment sludge (F006)), then it is not eligible for the LDR exemption at § 264.1082(c)(4) but could be exempt for other reasons, such as containing less than 500 ppmw volatile organics at the point of waste origination. This is true whether or not the waste is already a prohibited hazardous waste, or is newly listed.

2. Mixtures of Listed Wastes

The same principles as presented above apply when mixtures of listed wastes are involved:

(A) If the mixture contains listed wastes for which there are organic concentration limits in § 268.40 and newly listed wastes listed (in Appendix VII of Part 261) for organic hazardous constituents, the waste would be exempt from subpart CC if it meets the treatment standards in § 268.40 *and* the treatment standards to which the newly listed waste will be subject. Thus, to be exempt under § 264.1082(c)(4), a mixture of F001 wastes and FXXX (a hypothetical newly listed waste listed for presence of benzene) would have to meet the treatment standards for the organic hazardous constituents set out in § 268.40 for F001 plus UTS for benzene;

(B) If the mixture contains listed wastes for which there are organic concentration limits in § 268.40 and listed wastes with treatment standards only for inorganic constituents (or which is newly listed, and is listed only due to presence of inorganic hazardous constituents), the waste mixture would be eligible for the § 264.1082(c)(4) variance if it meets the organic concentration limits in § 268.40. Thus, a mixture of F001 and F006 wastes would be exempt from subpart CC if it meets the treatment standard for F001 organic hazardous constituents;

(C) If the mixture consists of listed wastes which are exclusively subject to, or are listed for, inorganic hazardous constituents, the mixture is not eligible for the § 264.1082(c)(4) exemption.

Finally, part of the "applicable" LDR standard for listed wastes is that the standard not be achieved by impermissible dilution (as set out in § 268.3 and several EPA interpretations, such as in 60 FR 11706–11708 (March 2, 1995)). Impermissible dilution could involve not only mixing an agent to the waste to increase volume without contributing to the treatment process, but also allowing volatilization from the waste without capture and destruction of the organic emissions. 52 FR at 25779 (July 8, 1987); *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 17 (D.C. Cir. 1992). In essence, this means that the LDR standards need to be achieved by treatment that destroys or removes the organic hazardous constituent (or the wastes may meet the treatment standard as generated). See 60 FR 11708. The subpart CC rules likewise contain provisions prohibiting dilution as a means of making a waste eligible for an exemption from the rule (see, e.g., § 265.1083(c)(2)(vi)). Thus, to be eligible for this exemption from the subpart CC standards, listed wastes must either meet treatment standards for organics by treatment which destroys or removes hazardous organic constituents, or the wastes must meet those standards as generated.

3. Characteristic Wastes

The first principle to bear in mind regarding characteristic hazardous wastes is that the subpart CC rule no longer applies once these wastes are decharacterized, i.e., no longer exhibit a characteristic of hazardous waste. This is because the subpart CC rules only apply to wastes that are identified or listed as hazardous. See, e.g., § 265.1080(a). Also, since the rules do not prohibit any method which removes a hazardous characteristic, dilution can be used for this purpose; see § 261.3(d)(1). Thus, in the discussion that follows, it must be understood that all references to characteristic hazardous wastes are to wastes which continue to exhibit a characteristic.

Characteristic wastes can be identified because of the presence of organic hazardous constituents, but also can contain organic "underlying hazardous constituents"—hazardous constituents present at levels exceeding the Universal Treatment Standards but which do not cause the waste to exhibit a characteristic; see § 268.2(i). Such hazardous constituents typically must be treated to meet UTS before a characteristic waste is land disposed (see *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 16–18), and so UTS can be considered to be an applicable standard for purposes of the subpart CC exemption under discussion in this preamble.

Principles applicable to specific situations involving characteristic hazardous wastes are therefore:

(A) Since subpart CC controls do not apply to nonhazardous wastes, these standards do not apply as the result of managing decharacterized wastes.

(B) If the waste exhibits ignitability, corrosivity, or reactivity (or is a mixture which exhibits one or more of these characteristics), then the waste is exempt from subpart CC if it meets treatment standards for any of the organic underlying hazardous constituents which are present (and the waste is no longer subject to subpart CC if it no longer exhibits a characteristic, whether or not treatment standards for underlying hazardous constituents are achieved). In this example, these characteristic wastes are prohibited and subject to the requirement to treat for underlying hazardous constituents, so that these standards clearly are applicable;

(C) If the waste or waste mixture exhibits a characteristic for an organic hazardous constituent (so-called Toxicity Characteristic (TC) organic wastes), then the waste must meet the treatment standard for that constituent plus UTS for any organic underlying hazardous constituent. These are the current requirements set out in Part 268 for the waste and so are clearly applicable;

(D) If the waste or waste mixture exhibits a characteristic for a metal, the waste would be exempt from subpart CC if it meets UTS for any organic underlying hazardous constituent which may be present. This result comes from the *Chemical Waste Management* opinion cited above (although the EPA has not yet amended the Part 268 rules to reflect the court's holding with respect to these wastes), and so can be viewed as applicable standards for purposes of the subpart CC exemption.

4. Examples

A number of examples that illustrate the EPA intent and interpretation of the subpart CC LDR exemption are summarized below.

1. F001 + F006. Listed organic plus listed inorganic. Meet treatment standards for organics in F001;

2. F001 + D018. Listed organic plus organic TC. Meet treatment standards for F001, treatment standards for benzene, and treatment standards for any organic underlying hazardous constituent in the D018 waste (or eliminate the D018 characteristic before the waste is managed in a tank, container or surface impoundment, in which case only the treatment standards for F001 waste would have to be satisfied for the exemption to apply);

3. F001 + D008. Listed organic plus TC metal. Meet treatment standards for F001 plus treatment standards for any organic underlying hazardous constituents which may be present in the D008 waste (or eliminate the D008 characteristic before the waste is managed in a tank, container or surface impoundment, leaving the F001 standard as the applicable treatment standard);

4. F006 + D018 + D008. Listed inorganic, TC organic, TC inorganic. Meet treatment standard for benzene and for organic underlying hazardous constituents in D018 and D008 wastes;

5. F006. Ineligible for § 264.1082(c)(4) exemption.

There have also been questions regarding whether this LDR exemption applies to mixtures that would meet the organic constituent concentration limits specified for the hazardous wastes in the mixture but for the contribution of organic constituents from the decharacterized wastes in the mixture. The EPA interprets the rule so that the LDR exemption does not apply in these circumstances. First, the language of the rule refers to "all hazardous waste placed in the unit" having to meet the treatment standard, which logically means meeting the standard at the point the hazardous waste is placed in the unit. Second, it is reasonable to look at the point of mixing as a new point of waste origination in keeping with the overall thrust of the provision to reserve the exemption for wastes which actually are treated. See 54 FR at 26633 (June 23, 1989) where the EPA noted a similar view in the LDR context. The EPA also notes that this interpretation is consistent with other provisions of the rule where the Agency has indicated expressly that organic removal is to be evaluated in the context of each individual waste stream entering a treatment process. See section § 265.1083(c)(2)(v)(C).

The last issue addressed on this topic in today's preamble concerns the relationship of this exemption and treatment variances under the LDR program. The EPA notes that the exemption from subpart CC standards applies only to hazardous wastes that have been treated to meet the treatment standards set out in 40 CFR 268.40. This language excludes alternative standards which are established as part of the treatment variance process, which alternative standards are codified in 40 CFR 268.44. This distinction is intentional. As the EPA recently noted in the rulemaking amending the treatment variance standards, it is possible that a treatment variance may result in a standard which does not fully remove volatile organics to the extent contemplated in creating the subpart CC exemption. For this reason, the EPA has indicated explicitly that such wastes may remain subject to the subpart CC rules. The EPA reiterates that approach here.

The EPA is today amending the treatment demonstration provision for valuing waste analysis results below the limit of detection for an analytical method. In response to comments, EPA is today revising paragraphs (A) and (B) of § 264.1082(c)(2)(ix) and § 265.1083(c)(2)(ix). The change to paragraph (A) is being made in recognition that a relatively high blank value for Method 25D does not necessarily indicate that a waste stream has failed to meet the treatment demonstration requirements of § 265.1083(c)(2)(i) through (vi). The blank value required in paragraph 4.4 of EPA Reference Method 25D (codified in appendix A to 40 CFR part 60) is an indication of the organics contained in the Polyethylene Glycol, not the organics in the waste. For a Method 25D analytical result, the method instructs the operator to report the value of the instrument results minus the blank value. In a circumstance that the instrument results are higher than the blank value, the reported Method 25D result would not be non-detect, but rather, would be a numerical concentration value. In circumstances that the instrument results are equal to the blank value, the reported result would be non-detect. In the circumstance resulting in a non-detect, the Agency does not consider it appropriate to require the facility owner or operator to compare the treatment results of paragraphs (c)(2)(i) through (vi) in § 264.1082 and § 265.1083 to one-half of the blank value, as was required by the regulatory requirement being revised today. Therefore, the Agency is adding a provision that allows the facility owner or operator to substitute a value of 25 ppmw for a non-detect Method 25D result, if one-half the Method 25D blank value is more than 25 ppmw. The Agency has selected the value of 25 ppmw because it represents 95 percent reduction of organics in a waste stream of 500 ppmw, the required percent reduction for a waste stream with a VO concentration equal to the action level for the subpart CC standards.

No default value similar to the 25 ppmw value described here is included in the provisions for non-detect results in waste determinations performed to determine whether the hazardous waste is below 500 ppmw at its point of waste origination. See 265.1084(a)(3). Such a provision is necessary in situations where an owner or operator is attempting to demonstrate a process has achieved 95 percent reduction of organics, because the concentration of the stream exiting the process unit may need to be demonstrated to be as low as 25 ppmw. Such is not the case with waste determinations performed to demonstrate that the hazardous waste stream is below the subpart CC action level of 500 ppmw, where the waste determination need only demonstrate that the waste is below 500 ppmw. The valuing of non-detects for waste determinations performed at the point of waste origination is discussed further in the following section of this preamble.

The EPA is revising paragraph (B) of § 264.1082(c)(2)(ix) and § 265.1083(c)(2)(ix) to clarify the Agency's intent that the level of detection for an analytical method other than method 25D is the sum of the limits of detection for each of the regulated compounds in the waste sample. As previously written, the provision did not clearly indicate that for purposes of this subpart, only the detection limits for organic compounds with Henry's Law greater than or equal to 0.1 Y/X are required to be summed, to establish the limit of detection for an analytical method.

The EPA is also adding a reference to organic hazardous constituents in paragraph (c)(4)(ii) of § 264.1082 (which applies when the LDR standard is a designated method of treatment), to make clear that this provision requires treatment of organics. With this revision, § 264.1082(c)(4)(ii) now conforms to § 264.1082(c)(4)(i). A conforming change is being made to the requirement for interim status facilities, at § 265.1083(c)(4)(ii).

D. Waste Determination Procedures

Paragraphs in § 264.1083(a)(2) and § 265.1084(a)(2) are revised by changing "The average VO concentration of a hazardous waste at the point of waste origination may be determined * * *" to read as follows: "For a waste determination that is required by paragraph (a)(1) of this section, the average VO concentration of a hazardous waste at the point of waste origination may be determined * * *" This waste determination requirement was explained in Section VII.A.3. *Waste Determination Procedures*, of the preamble to the final rule (59 FR 62915, December 6, 1994) as follows: "A determination of the volatile organic concentration of a hazardous waste is required by the subpart CC standards only when a hazardous waste is placed in a tank, surface impoundment, or container subject to the rule that does not use air emission controls in accordance with the requirements of the rule. A TSDF owner or operator is not required to determine the volatile organic concentration of the waste if it is placed in a tank, surface impoundment, or container using the required air emission controls." Consistent with this statement, the EPA is slightly revising the current rule to make clear that the average VO concentration determination is required only for hazardous waste placed in a unit not using subpart CC air emission controls and not otherwise exempt from using subpart CC air emission controls.

Today's action also revises § 265.1084(a)(3)(ii)(B) to clarify the EPA's intent regarding the number of samples required for a waste determination. The amended paragraph states (as did the published rule language at § 265.1084(a)(5)(iv)(A) (see 59 FR 62939, December 6, 1994)), that the average of four or more sample results constitutes a waste determination for the waste stream. This amended paragraph further clarifies that one or more waste determinations may be needed to represent the average VO concentration over the complete range of waste compositions and quantities that occur during the entire averaging period (due to normal variations in the operating conditions for the source or process generating the hazardous waste stream). Therefore, to determine the average VO concentration of a waste stream generated by a process with large seasonal variations in waste quantity, or fluctuations in ambient temperature, several waste determinations (of four or more samples each) will be required.

The affected public has been fully informed of the EPA's intent regarding the fact that four samples constitute a waste determination, and that one or more waste determinations may be needed to characterize the waste stream's VO concentration over the averaging period. To inform the public of the technical requirements and compliance options in the amended subpart CC RCRA air rules, the EPA conducted a series of six seminars during August and September of 1995 and an additional six seminars during August through November of 1996. During these seminars, the EPA presented a thorough discussion of the details associated with making a waste determination. (Refer to EPA RCRA Docket No. F–95–CE3A–FFFFF, Item No. F–95–CE3A–S0017 and Docket No. F–96–CE3A–FFFFF.)

In another clarifying revision, in each citation of Method 8260(B) and Method 8270(C) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, the reference to version (B) or (C) is being deleted by today's action. The citations that are being revised were added by the November 25, 1996, final rule amendments (61 FR 59932) to the following paragraphs of § 265.1084: (a)(3)(iii), (a)(3)(iii)(F), (a)(3)(iii)(G), (b)(3)(iii), (b)(3)(iii)(F), and (b)(3)(iii)(G).

It was the EPA's intent that the current version of each of these methods, as applicable to the waste being measured, be used in making a waste determination, not necessarily the specific versions cited. At the time the November 25, 1996 amendments were published, the versions 8260(B) and 8270(C) were only proposed methods; the published versions were 8260(A) and 8270(B). Specifying these particular versions was an inadvertent error, which is being corrected by today's action. As was stated in Section IV.F, *Waste Determination Procedures*, of the preamble to the final rule amendments (61 FR 59942, November 25, 1996), after extensive review, the EPA decided that as alternatives to using Method 25D for direct measurement of VO concentration in a hazardous waste for the subpart CC RCRA air rules, it was appropriate to add Methods 624, 625, 1624, and 1625 (all contained in 40 CFR part 136, appendix A) and Methods 8260(B) and 8270(C) (both in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" in EPA publication SW–846) when these methods are used under certain specified conditions. It was noted that for each of these methods, there is a published list of chemical compounds which the EPA considers the method appropriate to measure. The owner or operator may only use these methods to measure compounds that are contained on the list associated with that method, unless specified validation procedures are also performed. It was further noted that for the purpose of a waste determination, the owner or operator must evaluate the mass of all VO compounds in a waste that have Henry's Law value above the 0.1 Y/X value. Therefore, it is the EPA's position that the owner or operator is responsible for determining that the analytical method being used for a waste determination is sufficient to evaluate all of the applicable organic compounds that are contained in the waste.

(Note: Today's action includes a revised list of known compounds with a Henry's Law value less than or equal to 0.1 Y/X, contained in appendix VI of subpart 265; the revisions correct typographical errors and format the list to be alphabetical.)

Also in today's action, a printing error that placed § 265.1084(a)(3)(iii)(A)–(I) at the end of § 265.1084(a)(3)(iii) has been corrected. In addition, in the November 25, 1996 final rule amendments because of a typographical error in § 265.1084(a)(3)(iii)(G), the words "introduction and analysis" were omitted from the sample handling steps for which site-specific procedures must be documented in the quality assurance program to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption. Today's amendments revise § 265.1084(a)(3)(iii)(G) to read as follows: "Documentation of site specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps."

Several commenters have stated that the subpart CC provisions for treatment of non-detect values in the analysis of treated waste samples, contained in §§ 264.1082(c)(ix) and 265.1083(c)(2)(ix), should also apply to waste determinations at the point of waste origination, for purposes of determining compliance with the 500 ppmw VO concentration action level of the standards. Commenters requested

this application of the non-detect policy to waste determinations because a waste determination consists of the average of four or more samples, and some of the samples analyzed may yield results that are below the analytical method's limit of detection. The commenters' concern is the same rationale that led EPA to amend the provisions at sections 264.1082 and 265.1083 in the November 25, 1996 final rule amendments: without such a provision, the owner or operator does not have a way to assign a numeric value for a non-detect reading, when computing the average of four or more waste samples to calculate a waste determination. The same logic applies to both circumstances, and it was obviously an oversight that EPA did not include this provision in the November 25, 1996 final rule amendments. Thus, the EPA is today adding to the waste determination provisions at § 265.1084(a)(3)(iv), a provision for valuing non-detect analytical results. The new rule language provides the appropriate guidance on the valuing of non-detects in the calculation of the average of four or more samples for a waste determination.

(Note: A corresponding amendment is not required at § 265.1084(b)(3)(iv) for treated hazardous waste because those rules specifically § 264.1082(c)(2)(ix) and § 265.1083(c)(2)(ix), contain provisions for valuing non-detects when determining performance of an organic destruction or removal process.)

The EPA today is also amending regulatory language to reflect a clarification that was addressed in the November 25, 1996 rulemaking preamble (61 FR at 59943) but was inadvertently omitted from the regulatory text. This amendment adds two new paragraphs to the waste determination provisions, § 265.1084 (a)(3)(v) and (b)(3)(v), to state that EPA would determine compliance with the subpart CC regulations based on the same test method used by the facility owner or operator, provided the owner or operator had used a test method appropriate for the waste. The appropriateness of an analytical method is described in paragraphs § 265 (a)(3)(iii) and (b)(3)(iii), respectively. The November 25, 1995 preamble to the final rule amendments (61 FR 59943) stated that, "* * * as long as one of the allowable test methods is being used for direct measurement of the VO concentration of a hazardous waste, the EPA would only enforce against the facility on that basis (i.e., using the same test method), unless the method used is not appropriate for the hazardous waste managed in the unit." Today's amendments add a paragraph to the analysis section of the final rule's waste determination procedures at § 265.1084 (a) and (b) to codify this intended provision.

As published in the November 25, 1996 final rule amendments (61 FR 59975), paragraph 265.1084(a)(4)(iv) provides that the results of a direct measurement of average VO concentration shall be used to resolve a disagreement between the Regional Administrator and the owner or operator regarding a determination of the average VO concentration of a hazardous waste stream using knowledge. To clarify that in such cases where there is disagreement regarding use of knowledge, the owner or operator has the discretion to choose an appropriate test method or methods, the following sentence has been added to § 265.1084(a)(4)(iv): "The owner or operator may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of paragraph (a)(3)(iii) of this section."

The EPA is also clarifying the waste determination requirements for treated wastes. Prior to today's amendment, the subpart CC regulatory text required analysis of all treated waste. As explained below, a waste determination is unnecessary for a waste treated by either a boiler or industrial furnace (BIF) operated in accordance with subpart H to 40 CFR part 266, or a hazardous waste incinerator operated in accordance with subpart O to 40 CFR parts 264 or 265, the EPA is amending the rule to clarify this. Today's action revises paragraph (b)(1) of §§ 264.1083 and 265.1084 to require that the owner or operator perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of paragraphs (c)(2)(i) through (c)(2)(vi) of §§ 264.1082 and 265.1083, respectively. Those specific paragraphs are cited in today's amended rule language to clarify that a waste determination is only required for a hazardous waste placed in a waste management unit exempted under one of the treatment demonstration options that is a performance standard, as opposed to an equipment specification standard. As was noted in Section VII.A.2.b. *Treated Hazardous Waste*, of the final rule preamble (59 FR 62914, December 6, 1994), provisions for hazardous waste treatment are specified in the subpart CC standards for the following processes: (1) An organic destruction, biological degradation, or organic removal process that reduces the organic content of the hazardous waste and is designed and operated in accordance with certain conditions specified in the rule; (2) a hazardous waste incinerator that is designed and operated in accordance with the requirements of 40 CFR part 264 subpart O or 40 CFR part 265 subpart O; or (3) a BIF that is subject to the requirements of 40 CFR part 266 subpart H.

Under today's amendments to the rule, the EPA is clarifying its original intent, that a waste determination is required only for a treated hazardous waste placed in a waste management unit, if the unit is exempt from air emission control requirements under provisions contained in paragraphs (c)(2)(i) through (c)(2)(vi) of §§ 264.1082 and 265.1083. The EPA requires waste demonstrations for those treatment demonstration options to ensure that the treatment conditions specified in subpart CC have been met. As explained in the December 1994 final rule preamble (59 FR at 62914, December 6, 1994), the waste demonstration results are required to indicate that a sufficient mass of organic constituents have been removed or destroyed from a regulated waste stream, prior to it being placed in a hazardous waste management unit that is not equipped with air emission controls. The treatment demonstration options listed in paragraphs (c)(2)(i) through (viii) of §§ 264.1082 and 265.1083 are based on the treatment process achieving a 95% reduction by weight of organic constituents in the waste. For the provisions of (c)(2)(i) through (c)(2)(vi) of §§ 264.1082 and 265.1083, the treatment process is not specified in the regulation; rather the requirement is based on the removal efficiency of the treatment process. Thus, to demonstrate compliance, EPA considers it necessary that the owner or operator perform waste determinations to demonstrate the appropriate removal efficiency has been achieved. However, the treatment demonstration provisions of paragraph (c)(2)(vii) in §§ 264.1082 and 265.1083 require that the hazardous waste be treated in an incinerator that is designed and operated in accordance with the requirements of subpart O in 40 CFR part 264 or part 265; and the treatment demonstration provisions of paragraph (c)(2)(viii) in §§ 264.1082 and 265.1083 require that the hazardous waste be treated in a BIF that is designed and operated in accordance with the requirements of 40 CFR part 266, subpart H. The EPA considers compliance with those combustion standards to be sufficient demonstration that the organics in the waste will be destroyed by 95 percent or more, by weight, and does not consider a waste

determination necessary. The EPA has consistently given verbal guidance that waste determinations are not required for waste treated in the above-mentioned specific units, and is today making an amendment to the regulatory text to make the regulatory requirements consistent with this guidance.

In a further clarification, the EPA intended that the owner or operator use the same test method to determine the average VO concentration at the point of waste treatment as is used at the point of waste origination, if these values are to be used to determine the effectiveness of a treatment system. As was stated in Section IV.F, *Waste Determination Procedures*, of the preamble to the final rule amendments (61 FR 59942, November 25, 1996), "The main point that must be reemphasized regarding direct measurement of VO concentration is that, although the EPA is amending the rule to allow various test methods other than Method 25D to be used in a waste determination, the owner or operator must use a test method(s) that is appropriate for the compounds contained in the waste. The method(s) used for the waste determination must be suitable for and must reflect or account for all compounds in the waste with a Henry's Law constant equal to or greater than 0.1 Y X at 25 degrees Celsius."

Since the effectiveness of a waste treatment process must be judged on the basis of the process's capacity to reduce the organics in waste relative to their concentration at the point of waste origination or at the point of entry to the treatment system, the method(s) used for the waste determination at the point of waste treatment must be appropriate to detect and measure the compounds in the waste at the point of waste origination; to put the measurements on a common basis and provide an accurate comparison, the EPA considers it necessary that the method(s) used at the point of waste origination must be the same as the method(s) used at the point of waste treatment. To clarify this requirement, which the EPA has heretofore considered implicit, the following sentence is being added to § 265.1084(b)(3)(iii): "When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) or § 265.1083(c)(2)(i) through (c)(2)(vi) are met, then the waste samples shall be prepared and analyzed using the same method(s) as were used in making the initial waste determination(s) at the point of waste origination or at the point of entry to the treatment system." (Only the waste determination provisions in part 265 are being revised in connection with this rule clarification and the following rule clarification, because the subpart CC waste determination protocols are contained in part 265, and the part 264 standards cross-reference part 265.)

Because of a printing error, the equations for calculating the actual organic mass removal rate in § 265.1084(b)(8)(iii) and for calculating the actual organic mass biodegradation rate in § 265.1084(b)(9)(iv) were out of place in the November 25, 1996 amendments (61 FR 59978). This document corrects the placement of these equations.

In a further clarification to the waste determination procedures of subpart CC, paragraph 265.1084(d)(5)(ii) required that a mixture of methane in air at a concentration of approximately, but less than, 10,000 ppmw be used to calibrate the detection instrument used to determine no detectable organic emissions. It was the EPA's intent that the calibration procedure be consistent with the procedure specified in the subpart BB equipment leak test methods and procedures at §§ 264.1063 and 265.1063, as they reference the same monitoring procedure. Paragraph (b)(4)(ii) of §§ 264.1063 and 265.1063 specifies that calibration gases for the detection instrument shall be, "A mixture of methane or n-hexane and air at a concentration of approximately, but less than 10,000 ppm methane or n-hexane. Consistent with this requirement, today's action revises the requirement for calibration gases in parts 264 and 265 to provide the owner or operator the choice of using a mixture of methane or n-hexane and air.

E. Standards: Tanks

Commenters have questioned whether a facility owner or operator is permitted to install a closure device on a tank manifold system or header vent when a series of tanks have their vents (i.e., tank openings) connected to a common header. In many tanks systems, tank vents are connected to a manifold or central header, and a closure device (or pressure/vacuum device such as a conservation vent) is installed on the header rather than on the individual tanks. Prior to today's amendment, the subpart CC level 1 tank requirements at paragraph (2)(2)(iii) in § 264.1084 and § 265.1085 could have been interpreted to require that each opening on a Level 1 tank fixed roof must be either equipped with a closure device or connected through a closed-vent system to a control device, with no allowance for the closure device or pressure/vacuum device to be installed on the tank manifold system. The EPA did not intend the regulatory requirement to disallow a closure device or pressure/vacuum device from being installed on a tank manifold system. The EPA is aware that such tank manifold or vent header systems provide a degree of emissions reduction which is derived from vapor balancing between tanks during unloading and inter-tank transfers; the EPA clearly did not intend to discourage their use. The EPA is therefore amending the subpart CC tank standards to provide that a closure device can be installed on a manifold vent header for Level 1 tanks, by revising paragraph (c)(2)(iii) in § 264.1084 and § 265.1085.

In the November 25, 1996 final rule amendments, the EPA promulgated a provision that allowed a facility to install and operate air emission control devices on Level 1 tanks. As published, the regulatory language for that provision inadvertently made it mandatory that these control devices be operating at all times when hazardous waste is managed in the tank, even at times of routine maintenance. The EPA is amending the rules today to clarify that the control device is not required to be operating during specified periods, including those instances it is necessary to provide access to the tank for performing routine inspections, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port or hatch to maintain or repair equipment. Paragraph (B) is being revised in § 264.1084(c)(2)(iii) and § 265.1085(c)(2)(iii) to better convey this intent.

In the amendments to the final rule published on November 25, 1996 (61 FR 59944), the preamble at Section G, *Standards: Tanks* that discussed the revisions to the subpart CC tank standards, stated "* * * an option is being provided allowing the use of an enclosure vented through a closed-vent system to an enclosed combustion device or a control device designed and operated to reduce the total organic content of the inlet vapor stream by at least 95 percent by weight," in order to comply with the tank level 2 air emission control requirements. However, the latter portion of this statement was incorrect and the EPA is clarifying that it was the EPA's intent that only enclosed combustion devices can be used as control devices under this alternative to comply with the Tank

Level 2 air emission control requirements. It should also be noted that the regulation as amended by the November 25,1996 **Federal Register** document (at §§ 264.1084(d)(5) and 265.1085(d)(5)) was correct and did not contain the statement regarding the use of a (non-combustion) "control device designed and operated to reduce the total organic content of the inlet vapor stream by at least 95 percent by weight." Since publication of the November 25, 1996 preamble, the EPA has consistently and repeatedly provided verbal clarification in all forums where the subject of level 2 tank enclosures has been raised: that the noted preamble text is incorrect and that level 2 tanks operated inside an enclosure must be vented to an enclosed combustion device. The EPA provided this information publicly at each of the six seminars EPA conducted in September through December of 1996: additionally, an industry trade association provided this same clarification at the two seminars the industry trade group conducted in March and April of 1997 (these seminars are discussed in the Background section of today's preamble). Additionally, the requirement for enclosed combustion devices on level 2 tank enclosures was strongly affirmed in the accompanying printed materials for each of these EPA and industry trade group seminars: those printed materials were distributed to all seminar attendees, and to additional members of EPA and the regulated community, for informational purposes and peer review. Further, the RCRA Hotline has been clarifying the regulatory text requirement for enclosed combustion devices to callers who have raised the topic to Hotline representatives. The requirement for enclosed combustion devices on level 2 tank enclosures is not being amended by today's action. However, the EPA is currently considering a future amendment to this requirement that would allow owners or operators to operate a Level 2 tank enclosure vented to an alternate control device, provided they make certain site-specific demonstrations. The reason EPA currently requires enclosure emissions to be vented to an enclosed combustion device is because organic concentrations in air within the enclosure are very dilute, due to the inherent dilution in the enclosure, and are often less than 100 ppm organics by volume. It is not clear to the EPA that control devices other than enclosed combustion devices, can reduce organics in such a dilute vent stream by the 95 percent control efficiency required the subpart CC standards. The EPA has agreed to investigate the possibility whereby a facility could make a case-by-case demonstration of a non-combustion control device efficiency; the EPA would require the demonstration to show that a mass of organics would be removed from a given waste, using a particular enclosure and control device, equivalent to 95 percent reduction of organics in the tank headspace, if the tank were to be equipped with a discreet cover. Though such a demonstration would likely be fairly detailed and costly, commenters have indicated that they would be interested in pursuing such an option if it were included in the subpart CC tank enclosure requirements. The EPA considers that such an equivalency would be consistent with the existing tank standards: if a technically feasible and verifiable equivalency demonstration technique can be developed, this could be a reasonable alternative to the requirement for enclosed combustion devices under the Level 2 tank enclosure control option. The EPA will continue to investigate this option, and if a viable approach can be developed, will publish a future amendment to incorporate it into the subpart CC Level 2 tank standards.

The EPA has received inquiries as to whether doors are allowed to be open on level 2 tank enclosures, and how doors are regarded under the provisions for natural draft openings (NDO) in the "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B ("Criteria T") requirements. The Criteria T evaluation of NDO is intended to evaluate the effectiveness of the enclosure at capturing emissions from within the enclosure. Therefore, for purposes of Criteria T, the evaluation of the enclosure must be conducted on the enclosure as it is operated during hazardous waste management operations. If the enclosure has a door that is closed during waste operations, then the open doorway would not be considered an NDO; however, cracks or openings that exist around the door when it is closed would be considered NDO. Doors on enclosures are often very large, to accommodate waste transportation vehicles; thus, the effectiveness of an enclosure is severely altered by the positioning of such a door. Obviously, if a door is normally open during times when hazardous waste is managed in the enclosed tank, the open doorway would be considered an NDO.

By this clarification, the EPA is not precluding the opening of enclosure doors. The EPA considers it appropriate to allow enclosure doors to be open for the same circumstances that tank covers can be open under paragraph 265.1085(g)(2)(i)(A) and similar paragraphs for tanks equipped with fixed roofs—when necessary to provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Also commensurate with paragraph 265.1085(g)(2)(i)(A), following completion of the activity, the owner or operator should promptly secure the door in the position it was in during the evaluation of the NDO.

It also warrants clarification that the enclosure door (and other openings not accounted for as Criteria T NDO) must be closed at all times that hazardous waste is managed in the enclosed tank (unless the tank is exempt from subpart CC air emission control requirements), not just when waste is being treated in the tank. The EPA considers it inherently obvious within the tank standards that the enclosure around a tank must be operated in the same manner in which it was evaluated for the Criteria T requirements. Specifically, paragraphs § 264.1084(i)(1) and § 265.1085(i)(1) require that the enclosure be designed and operated in accordance with the Criteria T.

The EPA recognizes that it is not feasible to require all waste transfer to and from a tank enclosure to be conducted by enclosed transfer systems. However, the EPA does consider it reasonable to interpret the provisions of § 264.1084(i)(1) and § 265.1085(i)(1) to require that the enclosure be operated in the same manner in which it was evaluated for compliance with Criteria T. Thus, the EPA is clarifying that enclosure doors and other openings not evaluated as NDO shall be closed when hazardous waste is managed inside the enclosure, except when it is necessary to open the door or opening for waste transfer, equipment access, or worker access.

In the December 6, 1994 final regulation, the regulatory text at §§ 264.1084(g) and 265.1085(g) allowed that an owner or operator may install and operate a safety device on tank covers, closed-vent systems and control devices. The amendments published on November 25, 1996 amended the tank requirements; in those amendments, the provision for safety devices was inadvertently omitted from the tank requirements for floating roof covers. Today's action adds new paragraphs 264.1084(e)(4), 264.1084(f)(4), 265.1085(e)(4), and 265.1085(f)(4) stating that safety devices are allowed

on both internal and external floating roof tank covers.

Today's action amends § 264.1084(f)(3)(iii) to correct a typographical error. The sentence "Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this subpart * * *" is revised to read as follows. "Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this section * * *" Also, to correct another typographical error in § 264.1084(f)(3)(i)(D)(4) and § 265.1085(f)(3)(i)(D)(4), the phrase "* * * and then dividing the sum for each seal type by the nominal perimeter of the tank." is revised to read as follows "* * * and then dividing the sum for each seal type by the nominal diameter of the tank."

In the November 25, 1996 final rule amendments (61 FR 59932), an exemption from the control requirements of subpart CC was added for a tank, surface impoundment, or container for which all the hazardous waste placed in the unit meets the Land Disposal Restrictions (LDR) as specified in §§ 264.1082(c)(4) and 265.1083(c)(4). However, the EPA inadvertently failed to add this exemption based on meeting applicable LDR treatment standards to the exemption from the closed system transfer requirements. Today's change adds paragraph (iii) under §§ 264.1084(j)(2) and 265.1085(j)(2) to correct this oversight. It was originally the EPA's intent to make this conforming amendment for closed system transfer requirements in the November 25, 1996 action. The basic structure of the subpart CC rule is that once a hazardous waste is subject to the provisions of the rule, all containers, tanks, and impoundments managing the waste are subject to the rule's requirements. However, once a waste is treated to destroy or remove organics in a manner specified in the rule, downstream tanks, containers, and surface impoundments are not subject to the subpart CC air requirements to operate the units with covers and/or control devices.

(Note: Recordkeeping, monitoring, reporting and testing requirements may apply to those downstream units.) See Section VII.A.2.b, *Treated Hazardous Waste*, of the preamble to the final rule (59 FR 62914, December 6, 1994). The EPA inadvertently failed to codify this core principle for closed system transfer and is correcting the omission in today's rule

F. Standards: Surface Impoundments

Today's action corrects a typographical error in §§ 264.1085(b)(2) and 265.1086(b)(2) by revising the phrase "* * * paragraph (d) of this sections." to read "* * * paragraph (d) of this section." Also, the EPA is clarifying the requirements of §§ 264.1085(d)(1)(iii) and 265.1086(d)(1)(iii) by making a non-substantive editing change. "Factors to be considered when selecting the materials for * * *" is redrafted to read "Factors to be considered when selecting the materials of construction * * *" To correct another typographical error in §§ 264.1085(d)(2)(i)(B) and § 265.1086(d)(2)(i)(B), "To remove accumulated sludge or other residues from the bottom of surface impoundment." is revised to read. "To remove accumulated sludge or other residues from the bottom of the surface impoundment."

As is discussed regarding tanks, in Section E of this preamble, the EPA inadvertently failed to add the exemption for hazardous wastes that have been treated to meet applicable LDR treatment standards to the exemption from the closed system transfer requirements for hazardous waste that is transferred to a surface impoundment. Today's action adds this exemption to the exemptions from closed system transfer requirements in §§ 264.1085(e)(2)(iii) and 265.1086(e)(2)(iii).

G. Standards: Containers

The EPA has received comments from the regulated community regarding the inspection requirements for containers; these comments clearly indicate a widespread misinterpretation of the rule requirements relevant to container inspections. Numerous commenters referenced in their statements to the EPA that the language in § 264.1086(c)(4)(i) and (d)(4)(i), and the corresponding paragraphs in 40 CFR part 265, require a visual inspection to occur within 24 hours after acceptance of each regulated container which is transported to a regulated facility and which contains hazardous waste at the time it arrives at the facility. They also noted that the requirement for an inspection to be conducted within a 24-hour time frame is unnecessarily burdensome in some limited and infrequent situations.

The visual container inspection requirement is intended to provide means for the facility owner or operator to ensure that the container has no visible openings or gaps through which organics could be emitted; see Section IV.I.3 of the preamble, 61 FR 59948, November 25, 1996. The amended container regulations published November 25, 1996, did not specify the time frame in which the initial visual inspection must be conducted. The regulation states, "In the case when * * * the container is not emptied (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)) within 24 hours after the container is accepted at the facility, the owner or operator shall visually inspect the container * * *" The 24-hour period in the rule language refers to the time limit on emptying the container that triggers the visual inspection; the rule language in § 265.1087(c)(4)(i) and (d)(4)(i), and the corresponding paragraphs in 40 CFR part 265, as published in November 1996, do not specify the time frame in which the visual inspections must be conducted. However, it is the intent of the EPA that the initial inspection be subject to the same time requirements as were set out in the December 6, 1994, final regulation (see 40 CFR 265.1089(f)(1) of the December 6, 1994 published regulation (at 59 FR 62947)). Specifically, the container inspection must be conducted on or before the date that the container is initially subject to the subpart CC container standards. Thus, for a container with hazardous waste that is transported to a regulated facility, the inspection of the container is required on or before the date that the container is accepted at the facility.

In those situations where it would be infeasible to inspect a container on the date it is accepted at the facility, for the purpose of compliance with the subpart CC container standards, it would be acceptable for the container to be inspected prior to that date. For example, if an owner or operator of an affected facility accepts a shipment of containers that arrives at the TSDF on a truck, and the TSDF owner or operator is unable to conduct a visual inspection of the containers at the time of acceptance of the container shipment, it is acceptable under the rule to have the generator or transporter perform the visual inspection of the individual containers before or during loading of the containers onto the truck for transport to the affected facility. The transporter or generator could provide the recipient TSDF with some level of information (e.g., written documentation) to confirm the inspection has been conducted on or before the date that the container is accepted at the facility. It is likely that the TSDF owner or operator would then perform their own visual inspection when possible, (e.g., at the time that the containers are unloaded from the truck at the TSDF). The EPA considers the use of generator or transporter supplied information to comply with the visual inspection requirements similar to owner or operator use of generator

information regarding the organic content of a hazardous waste as a means to comply with the waste determination (i.e., VO concentration determination) requirements of the rule. It should be noted that in either case, it is ultimately the responsibility of the owner or operator of the affected facility to be in compliance with all the applicable regulatory requirements. The EPA is amending the language in § 264.1086(c)(4)(i) and (d)(4)(i), and the corresponding paragraphs in 40 CFR part 265, to clarify that the 24-hour period noted in the rule refers to the time frame for emptying a container, and that this 24-hour criterion then triggers the need for a visual inspection that must be conducted on or before the date that the container is accepted at the facility.

The amendment to §§ 264.1086 (c)(4)(i) and (d)(4)(i), and the corresponding language in part 265, also clarify the phrase "accepted at the facility." For the purposes of this inspection requirement for containers, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest of the appendix to 40 CFR part 262 (EPA Form 8700–22), as required under subpart E of this part, at § 264.71 and § 265.71. The instructions to EPA Form 8700–22 at Item 20, Facility Owner or Operator: Certification of Receipt of Hazardous Materials Covered by This Manifest Except as Noted in Item 19, state, "Print or type the name of the person accepting the waste on behalf of the owner or operator of the facility. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt." The EPA considers acceptance of the waste to occur at the time of manifest signature. This has been the EPA's consistent interpretation of this phrase, and is the guidance that EPA has supplied both verbally and in written seminar materials.

The EPA has received questions regarding when the opening of a cover or closure device is allowed on containers. Several of these questions have concerned the opening of the vent on vacuum trucks during loading operations and the opening of containers vents to allow venting of vapors for the purpose of worker safety. With regard to vacuum trucks, the EPA has always intended the subpart CC final rules to allow containers to vent emissions directly to the atmosphere during filling operations. This would include use of a vacuum system to fill a tank truck (i.e., a container under RCRA). Although the December 6, 1994 final rules only allowed the opening through which waste was transferred to be open during waste transfer, this was inadvertent; the EPA intended to allow venting during waste transfer operations, either through the opening through which the waste is transferred, or through a second opening that would serve as a vent. To this effect, the EPA amended the subpart CC rules on February 9, 1996 to clarify this point (see 61 FR 4909). The fact that EPA is not requiring control of vacuum trucks is also discussed in the document *Hazardous Waste Treatment, Storage, and Disposal Facilities—Background Information for Promulgated Organic Air Emission Standards for Tanks, Surface Impoundments, and containers*, see EPA–453/R–94–076b, November 1994, Section 6.6.5, where it is clear that the EPA is fully aware that a practical means of controlling the exhaust from the vacuum pump on a vacuum truck has not been demonstrated. The EPA is now reiterating that these types of systems are allowed under the subpart CC container rules.

In response to commenters, EPA is providing clarification that venting of containers for worker safety is also allowed under the subpart CC container rules. Provision (iii) of §§ 264.1086(c)(3) and 265.1087(c)(3), which allows opening of a closure device or cover when access inside is needed, would allow the owner or operator to vent a container prior to sending a worker into a tanker or other container for clean-out. This type of venting is necessary to avoid an unsafe condition when entering a confined space. For example, venting both before and during the cleaning operations is needed to reduce the organic vapor concentration below the lower explosive limit (LEL) for worker safety. In addition, provision (v) of §§ 264.1086(c)(3) and 265.1087(c)(3), which allows opening of a safety device at any time clearly shows the EPA intent regarding the implementation measures necessary to avoid an unsafe condition. The EPA considers that the current rule language allows this type of venting for maintenance of worker safety, and is providing this preamble discussion in response to requests from commenters.

An additional interpretive clarification is required, regarding the transfer requirements to, from, and among hazardous waste containers, specifically when transfers occur in conjunction with hazardous waste stabilization operations.

The first clarification addresses whether the addition of sorbent materials is considered to be waste stabilization for the purposes of compliance with subpart CC, and thus, whether such activities are required to be conducted in containers equipped with level 3 controls. There has been specific inquiry as to whether the subpart CC level 3 container standards apply in situations where an owner or operator "transfers" hazardous waste from one container, such as a bulk container or roll off box, to a second unit, and adds the sorbent to the waste after each scoop of waste is placed in the second unit. The container standards at § 264.1086(b)(2) state that, "* * * the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in paragraph (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere." In its definition of waste stabilization at 40 CFR 265.1081, the EPA has stated that stabilization includes the elimination of free liquids, but does "not include the adding of absorbent materials to the surface of a waste without mixing, agitation, or subsequent curing, to absorb free liquid." The associated preamble language clearly defined what activities EPA was excluding from the waste stabilization definition. See 61 FR at 4905, February 9, 1996. That preamble discussion stated, "The EPA is also amending the term "waste stabilization" to specifically exclude the process of adding non-reactive absorbent material to the surface of a waste. The EPA recognizes that to meet certain criteria under the Land Disposal Restrictions, or to prevent the introduction of liquid into certain combustion devices, owners or operators apply absorbent material to the surface of wastes just prior to disposal. In such procedures, the container is opened, absorbent material is placed on the surface of the waste to absorb a relatively small amount of liquid, and the container is closed. No mixing or agitation is involved in the process."

It is clear from the text of the regulation, as well as the February 9, 1996 preamble discussion, that addition of absorbent, even with very limited mixing or agitation, must be performed in compliance with the container level 3 standards. In fact, this is the literal meaning of the provision—such "transfer" operations result in mixing of the sorbent material with the waste, a condition that qualifies as waste stabilization under subpart CC, and requires container level 3 controls. (See also the discussion of the EPA's intentions regarding requirements for containers in the February 9, 1996

preamble at 61 FR 4903, which makes clear that a hazardous waste transfer operation conducted as described above would not satisfy the EPA's stated intent with regard to the general transfer requirements of the container standards. Therefore, the type of transfer operation described above can only occur if the containers meet the container level 3 requirements. The EPA repeats that this requirement has a sound environmental basis. Containers would remain open to the environment during such operations, and the volatile hazardous constituents will be released. The reaction of the sorbent materials with the hazardous waste would, in fact, be likely to increase the volatilization of the organics in the waste, while the container would remain uncovered as subsequent layers of waste and sorbent were applied. Such a situation would result in organic emissions that the EPA considers most appropriately controlled under the container level 3 requirements, and the rules so require.

The EPA recognizes, however, that there are circumstances where addition of sorbent is not stabilization and therefore will not trigger subpart CC container standards. This is why the rule states that stabilization "does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid." The chief example EPA has provided of such an activity is addition of sorbent just prior to the final disposition of the material (the situation given in the February 9, 1996 preamble discussion). Other examples would involve situations where tanks are covered immediately after addition of sorbent and stay covered thereafter.

Examples could occur when sorbent is added to a container at the end of a work day, or at the final completion of a waste transfer. The EPA's technical basis for allowing sorbent material to be placed on the waste surface in these limited situations, we repeat, is that any potential for volatilization to the atmosphere of the organics in the waste would be prevented by the immediate application of the container cover.

A similar issue has come to the attention of EPA, regarding the container standards at § 264.1086(d)(2) and § 265.1087(d)(2), which require that transfer of hazardous waste in or out of a container "* * * be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical * * *" This provision was an amendment to the more extensive transfer requirements that were promulgated in the December 6, 1994 rule. The November 25, 1996 amendment also revised the tank and surface impoundment transfer requirements such that only transfer between and among subpart CC-regulated tanks and surface impoundments are required to be conducted in an enclosed transfer system. This amendment was made in recognition that it is often impractical for waste in containers to be transferred to tanks or surface impoundments through an enclosed system. However, it is the EPA's intent that transfer of hazardous waste among containers, and between containers and surface impoundments or tanks, be conducted in a manner to minimize waste exposure to the atmosphere. See § 264.1084(j), § 264.1085(e), § 264.1086(d)(2) and corresponding paragraphs in part 265.

Members of the regulated community have questioned whether it is possible to evade these less extensive transfer requirements by including an intervening non-subpart CC unit when performing a transfer of hazardous waste. Specifically, certain regulated facilities have discussed transferring waste from a subpart CC-regulated unit (e.g., a tank or container) to a unit not subject to subpart CC (e.g., the floor of a containment building), then subsequently transferring the waste to a second subpart CC-regulated unit. Since the containment building is not a unit regulated by subpart CC, the subpart CC standards do not impose transfer requirements to or from containment buildings; thus, the facilities suggest that the subpart CC transfer requirements would be met. As noted above, the subpart CC container requirements state that transfer of hazardous waste to and from a regulated container shall be conducted in a manner which minimizes the waste's exposure to the atmosphere, considering practical factors. The EPA considers an unnecessary and open-air transfer of waste to or from a container, conducted in whole or in part, to avoid the subpart CC container (or tank) requirements, to not meet the obvious intent of the container transfer requirement (e.g., see 264.1086(d)(2)). The EPA is aware of waste transfer methods that would be more effective in minimizing exposure of the waste to the atmosphere—the owner or operator is responsible for conducting waste transfer in such a manner as to minimize exposure of the hazardous waste to the atmosphere. Rather than leaving this issue open to interpretation, the EPA will instruct permit writers to invoke omnibus authority under RCRA section 3005(c)(3) to assure control of such transfers where necessary to protect human health and the environment.

There are other aspects of the container standards that also require some further clarification; one point that needs some additional explanation is in regard to the Department of Transportation (DOT) compliance demonstration option for containers. The subpart CC container standards, as amended November 25, 1996, allow three options for compliance demonstration, one of which is through compliance with certain applicable DOT regulations for packaging of hazardous materials for transportation. Commenters have stated that they consider the specification in subpart CC, as to which DOT packaging requirements qualify for that compliance option, to have resulted in an overly stringent requirement. However, the EPA has clarified that demonstration of compliance through the use of certain DOT packagings is only one approach to demonstrating compliance with the container standards. The regulated industry has indicated to EPA that the vast majority of hazardous waste that is shipped in DOT transport packagings meets the requirements for container level 1 standards. Thus, if a facility owner or operator is using a DOT packaging which is not among those specified under the subpart CC container standards, the facility owner or operator must conduct a visual inspection to determine that there are no visible openings, cracks, etc. in the container. See § 265.1087(c)(1)(ii). The EPA considers the existing regulatory language to adequately convey this intent, and is including this preamble discussion in response to commenters' requests.

The container option to comply with applicable DOT packaging regulations, described at 40 CFR 265.1087(f) and 264.1086(f), includes four requirements which must all be met to comply with the subpart CC compliance demonstration. The regulatory language of that paragraph clearly indicates (in fact, literally indicates) that compliance with all four of the subparagraphs at § 265.1087(f)(1) through § 265.1087(f)(4) is required, since the requirements are not presented as alternatives. The following paragraphs provide a detailed description of each of the four requirements found at § 265.1087(f).

The first requirement, found at 40 CFR 265.1087(f)(1), specifies that the container must meet the applicable requirements specified in 40 CFR part 178 or part 179. It is EPA's intent to require that in order to comply with 40 CFR part 265.1087(f), a container must

be subject to 49 CFR part 178 or part 179; it is also the EPA's intent to require that such a container be in compliance with all the requirements of 49 CFR parts 178 and 179 that are applicable. (Again, this is the direct and literal reading of the provision.) In developing the final rule, the EPA determined that containers subject to and in compliance with these requirements would achieve the appropriate level of air emission control; see the preamble discussion at Section IV.I.1, 61 FR 59947, November 25, 1996. The Agency could not make that finding for containers not subject to these provisions. A container not subject to 49 CFR part 178 or 179 is thus not eligible to comply with the subpart CC rule through the requirements of 40 CFR 265.1087 (c)(1)(i) or (d)(1)(i), nor the corresponding paragraphs in 40 CFR part 264; it would have to comply with the subpart CC rule through the requirements of 40 CFR 265.1087 (c)(1)(ii), (c)(1)(iii), (d)(1)(ii) or d(1)(iii), or the corresponding paragraphs in 40 CFR part 264, as appropriate.

The second requirement within 40 CFR 265.1087(f) for DOT-compliant containers stipulates that the hazardous waste must be managed in the DOT container in accordance with all the requirements contained in 49 CFR part 107 subpart B, part 172, part 173, and part 180 that are applicable to that container and the waste managed in that container. The EPA listed these regulatory parts because they were characterized by the industry and by DOT as the parts which describe the requirements for management of hazardous waste, for the types of containers that are specified in 49 CFR parts 178 and 179. The reference to 49 CFR part 107 subpart B is included to recognize the exemptions for containers that have been determined by DOT to be equivalent or superior to those required within 49 CFR part 178 and 179 standards.

The third and fourth requirements, listed in 40 CFR 265.1087(f)(3) and (f)(4) and their corresponding paragraphs in 40 CFR part 264, state that, "* * * For the purpose of complying with this subpart, no exceptions to the 40 CFR part 178 and part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section," and "For a lab pack that is managed in accordance with the requirements of 40 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for combination packagings specified in 40 CFR 173.12(b)." These requirements indicate that the DOT-authorized container must be in compliance with all applicable requirements in 49 CFR parts 178 and 179. Paragraph 265.1087(f)(3) of the subpart CC rule specifically means that for the purposes of the subpart CC rule provisions, compliance with 49 CFR parts 178 and 179 is required, and no exceptions to those provisions are allowed (unless the container were a lab pack, as described in § 265.1087(f)(4)). As with the earlier provisions discussed above, this is the literal meaning of the provision. There are many exceptions, both explicit and implicit, to the 49 CFR part 178 and 179 standards which are contained in other sections of the DOT standards. The EPA's intent in 40 CFR 265.1087(f)(3) is to disallow any regulatory provision which removes or alters a requirement contained in 49 CFR parts 178 or 179, regardless of where that disallowing regulatory provision is codified, or whether that provision is specifically described as an "exception." For instance, 49 CFR 173.28(e) states that a non-reusable container may be reused for certain circumstances; however, the allowance of that paragraph would not be recognized for compliance with the subpart CC container standards at 40 CFR 265.1087(f) or 40 CFR 264.1086(f). As another example, 49 CFR 173.204 contains an implicit exception for certain hazardous materials that states, "packaging need not conform to the requirements of part 178." However, if that packaging were used to manage a hazardous waste subject to the container regulations of the subpart CC rule, the effect of 40 CFR 265.1087(f)(3) would be to require that, for compliance with the subpart CC rule, such packaging must comply with the requirements of 49 CFR part 178. In this example, 40 CFR 265.1087(f) and 264.1086(f) would disallow the exception to 49 part 178 provided by 49 CFR 173.204. Thus, as a general matter, 40 CFR 265.1087(f) and 264.1086(f) have the intended effect of requiring strict compliance with all applicable requirements of 49 CFR parts 178 and 179 (other than the exception for lab packs at 49 CFR 173.12(b)), for the purpose of the DOT compliance option within the subpart CC container standards. Strict compliance with these provisions is necessary to ensure that the emission reduction intended by the rule is achieved.

Today's action also corrects two typographical errors in § 264.1086. In § 264.1086(c)(2), "* * * Organic vapor permeability, the effects of the contact with the hazardous waste * * *" is revised to read as follows, "Organic vapor permeability; the effects of the contact with the hazardous waste * * *" and in § 264.1086(d)(2), "* * * any one of the following: a submerged-fill pipe * * *" is revised to read as follows, "* * * any one of the following: A submerged-fill pipe * * *"

For containers required to use Level 2 controls under the subpart CC standards, one option under the final rules requires that the hazardous waste be managed in a "container that operates with no detectable organic emissions." (See §§ 264.1086(d)(ii) and 265.1087(d)(ii).) The test for conducting no detectable organic emissions for the purpose of complying with this requirement must be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. However, under subpart CC, there are no requirements for periodic Method 21 leak monitoring of containers. (See Section IV.I.3 of the preamble to the final rule, 61 FR 59948, November 25, 1996.) Any Method 21 monitoring to determine if the containers operate with no detectable organic emissions is conducted at the owner's or operator's discretion. In order to clarify this point, the EPA has amended the language in paragraph (g) of the container standards.

H. Standards: Closed-Vent Systems and Control Devices

The inspection and monitoring requirements under paragraph (c) of § 264.1087 and § 265.1088 are being amended to clarify that the inspection and monitoring procedures specifically cited in paragraph (c)(7) are applicable to closed-vent systems as well as to the control devices. The reference to closed-vent system in paragraph (c)(7) was inadvertently left out of the sentence specifying what shall be inspected and monitored; however, the procedures specified in the paragraph did cite the requirements applicable to closed-vent systems, and it was thus the EPA's intent that closed-vent systems be included.

The EPA has received several comments concerning how a TSDF owner or operator would demonstrate compliance with the 95 percent removal requirement (see § 265.1088(c)(1)(ii)) for a vent stream with low concentration organic vapor entering an organic air emission control device. The commenters contended that the 95 percent removal or destruction performance demonstration is not feasible for low concentration organic streams. However, the EPA has not at this time found adequate technical reasons to change the 95 percent control requirement. Similar requirements have been included in other regulations controlling air emissions from process vents on hazardous and non-hazardous

waste management operations (e.g., subpart DD in 40 CFR part 63) and guidance regarding compliance with the 95 percent control requirement has been published by the EPA, see EPA–450/3–89–021, *Hazardous Waste TSDF—Technical Guidance Document for RCRA Air Emission Standards for Process Vents and Equipment Leaks*; or EPA–450/3–91–007, *Alternative Control Technology Document—Organic Waste Process Vents*. The EPA has also published guidance regarding the control of low concentration organic vapor streams; see EPA–450/R–95–003, *Survey of Control Technologies for Low concentration Organic Vapor Gas Streams*.

It has been suggested that the EPA include the use of an activated carbon adsorption control system as a specified technology and/or use of surrogate compounds to demonstrate compliance. Again, the EPA does not have an adequate technical basis to revise the control device requirements to include a carbon adsorption control equipment specification. Carbon adsorption systems require considerable constituent and other site-specific information for proper control device design, unlike combustion systems, for which organic control efficiency is less dependent on the particular organic constituent present in the gas stream. Therefore, the EPA has not included a carbon adsorption equipment specification in the rule as an alternative to the 95 percent organic removal efficiency demonstration.

Commenters also have requested that the EPA amend the control device requirements of the rule to allow that the temperature sensor for condensers be placed in the coolant exhaust rather than in the exhaust vent stream from the condenser exit. The EPA selected this monitoring location because its was judged that monitoring the exhaust gas provided a better and more direct characterization of the performance of the condenser. In addition, the standards for closed-vent systems and control devices in subpart AA (see § 264.1033(i)) allow that "an alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control devices's design specifications." This same allowance is not contained in the part 265 standards for interim status facilities because the rules do not have provisions for reporting and thus there is no direct mechanism for Agency review of the appropriateness of the alternative parameter. The EPA did not seek to burden the owner or operator of interim status facilities with the additional reporting requirements associated with the technical demonstration of equivalent characterization of performance. For those facilities that are monitoring an alternative parameter, e.g., condenser coolant exhaust rather than the condenser vent stream exhaust, in compliance with provisions of a Clean Air Act regulation such as the HON, the owner or operator of the unit may be able to comply with the RCRA air rules through one of the Clean Air Act applicability exemptions contained in the RCRA air rules at §§ 264.1030(d) and 265.1030(d) of subpart AA and §§ 264.1080(b)(7) and 265.1080(b)(7) of subpart CC. The EPA continues to believe that the monitoring requirements specified in the 40 CFR part 265 rules are reasonable, and the EPA does not consider it appropriate to allow alternative parameters to be monitored without a mechanism for Agency review of the alternative approach (e.g., a Clean Air Act or RCRA permit). Therefore, the EPA is not amending the rule in this regard.

As previously noted in Section III.C of this preamble, the November 25, 1996, amendments to the subpart CC standards for control devices and closed vent systems (at § 265.1088(c)(2)(i)), added provisions to allow up to 240 hours per year for periods of planned routine maintenance of a control device, during which time the control device is not required to meet the performance requirements for emission reductions specified in the rule. The EPA has received comments that control devices such as boilers, industrial furnaces, and incinerators often require routine maintenance that takes longer than 10 days per year. In connection with this, the commenters also requested that the EPA provide an extension to the repair period so long as the owner or operator documents the decision to use an extension by including certain material in the operating record. The EPA considers the emissions from hazardous waste to be a significant source of nationwide organic air emissions, and does not consider it appropriate to lengthen the time that a control device may be out of service for routine maintenance, while hazardous waste is being managed in the unit. As promulgated in December 1994, the subpart CC standards did not allow provisions for planned maintenance time, because the modeled emission reductions attributed to the implementation of these standards were based on control device operation at all times that affected waste is managed in a unit requiring a control device. In the November 1996 amendments, the EPA revised the control device provisions in recognition that planned or routine maintenance of control devices, within reason, would limit the unplanned malfunctions. However, the EPA continues to consider that 240 hours per year is an appropriate maximum amount of time for hazardous waste to be managed in units without the required control device operating. Thus, the EPA is not amending this provision. Instances of control device down time beyond the allowed 240 hours for maintenance would be considered periods in which the facility is not in compliance with the control requirements of the rule.

The EPA is today clarifying that the requirements for management of spent carbon, at § 264.1088(c)(3)(ii) and § 265.1089(c)(3)(ii) apply only to carbon that is a hazardous waste. This clarification has been made in both the February 9, 1996 technical amendments (see 61 FR at 4910) and the November 25, 1996 final rule amendments (see 61 FR at 59936). When amending the regulatory text at § 264.1087(c)(3)(ii) and § 265.1088(c)(3)(ii) in the November 25, 1996 action, the EPA inadvertently omitted the phrases that state the requirement applies to carbon that is a hazardous waste, and the requirement applies regardless of the VO concentration of the carbon. These statements had been included in the regulatory text prior to that November 25 Federal Register document; today's amendment clarifies the EPA's intent by correcting that omission.

I. Recordkeeping and Reporting Requirements

In the November 25, 1996 final rule amendments (61 FR 59952 and 59971) to parts 264 and 265, the subpart CC applicability was amended to exempt any hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. Though the requirement for owner or operator certification was established at § 264.1080(b)(7), the EPA inadvertently failed to add the associated recordkeeping requirement to the recordkeeping sections of subpart CC. In order to establish minimum recordkeeping requirements for those units that are exempted from the subpart because the unit is in compliance with control requirements under a Clean Air Act regulation, the subpart CC recordkeeping requirements are being amended by today's action. A

new paragraph (j) is being added to § 264.1089 and § 265.1090 that requires the owner or operator to record and maintain: (1) a certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified in 40 CFR parts 60, 61, or 63; and (2) identification of the specific requirements with which the unit is in compliance.

Adding these requirements also necessitated a change to paragraph (a) of § 264.1089 and § 265.1090 in order to include paragraph (j) in the list of information specified for recordkeeping under the subpart.

In addition, today's action corrects typographical errors in § 264.1089(a) and § 265.1090(a). In the last sentence of § 264.1089(a), "* * * air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1084(d) of this subpart." is revised to read as follows. "* * * air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1080(d) or § 264.1080(b)(7), respectively, of this subpart." Similarly, in the last sentence of § 265.1090(a), "* * * air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1084(d) of this subpart" is revised to read as follows. "* * * air emission controls specified in §§ 265.1085 through 265.1088 of this subpart in accordance with the conditions specified in § 265.1080(d) or § 265.1080(b)(7), respectively, of this subpart."

Also in the recordkeeping sections of subpart CC, paragraph (f) of § 264.1089 and § 265.1090 are being amended to provide the full citation referenced in the paragraph: the references to § 264.1082(c)(2) and § 265.1083(c)(2) are being expanded to state (c)(2)(i) through (c)(2)(vi)" in paragraph (f) to cover specifically each of the exemption options, for which a waste determination for a treated hazardous waste is required.

In a further correction, paragraph (b)(1)(ii)(B) of § 264.1089 and § 265.1090 is being amended to correct the sentence structure and eliminate the redundant phrase "the following information."

J. Appendix VI to Part 265

Appendix VI to part 265 is revised and reprinted in total. The revisions made by today's action correct printing errors in the November 25, 1996, final rule amendments (61 FR 59993), reformat the list to be alphabetical, correct typographical errors in compound names (for example, dimethyl hydrazine (1,) is corrected to read 1,1-dimethyl hydrazine), and add CAS numbers that were not available in the November 25, 1996, final rule amendments.

There has been some uncertainty among the regulated community with respect to whether or not cyanide (CN) is classified as an "organic" compound. For purposes of subpart CC, cyanide is listed in Appendix VI to Part 265 as one of the compounds with a Henry's Law Constant less than 0.1 Y/X and as such it is not necessary to quantify CN as a part of the volatile organic concentration determination.

VI Administrative Requirements

A. Docket

Six RCRA dockets contain information pertaining to today's rulemaking: (1) RCRA docket number F-91-CESP-FFFFF, which contains copies of all BID references and other information related to the development of the rule up through proposal; (2) RCRA docket number F-92-CESA-FFFFF, which contains copies of the supplemental data made available for public comment prior to promulgation; (3) RCRA docket number F-94-CESF-FFFFF, which contains copies of all BID references and other information related to development of the final rule following proposal; (4) RCRA docket number F-94-CE2A-FFFFF, which contains information pertaining to waste stabilization operations performed in tanks; (5) RCRA docket number F-95-CE3A-FFFFF, which contains information about potential final rule revisions made available for public comment; and (6) RCRA docket number F-96-CE4A-FFFFF, which contains a copy of each of the comment letters submitted in regard to the revisions that the EPA was considering for the final subpart CC standards. The public may review all materials in these dockets at the EPA RCRA Docket Office.

The EPA RCRA Docket Office is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603-9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), 401 M Street SW, Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated RCRA air rules were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1593.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260-2740.

Today's amendments to the RCRA air rules should have only a minor impact on the information collection burden estimates made previously, and that impact is expected to be a reduction. The changes consist of new definitions, alternative test procedures, clarifications of requirements, and additional compliance options. The changes are not additional requirements, but rather, are reductions in previously published requirements. The overall information-keeping requirements in the rule are being reduced. Consequently, the ICR has not been revised.

C. Executive Order 12866

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is "significant" and, therefore, subject to the OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The RCRA subpart CC air rules published on December 6, 1994, were considered significant under Executive Order 12866, and a regulatory impact analysis (RIA) was prepared. The amendments published today clarify the

rule, provide more compliance alternatives, make certain regulatory provisions more lenient, and correct structural problems with the drafting of some sections. The OMB has evaluated this action, and determined it to be non-significant; thus it did not require their review.

D. Regulatory Flexibility

This rule is not subject to notice and comment rulemaking requirements and therefore is not subject to the Regulatory Flexibility Act. However, for the reasons discussed in the December 6, 1994 **Federal Register** (59 FR 62923), this rule does not have a significant impact on a substantial number of small entities. The changes to the rule do not add new control requirements to the December 1994 rule. The amendments in fact reduce the already-existing requirements. Therefore, the amendments are also not considered significant.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804 2) given that it amends the rule published in 1994 to reduce the extent of regulation.

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Immediate Effective Date

The EPA has determined to make today's action effective immediately. The EPA believes that the corrections being made in today's action are either interpretations of existing regulations which do not require prior notice and opportunity for comment, or are technical corrections of obvious errors in the published rules (for example, corrections to regulations inconsistent with or not carrying out statements in the preamble or Background Information Document). Comment on such changes is unnecessary, within the meaning of 5 U.S.C. 553(b)(3)(B). In addition, the EPA notes that many of these clarifications result from the public meeting process, so that the Agency has provided a measure of opportunity for comment.

VII. Legal Authority

These regulations are amended under the authority of sections 2002, 3001–3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6921–6927, 6930, and 6974).

List of Subjects

40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Container, Control device, Hazardous waste, Inspection, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Tank, TSDF, Waste determination.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Air pollution, Confidential business information, Hazardous waste, Permit modification, Reporting and recordkeeping requirements.

Dated, November 28, 1997

Richard D. Wilson,

Acting Asssistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 264, 265, and 270 of the Code of Federal Regulations are amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart B—General Facility Standards

2. Section 264.15 is amended by revising paragraph (b)(4), and leaving the "COMMENT" at the end of the paragraph to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable.

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

3. Section 264.73 is amended by revising paragraph (b)(6) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252—264.254, 264.276, 264.278, 264.280, 264.302—264.304, 264.309, 264.347, 264.602, 264.1034(c)—264.1034(f), 264.1035, 264.1063(d)—264.1063(i), 264.1064, and 264.1082 through 264.1090 of this part.

* * * * *

Subpart AA—Air Emission Standards for Process Vents

4. Section 264.1030 is amended by revising paragraphs (b)(3) and (c), leaving the "NOTE" at the end of paragraph (c), and adding paragraph (e), to read as:

§ 264.1030 Applicability.

* * * * *

(b) * * *

(3) A unit that is exempt from permitting under the provisions of 40

CFR 262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.

(c) For the owner and operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of 40 CFR 270.50(d). Until such date when the owner and operator receives a final permit incorporating the requirements of this subpart, the owner and operator is subject to the requirements of 40 CFR 265, subpart AA.

* * * * *

(e) The requirements of this subpart do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this subpart are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.

* * * * *

5. Section 264.1031 is amended by revising the definition of "In light liquid service" to read as follows:

§ 264.1031 Definitions.

* * * * *

In light liquid service means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20°C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20°C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

* * * * *

6. Section 264.1033 is amended by revising paragraph (a)(2) to read as follows:

§ 264.1033 Standards: Closed-vent systems and control devices.

(a) * * *

(2)(i) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(ii) Any unit that begins operation after December 21, 1990, and is subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(iii) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(iv) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997, due to an action other than those described in paragraph (a)(2)(iii) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

7. Section 264.1050 is amended by revising paragraphs (b)(3), (c) and (f) to read as follows:

§ 264.1050 Applicability.

* * * * *

(b) * * *

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.

(c) For the owner or operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of 40 CFR 270.50(d). Until such date when the owner or operator receives a final permit incorporating the requirements of this subpart, the owner or operator is subject to the requirements of 40 CFR part 265, subpart BB.

* * * * *

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of §§ 264.1052 through 264.1060 of this subpart if it is identified, as required in § 264.1064(g)(6) of this subpart.

* * * * *

8. Section 264.1060 is revised to read as follows:

§ 264.1060 Standards: Closed-vent systems and control devices.

(a) Owners and operators of closed-vent systems and control devices subject to this subpart shall comply with the provisions of § 264.1033 of this part.

(b)(1) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(2) Any unit that begins operation after December 21, 1990, and is subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(3) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award or contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(4) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997, due to an action other than those described in paragraph (b)(3) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

9. Section 264.1062 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 264.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

* * * * *

(b) * * *

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., monitor for leaks once every six months) for the valves subject to the requirements in § 264.1057 of this subpart.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in § 264.1057 of this subpart.

* * * * *

10. Section 264.1064 is amended by revising paragraphs (g)(6) and (m) to read as follows:

§ 264.1064 Recordkeeping requirements.

* * * * *

(g) * * *

(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

* * * * *

(m) The owner or operator of a facility with equipment that is subject to this subpart and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to § 264.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60 part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

11. Section 264.1080 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 264.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

* * * * *

(c) For the owner and operator of a facility subject to this subpart who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 of this chapter or reviewed in accordance with the requirements of 40 CFR 270.50(d) of this chapter. Until such date when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of 40 CFR 270.50(d), the owner and operator is subject to the requirements of 40 CFR part 265, subpart CC.

* * * * *

12. Section 264.1082 is amended by revising paragraphs (b), (c)(2)(ix)(A), (c)(2)(ix)(B), (c)(3) and (c)(4)(ii) to read as follows:

§ 264.1082 Standards: General.

* * * * *

(b) The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in §§ 264.1084 through 264.1087 of this subpart, as applicable to the hazardous waste management unit, except as provided for in paragraph (c) of this section.

(c) * * *

(2) * * *

(ix) * * *

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A, or a value of 25 ppmw, whichever is less.

(B) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius.

(3) A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of paragraph (c)(2)(iv) of this section.

(4) * * *

(ii) The organic hazardous constituents in the waste have been treated by the treatment technology established by the EPA for the waste in 40 CFR 268.42(a), or have been removed or destroyed by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

* * * * *

13. Section 264.1083 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 264.1083 Waste determination procedures.

(a) * * *

(2) For a waste determination that is required by paragraph (a)(1) of this section, the average VO concentration of a hazardous waste at the point of waste origination shall be determined in accordance with the procedures specified in 40 CFR 265.1084(a)(2) through (a)(4).

(b) * * *

(1) An owner or operator shall perform the applicable waste determinations for each treated hazardous waste placed in waste management units exempted under the provisions of § 264.1082(c)(2)(i) through (c)(2)(vi) of this subpart from using air emission controls in accordance with standards specified in §§ 264.1084 through 264.1087 of this subpart, as applicable to the waste management unit.

* * * * *

14. Section 264.1084 is amended by revising paragraph (c)(2)(iii) introductory text and paragraph (c)(2)(iii)(B), adding paragraph (e)(4), revising paragraph (f)(3)(i)(D)(*4*) and paragraph (f)(3)(iii) introductory text, adding paragraph (f)(4), and adding paragraph (j)(2)(iii) to read as follows:

§ 264.1084 Standards: Tanks.

* * * * *

(c) * * *

(2) * * *

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

* * * * *

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous waste is managed in the tank, except as provided for in paragraphs (c)(2)(iii)(B)(*1*) and (*2*) of this section.

(*1*) During periods when it is necessary to provide access to the tank for performing the activities of paragraph (c)(2)(iii)(B)(*2*) of this section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(*2*) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

* * * * *

(e) * * *

(4) Safety devices, as defined in 40 CFR 265.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (e) of this section.

(f) * * *

(3) * * *

(i) * * *

(D) * * *

(*4*) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

* * * * *

(iii) Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this section, the owner or operator shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Regional Administrator of the date and location of the inspection as follows:

* * * * *

(4) Safety devices, as defined in 40 CFR 265.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (f) of this section.

* * * * *

(j) * * *

(2) * * *

(iii) The hazardous waste meets the requirements of § 264.1082(c)(4) of this subpart.

* * * * *

15. Section 264.1085 is amended by revising paragraphs (b)(2), (d)(1)(iii), and (d)(2)(i)(B) and adding paragraph (e)(2)(iii) to read as follows:

§ 264.1085 Standards: Surface impoundments.

* * * * *

(b) * * *

(2) A cover that is vented through a closed-vent system to a control device in accordance with the provisions specified in paragraph (d) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

* * * * *

(2) * * *

(i) * * *

(B) To remove accumulated sludge or other residues from the bottom of the surface impoundment.

* * * * *

(e) * * *

(2) * * *

(iii) The hazardous waste meets the requirements of § 264.1082(c)(4) of this subpart.

* * * * *

16. Section 264.1086 is amended by revising paragraphs (c)(2), (c)(4)(i), (d)(2), (d)(4)(i), and paragraph (g) introductory text to read as follows:

§ 264.1086 Standards: Containers.

* * * * *

(c) * * *

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (c)(1)(iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

* * * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the

container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to 40 CFR part 262 (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

* * * * *

(d) * * *

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

* * * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to 40 CFR part 262 (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

* * * * *

(g) To determine compliance with the no detectable organic emissions requirement of paragraph (d)(1)(ii) of this section, the procedure specified in § 264.1083(d) of this subpart shall be used.

* * * * *

17. Section 264.1087 is amended by revising paragraphs (c)(3)(ii) and (c)(7) to read as follows:

§ 264.1087 Standards: Closed-vent systems and control devices.

* * * * *

(c) * * *

(3) * * *

(ii) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of 40 CFR 264.1033(n), regardless of the average volatile organic concentration of the carbon.

* * * * *

(7) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in 40 CFR 264.1033(f)(2) and 40 CFR 264.1033(l). The readings from each monitoring device required by 40 CFR 264.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

18. Section 264.1089 is amended by revising paragraphs (a), (b)(1)(ii)(B), and (f)(1) and adding paragraph (j) to read as follows:

§ 264.1089 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to requirements of this subpart shall record and maintain the information specified in paragraphs (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraphs (i) and (j) of this section, records required by this section shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraphs (i) and (j) of this section shall be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1080(d) or § 264.1080(b)(7) of this subpart, respectively.

(b) * * *

(1) * * *

(ii) * * *

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of § 264.1084 of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

* * * * *

(f) * * *

(1) For tanks, surface impoundments, and containers exempted under the hazardous waste organic concentration conditions specified in § 264.1082(c)(1) or §§ 264.1082(c)(2)(i) through (c)(2)(vi) of this subpart, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 264.1083 of this subpart.

* * * * *

(j) For each hazardous waste management unit not using air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the requirements of § 264.1080(b)(7) of this subpart, the owner and operator shall record and maintain the following information:

(1) Certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

(2) Identification of the specific requirements codified under 40 CFR

part 60, part 61, or part 63 with which the waste management unit is in compliance.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

19. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart B—General Facility Standards

20. Section 265.15 is amended by revising paragraph (b)(4) to read as follows:

§ 265.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058, and 265.1084 through 265.1090 of this part, where applicable.

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

21. Section 265.73 is amended by revising paragraph (b)(6), and leaving the "COMMENT" at the end of the paragraph, to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and by §§ 265.19, 265.90, 265.94, 265.191, 265.193, 265.195, 265.222, 265.223, 265.226, 265.255, 265.259, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302 through 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090 of this part.

* * * * *

Subpart AA—Air Emission Standards for Process Vents

22. Section 265.1030 is amended by revising paragraph (b)(3), leaving the "NOTE" at the end of paragrpah (b)(3), and adding paragraph (d), to read as follows:

§ 265.1030 Applicability.

* * * * *

(b) * * *

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the requirements of 40 CFR 261.6.

(d) The requirements of this subpart do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this subpart are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.

23. Section 265.1033 is amended by revising paragraphs (a)(2) and (f)(2)(vi)(B) to read as follows:

§ 265.1033 Standards: Closed-vent systems and control devices.

(a) * * *

(2)(i) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the requirements of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(ii) Any unit that begins operation after December 21, 1990, and is subject to the requirements of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(iii) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(iv) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997, due to an action other than those described in paragraph (a)(2)(iii) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

* * * * *

(f) * * *

(2) * * *

(vi) * * *

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius (°C) or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

24. Section 265.1050 is amended by revising paragraphs (b)(3) and (e) to read as follows:

§ 265.1050 Applicability.

* * * * *

(b) * * *

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or

container) and is not a recycling unit under the provisions of 40 CFR 261.6.

* * * * *

(e) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of §§ 265.1052 through 265.1060 of this subpart if it is identified, as required in § 265.1064(g)(6) of this subpart.

* * * * *

25. Section 265.1060 is revised to read as follows:

§ 265.1060 Standards: Closed-vent systems and control devices.

(a) Owners and operators of closed-vent systems and control devices subject to this subpart shall comply with the provisions of § 265.1033 of this part.

(b)(1) The owner or operator of an existing facility who can not install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(2) Any units that begin operation after December 21, 1990, and are subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(3) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(4) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997 due to an action other than those described in paragraph (b)(3) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

26. Section 265.1062 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 265.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

* * * * *

(b) * * *

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., monitor for leaks once every six months) for the valves subject to the requirements in § 265.1057 of this subpart.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in § 265.1057 of this subpart.

* * * * *

27. Section 265.1064 is amended by revising paragraphs (g)(6) and (m) to read as follows:

§ 265.1064 Recordkeeping requirements.

* * * * *

(g) * * *

(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

* * * * *

(m) The owner or operator of any facility with equipment that is subject to this subpart and to leak detection, monitoring, and repair requirements under regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to § 265.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulation at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

28. Section 265.1080 is amended by revising paragraphs (b)(1) and the introductory paragraph of (c) to read as follows:

§ 265.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

* * * * *

(c) For the owner and operator of a facility subject to this subpart who has received a final permit under RCRA section 3005 prior to December 6, 1996, the following requirements apply:

* * * * *

29. Section 265.1081 is amended by revising the definition of "In light material service" to read as follows:

§ 265.1081 Definitions.

* * * * *

In light material service means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 °C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight.

* * * * *

30. Section 265.1082 is revised to read as follows:

§ 265.1082 Schedule for implementation of air emission standards.

(a) Owners or operators of facilities existing on December 6, 1996 and subject to subparts I, J, and K of this part shall meet the following requirements:

(1) Install and begin operation of all control equipment or waste management units required to comply with this subpart and complete modifications of production or

treatment processes to satisfy exemption criteria in accordance with § 265.1083(c) of this subpart by December 6, 1996, except as provided for in paragraph (a)(2) of this section.

(2) When control equipment or waste management units required to comply with this subpart cannot be installed and in operation or modifications of production or treatment processes to satisfy exemption criteria in accordance with § 265.1083(c) of this subpart cannot be completed by December 6, 1996, the owner or operator shall:

(i) Install and begin operation of the control equipment and waste management units, and complete modifications of production or treatment processes as soon as possible but no later than December 8, 1997.

(ii) Prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for control equipment, waste management units, and production or treatment process modifications; initiation of on-site installation of control equipment or waste management units, and modifications of production or treatment processes; completion of control equipment or waste management unit installation, and production or treatment process modifications; and performance of testing to demonstrate that the installed equipment or waste management units, and modified production or treatment processes meet the applicable standards of this subpart.

(iii) For facilities subject to the recordkeeping requirements of § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in the operating record no later than December 6, 1996.

(iv) For facilities not subject to § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility no later than December 6, 1996.

(b) Owners or operators of facilities and units in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to subparts I, J, or K of this part shall meet the following requirements:

(1) Install and begin operation of control equipment or waste management units required to comply with this subpart, and complete modifications of production or treatment processes to satisfy exemption criteria of § 265.1083(c) of this subpart by the effective date of the amendment, except as provided for in paragraph (b)(2) of this section.

(2) When control equipment or waste management units required to comply with this subpart cannot be installed and begin operation, or when modifications of production or treatment processes to satisfy exemption criteria of § 265.1083(c) of this subpart cannot be completed by the effective date of the amendment, the owner or operator shall:

(i) Install and begin operation of the control equipment or waste management unit, and complete modification of production or treatment processes as soon as possible but no later than 30 months after the effective date of the amendment.

(ii) For facilities subject to the recordkeeping requirements of § 265.73 of this part, enter and maintain the implementation schedule specified in paragraph (a)(2)(ii) of this section in the operating record no later than the effective date of the amendment, or

(iii) For facilities not subject to § 265.73 of this part, the owner or operator shall enter and maintain the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility site no later than the effective date of the amendment.

(c) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997 due to an action other than those described in paragraph (b) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

(d) The Regional Administrator may elect to extend the implementation date for control equipment at a facility, on a case by case basis, to a date later than December 8, 1997, when special circumstances that are beyond the facility owner's or operator's control delay installation or operation of control equipment, and the owner or operator has made all reasonable and prudent attempts to comply with the requirements of this subpart.

31. Section 265.1083 is amended by revising paragraphs (b), (c)(2)(i), (c)(2)(ix)(A), (c)(2)(ix)(B), (c)(3), and (c)(4)(ii) to read as follows:

§ 265.1083 Standards: General.

* * * * *

(b) The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in §§ 265.1085 through 265.1088 of this subpart, as applicable to the hazardous waste management unit, except as provided for in paragraph (c) of this section.

(c) * * *

(2) * * *

(i) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_t) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in § 265.1084(b) of this subpart.

* * * * *

(ix) * * *

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A, or a value of 25 ppmw, whichever is less.

(B) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8 x 10^{-6} atmospheres gram-mole m^3] at 25 degrees Celsius.

(3) A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of paragraph (c)(2)(iv) of this section.

(4) * * *

(ii) The organic hazardous constituents in the waste have been treated by the treatment technology established by the EPA for the waste in 40 CFR 268.42(a), or have been removed or destroyed by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

* * * * *

32. Section 265.1084 is amended by adding paragraphs (a)(3)(v) and (b)(3)(v) and by revising paragraphs (a)(2), (a)(3)(ii)(B), (a)(3)(iii) introductory text, (a)(3)(iii)(A), (a)(3)(iii)(F) introductory text, (a)(3)(iii)(G), (a)(3)(iii)(G)(*1*), (a)(3)(iv), (a)(4)(iv), (b)(1), (b)(3)(ii)(B), (b)(3)(iii) introductory text, (b)(3)(iii)(F) introductory text, (b)(3)(iii)(G) introductory text, (b)(3)(iv), (b)(8)(iii), (b)(9)(iv), and (d)(5)(ii) to read as follows:

§ 265.1084 Waste determination procedures.

(a) * * *

(2) For a waste determination that is required by paragraph (a)(1) of this section, the average VO concentration of a hazardous waste at the point of waste origination shall be determined using either direct measurement as specified in paragraph (a)(3) of this section or by knowledge as specified in paragraph (a)(4) of this section.

(3) * * *

(ii) * * *

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

* * * * *

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (a)(3)(iii)(A) through (a)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (a)(3)(iii)(B) through (a)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (a)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the concentration of each individual chemical constituent measured in the waste by a method other than Method 25D may be corrected to the concentration had it been measured using Method 25D by multiplying the measured concentration by the constituent-specific adjustment factor (f_{m25D}) as specified in paragraph (a)(4)(iii) of this section. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

(A) Method 25D in 40 CFR part 60, appendix A.

* * * * *

(F) Method 8260 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8260. The quality assurance program shall include the following elements:

* * * * *

(G) Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8270. The quality assurance program shall include the following elements:

(*1*) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

* * * * *

(iv) Calculations.

(A) The average VO concentration ($\bar{C}$) on a mass-weighted basis shall be calculated by using the results for all waste determinations conducted in accordance with paragraphs (a)(3)(ii) and (iii) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

where:

$\bar{C}$ = Average VO concentration of the hazardous waste at the point of waste origination on a mass-weighted basis, ppmw.

i = Individual waste determination "i" of the hazardous waste.

n = Total number of waste determinations of the hazardous waste conducted for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous waste stream represented by C_i, kg/hr.

Q_T = Total mass quantity of hazardous waste during the averaging period, kg/hr.

C_i = Measured VO concentration of waste determination "i" as determined in accordance with the requirements of paragraph (a)(3)(iii) of this section (i.e. the average of the four or more samples specified in paragraph (a)(3)(ii)(B) of this section), ppmw.

(B) For the purpose of determining C_i, for individual waste samples analyzed in accordance with paragraph (a)(3)(iii) of this section, the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(*1*) If Method 25D in 40 CFR part 60, Appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

(*2*) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius.

(v) Provided that the test method is appropriate for the waste as required under paragraph (a)(3)(iii) of this section, the EPA will determine compliance based on the test method used by the owner or operator as recorded pursuant to § 265.1090(f)(1) of this subpart.

(4) * * *

(iv) In the event that the Regional Administrator and the owner or operator disagree on a determination of the average VO concentration for a hazardous waste stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in paragraph (a)(3) of this section shall be used to establish compliance with the applicable requirements of this subpart. The Regional Administrator may perform or request that the owner or operator perform this determination using direct measurement. The owner or operator may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of paragraph (a)(3)(iii) of this section.

(b) * * *

(1) An owner or operator shall perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of § 265.1083 (c)(2)(i) through (c)(2)(vi) of this subpart from using air emission controls in accordance with standards specified in §§ 265.1085 through 265.1088 of this subpart, as applicable to the waste management unit.

* * * * *

(3) * * *

(ii) * * *

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

* * * * *

(iii) *Analysis.* Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (b)(3)(iii)(A) through (b)(3)(iii)(I) of this section, including appropriate quality-assurance and quality control (QA/QC) checks and use of target compounds for calibration. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) of this part, or § 265.1083(c)(2)(i) through (c)(2)(vi) of this subpart are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (b)(3)(iii)(B) through (b)(3)(iii)(C) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (b)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the concentration of each individual chemical constituent measured in the waste by a method other than Method 25D may be corrected to the concentration had it been measured using Method 25D by multiplying the measured concentration by the constituent-specific adjustment factor (f_{m25D}) as specified in paragraph (b)(4)(iii) of this section. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

* * * * *

(F) Method 8260 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8260. The quality assurance program shall include the following elements:

* * * * *

(G) Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8270. The quality assurance program shall include the following elements:

* * * * *

(iv) *Calculations.* The average VO concentration ($\bar{C}$) on a mass-weighted basis shall be calculated by using the results for all waste determinations conducted in accordance with paragraphs (b)(3)(ii) and (iii) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

where:

$\bar{C}$=Average VO concentration of the hazardous waste at the point of waste treatment on a mass-weighted basis, ppmw.

i=Individual waste determination "i" of the hazardous waste.

n=Total number of waste determinations of the hazardous waste conducted for the averaging period (not to exceed 1 year).

Q_i=Mass quantity of hazardous waste stream represented by C_i, kg/hr.

Q_T=Total mass quantity of hazardous waste during the averaging period, kg/hr.

C_i=Measured VO concentration of waste determination "i" as determined in accordance with the requirements of paragraph (b)(3)(iii) of this

section (i.e. the average of the four or more samples specified in paragraph (b)(3)(ii)(B) of this section), ppmw.

(v) Provided that the test method is appropriate for the waste as required under paragraph (b)(3)(iii) of this section, compliance shall be determined based on the test method used by the owner or operator as recorded pursuant to § 265.1090(f)(1) of this subpart.

* * * * *

(8) * * *

(iii) The MR shall be calculated by using the mass flow rate determined in accordance with the requirements of paragraph (b)(8)(ii) of this section and the following equation:

$MR = E_b - E_a$

Where:

MR=Actual organic mass removal rate, kg/hr.

E_b=Waste volatile organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

E_a=Waste volatile organic mass flow exiting process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

* * * * *

(9) * * *

(iv) The MR_{bio} shall be calculated by using the mass flow rates and fraction of organic biodegraded determined in accordance with the requirements of paragraphs (b)(9)(ii) and (b)(9)(iii) of this section, respectively, and the following equation:

$MR_{bio} = E_b \times F_{bio}$

Where:

MR_{bio}=Actual organic mass biodegradation rate, kg/hr.

E_b=Waste organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

F_{bio}=Fraction of organic biodegraded as determined in accordance with the requirements of paragraph (b)(9)(iii) of this section.

* * * * *

(d) * * *

(5) * * *

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.

* * * * *

33. Section 265.1085 is amended by revising the introductory text of paragraph (c)(2)(iii), revising (c)(2)(iii)(B), adding paragraph (e)(4), revising paragraph (f)(3)(i)(D)(*4*), adding paragraph (f)(4), and adding paragraph (j)(2)(iii) to read as follows:

§ 265.1085 Standards: Tanks.

* * * * *

(c) * * *

(2) * * *

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

* * * * *

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous waste is managed in the tank, except as provided for in paragraphs (c)(2)(iii)(B)(*1*) and (*2*) of this section.

(*1*) During periods it is necessary to provide access to the tank for performing the activities of paragraph (c)(2)(iii)(B)(*2*) of this section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(*2*) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for the removal of accumulated sludge or other residues from the bottom of the tank

* * * * *

(e) * * *

(4) Safety devices, as defined in § 265.1081 of this subpart, may be installed and operated as necessary on any tank complying with the requirements of paragraph (e) of this section.

(f) * * *

(3) * * *

(i) * * *

(D) * * *

(*4*) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

* * * * *

(4) Safety devices, as defined in 40 CFR 265.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (f) of this section.

* * * * *

(j) * * *

(2) * * *

(iii) The hazardous waste meets the requirements of § 265.1083(c)(4) of this subpart.

* * * * *

34. Section 265.1086 is amended by revising paragraphs (b)(2), (d)(1)(iii), and (d)(2)(i)(B) and adding paragraph (e)(2)(iii) to read as follows:

§ 265.1086 Standards: Surface impoundments.

* * * * *

(b) * * *

(2) A cover that is vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (d) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

* * * * *

(2) * * *

(i) * * *

(B) To remove accumulated sludge or other residues from the bottom of the surface impoundment.

* * * * *

(e) * * *

(2) * * *

(iii) The hazardous waste meets the requirements of § 265.1083(c)(4) of this subpart.

* * * * *

35. Section 265.1087 is amended by revising paragraphs (c)(4)(i), (d)(4)(i), and the introductory text of paragraph (g) to read as follows:

§ 265.1087 Standards: Containers.

* * * * *

(c) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time

the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to 40 CFR part 262 (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

* * * * *

(d) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to 40 CFR part 262 (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at § 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

* * * * *

(g) To determine compliance with the no detectable organic emissions requirements of paragraph (d)(1)(ii) of this section, the procedure specified in § 265.1084(d) of this subpart shall be used.

* * * * *

36. Section 265.1088 is amended by revising paragraphs (c)(3)(ii) and (c)(7) to read as follows:

§ 265.1088 Standards: Closed-vent systems and control devices.

* * * * *

(c) * * *

(3) * * *

(ii) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of 40 CFR 265.1033(m), regardless of the average volatile organic concentration of the carbon.

* * * * *

(7) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in 40 CFR 265.1033(f)(2) and 40 CFR 265.1033(k). The readings from each monitoring device required by 40 CFR 265.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

37. Section 265.1090 is amended by revising paragraphs (a), (b)(1)(ii)(B), and (f)(1) and adding paragraph (j) to read as follows:

§ 265.1090 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to requirements in this subpart shall record and maintain the information specified in paragraphs (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraphs (i) and (j) of this section, records required by this section shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraphs (i) and (j) of this section shall be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in §§ 265.1085 through 265.1088 of this subpart in accordance with the conditions specified in § 265.1080(d) or § 265.1080(b)(7) of this subpart, respectively.

(b) * * *

(1) * * *

(ii) * * *

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 265.1085 of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

* * * * *

(f) * * *

(1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in § 265.1083(c)(1) or § 265.1084(c)(2)(i) through (c)(2)(vi) of this subpart, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 265.1084 of this subpart.

* * * * *

(j) For each hazardous waste management unit not using air emission controls specified in §§ 265.1085 through 265.1088 of this subpart in accordance with the provisions of § 265.1080(b)(7) of this subpart, the owner and operator shall record and maintain the following information:

(1) Certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

(2) Identification of the specific requirements codified under 40 CFR part 60, part 61, or part 63 with which the waste management unit is in compliance.

* * * * *

38. Part 265, Appendix VI is revised to read as follows:

Appendix VI to Part 265—Compounds With Henry's Law Constant Less Than 0.1 Y/X

Compound name	CAS No.
Acetaldol	107–89–1
Acetamide	60–35–5
2-Acetylaminofluorene	53–96–3
3-Acetyl-5-hydroxypiperidine.	
3-Acetylpiperidine	618–42–8
1-Acetyl-2-thiourea	591–08–2
Acrylamide	79–06–1
Acrylic acid	79–10–7
Adenine	73–24–5
Adipic acid	124–04–9
Adiponitrile	111–69–3
Alachlor	15972–60–8
Aldicarb	116–06–3
Ametryn	834–12–8
4-Aminobiphenyl	92–67–1
4-Aminopyridine	504–24–5
Aniline	62–53–3
o-Anisidine	90–04–0
Anthraquinone	84–65–1
Atrazine	1912–24–9
Benzenearsonic acid	98–05–5
Benzenesulfonic acid	98–11–3
Benzidine	92–87–5
Benzo(a)anthracene	56–55–3
Benzo(k)fluoranthene	207–08–9
Benzoic acid	65–85–0
Benzo(g,h,i)perylene	191–24–2
Benzo(a)pyrene	50–32–8
Benzyl alcohol	100–51–6
gamma-BHC	58–89–9
Bis(2-ethylhexyl)phthalate	117–81–7
Bromochloromethyl acetate.	
Bromoxynil	1689–84–5
Butyric acid	107–92–6
Caprolactam (hexahydro-2H-azepin-2-one)	105–60–2
Catechol (o-dihydroxybenzene)	120–80–9
Cellulose	9004–34–6
Cell wall.	
Chlorhydrin (3-Chloro-1,2-propanediol)	96–24–2
Chloroacetic acid	79–11–8
2-Chloroacetophenone	93–76–5
p-Chloroaniline	106–47–8
p-Chlorobenzophenone	134–85–0
Chlorobenzilate	510–15–6
p-Chloro-m-cresol (6-chloro-m-cresol)	59–50–7
3-Chloro-2,5-diketopyrrolidine.	
Chloro-1,2-ethane diol.	
4-Chlorophenol	106–48–9
Chlorophenol polymers (2-chlorophenol & 4-chlorophenol)	95–57–8 & 106–48–9
1-(o-Chlorophenyl)thiourea	5344–82–1
Chrysene	218–01–9
Citric acid	77–92–9
Creosote	8001–58–9
m-Cresol	108–39–4
o-Cresol	95–48–7
p-Cresol	106–44–5
Cresol (mixed isomers)	1319–77–3
4-Cumylphenol	27576–86
Cyanide	57–12–5
4-Cyanomethyl benzoate.	
Diazinon	333–41–5
Dibenzo(a,h)anthracene	53–70–3
Dibutylphthalate	84–74–2
2,5-Dichloroaniline (N,N'-dichloroaniline)	95–82–9
2,6-Dichlorobenzonitrile11	1194–65–6
2,6-Dichloro-4-nitroaniline	99–30–9
2,5-Dichlorophenol	333–41–5
3,4-Dichlorotetrahydrofuran	3511–19
Dichlorvos (DDVP)	62737
Diethanolamine	111–42–2
N,N-Diethylaniline	91–66–7

Compound name	CAS No.
Diethylene glycol	111–46–6
Diethylene glycol dimethyl ether (dimethyl Carbitol)	111–96–6
Diethylene glycol monobutyl ether (butyl Carbitol)	112–34–5
Diethylene glycol monoethyl ether acetate (Carbitol acetate)	112–15–2
Diethylene glycol monoethyl ether (Carbitol Cellosolve)	111–90–0
Diethylene glycol monomethyl ether (methyl Carbitol)	111–77–3
N,N'-Diethylhydrazine	1615–80–1
Diethyl (4-methylumbelliferyl) thionophosphate	299–45–6
Diethyl phosphorothioate	126–75–0
N,N'-Diethylpropionamide	15299–99–7
Dimethoate	60–51–5
2,3-Dimethoxystrychnidin-10-one	357–57–3
4-Dimethylaminoazobenzene	60–11–7
7,12-Dimethylbenz(a)anthracene	57–97–6
3,3-Dimethylbenzidine	119–93–7
Dimethylcarbamoyl chloride	79–44–7
Dimethyldisulfide	624–92–0
Dimethylformamide	68–12–2
1,1-Dimethylhydrazine	57–14–7
Dimethylphthalate	131–11–3
Dimethylsulfone	67–71–0
Dimethylsulfoxide	67–68–5
4,6-Dinitro-o-cresol	534–52–1
1,2-Diphenylhydrazine	122–66–7
Dipropylene glycol (1,1'-oxydi-2-propanol)	110–98–5
Endrin	72–20–8
Epinephrine	51–43–4
mono-Ethanolamine	141–43–5
Ethyl carbamate (urethane)	5–17–96
Ethylene glycol	107–21–1
Ethylene glycol monobutyl ether (butyl Cellosolve)	111–76–2
Ethylene glycol monoethyl ether (Cellosolve)	110–80–5
Ethylene glycol monoethyl ether acetate (Cellosolve acetate)	111–15–9
Ethylene glycol monomethyl ether (methyl Cellosolve)	109–86–4
Ethylene glycol monophenyl ether (phenyl Cellosolve)	122–99–6
Ethylene glycol monopropyl ether (propyl Cellosolve)	2807–30–9
Ethylene thiourea (2-imidazolidinethione)	9–64–57
4-Ethylmorpholine	100–74–3
3-Ethylphenol	620–17–7
Fluoroacetic acid, sodium salt	62–74–8
Formaldehyde	50–00–0
Formamide	75–12–7
Formic acid	64–18–6
Fumaric acid	110–17–8
Glutaric acid	110–94–1
Glycerin (Glycerol)	56–81–5
Glycidol	556–52–5
Glycinamide	598–41–4
Glyphosate	1071–83–6
Guthion	86–50–0
Hexamethylene-1,6-diisocyanate (1,6-diisocyanatohexane)	822–06–0
Hexamethyl phosphoramide	680–31–9
Hexanoic acid	142–62–1
Hydrazine	302–01–2
Hydrocyanic acid	74–90–8
Hydroquinone	123–31–9
Hydroxy-2-propionitrile (hydracrylonitrile)	109–78–4
Indeno (1,2,3-cd) pyrene	193–39–5
Lead acetate	301–04–2
Lead subacetate (lead acetate, monobasic)	1335–32–6
Leucine	61–90–5
Malathion	121–75–5
Maleic acid	110–16–7
Maleic anhydride	108–31–6
Mesityl oxide	141–79–7
Methane sulfonic acid	75–75–2
Methomyl	16752–77–5
p-Methoxyphenol	150–76–5
Methyl acrylate	96–33–3
4,4'-Methylene-bis-(2-chloroaniline)	101–14–4
4,4'-Methylenediphenyl diisocyanate (diphenyl methane diisocyanate)	101–68–8
4,4'-Methylenedianiline	101–77–9
Methylene diphenylamine (MDA).	
5-Methylfurfural	620–02–0

Compound name	CAS No.
Methylhydrazine	60–34–4
Methyliminoacetic acid.	
Methyl methane sulfonate	66–27–3
1-Methyl-2-methoxyaziridine.	
Methylparathion	298–00–0
Methyl sulfuric acid (sulfuric acid, dimethyl ester)	77–78–1
4-Methylthiophenol	106–45–6
Monomethylformamide (N-methylformamide)	123–39–7
Nabam	142–59–6
alpha-Naphthol	90–15–3
beta-Naphthol	135–19–3
alpha-Naphthylamine	134–32–7
beta-Naphthylamine	91–59–8
Neopentyl glycol (dimethylolpropane)	126–30–7
Niacinamide	98–92–0
o-Nitroaniline	88–74–4
Nitroglycerin	55–63–0
2-Nitrophenol	88–75–5
4-Nitrophenol	100–02–7
N-Nitrosodimethylamine	62–75–9
Nitrosoguanidine	674–81–7
N-Nitroso-n-methylurea	684–93–5
N-Nitrosomorpholine (4-nitrosomorpholine)	59–89–2
Oxalic acid	144–62–7
Parathion	56–38–2
Pentaerythritol	115–77–5
Phenacetin	62–44–2
Phenol	108–95–2
Phenylacetic acid	103–82–2
m-Phenylene diamine	108–45–2
o-Phenylene diamine	95–54–5
p-Phenylene diamine	106–50–3
Phenyl mercuric acetate	62–38–4
Phorate	298–02–2
Phthalic anhydride	85–44–9
alpha-Picoline (2-methyl pyridine)	109–06–8
1,3-Propane sulfone	1120–71–4
beta-Propiolactone	57–57–8
Proporur (Baygon).	
Propylene glycol	57–55–6
Pyrene	129–00–0
Pyridinium bromide	39416–48–3
Quinoline	91–22–5
Quinone (p-benzoquinone)	106–51–4
Resorcinol	108–46–3
Simazine	122–34–9
Sodium acetate	127–09–3
Sodium formate	141–53–7
Strychnine	57–24–9
Succinic acid	110–15–6
Succinimide	123–56–8
Sulfanilic acid	121–47–1
Terephthalic acid	100–21–0
Tetraethyldithiopyrophosphate	3689–24–5
Tetraethylenepentamine	112–57–2
Thiofanox	39196–18–4
Thiosemicarbazide	79–19–6
2,4-Toluenediamine	95–80–7
2,6-Toluenediamine	823–40–5
3,4-Toluenediamine	496–72–0
2,4-Toluene diisocyanate	584–84–9
p-Toluic acid	99–94–5
m-Toluidine	108–44–1
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1
Triethanolamine	102–71–6
Triethylene glycol dimethyl ether.	
Tripropylene glycol	24800–44–0
Warfarin	81–81–2
3,4-Xylenol (3,4-dimethylphenol)	95–65–8

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

39. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

40. Section 270.14 is amended by revising paragraph (b)(5) to read as follows:

§ 270.14 Contents of part B: General requirements.

* * * * *

(b) * * *

(5) A copy of the general inspection schedule required by § 264.15(b) of this part. Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1084, 264.1085, 264.1086, and 264.1088 of this part.

* * * * *

[FR Doc. 97-31792 Filed 12-5-97; 8:45 am]
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TITLE 33
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT

SERIES 20
HAZARDOUS WASTE MANAGEMENT RULE

§33-20-1. Scope And Authority.

1.1. Scope and Purpose. -- The purpose of this rule is to provide for the regulation of the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment.

1.2. Authority. -- W. Va. Code §22-18-1 et seq.

1.3. Filing Date. -- April 29, 1998.

1.4. Effective Date. -- July 1, 1998.

1.5. Amendment of Former Rule. -- This rule amends the Hazardous Waste Management rule, 33 CSR 20, in effect prior to the date this rule becomes effective.

1.6. Incorporation by Reference. -- Whenever either federal statutes or regulations or state statutes or rules are incorporated by reference into this rule, the reference is to that statute or regulation in effect on July 1, 1996, unless otherwise noted in the text of this rule. This incorporation by reference is not intended to replace or abrogate federal authorities granted the Resource Conservation and Recovery Act of 1976.

1.6.a. In applying the federal requirements incorporated by reference throughout this rule, the following exceptions or substitutions apply, unless the context clearly requires otherwise or the referenced rule cannot be delegated to the state:

1.6.a.1. "Office of waste management, West Virginia division of environmental protection" shall be substituted for "environmental protection agency."

1.6.a.2. "Chief of the office of waste management, West Virginia division of environmental protection" shall be substituted for "administrator," "regional administrator," and "director." In those sections that are not adopted by reference or that are not delegable to the state, "administrator", "regional administrator", and "director" shall have the meaning defined in 40 CFR §260.10.

1.6.a.3. Whenever the regulations require publication in the "Federal Register" compliance shall be accomplished by publication in the "West Virginia Register," a part of the "State Register" created pursuant to the provisions of W. Va. Code, §29A-2-2 for those areas applicable and delegable to the state.

1.6.a.4. Whenever in the federal regulation reference is made to the Resource Conservation and Recovery Act of 1976 §3010, as amended (42 U.S.C. § 6930), the reference should be to section 4 of this rule. The notification requirements of the Resource Conservation and Recovery Act of 1976 §§3010 remain in effect and will be satisfied by compliance with section 4 of this rule.

1.7. Cross Reference. -- Whenever a reference is cited in a provision incorporated by reference which cross reference was not incorporated by reference, the provisions of the applicable state law and rules, if any, control to the extent of any conflict or inconsistency. Where state rules are present and there is a question, the

state rules govern. Where there are no state regulations present, federal regulations govern. For example, cross reference to 40 CFR part 264 subpart O -- Incinerators, which was not incorporated by reference, would need to be referenced to the applicable West Virginia division of environmental protection, office of air quality rule, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

1.8. Inconsistencies with the W. Va. Code. -- In the event a provision of the code of federal regulations incorporated by reference herein includes a section which is inconsistent with the W. Va. Code, the W. Va. Code controls to the extent federal law does not preempt the state law. In the event a provision of the code of federal regulations incorporated by reference herein is beyond the scope of authority granted the division of environmental protection pursuant to statute, or is in excess of the statutory authority, such provision shall be and remain effective only to the extent authorized by the W. Va. Code.

1.9. Provisions Applied Prospectively. -- The provisions of this rule are to be applied prospectively. All orders, determinations, demonstrations, rules, permits, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted, approved or allowed to become effective by the chief, and which are in effect on the date this rule becomes effective, shall continue in effect according to their terms unless modified, suspended or revoked in accordance with the law.

§33-20-2. Hazardous Waste Management System: General.

2.1. 40 CFR Part 260. -- The provisions of 40 CFR part 260 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

2.1.a. The definitions of terms used in this rule shall have the meaning ascribed to them in 40 CFR parts 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 273 and 279 with the exceptions, modifications and additions set forth in this section.

2.1.a.1. "Major facility" means a disposal or treatment facility which disposes or treats an amount of hazardous waste exceeding or equal to one thousand (1000) tons during a calendar year, and any storage facility having a storage capacity for one thousand (1000) tons of hazardous waste or more.

2.1.a.2. "Full regulation" means those rules applicable to generators of greater than one thousand (1000) kilograms of non-acutely hazardous waste in a calendar month and/or who treat, store or dispose of hazardous waste at their facility.

2.1.a.3. "Mercury containing lamp" means an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp. Mercury containing lamps commonly include fluorescent lamps.

2.1.a.4. "Universal Waste" means any of the following hazardous wastes that are managed under the universal waste requirements of 40 CFR part 273:

(1) Batteries as described in 40 CFR §273.2;

(2) Pesticides as described in 40 CFR §273.3; and

(3) Thermostats and mercury containing lamps as described in 40 CFR §273.4.

2.2. 40 CFR §260.2. -- The provisions of 40 CFR §260.2 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W. Va. Code, §22-18-12.

2.3. 40 CFR §§260.21(d) and 260.23. -- The provisions of 40 CFR §260.21(d) and 40 CFR §260.23 are excepted from incorporation by reference.

2.4. Petitions for Waste Exclusions.

2.4.a. Persons desiring to exclude a waste at a particular generating facility from the lists set forth in 40 CFR part 261 may petition the chief for such an exclusion after having received approval from the administrator of the environmental protection agency. The petition shall include:

2.4.a.1. A copy of the petition submitted to the administrator of the environmental protection agency pursuant to 40 CFR §260.22, including all demonstration information;

2.4.a.2. A copy of the administrator's approval granting the exclusion pursuant to 40 CFR §260.20(d); and

2.4.a.3. Any other additional information which may be required for the chief to evaluate the petition.

2.4.b. Within one hundred and twenty (120) days of the filing of the petition the chief shall decide whether to approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the chief shall notify the petitioner of such action in writing, setting forth the reasons therefor.

2.4.c. The chief shall not deny a petition to exclude a waste at a particular facility that has been approved by the administrator unless scientifically supportable reasons for such denial are advanced which had not been presented to the administrator.

2.5. Petitions to amend the regulations to include additional wastes as universal wastes.

2.5.a. Persons desiring to include a waste as a universal waste may petition the chief for such an inclusion after having received approval from the administrator of the environmental protection agency. The petition shall include:

2.5.a.1. A copy of the petition submitted to the administrator of the environmental protection agency pursuant to 40 CFR §260.23, including all demonstration information:

2.5.a.2. A copy of the administrator's approval granting the exclusion pursuant to 40 CFR §260.20 and 40 CFR part 273; and

2.5.a.3. Any other additional information which may be required for the chief to evaluate the petition.

2.5.b. Within one hundred and twenty (120) days of the filing of the petition the chief shall decide whether to approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the chief shall notify the petitioner of such action in writing, setting forth the reasons therefor.

2.5.c. The chief shall not deny a petition to include a waste as a universal waste that has been approved by the administrator unless scientifically supportable reasons for such denial are advanced which had not been presented to the administrator.

2.5.d. Any person may petition the chief to include a waste as a universal waste as follows:

2.5.d.1. Submit a petition to the chief demonstrating that the regulation under the universal waste regulations of 40 CFR part 273 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition should also include information required by 40 CFR §260.20(b), and include as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

2.5.d.2. The chief will grant or deny a petition using the factors listed in 40 CFR §273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR part 273 is appropriate for the waste or category of waste, will improve management practices for the

waste or category of waste, and will improve implementation of the hazardous waste program.

2.5.d.3. The decision of the chief shall be in writing and state the reasons to either grant or deny the petition. Any petitioner aggrieved by the decision of the chief may appeal the decision to the environmental quality board in accordance with the provisions of W. Va. Code §22-18-20.

§33-20-3. Identification and Listing of Hazardous Waste.

3.1. 40 CFR Part 261. -- The provisions of 40 CFR part 261 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

3.1.a. In order for a mixture of a waste and one or more hazardous wastes identified in 40 CFR §§261.3(a)(2)(iv) to be exempt from the definition of hazardous waste, the owner or operator must comply with the following:

3.1.a.1. Provide a certification in writing to the chief that groundwater monitoring complying with either 40 CFR part 265, subpart F or which is approved by the chief, is or will be in place at the wastewater treatment facility identified in 40 CFR §261.3(a)(2)(iv). A time schedule for the installation of such groundwater monitoring must be included. This requirement does not apply to wastewater treatment units or containers.

3.1.a.2. Before claiming an exemption, the owner or operator of each wastewater treatment facility receiving mixtures of wastes under 40 CFR §261.3(a)(2)(iv) shall notify the chief of the receipt of such wastes on a form prescribed by the chief.

3.1.a.3. Annually submit to the chief a list of hazardous wastes that are expected to be present in the mixture to be exempted.

3.2. The provisions of 40 CFR §261.5 (f)(3)(iv) and (g)(3)(iv) are excepted from incorporation by reference. Conditionally exempt small quantity generators shall notify the chief of their hazardous waste activity in accordance with Section 4 of this rule.

3.3. The provisions of 40 CFR §261.9 are amended by revising 40 CFR §261.9(c)to read as follows:

(c) Thermostats and mercury containing lamps as described in 40 CFR §273.4.

3.4. West Virginia recognizes the decision by the U.S. Court of Appeals for the District of Columbia Circuit which vacated several carbamate listings, {Dithiocarbamate Task Force v. Environmental Protection Agency, 98 F.3d 1394 (D.C. Cir. 1996)}. The following waste listings are excluded from the incorporation by reference of 40 CFR 261.

3.4.a. In 40 CFR §261.3(a)(2)(iv)(F) and (G), K156 and K157 are excluded to the extent that they encompass 3-iodo-2-propynol n-butylcarbamate (IPBC).

3.4.b. In 40 CFR §261.32, K160 is excluded and K156, K157 and K158 are excluded to the extent that they encompass 3-iodo-2-propynol n-butylcarbamate (IPBC).

3.4.c. In 40 CFR §261.33(f), the following wastes are excluded: U277, U365, U366, U375, U376, U377, U378, U379, U381, U382, U383, U384, U385, U386, U390, U391, U392, U393, U396, U400, U401, U402, U403 and U407.

3.4.d. In 40 CFR 261, Appendix VII, the basis for listing K160 is excluded, and the basis for listing K156, K157 and K158 is excluded to the extent that they encompass 3-iodo-2-propynol n-butylcarbamate (IPBC).

3.5. The provisions of 40 CFR §§261.1, 261.2, 261.4 and 261.8 regarding the recycling of certain scrap metals and shredded circuit boards as amended and finalized in 61 Federal Register

25998 (May 12, 1997) are hereby incorporated by reference.

§33-20-4. Notification of Hazardous Waste Activity Regulations.

4.1. Applicability. Any person that engages in a hazardous waste activity in the State of West Virginia shall notify the chief of these activities when such activity begins, unless such activities are exempted from the requirements of this rule.

4.1.a. Any person as described in subsection 4.1 of this rule that has notified the EPA or is subject to the requirements to notify EPA as specified in volume 45, number 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provision of section 4 of this rule.

4.1.b. The purpose of section 4 of this rule is to provide a means for the State of West Virginia to utilize the information provided by all who complied with the notification requirements of EPA as described in subdivision 4.1.a. of this rule or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in subdivision 4.1.a of this rule to notify the chief of their hazardous waste activities.

4.2. Notification. Any person that notified EPA of hazardous waste activities as referenced above in subsection 4.1 of this rule shall provide a copy of that notification to the chief.

4.2.a. Any person involved in hazardous waste activities that did not comply with the notification requirements of EPA, as referenced above in subsection 4.1 of the rules, but is subject to those requirements shall notify the chief in writing of his hazardous waste activities within thirty (30) days of the effective date of this rule. Notification may be accomplished by the use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

4.2.b. Any person exempted from the federal notification requirements as specified in 40 CFR §§261.6(b) and 261.5, but subject to West Virginia notification requirements, shall notify the chief in writing of his hazardous waste activities on the date of initiation of such activities. Notification may be accomplished by use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

4.2.c. One notification form is required for each generator.

4.2.d. A notification form is required for each storage, treatment, disposal, or other facility. However, if one facility site includes more than one storage, treatment, or disposal activity, only one notification form for the entire facility site is required.

4.2.e. Generators that store, treat, or dispose of hazardous waste on-site shall file a notification form for generation activities as well as storage, treatment, and disposal activities, unless such activities are exempted from the requirements of this rule.

4.2.f. New generators and those initiating activities subsequent to the EPA notification period referenced in subdivision 4.1.a. of this rule shall comply with the EPA identification number requirements and shall provide a copy of their application for an EPA identification number to the administrator.

§33-20-5. Standards Applicable to Generators of Hazardous Waste.

5.1. 40 CFR Part 262. -- The provisions of 40 CFR part 262 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

5.2. 40 CFR §262.10(g). -- The provisions of 40 CFR §262.10.(g) shall be excepted from incorporation.

5.2.a. A person who generates a hazardous waste as defined by 40 CFR part 261 is subject to the compliance requirements and penalties prescribed in W. Va. Code, §22-18-1 et seq. if he or she does not comply with the requirements of this rule. This rule in no way abrogates the enforcement authority of the Resource Conservation and Recovery Act of 1976 §3008.

5.2.b. All references to 40 CFR §262.10(g) shall be deemed references to subsection 5.2 and the subdivisions herein, as appropriate.

5.3. 40 CFR Part 262, Subpart E. -- The provisions of 40 CFR part 262, subpart E -- Exports of Hazardous Waste are excepted from incorporation by reference and shall remain the provenance of the environmental protection agency and in addition to the requirements contained therein, any person subject to the provisions of subpart E shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by and within the timeframes set forth in subpart E.

5.4. 40 CFR Part 262, Subpart F. -- The provisions of 40 CFR part 262, subpart F -- Imports of Hazardous Waste are excepted from incorporation by reference and in addition to the requirements contained therein, any person subject to the provisions of subpart F shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by and within the timeframes set forth in subpart F.

§33-20-6. Standards Applicable to Transporters of Hazardous Waste.

6.1. 40 CFR Part 263. -- The provisions of 40 CFR part 263 are hereby adopted and incorporated by reference insofar as said regulations relate to the transportation of hazardous waste by air and water.

6.2. Note. -- The use of railroads for the transportation of hazardous waste is regulated by the West Virginia public service commission rules, "Rules and Regulations Governing the Transportation of Hazardous Waste by Rail", 150 CSR 11. The use of the state highways for the transportation of hazardous waste is regulated under the West Virginia division of highways, "Transportation of Hazardous Wastes Upon the Roads and Highways", 157 CSR 7.

§33-20-7. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

7.1. 45 CSR 25, office of air quality. -- The standards in Section 7 of this rule apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste except as otherwise provided by law. In addition to the standards in section 7 of this rule, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities", apply to management facilities which may emit hazardous waste or the constituents thereof to the atmosphere including incineration facilities except as otherwise provided by law. For purposes of section 7 of this rule, the following persons are considered to be incinerating hazardous waste:

7.1.a. Owners or operators of hazardous waste incinerators; and

7.1.b. Owners or operators of boilers or industrial furnaces used to destroy wastes.

7.2. 40 CFR Part 264. -- The provisions of 40 CFR part 264 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

7.3. 40 CFR §264.1 -- The provisions of 40 CFR §264.1(g)(11)(iii) are amended to read as follows:

(iii) Thermostats and mercury containing lamps as described in 40 CFR §273.4.

7.4. Required Receipt of Identical Notification. -- The provisions of 40 CFR section 264.12(a)(1) and (2) are retained by the environmental protection agency; however, the chief of the office of waste management must receive identical notification.

7.5. Releases from Solid Waste Management Unit. -- The provisions of 40 CFR part 264, subpart F -- Releases from solid waste management units are incorporated by reference with the following modifications, exceptions and additions.

7.5.a. For purposes of 40 CFR §264.92, reference to the "regional administrator" shall be to the "environmental quality board." The environmental quality board establishes groundwater protection standards pursuant to the authority granted the board in W. Va. Code, §22-12-4.

7.5.b. For purposes of 40 CFR §264.94 and subparagraphs thereof, the environmental quality board rule on groundwater protection standards, 46 CSR 12 and the subparagraphs therein, shall apply as required pursuant to the authority granted the environmental quality board in W. Va. Code, §22-12-4.

7.5.c. The provisions of 40 CFR §264.99(g) are incorporated by reference with the following modifications:

7.5.c.1. The chief will specify in the facility permit the frequencies for collecting samples required under 40 CFR §264.99(g). This frequency shall not be less than once every five years.

7.6. Financial Requirement. -- The provisions of 40 CFR part 264, subpart H -- Financial Requirements are adopted and incorporated by reference with the following modifications:

7.6.a. The provisions of 40 CFR §§264.149 and 264.150 are excepted from incorporation by reference.

7.7. Provisions Relating to Incinerators. -- The provisions of 40 CFR §§264.343, 264.344, 264.345 and 264.347 relating to incinerators are excepted from incorporation by reference. Consult the rules of the air quality board regarding emissions from incinerators.

7.7.a. Consult the office of air quality, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

7.8. 40 CFR Part 264, Subparts AA, BB, CC. -- The provisions of 40 CFR part 264, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the office of air quality regarding air emissions.

§33-20-8. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

8.1. 40 CFR Part 265. -- The provisions of 40 CFR part 265 are adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

8.2. 40 CFR §265.1 -- The provisions of 40 CFR §265.1(c)(14)(iii) are amended to read as follows:

(iii) Thermostats and mercury containing lamps as described in 40 CFR §273.4.

8.3. 40 CFR §§265.12(a), 265.149 and 265.150. -- The provisions of 40 CFR §§ 265.12(a)(1) and (2), 265.149, and 265.150 are excepted from incorporation by reference. The chief of the office of waste management must receive identical notification.

8.4. 40 CFR §§265.345, 265.347, 265.352. -- The provisions of 40 CFR §§265.341, 265.345, 265.347 and 265.352 relating to incinerators are excepted from incorporation by reference. Consult the rules of the office of air quality regarding emissions from incinerators.

8.5. Thermal Treatment. -- The provisions of 40 CFR part 265, subpart P -- Thermal Treatment are incorporated by reference except for the provisions of 40 CFR §265.375 and 40 CFR §265.383 which are excepted from incorporation by reference. Consult the rules of the office of air quality regarding emissions from thermal treatment units.

8.6. 40 CFR Part 265 Subparts AA, BB, CC. -- The provisions of 40 CFR part 265, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the office of air quality regarding air emission standards for process vents and air emissions standards for equipment leaks.

§33-20-9. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

9.1. 40 CFR Part 266. -- The provisions of 40 CFR part 266 are hereby adopted and incorporated by reference. Consult the rules of the office of air quality regarding Subpart H of this part.

§33-20-10. Land Disposal Restrictions.

10.1. 40 CFR Part 268. -- The provisions of 40 CFR part 268 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

10.2. 40 CFR §268.1 -- The provisions of 40 CFR §268.1(f)(3) are amended to read as follows:

(3) Thermostats and mercury containing lamps as described in 40 CFR §273.4.

10.3. 40 CFR §§268.5, 268.6, 268.10 - 13, 268.42(b) and 268.44. -- The provisions of 40 CFR §§268.5, 268.6, 268.10, 268.11, 268.12, 268.13 and 268.42(b)are excepted from incorporation by reference.

10.4. Definition of Administrator in 40 CFR Part 268.40(b). The term "administrator" in 40 CFR part 268.40(b) shall retain its meaning as defined in 260.10.

10.5. The provisions of federal register, volume 62, number 33, February 19, 1997, page 7502 (et seq) "land disposal restrictions - corrections of tables; treatment standards for hazardous waste and universal treatment standards" are hereby incorporated by reference.

10.6. The provisions of 40 CFR §§268.1, 268.4, 268.7 and 268.9 regarding Land Disposal Restrictions amended and finalized in 61 Federal Register 25998 (May 12, 1997) are hereby incorporated by reference.

§33-20-11. The Hazardous Waste Permit Program.

11.1. 40 CFR Part 270. -- The provisions of 40 CFR part 270, 1995 ed., as amended by 61 FR 28508, June 5, 1996, are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section. All references in 40 CFR part 270 to 40 CFR part 124 shall be deemed to be references to the applicable provisions of subsections 11.5. through 11.15. of this rule. To the extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein shall control.

11.2. 40 CFR §270.1 -- The provisions of 40 CFR §270.1(c)(2)(viii)(C) are amended to read as follows:

(c) Thermostats and mercury containing lamps as described in 40 CFR § 273.4.

11.3. 40 CFR §270.2 Definitions.

11.3.a. Definition of "RCRA Permit". -- For purposes of this section, the term "RCRA permit" means "West Virginia hazardous waste management permit."

11.3.b. Definition of "Major Facility". -- The term "major facility" shall have the meaning given at paragraph 2.1.a.1. of this rule.

11.4. Application Fees.

11.4.a. Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, shall submit as part of said application a money order or cashier's check payable to "The Hazardous Waste Management Fund" of the state treasury. Persons required to obtain a permit-by-rule pursuant to these regulations are not required to pay a permit application fee.

11.4.b. Such fee shall be determined by the schedule set forth in table 1 of this rule. If the cumulative total of application fees imposed under this section equals or exceeds fifty thousand dollars ($50,000) then the person required to pay the fees may, at the person's option, elect to submit the fee payments in installments over a three year period. The installments submitted to the division of environmental protection may not be less frequent than annually and the amount submitted annually may not be less than one-third of the total amount due.

11.4.c. The chief reserves the right to promulgate rules establishing a permit renewal fee at a later date.

11.5. Draft Permits.

11.5.a. Once an application is complete, the chief shall tentatively decide whether to prepare a draft permit or to deny the application.

11.5.b. If the chief decides to prepare a draft permit, a draft permit shall be prepared that contains the following information:

11.5.b.1. All conditions under 40 CFR §§270.30 and 270.32;

11.5.b.2. All compliance schedules under 40 CFR §270.33;

11.5.b.3. All monitoring requirements under 40 CFR §270.31; and

11.5.b.4. Standards for treatment, storage, and disposal and other permit conditions under 40 CFR part 270.

11.5.c. A fact sheet prepared in accordance with subsection 11.6 of this rule shall accompany the draft permit. The fact sheet shall be based on the "administrative record" as defined in subsection 11.15 of this rule.

11.5.d. Any additional information considered to be necessary or proper.

11.5.e. If the chief tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application shall be accompanied with a statement of basis. If the chief's final decision is that the tenative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection 11.5 of this rule.

11.6. Fact Sheet.

11.6.a. A fact sheet shall be prepared by the chief for every draft permit for each hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The chief shall send this fact sheet to the applicant and, upon request, to any other person.

11.6.b. The fact sheet shall include, when applicable:

11.6.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;

11.6.b.2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged. A description of the type of wastes, fluids, or pollutants shall include, but not limited to, the characteristics of

the waste materials and the potential effects on public health and the environment;

11.6.b.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or rule provisions;

11.6.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

11.6.b.5. A description of the procedures for reaching a final decision on the draft permit including:

11.6.b.5.A. The beginning and ending dates of the comment period and the address where comments will be received;

11.6.b.5.B. Procedures for requesting a hearing and the nature of that hearing; and

11.6.b.5.C. Any other procedures by which the public may participate in the final decision; and

11.6.b.6. Name and telephone number of a person to contact for additional information.

11.7. Public Access to Information.

11.7.a. Any records, reports, or information and any permit, permit applications, and related documentation within the chief's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the chief that such records, reports, permit documentation, or information, or any part hereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the chief shall consider, treat, and protect such records as confidential.

11.7.b. It shall be the responsibility of the person claiming any information as confidential under the provisions of subsection 11.7. of this rule to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

11.7.c. Any document submitted to the chief which contains information for which claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the chief. The document shall be submitted in two (2) separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross-references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

11.7.d. No information shall be protected as confidential information by the chief unless it is submitted in accordance with the provisions of subdivision 11.7.c. of this rule and no information which is submitted in accordance with the provisions of subdivision 11.7.c. of this rule shall be afforded protection as confidential information unless the chief finds that such protection is necessary to protect trade secrets. The person who submits information claimed to be confidential shall receive written notice from the chief as to whether the information has been accepted as confidential or not.

11.7.e. All information which meets the tests of subdivision 11.7.d. of this rule shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If said person fails to satisfactorily demonstrate to the chief that such information in the form presented to him meets the criteria of subdivision 11.7.d. of this rule, the chief shall mark the information "REJECTED" and promptly return such information to the person submitting such information.

11.7.f. Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the chief or his designee.

11.7.g. Nothing in subsection 11.7. of this rule may be construed as limiting the disclosure of information by the division to any officer, employee, or authorized representative of the State or federal government concerned with effecting the purposes of subsection 11.7. of this rule.

11.7.h. Persons interested in obtaining information pursuant to subsection 11.7. of this rule should submit a request in accordance with the environmental quality board rule 46 CSR 8.

11.7.i. Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

11.8. Public Participation in Permit Process.

11.8.a. Public notice shall be given that the following actions have occurred:

11.8.a.1. A draft permit has been prepared; or

11.8.a.2. A hearing has been scheduled.

11.8.b. Timing. -- Public notice of the preparation of a draft permit required under subsection 11.8. of this rule shall allow at least forty-five (45) days for public comment.

11.8.c. Public notice of a public hearing shall be given at least thirty (30) days before the hearing.

11.8.d. Methods. Public notice of activities described in subsection 11.8. of this rule shall be given by the following methods:

11.8.e. By mailing a copy of the notice to the following persons:

11.8.e.1. The applicant;

11.8.e.2. Any federal or state agency which the chief knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the facility or activity including, but not limited to, the U.S. environmental protection agency and the U.S. army corps of engineers;

11.8.e.3. Each state agency having authority under state law with responsibility to the construction or operation of such facility;

11.8.e.4. Any unit of local government having jurisdiction over the area where the facility is proposed to be located;

11.8.e.5. Other appropriate federal or state agencies including, but not limited to, the U.S. fish and wildlife service, the U.S. forest service, the West Virginia department of culture and history, the West Virginia department of health, other governmental authorities including any affected states, and the advisory council on historic preservation (Suite 430, 1522 K Street, N.W., Washington, D.C. 20005); and

11.8.e.6. All persons to whom a public notice is sent;

11.8.e.7. Persons on the mailing list developed by:

11.8.e.7.A. Including those who request in writing to be on the list.

11.8.e.7.B. Soliciting persons for "area lists" from participants in past permit proceedings in that area.

11.8.e.7.C. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in appropriate publications of the state. The chief may update the mailing list by requesting written indication of continued interest from those listed. The chief may delete from the list the name

of any person who fails to respond to such a request.

11.8.e.8. By publishing the public notice, in the form of a class I legal advertisement in a qualified daily or weekly newspaper of general circulation and broadcasting the public notice over local radio stations in the area in which the facility is or is proposed to be located. A qualified daily or weekly newspaper is, for the purpose of subsection 11.8. of this rule, any newspaper which meets the provisions of W. Va. Code, §59-3-1(b).

11.8.e.9. By any other method reasonably calculated to give actual notice of the action in question to the person potentially affected by it, including press releases or any other forum of medium to elicit public participation.

11.8.e.10. Any person otherwise entitled to receive notice under subsection 11.8. of this rule may waive the right to receive notice for any classes and categories of permits.

11.9. Personal Notification by Facility Owner or Operator to Individual Residents.

11.9.a. Following the submittal of a Part B application which is deemed complete by the chief, and before the public notice of the preparation of a draft permit as required under subsection 11.8. of this rule, the facility owner or operator shall serve notice upon the residence of all persons residing within one-quarter mile of the boundaries of the specific hazardous waste management facility.

11.9.b. Service of such notice as herein provided shall be made by delivering a copy to the residence of each person upon whom service must be made or by mailing it by registered mail to the last known address of each person or by such other reasonable means as the chief and the owner or operator agree will provide an effective and practical method of notification.

11.9.c. Following completion of service of notice as set forth herein, and no later than the date of public notice required in subsection 11.8. of this rule, the owner or operator shall certify in writing to the chief that service has been completed, describe the method of service, and provide a copy of the written notice employed to the chief.

11.9.d. The personal notice required herein shall be a written notice containing at a minimum:

11.9.d.1. The name and address of the permit applicant;

11.9.d.2. The name, location, and type of hazardous waste management facility for which the application has been submitted;

11.9.d.3. A statement advising the recipients of the notice that a complete application for permit has been submitted; and

11.9.d.4. A statement advising the recipients of personal notice that an opportunity for public comment upon the application and draft permit will be made available to them upon completion of division review of the application and that such notice will be published as a legal advertisement in a local newspaper and broadcast over the radio.

11.10. Contents of Public Notice.

11.10.a. All public notices issued under subsection 11.8. of this rule shall contain the following information:

11.10.a.1. Name and address of the office processing the permit action for which notice is being given;

11.10.a.2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

11.10.a.3. A brief description of the business conducted at the facility described in the permit application or the draft permit;

11.10.a.4. The name, address, and telephone number of a person from whom interested persons may obtain further information including copies of the draft permit or fact sheet, and the application; and

11.10.a.5. A brief description of the comment procedures required by subsections 11.11. and 11.12. of this rule and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision.

11.10.b. In addition to the general public notice described in subdivision 11.10.a. of this rule, the public notice of a hearing shall contain the following information:

11.10.b.1. Reference to the date of previous public notices relating to the permit;

11.10.b.2. Date, time and place of the hearing;

11.10.b.3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

11.10.b.4. Name and address of the nearest district office where the file will be available for inspection.

11.11. Public Comment and Request for Public Hearings. During the public comment period provided that any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subsections 11.13. and 11.14. of this rule.

11.12. Public Hearings.

11.12.a. The chief shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s). The chief may also hold a public hearing at his discretion whenever, for instance, such hearing may clarify one or more issues involved in the permit decision.

11.12.b. The chief shall hold a public hearing upon receiving written notice of opposition to a draft permit and a request for public hearing within forty-five (45) days of the public notice. Whenever possible the chief shall schedule a hearing under subsection 11.12. of this rule at a location convenient to the nearest such proposed facility. Public notice of the hearing shall be given as specified in subsection 11.8. of this rule.

11.13. Reopening of the Public Comment Period.

11.13.a. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the chief may take one or more of the following actions:

11.13.a.1. Prepare a new draft permit, appropriately modified, under subsection 11.5. of this rule.

11.13.a.2. Prepare a revised fact sheet under subsection 11.6. of this rule and reopen the comment period.

11.13.a.3. Reopen or extend the comment period under subsection 11.11. of this rule to give interested persons an opportunity to comment on the information or arguments submitted.

11.13.b. Comments filed during the reopened comment period shall be limited to the

substantial new questions that caused its reopening. The public notice under subsection 11.8. of this rule shall define the scope of the reopening.

11.14. Response to Comments.

11.14.a. At the time that any final permit is issued, the chief shall issue a response to comments. This response shall be in writing and shall:

11.14.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit and the reasons for change; and

11.14.a.2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or hearing.

11.14.b. The response to comments shall be delivered to any person who commented or any person who requests the same.

11.15. Administrative Record

11.15.a. The provisions of a draft permit prepared under subsection 11.5. of this rule shall be based on the administrative records consisting of:

(1) The application and any supporting data furnished by the applicant;

(2) The draft permit or notice of intent to deny the application or to terminate the permit;

(3) The fact sheet;

(4) All documents cited in the fact sheet; and

(5) Other documents contained in the supporting file for the draft permit.

11.15.b. The chief shall base final permit decisions on the administrative record consisting of:

(1) Administrative record for the draft permit;

(2) All comments received during the public comment period provided under subsection 11.8 of this rule (including any extension or reopening under subsection 11.13 of this rule);

(3) The tape or transcript of any hearing(s) held under subsection 11.12 of this rule;

(4) Any written material submitted at such hearing;

(5) The response to comments required by subsection 11.14 of this rule which identified and supports any change made in the draft permit and any new material placed in the record under that subsection;

(6) Other documents contained in the supporting file for the permit;

(7) An addendendum to the fact sheet if needed; and

(8) The final permit.

11.15.c. The administrative record shall be complete on the date the final permit is issued.

11.15.d. Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 11.15.a. and 11.15.b. of this rule, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

11.16. 40 CFR §270.12. The provisions of 40 CFR §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of

W. Va. Code, §22-18-12 and subsection 11.7. of this rule.

11.17. 40 CFR §270.24. The provisions of 40 CFR §270.24 are excepted from incorporation by reference. Consult the rules of the office of air quality regarding emissions from process vents.

11.18. 40 CFR §§270.60(b) and 270.64. The provision of 40 CFR §§270.60(b) and 270.64 are excepted from incorporation by reference. Consult the rules of the office of water resources and the environmental quality board regarding the requirements for underground injection wells.

§33-20-12. Deed and Lease Disclosure; Notice in Deed to Property.

12.1. Recording Requirement. -- The owner of the property on which a hazardous waste management facility is located must record, in accordance with state law, a notation on the deed or lease to the facility property -- or on some other instrument that is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:

12.1.a. The land has been used to manage hazardous wastes; and

12.1.b. Its use is restricted under 40 CFR §264.117(c).

12.2. Upon actual transfer of property which contains hazardous wastes that have been stored, treated, or disposed of, the previous owner shall notify the chief in writing of such transfer.

12.3. Other Requirements. -- Nothing contained in this section of this rule shall relieve any person from complying with the requirements on deed and lease disclosures set forth in W. Va. Code, §22-18-21.

§33-20-13. Universal Waste Rule.

13.1. 40 CFR Part 273. -- The provisions of 40 CFR part 273 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

13.2. In addition to pesticides, batteries, and thermostats covered by 40 CFR part 273, mercury containing lamps, commonly known as fluorescent light bulbs, are also covered under part 273 as follows:

13.3. 40 CFR §273.1 -- The provisions of 40 CFR §273.1(a)(3) are amended to read as follows:

(3) Thermostats and mercury containing lamps as described in 40 CFR §273.4.

13.4. 40 CFR §273.4 -- Applicability - mercury thermostats and mercury containing lamps -- The provisions of 40 CFR §273.4 are amended by adding thereto a new subdivision designated subdivision (d) to read as follows:

(d) Whenever the phrase "mercury thermostats" or "thermostats" is used in 40 CFR part 273, the phrase is to be read to include mercury containing lamps except where such language refers to mercury containing ampules. Mercury containing lamps shall be managed as universal waste to the same extent as mercury thermostats if the mercury containing lamp is a hazardous waste because it exhibits one or more of the characteristics identified in 40 CFR part 261, subpart C. Mercury containing lamps must be handled to prevent breakage, leakage or spillage of the hazardous constituents. In the event that the hazardous constituents are released, the handler must manage the material in accordance with all applicable universal waste remediation procedures and determine whether or not it is subject to the requirements of 40 CFR Parts 260 through 272.

13.5. 40 CFR §273.6 -- Definitions -- The provisions of 40 CFR §273.6 are amended to read as follows:

13.5.a. "Mercury containing lamp" means an electric lamp in which mercury is purposely introduced by the manufacturer for the

operation of the lamp. Mercury containing lamps commonly include fluorescent lamps.

13.5.b. "Universal Waste" means any of the following hazardous wastes that are managed under the universal waste requirements of 40 CFR part 273:

(1) Batteries as described in 40 CFR §273.2;

(2) Pesticides as described in 40 CFR §273.3; and

(3) Thermostats and mercury containing lamps as described in 40 CFR §273.4.

13.6. 40 CFR §§273.20, 273.40, 273.56 -- Exports are excepted from incorporation by reference and shall remain the provenance of the environmental protection agency and in addition to the requirements contained therein, any person subject to the provisions of part 273 shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by part 273.

13.7. 40 CFR §273.70 -- The provisions of 40 CFR 273.70 Imports are excepted from incorporation by reference to the extent jurisdiction is limited to West Virginia. Persons managing universal waste that is imported to West Virginia are subject to the requirements of this rule.

13.8. 40 CFR §§273.80 and 273.81 -- The provisions of 40 CFR §273.80 and 273.81 are excepted from incorporation by reference. Consult the provisions of subdivision 2.5.d of this rule to petition to include a waste as a universal waste.

§33-20-14. Standards for the Management of Used Oil.

14.1. 40 CFR Part 279. -- The provisions of 40 CFR part 279 are hereby adopted and incorporated by reference with the exception contained in this section. Consult the rules of the office of air quality regarding the burning of used oil.

14.2. 40 CFR §279.82(b). -- The term EPA at 40 CFR §279.82(b) shall have the meaning of United States environmental protection agency.

14.3. Effective Date of Section 14. -- Notwithstanding the effective date of this rule, the effective date of the provisions of this section shall be July 1, 1995.

§33-20-15. Appeal Rights.

15.1. Any person aggreived or adversely affected by the failure or refusal of the director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the director under the provisions of this rule, may appeal to the environmental quality board in accordance with the provisions of W. Va. §22B-1-1 et seq.

TABLE 1
PERMIT APPLICATION FEE SCHEDULE

STORAGE

EPA CODE ACTIVITY	FEE	FEE
S01 Container	<100 tons capacity $2,500.00	≥100 tons capacity $3,750.00
S02 Tank	<100 tons capacity $2,500.00	≥100 tons capacity $3,750.00
S04 Surface Impoundment	<1,000 tons capacity $10,000.00	≥1,000 tons capacity $12,500.00
S05 Drip Pad	$2,500.00	
S03 Waste Pile	<100 tons capacity $5,000.00	≥100 tons capacity $7,500.00
S06 Waste Pile (Containment Bldg.)	<100 tons capacity $5,000.00	≥100 tons capacity $ 7,500.00

DISPOSAL

EPA CODE ACTIVITY	FEE	FEE
D80 Landfill	<1,000 tons/year $15,000.00	≥1,000 tons/year $25,000.00
D81 Land Application	<1,000 tons/year $15,000.00	≥1,000 tons/year $25,000.00
D83 Surface Impoundment	<1,000 tons/year $15,000.00	≥1,000 tons/year $25,000.00

TABLE 1
PERMIT APPLICATION FEE SCHEDULE
(CONTINUED)

TREATMENT

EPA CODE ACTIVITY	FEE	FEE
T01 Tank	<100 tons capacity $2,500.00	≥100 tons capacity $3,750.00
T02 Surface Impoundment	<1,000 tons/year $10,000.00	≥1,000 tons/year $12,500.00
T03 Incinerator	<1,000 tons/year $5,000.00	≥1,000 tons/year $7,500.00
T80 thru T93 Boiler/Industrial Furnace	<1,000 tons/year $5,000.00	≥1,000 tons/year $7,500.00
T04 Other	$5,000.00	$7,500.00
T-94 Containment Bldg. Treatment	$5,000.00	$7,500.00

EMERGENCY PERMITS

EPA CODE ACTIVITY	FEE
State and Federal	Nil
Others	$500.00

TABLE 1
PERMIT APPLICATION FEE SCHEDULE
(CONTINUED)

MISCELLANEOUS

EPA CODE ACTIVITY	FEE
Permit Modification under 40 CFR, 270.42 (Class I, II, III)	$1,250.00
Modification under 40 CFR, 270.41	$2,500.00
Post-Closure Care Permit	$15,000.00
Closure Plans	$1,500.00

are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)–(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in subpart E of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under § 261.4(a)(13);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12);

(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under § 266.40(e) of this chapter and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under § 266.40(e) of this chapter; and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under § 266.40(e) of this chapter; and

(v) Petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in part 261, subpart C.

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of parts 260 through 268 of this chapter, but is regulated under part 279 of this chapter. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(5) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in § 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of parts 262 and 263 of this chapter and the notification requirements under section 3010 of

RCRA, except as provided in paragraph (a) of this section.

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A though L, AA, BB, and CC of parts 264 and 265, and under parts 124, 266, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

(i) Notification requirements under section 3010 of RCRA;

(ii) Sections 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies) of this chapter.

(iii) Section 261.6(d) of this chapter.

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of part 264 or 265 of this chapter.

[50 FR 49203, Nov. 29, 1985, as amended at 51 FR 28682, Aug. 8, 1986; 51 FR 40637, Nov. 7, 1986; 52 FR 11821, Apr. 13, 1987; 55 FR 25493, June 21, 1990; 56 FR 7207, Feb. 21, 1991; 56 FR 32692, July 17, 1991; 57 FR 41612, Sept. 10, 1992; 59 FR 38545, July 28, 1994; 60 FR 25541, May 11, 1995; 61 FR 16309, Apr. 12, 1996; 61 FR 59950, Nov. 25, 1996; 62 FR 26019, May 12, 1997]

EFFECTIVE DATE NOTE: At 62 FR 26019, May 12, 1997, § 261.6(a)(3)(ii) was revised, effective Aug. 11, 1997. For the convenience of the user, the superseded text is set forth as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(3) * * *

(ii) Scrap metal;

* * * * *

§ 261.7 Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either (i) an empty container or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under parts 261 through 265, or part 268, 270 or 124 of this chapter or to the notification requirements of section 3010 of RCRA.

(2) Any hazardous waste in either (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under parts 261 through 265, and parts 268, 270 and 124 of this chapter and to the notification requirements of section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) of this chapter is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, *e.g.*, pouring, pumping, and aspirating, *and*

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, *or*

(iii)(A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with § 262.40(a).

(b) The generator must give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail; or

(3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

NOTE: See § 263.20(e) and (f) for special provisions for rail or water (bulk shipment) transporters.

[45 FR 33142, May 19, 1980, as amended at 45 FR 86973, Dec. 31, 1980; 55 FR 2354, Jan. 23, 1990]

Subpart C—Pre-Transport Requirements

§ 262.30 Packaging.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 CFR parts 173, 178, and 179.

§ 262.31 Labeling.

Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172.

§ 262.32 Marking.

(a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address ————.
Manifest Document Number ————.

§ 262.33 Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F.

§ 262.34 Accumulation time.

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) In containers and the generator complies with subpart I of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with subpart J of 40 CFR part 265, except §§ 265.197(c) and 265.200; and/or

(iii) On drip pads and the generator complies with subpart W of 40 CFR part 265 and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(iv) The waste is placed in containment buildings and the generator complies with subpart DD of 40 CFR part 265, has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the facility's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for §§ 265.111 and 265.114.

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16, and with 40 CFR 268.7(a)(4).

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264 and 265 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:

(i) Complies with §§ 265.171, 265.172, and 265.173(a) of this chapter; and

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) through (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(g) An indication of whether the facility is new or existing and whether it is a first or revised application.

(h) For existing facilities, (1) a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas; and (2) photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(i) A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

(j) A specification of the hazardous wastes listed or designated under 40 CFR part 261 to be treated, stored, or disposed of at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.

(k) A listing of all permits or construction approvals received or applied for under any of the following programs:

(1) Hazardous Waste Management program under RCRA.

(2) UIC program under the SWDA.

(3) NPDES program under the CWA.

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(5) Nonattainment program under the Clean Air Act.

(6) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(7) Ocean dumping permits under the Marine Protection Research and Sancturies Act.

(8) Dredge or fill permits under section 404 of the CWA.

(9) Other relevant environmental permits, including State permits.

(l) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within ¼ mile of the facility property boundary.

(m) A brief description of the nature of the business.

(n) For hazardous debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

[48 FR 14228, Apr. 1, 1983, as amended at 57 FR 37281, Aug. 18, 1992]

§ 270.14 Contents of part B: General requirements.

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in §§ 270.14 through 270.29 applicable to the facility. The part B information requirements presented in §§ 270.14 through 270.29 reflect the standards promulgated in 40 CFR part 264. These information requirements are necessary in order for EPA to determine compliance with the part 264 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in part B can not be provided to the extent required, the Director may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Director and signed in accordance with requirements in § 270.11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer.

(b) General information requirements. The following information is required for all HWM facilities, except as § 264.1 provides otherwise:

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with part 264 of this chapter.

(3) A copy of the waste analysis plan required by § 264.13(b) and, if applicable § 264.13(c).

(4) A description of the security procedures and equipment required by § 264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by § 264.15(b). Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 245.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1084, 264.1085, 264.1086, and 264.1088.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of part 264, subpart C.

(7) A copy of the contingency plan required by part 264, subpart D. Note: Include, where applicable, as part of the contingency plan, specific requirements in §§ 264.227, 264.255, and 264.200.

(8) A description of procedures, structures, or equipment used at the facility to:

(i) Prevent hazards in unloading operations (for example, ramps, special forklifts);

(ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

(iii) Prevent contamination of water supplies;

(iv) Mitigate effects of equipment failure and power outages;

(v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and

(vi) Prevent releases to atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with § 264.17 including documentation demonstrating compliance with § 264.17(c).

(10) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals).

(11) Facility location information;

(i) In order to determine the applicability of the seismic standard [§ 264.18(a)] the owner or operator of a new facility must identify the political jurisdiction (e.g., county, township, or election district) in which the facility is proposed to be located.

[*Comment*: If the county or election district is not listed in appendix VI of part 264, no further information is required to demonstrate compliance with § 264.18(a).]

(ii) If the facility is proposed to be located in an area listed in appendix VI of part 264, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided must be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted must show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

(*1*) Published geologic studies,

(*2*) Aerial reconnaissance of the area within a five-mile radius from the facility.

(*3*) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and

(*4*) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass with 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such

§ 270.25 Specific part B information requirements for equipment.

Except as otherwise provided in § 264.1, owners and operators of facilities that have equipment to which subpart BB of part 264 applies must provide the following additional information:

(a) For each piece of equipment to which subpart BB of part 264 applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (e.g., a pump or pipeline valve).

(4) Percent by weight total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(6) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(b) For facilities that cannot install a closed-vent system and control device to comply with the provisions of 40 CFR 264 subpart BB on the effective date that the facility becomes subject to the provisions of 40 CFR 264 or 265 subpart BB, an implementation schedule as specified in § 264.1033(a)(2).

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in § 264.1035(b)(3).

(d) Documentation that demonstrates compliance with the equipment standards in §§ 264.1052 to 264.1059. This documentation shall contain the records required under § 264.1064. The Regional Administrator may request further documentation before deciding if compliance has been demonstrated.

(e) Documentation to demonstrate compliance with § 264.1060 shall include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by § 264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "ATPI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

[55 FR 25518, June 21, 1990, as amended at 56 FR 19290, Apr. 26, 1991]

§ 270.26 Special part B information requirements for drip pads.

Except as otherwise provided by § 264.1 of this chapter, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

(a) A list of hazardous wastes placed or to be placed on each drip pad.

(b) If an exemption is sought to subpart F of part 264 of this chapter, as provided by § 264.90 of this chapter, detailed plans and an engineering report describing how the requirements of § 264.90(b)(2) of this chapter will be met.

(c) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated

and maintained to meet the requirements of § 264.573 of this chapter, including the as-built drawings and specifications. This submission must address the following items as specified in § 264.571 of this chapter:

(1) The design characteristics of the drip pad;

(2) The liner system;

(3) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;

(4) Practices designed to maintain drip pads;

(5) The associated collection system;

(6) Control of run-on to the drip pad;

(7) Control of run-off from the drip pad;

(8) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

(9) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned.

(10) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(11) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and non-pressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;

(12) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(13) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals.

(14) A description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.573 of this chapter. This information should be included in the inspection plan submitted under § 270.14(b)(5) of this part.

(15) A certification signed by an independent qualified, registered professional engineer, stating that the drip pad design meets the requirements of paragraphs (a) through (f) of § 264.573 of this chapter.

(16) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under § 264.575(a) of this chapter. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how § 264.310 (a) and (b) of this chapter will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under § 270.14(b)(13).

[55 FR 50489, Dec. 6, 1990. Redesignated and amended at 56 FR 30198, July 1, 1991]

§ 270.27 Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers.

(a) Except as otherwise provided in 40 CFR 264.1, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of 40 CFR part 264, subpart CC shall provide the following additional information:

(1) Documentation for each floating roof cover installed on a tank subject to 40 CFR 264.1084(d)(1) or 40 CFR 264.1084(d)(2) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in 40 CFR 264.1084(e)(1) or 40 CFR 264.1084(f)(1).

(2) Identification of each container area subject to the requirements of 40

CFR part 264, subpart CC and certification by the owner or operator that the requirements of this subpart are met.

(3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of 40 CFR 264.1084(d)(5) or 40 CFR 264.1086(e)(1)(ii) that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of 40 CFR 264.1085(c) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in 40 CFR 264.1085(c)(1).

(5) Documentation for each closed-vent system and control device installed in accordance with the requirements of 40 CFR 264.1087 that includes design and performance information as specified in §270.24 (c) and (d) of this part.

(6) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

(7) When an owner or operator of a facility subject to 40 CFR part 265, subpart CC cannot comply with 40 CFR part 264, subpart CC by the date of permit issuance, the schedule of implementation required under 40 CFR 265.1082.

[61 FR 59996, Nov. 25, 1996]

§ 270.28 [Reserved]

§ 270.29 Permit denial.

The Director may, pursuant to the procedures in part 124, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

[54 FR 9607, Mar. 7, 1989]

Subpart C—Permit Conditions

§ 270.30 Conditions applicable to all permits.

The following conditions apply to all RCRA permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See §270.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall

carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) *Property rights.* The permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

(1) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by RCRA, any substances or parameters at any location.

(j) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by §264.73(b)(9) of this chapter, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Director at any time. The permittee shall maintain records from all ground-water monitoring wells and associated ground-water surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

(3) Records for monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) *Signatory requirements.* All applications, reports, or information submitted to the Director shall be signed and certified (See §270.11.)

(l) *Reporting requirements*—(1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)–(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in subpart E of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under § 261.4(a)(13);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12);

(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under § 266.40(e) of this chapter and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under § 266.40(e) of this chapter; and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under § 266.40(e) of this chapter; and

(v) Petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in part 261, subpart C.

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of parts 260 through 268 of this chapter, but is regulated under part 279 of this chapter. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(5) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in § 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of parts 262 and 263 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section.

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A though L, AA, BB, and CC of parts 264 and 265, and under parts 124, 266, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

(i) Notification requirements under section 3010 of RCRA;

(ii) Sections 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies) of this chapter.

(iii) Section 261.6(d) of this chapter.

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of part 264 or 265 of this chapter.

[50 FR 49203, Nov. 29, 1985, as amended at 51 FR 28682, Aug. 8, 1986; 51 FR 40637, Nov. 7, 1986; 52 FR 11821, Apr. 13, 1987; 55 FR 25493, June 21, 1990; 56 FR 7207, Feb. 21, 1991; 56 FR 32692, July 17, 1991; 57 FR 41612, Sept. 10, 1992; 59 FR 38545, July 28, 1994; 60 FR 25541, May 11, 1995; 61 FR 16309, Apr. 12, 1996; 61 FR 59950, Nov. 25, 1996; 62 FR 26019, May 12, 1997]

EFFECTIVE DATE NOTE: At 62 FR 26019, May 12, 1997, § 261.6(a)(3)(ii) was revised, effective Aug. 11, 1997. For the convenience of the user, the superseded text is set forth as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(3) * * *

(ii) Scrap metal;

* * * * *

§ 261.7 Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either (i) an empty container or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under parts 261 through 265, or part 268, 270 or 124 of this chapter or to the notification requirements of section 3010 of RCRA.

(2) Any hazardous waste in either (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under parts 261 through 265, and parts 268, 270 and 124 of this chapter and to the notification requirements of section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) of this chapter is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, *e.g.*, pouring, pumping, and aspirating, *and*

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, *or*

(iii)(A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with § 262.40(a).

(b) The generator must give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail; or

(3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

NOTE: See § 263.20(c) and (f) for special provisions for rail or water (bulk shipment) transporters.

[45 FR 33142, May 19, 1980, as amended at 45 FR 86973, Dec. 31, 1980; 55 FR 2354, Jan. 23, 1990]

Subpart C—Pre-Transport Requirements

§ 262.30 Packaging.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 CFR parts 173, 178, and 179.

§ 262.31 Labeling.

Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172.

§ 262.32 Marking.

(a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address ————.
Manifest Document Number ————.

§ 262.33 Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F.

§ 262.34 Accumulation time.

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) In containers and the generator complies with subpart I of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with subpart J of 40 CFR part 265, except §§ 265.197(c) and 265.200; and/or

(iii) On drip pads and the generator complies with subpart W of 40 CFR part 265 and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(iv) The waste is placed in containment buildings and the generator complies with subpart DD of 40 CFR part 265, has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the facility's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for §§ 265.111 and 265.114.

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16, and with 40 CFR 268.7(a)(4).

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264 and 265 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:

(i) Complies with §§ 265.171, 265.172, and 265.173(a) of this chapter; and

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) through (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(g) An indication of whether the facility is new or existing and whether it is a first or revised application.

(h) For existing facilities, (1) a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas; and (2) photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(i) A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

(j) A specification of the hazardous wastes listed or designated under 40 CFR part 261 to be treated, stored, or disposed of at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.

(k) A listing of all permits or construction approvals received or applied for under any of the following programs:

(1) Hazardous Waste Management program under RCRA.

(2) UIC program under the SWDA.

(3) NPDES program under the CWA.

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(5) Nonattainment program under the Clean Air Act.

(6) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(7) Ocean dumping permits under the Marine Protection Research and Sancturies Act.

(8) Dredge or fill permits under section 404 of the CWA.

(9) Other relevant environmental permits, including State permits.

(l) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within ¼ mile of the facility property boundary.

(m) A brief description of the nature of the business.

(n) For hazardous debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

[48 FR 14228, Apr. 1, 1983, as amended at 57 FR 37281, Aug. 18, 1992]

§ 270.14 Contents of part B: General requirements.

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in §§ 270.14 through 270.29 applicable to the facility. The part B information requirements presented in §§ 270.14 through 270.29 reflect the standards promulgated in 40 CFR part 264. These information requirements are necessary in order for EPA to determine compliance with the part 264 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in part B can not be provided to the extent required, the Director may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Director and signed in accordance with requirements in § 270.11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer.

(b) General information requirements. The following information is required for all HWM facilities, except as § 264.1 provides otherwise:

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with part 264 of this chapter.

(3) A copy of the waste analysis plan required by § 264.13(b) and, if applicable § 264.13(c).

(4) A description of the security procedures and equipment required by § 264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by § 264.15(b). Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 245.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1084, 264.1085, 264.1086, and 264.1088.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of part 264, subpart C.

(7) A copy of the contingency plan required by part 264, subpart D. Note: Include, where applicable, as part of the contingency plan, specific requirements in §§ 264.227, 264.255, and 264.200.

(8) A description of procedures, structures, or equipment used at the facility to:

(i) Prevent hazards in unloading operations (for example, ramps, special forklifts);

(ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

(iii) Prevent contamination of water supplies;

(iv) Mitigate effects of equipment failure and power outages;

(v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and

(vi) Prevent releases to atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with § 264.17 including documentation demonstrating compliance with § 264.17(c).

(10) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals).

(11) Facility location information;

(i) In order to determine the applicability of the seismic standard [§ 264.18(a)] the owner or operator of a new facility must identify the political jurisdiction (e.g., county, township, or election district) in which the facility is proposed to be located.

[*Comment*: If the county or election district is not listed in appendix VI of part 264, no further information is required to demonstrate compliance with § 264.18(a).]

(ii) If the facility is proposed to be located in an area listed in appendix VI of part 264, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided must be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted must show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

(*1*) Published geologic studies,

(*2*) Aerial reconnaissance of the area within a five-mile radius from the facility.

(*3*) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and

(*4*) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass with 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such

§ 270.25 Specific part B information requirements for equipment.

Except as otherwise provided in § 264.1, owners and operators of facilities that have equipment to which subpart BB of part 264 applies must provide the following additional information:

(a) For each piece of equipment to which subpart BB of part 264 applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (e.g., a pump or pipeline valve).

(4) Percent by weight total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(6) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(b) For facilities that cannot install a closed-vent system and control device to comply with the provisions of 40 CFR 264 subpart BB on the effective date that the facility becomes subject to the provisions of 40 CFR 264 or 265 subpart BB, an implementation schedule as specified in § 264.1033(a)(2).

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in § 264.1035(b)(3).

(d) Documentation that demonstrates compliance with the equipment standards in §§ 264.1052 to 264.1059. This documentation shall contain the records required under § 264.1064. The Regional Administrator may request further documentation before deciding if compliance has been demonstrated.

(e) Documentation to demonstrate compliance with § 264.1060 shall include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by § 264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "ATPI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

[55 FR 25518, June 21, 1990, as amended at 56 FR 19290, Apr. 26, 1991]

§ 270.26 Special part B information requirements for drip pads.

Except as otherwise provided by § 264.1 of this chapter, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

(a) A list of hazardous wastes placed or to be placed on each drip pad.

(b) If an exemption is sought to subpart F of part 264 of this chapter, as provided by § 264.90 of this chapter, detailed plans and an engineering report describing how the requirements of § 264.90(b)(2) of this chapter will be met.

(c) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated

and maintained to meet the requirements of § 264.573 of this chapter, including the as-built drawings and specifications. This submission must address the following items as specified in § 264.571 of this chapter:

(1) The design characteristics of the drip pad;

(2) The liner system;

(3) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;

(4) Practices designed to maintain drip pads;

(5) The associated collection system;

(6) Control of run-on to the drip pad;

(7) Control of run-off from the drip pad;

(8) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

(9) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned.

(10) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(11) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and non-pressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;

(12) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(13) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals.

(14) A description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.573 of this chapter. This information should be included in the inspection plan submitted under § 270.14(b)(5) of this part.

(15) A certification signed by an independent qualified, registered professional engineer, stating that the drip pad design meets the requirements of paragraphs (a) through (f) of § 264.573 of this chapter.

(16) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under § 264.575(a) of this chapter. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how § 264.310 (a) and (b) of this chapter will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under § 270.14(b)(13).

[55 FR 50489, Dec. 6, 1990. Redesignated and amended at 56 FR 30196, July 1, 1991]

§ 270.27 Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers.

(a) Except as otherwise provided in 40 CFR 264.1, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of 40 CFR part 264, subpart CC shall provide the following additional information:

(1) Documentation for each floating roof cover installed on a tank subject to 40 CFR 264.1084(d)(1) or 40 CFR 264.1084(d)(2) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in 40 CFR 264.1084(e)(1) or 40 CFR 264.1084(f)(1).

(2) Identification of each container area subject to the requirements of 40

CFR part 264, subpart CC and certification by the owner or operator that the requirements of this subpart are met.

(3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of 40 CFR 264.1084(d)(5) or 40 CFR 264.1086(e)(1)(ii) that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of 40 CFR 264.1085(c) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in 40 CFR 264.1085(c)(1).

(5) Documentation for each closed-vent system and control device installed in accordance with the requirements of 40 CFR 264.1087 that includes design and performance information as specified in §270.24 (c) and (d) of this part.

(6) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

(7) When an owner or operator of a facility subject to 40 CFR part 265, subpart CC cannot comply with 40 CFR part 264, subpart CC by the date of permit issuance, the schedule of implementation required under 40 CFR 265.1082.

[61 FR 59996, Nov. 25, 1996]

§ 270.28 [Reserved]

§ 270.29 Permit denial.

The Director may, pursuant to the procedures in part 124, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

[54 FR 9607, Mar. 7, 1989]

Subpart C—Permit Conditions

§ 270.30 Conditions applicable to all permits.

The following conditions apply to all RCRA permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See §270.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall

carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) *Property rights.* The permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

(1) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by RCRA, any substances or parameters at any location.

(j) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by §264.73(b)(9) of this chapter, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Director at any time. The permittee shall maintain records from all ground-water monitoring wells and associated ground-water surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

(3) Records for monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) *Signatory requirements.* All applications, reports, or information submitted to the Director shall be signed and certified (See §270.11.)

(l) *Reporting requirements.*—(1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

Federal Register

Friday
June 19, 1998

Part IV

Environmental Protection Agency

40 CFR Parts 63, 261, and 270
Hazardous Waste Combustors; Revised Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 261, and 270

[EPA F–98–RCSF–FFFFF; FRL–6110–3]

RIN 2050–AE01

Hazardous Waste Combustors; Revised Standards; Final Rule—Part 1: RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent To Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On April 19, 1996, EPA proposed revisions for air emission standards for certain hazardous waste combustion units. Today's rule finalizes some elements of that proposal. These elements include a conditional exclusion from RCRA for fuels which are produced from a hazardous waste, but which are comparable to some currently used fossil fuels; a new RCRA permit modification provision which is intended to make it easier for facilities to make changes to their existing RCRA permits when adding air pollution control equipment or making other changes in equipment or operation needed to comply with the upcoming air emission standards; notification requirements for sources which intend to comply with the final rule; and allowances for extensions to the compliance period to promote the installation of cost effective pollution prevention technologies to replace or supplement emission control technologies for meeting the emission standards.

EFFECTIVE DATE: This rule is effective on June 19, 1998.

ADDRESSES: The public docket for this rulemaking is available for public inspection at EPA's RCRA Docket, located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The regulatory docket for this final rule contains a number of background materials. To obtain a list of these items, contact the RCRA Docket at 703–603–9230 and request the list of references in EPA Docket #F–98–RCSF–FFFFF.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline between 9:00 a.m.–6:00 p.m. EST, at 800–424–9346 (toll-free); 703–412–9810 (from Government phones or if in the Washington, D.C. local calling area); or 800–553–7672 (for the hearing impaired). For more detailed information on specific aspects of the rulemaking, contact Mary Jo Krolewski on the comparable fuel exclusion at (703) 308–7754, Tricia Buzzell on permit modifications at (703) 308–8632, James Lounsbury on waste minimization and pollution prevention at (703) 308–8463, David Hockey on the notification of intent to comply at (703) 308–8846, or by writing, to U.S. Environmental Protection Agency, Office of Solid Waste, Permits and State Programs Division, 401 M St., S.W. (Mailcode 5303W), Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: This rule is available on the Internet. Please follow these instructions to access the rule electronically:

From the World Wide Web (WWW), type either
http://www.epa.gov/epaoswer/hazwaste/combust/fastrack.

EPA's "Pollution Prevention Facility Planning Guide" (May, 1992; NTIS #PB92–213206) describes the series of analytical steps that are often used by companies to identify waste minimization measures. Additional EPA references include: "Waste Minimization Opportunity Assessment Manual (EPA 625/7–88/003, July 1988), Interim Final "Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program In Place," (May 1993), "An Introduction to Environmental Accounting As a Business Management Tool" (EPA 742–R–95–001, June 1995), the "P2/Finance User's Manual: Pollution Prevention Financial Analysis and Cost Evaluation System for Lotus 1–2–3 (EPA 742–B–94–003, January 1994), and Enviro$ense, an electronic library of information on pollution prevention, technical assistance, and environmental compliance. Many of these and other documents can be accessed by contacting the RCRA Hotline toll-free at 1–800–424–9346. Enviro$ense can be accessed by contacting a system operator at (703) 908–2007, or on the Internet at http://wastenot.inel.gov/enviro-sense. Information on State waste minimization programs can be obtained through Enviro$ense, directly from the State pollution prevention program offices, or from the National Pollution Prevention Roundtable at E-mail address 75152.1416@compuserve.com, by phone at 202–466–7272 in Washington, D.C.

The official record for this action is kept in a paper format. Accordingly, EPA has transferred all electronic comments received into paper form and placed them into the official record, with all the comments received in writing. The official record is maintained at the address in the **ADDRESSES** section at the beginning of this document.

EPA's responses to comments have been incorporated in a "Response to Comments" document, which has been placed into the official record for this rulemaking. The major comments and responses are discussed in the Response to Comment sections of this preamble.

The contents of today's preamble are listed in the following outline:

I. Authority

These regulations are being finalized under the authority of sections 1004, 1006, 2002, 3001, 3004, 3005, and 7004 of the Solid Waste Disposal Act of 1965, as amended, including amendments by the Resource Conservation and Recovery Act.

II. Scope of the Final Rule

On April 19, 1996, EPA proposed rules to control emissions of HAPs from hazardous waste-burning incinerators, cement kilns, and light weight aggregate kilns. (61 FR 17358) After promulgation of the proposal, the Agency issued the following notices of data availability (NODA): NODA 1 (Peer review and Comparable fuels)—August 23, 1996: 61 FR 43501; NODA 2 (Revised emissions database)—January 7, 1997: 62 FR 960; Continuous Emissions Monitoring Systems (CEMS) NODA—March 21, 1997: 62 FR 13775; NODA 3 (MACT standards and implementation)—May 2, 1997: 62 FR 24212; and NODA 4 (Comparable fuels data)—September 9, 1997: 62 FR 47402.

Today's final rule addresses four elements of the April 19, 1996 (61 FR 17358) proposal to revise the standards for hazardous waste combustors. The remaining issues of the proposal will be addressed in final rules in the near future.

III. Comparable Fuels Exclusion

Under this final rule, EPA is excluding from the regulatory definition of solid waste hazardous waste-derived fuels that meet specification levels comparable to fossil fuels for concentrations of hazardous constituents and for physical properties that affect burning.[1] The exclusion would apply to the comparable fuel from the point it is generated and would be claimed by the person generating the comparable fuel (which person can include a hazardous waste treater). With respect to the fuels, generators of the comparable fuel would have to comply with sampling and analysis, notification and certification, and recordkeeping requirements in order for their fuels to be excluded. The exclusion potentially applies to gaseous and liquid hazardous waste-derived fuels. However, this exclusion does not apply to solids or to used oil, which is subject to special standards under 40 CFR Part 279.

Today's rule is consistent with EPA's goal to develop a comparable fuel specification which is of use to the regulated community but assures that an excluded waste-derived fuel is similar in composition to commercially available fuel and therefore poses no greater risk than burning fossil fuel. Accordingly, EPA is using a "benchmark approach" to identify a specification that would ensure that constituent concentrations and physical properties of excluded waste-derived fuel are comparable to those of fossil fuels.

The rationale for the Agency's approach is that if a hazardous waste-derived fuel is comparable to a fossil fuel in terms of hazardous and other key constituents and has a heating value indicative of a fuel, EPA has discretion to classify such material as a fuel product, not as a waste. Given that a comparable fuel would have legitimate energy value and the same hazardous constituents in comparable concentrations to those in fossil fuel (and satisfies other parameters related to comparability as well), classifying such material as a fuel product and not as a waste promotes RCRA's resource recovery goals without creating any risk greater than those posed by the commonly used commercial fuels. Under these circumstances, EPA can permissibly classify a comparable fuel as a non-waste. See 46 FR 44971 (August 8, 1981) (exemption from Subtitle C regulation for spent pickle liquor used as a wastewater treatment agent in part because of its similarity in composition to the commercial acids that would be used in its place); 50 FR 49180, 49181, 49183 (November 29, 1985) (explanation of a similar type of benchmark approach in establishing used oil fuel specification); 53 FR at 31164 (August 18, 1988) (exemption for certain hazardous waste-derived fertilizers due to similarity to the commercial fertilizers that would be used in their place).

Put another way, EPA can reasonably determine that a material which is a legitimate fuel and which contains hazardous constituents at levels comparable to fossil fuels is not being "discarded" within the meaning of RCRA section 1004 (27). "Discarded" itself is an ambiguous term, see *American Petroleum Inst.* v. *EPA*, 906 F. 2d 729, 741 (D.C. Cir. 1990). EPA's interpretation that hazardous waste-derived fuels which are comparable to fossil fuels need not be considered to be "discarded" serves the statutory objective of encouraging resource recovery. RCRA section 1003 (a) (10). In addition, burning of such fuels does not present the element of discarding hazardous constituents through combustion that underlies the typical classification of hazardous waste-derived fuels as a solid waste. 50 Fed. Reg. at 629–630 (Jan. 4, 1985). This is because, as noted, hazardous constituent concentration levels are comparable to those in fossil fuels.

[1] We note that DOW Chemical Company (Dow) in a petition to the Administrator, dated August 10, 1995, specifically requested that the Agency develop a generic exclusion for "materials that are burned for energy recovery in on-site boilers which do not exceed the levels of fossil fuel constituents* * *." (Petition, at p.3). This final rule also responds to that petition.

The case law further makes clear that EPA may classify secondary materials as "discarded" based, at least in part, upon whether such materials may be considered part of the waste management problem. *American Mining Congress* v. *EPA*, 907 F. 2d 1179, 1186 (D.C. Cir. 1990). Today's rule contains conditions to assure that burning of comparable fuels will not become part of the waste management problem. The chief condition is limitation on burning to industrial furnaces (as defined in 260. 10), industrial and utility boilers, and hazardous waste incinerators. Another condition prevents specification limits for hazardous constituents being achieved by means of dilution, so that the total volume of hazardous constituents emitted from burning comparable fuels would remain comparable to those from burning fossil fuels. The rule also contains notification and record keeping conditions which assure that the fuels meet the specification and will be burned in the requisite type of unit, and that this can be verified objectively by third persons.

EPA notes that today's final rule is consistent with the main approach discussed in the Dow petition (see footnote 1 above), which also points out a number of benefits that would result from promulgating this type of exclusion: (1) Support for the statutory goal of promoting beneficial energy recovery and resource conservation; (2) reduction of unnecessary regulatory burden and allowing all parties to focus resources on higher permitting and regulatory priorities; and (3) demonstration of a common-sense approach to regulation. Dow's petition contained data on the chemical and physical aspects of the fuel for which the petition was submitted. Based on these data and additional data submitted during the comment period, it appears that the waste petitioned for exclusion by Dow meets the individual physical and chemical comparable fuel specifications set forth in this rule. Today's rule does not exclude Dow's wastestreams or other wastestreams for which commenters submitted data that may meet the specifications of the final rule. It remains the responsibility of the generator to comply with the specifications of the comparable fuel exclusion stipulated by the State RCRA implementing authority.

A. EPA's Approach to Establishing Benchmark Constituent Levels

1. The Benchmark Approach

EPA considered using risk to human health and the environment as the way to determine the scope and levels of a "clean fuels" specification. However, the Agency encountered several technical and implementation problems using a purely risk-based approach to develop a national rule. Specifically, EPA has insufficient data relating to the types of waste burned and the risks they pose to develop a fully protective and complete "clean fuels" exemption. EPA also does not have sufficient data to determine the relationship between the amount of "clean fuel" burned and emissions, especially of dioxins and other non-dioxin PICs. EPA also does not know how emissions (likely uncontrolled) at the multitude of actual facilities that would burn an excluded fuel would compare to emissions from the example facilities that EPA would use to derive a "clean fuel" specification. (Emissions and/or risks at a given facility could be higher than those of the example facilities given site-specific considerations.) Without considering all reasonable, possible emission scenarios, which is not feasible for the Agency at this time, the Agency is not prepared today to address these potential risks [2].

The Chemical Manufacturers Association (CMA) submitted a proposal to exempt certain "clean" liquid wastes from RCRA regulation. (61 FR at 17469) Unlike EPA's benchmark-based comparable fuel approach, the CMA approach would establish "clean fuel" specifications for mercury, LVM, and SVM metals based on the technology-based MACT emissions standards proposed for hazardous waste combustors on April 19, 1996. As just discussed above, EPA is concerned about using risk to establish a "clean fuel" specification. EPA does not have data available documenting that emissions from burning a "clean fuel" would not pose a significant risk for the potential combustion and management scenarios in which the clean fuel exclusion from RCRA might be used. Therefore, EPA will not be adopting CMA's proposal in today's rule, but may address aspects of the CMA concept in future actions if appropriate and feasible.

The Agency instead developed a comparable fuel specification, based on the level of hazardous and other constituents normally found in fossil fuels. EPA refers to this as the benchmark approach. For this approach, EPA set a comparable fuel specification such that concentrations of hazardous constituents in the comparable fuel could be no greater than the concentration of hazardous constituents normally occurring in commercial fossil fuels. Thus, EPA expects that the comparable fuel would pose no greater risk when burned than a fossil fuel and would at the same time be physically comparable to a fossil fuel, leading to the conclusion that EPA may classify these materials as products, not wastes. See proposal for more details (61 FR 17460, April 19, 1996).

Some commenters argued that by using a benchmark approach, EPA had failed to assess potential risks to human health and the environment resulting from the exclusion. Commenters argued that EPA cannot determine that there are no adverse risks by the comparison to fossil fuels. EPA disagrees with commenters conclusions concerning the need to determine absolute risk. In this final rule, EPA is setting a comparable fuel specification with concentrations of hazardous constituents no greater than the concentrations of hazardous constituents occurring in fossil fuels. Thus, EPA reasonably expects—based on the methodology used to establish the specification—that the comparable fuel will pose no greater risk when burned than a fossil fuel and concomitant energy recovery benefits will be realized from reusing the waste to displace fossil fuels. The Agency concludes it has discretion in exercising jurisdiction over hazardous waste-derived fuels that are essentially the same as fossil fuel, since there would likely not be environmental benefits from regulating those hazardous waste-derived fuels (i.e., burners would likely just choose to burn fossil fuels). Indeed, as explained below; many commercial fuels could be less "clean" than the comparable fuels, so that substitution of some commercial fuels could be a net deterrent. See 50 FR at 49186 (November 29, 1985) where EPA discussed similar considerations when developing a specification for used oil fuel. See also discussion above as to why such fuels need not be considered to be "discarded". EPA has therefore decided not to regulate comparable hazardous waste-derived fuels meeting the benchmark specifications as hazardous waste under RCRA.

Furthermore, the Agency notes that the comparable fuel exclusion promulgated today is the first phase in addressing the "clean fuels" issue. Although EPA has identified problems with commenters' alternatives, there is

[2] It is possible to determine on an individual basis that particular waste-derived fuel should be excluded from RCRA on risk-based grounds. See 63 FR at 18533 (April 15, 1998) where EPA finalized such an exclusion for a waste fuel which could be generated by the pulp and paper industry. However, EPA cautions that making such a demonstration is difficult (because of potential uncertainties regarding combustion conditions and exposure patterns) and resource-intensive for the Agency to evaluate, and would still involve rulemaking.

room for further expansion of the comparable or clean fuel concept. EPA will continue to work with the regulated community to identify areas to expand the approach taken in today's final rulemaking.

2. Selection of the Benchmark Fuels

Since commercially available fossil fuels are diverse, EPA considered a range of fuels upon which to base its benchmark fuel selection. Available fuels ranged from gases, such as natural gas and propane, to liquids (such as gasoline and fuel oils) to solids (such as coal, coke, and peat). The Agency proposed a benchmark based on liquid fossil fuels (gasoline, No.2 fuel oil, and No.6 fuel oil). (61 FR at 17462)

Commenters argued that EPA should consider solid fossil fuels in developing the benchmark specifications. Commenters believe that materials such as coal are fuels that are widely used throughout the U.S. and failing to consider these materials ignores legitimate fuels used by certain industries. EPA disagrees with commenters' requests to include solid fossil fuels in its benchmark specification. From an environmental standpoint, the comparable fuel specification, which would exclude a hazardous waste-derived fuel from RCRA subtitle C regulation, should not be based on fossil fuels that have high levels of toxic constituents that will not be destroyed or detoxified by burning (e.g., metals and halogens). Data show that solid fossil fuels have comparatively higher metal [3] and possibly halogen levels than liquid fossil fuels [4]. Metals and halogens are not destroyed in the combustion process unlike organic constituents which are commonly destroyed or detoxified through combustion. Comparison with this type of fuel could easily result in a least common denominator approach whereby a hazardous waste-derived fuel would be "comparable" if it was no more dangerous to burn than the most contaminated fossil fuels. Such "comparability" is not congruent with the overall objective of RCRA to protect human health and the environment and is inconsistent with the specific directive to regulate combustion of hazardous waste-derived fuels where necessary to protect human health and the environment. (RCRA section 3004(q)). Thus, while EPA has chosen to use a benchmark rather than a risk-based approach, the Agency has chosen benchmark fuels that, in general, have lower contaminant levels for constituents that are not destroyed. Therefore, in today's rule, EPA is not using solid fossil fuels as part of the comparative benchmark.

EPA also will not be using a gas fuels as benchmarks. Basing the comparable fuel specification on a gas fuel would be overly conservative and have no utility to the regulated industry. (The reader should note that EPA is promulgating an exclusion for a particular type of hazardous waste-derived fuel, namely a type of synthesis gas ("syngas") meeting particular specifications (see Section D below). This hazardous waste derived gas can be used as a fuel and an exclusion provides beneficial resource recovery.) Liquid fuels, on the other hand, are widely used by industry, readily combusted, and do not present the inconsistencies of solid or gaseous fuels. Simply put, the Agency, in assessing comparability, is not required to base a specification on either the most or least contaminated fossil fuels, but may reasonably choose a median, in this case, representative fuel oils. In this final rule, EPA is selecting only liquid fuels for its benchmark fuel specification.

With regard to liquid fuels, commenters argued that EPA should consider as benchmark fuels non-petroleum liquid based fuels such as turpentine and tall oil. One commenter recommended that EPA identify turpentine as a benchmark fuel because it has a very high Btu value and is used as a fuel (and a manufacturing feedstock) both within and outside the forest products industry. Another commenter pointed out that tall oil is not only used in commerce as a traditional fuel, but that EPA has previously noted that tall oil is a legitimate non-waste fuel under the BIF rule low risk waiver exemption (LRWE) and DRE trial burn exemptions (56 FR 7193, February 21, 1991).

While EPA is interested in establishing a broad-based benchmark of liquid fuels, EPA disagrees that turpentine should be included in the benchmark specification. Turpentine is not a widely used commercial fuel. There are no ASTM standards for turpentine fuel which specify the minimum properties which must be met for the product to be considered as a commercial fuel. By contrast, there are ASTM specifications for each of the petroleum fossil fuels EPA is using as a benchmark.

EPA does agree with the commenter that tall oil is used in commerce as a traditional fuel and could be used as a benchmark fuel. At the time of the proposal, EPA had no data on tall oil. The commenter did submit one set of data that EPA was unable to use because it did not meet EPA data quality standards. Therefore, at this time, EPA will not include tall oil in its benchmark fuels.

Finally, some commenters did not support the use of gasoline for setting comparable fuel specifications, because it is not typically utilized in industrial boilers and furnaces. Gasoline is typically limited used in internal combustion engines, and the commenter did not anticipate that industry or individuals will utilize hazardous waste-derived fuels in automobiles, trucks and buses. EPA disagrees that gasoline should be excluded as one of the benchmark fuels. The Agency notes that gasoline is a widely used, commercially available, liquid fuel and EPA does not believe that our selection is necessarily limited to fuel burned in boilers or industrial furnaces. EPA has chosen its benchmark fuels so that the resulting comparable fuel when substituted would have hazardous constituents lower than the fuel it replaces. However, because the comparable fuel will not be substituted for use in gasoline applications (the exclusion is restricted to air regulated stationary combustion units, see Section H below), the rationale for the inclusion of gasoline differs. The Agency believes that gasoline provides a reasonable upper boundary for volatile organics, which are fuel-worthy constituents. The Agency notes that unlike some solid fuels, gasoline has low concentrations of metals. When compared to lighter fuel oils (e.g., No. 2 fuel oil), the gasoline specification has higher specifications for only the detected volatile organics, which are readily burnable compounds.

B. Options for the Benchmark Approach

At proposal, EPA presented several options for deciding what fossil fuel(s) data to use as the benchmark. The options range from developing a suite of comparable fuel specifications based on individual benchmark fuels (i.e., gasoline, No. 2, No. 4, No. 6) to basing the specification on composite values derived from the analysis of all benchmark fuels. (61 FR at 17643).

EPA took comment on individual benchmark fuel specifications based on gasoline, No. 2, and No. 6 fuel oil, using the 90th percentile values for the basis of the individual specifications. Under this approach, individual fuel specification(s) could be implemented

[3] A smaller fraction of metals in coal partitions to emissions than for liquid fuels. Given that most potentially comparable fuels are liquids, allowing metals at the concentrations present in coal could result in substantially higher metals emissions.

[4] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

in one of two ways. First, a facility could use any of the individual benchmark specifications, without regard to what fuel it currently burns. The second approach is to link the comparable fuel specification to the type of fuel burned at the facility and being displaced by the comparable fuel. Under a composite fuel benchmark approach, EPA took comment on using: (1) The 90th percentile aggregate values for the benchmark fuels; and (2) the 50th percentile aggregate values for the benchmark fuels. (61 FR at 17643).

1. Selection of Percentile Level

To calculate benchmark specifications, EPA obtained 27 fossil fuel samples, comprised of eight gasoline, eleven No. 2, one No. 4, and seven No. 6 fuel oil samples. Due to the small sample sizes of each fuel type, EPA initially used a nonparametric rank order statistical approach to analyze the fuel data. Rank order involved ordering the data for each constituent from lowest to highest concentration, assigning each data point a percentile value from lowest to highest percentile, respectively. Results were then calculated from the data percentiles. Because there were different numbers of samples for each fuel type, EPA was concerned that the fuel with the largest number of samples would dominate the composite database. To address this issue, EPA's statistical analysis "normalized" the number of samples, i.e., treated each fuel type in the composite equally without regard to the number of samples taken.[5] See *Kennecott v. EPA*, 780 F.2d 445, 457 (4th Cir. 1985) (upholding this statistical methodology). The fuel samples were weighted equally because this weighting reflects the fact that benchmark fuels can be used interchangeably in stationary combustion units. In addition, as noted in the next section, equal weighting prevented over-estimation of either metals and semi-volatiles in No. 6 fuel oil or volatiles in the higher end fractions.

One commenter argued that EPA's proposed constituent-by-constituent comparison approach is flawed because it ignores the compounding effect of joint probability. The commenter has examined the rank order statistics technique EPA used and has concluded that the percentile values for the individual constituents must be set higher for all of them to meet the overall percentile value simultaneously. For example, a candidate comparable fuel taken from the same reservoir as a benchmark fuel would, because of random variability in constituent concentrations, have a 23 percent chance of "failing" a comparison to a benchmark (at the 90th percentile) that has 14 constituents above the detection limits. Thus the commenter argued that the proposed constituent-by-constituent comparison would have little utility to the regulated community.

While EPA believes there is some interdependence among individual constituents and that the principle of joint probability cannot be strictly applied, EPA is inclined to agree with the commenter. At the time of proposal, EPA believed that a 50th percentile analysis represented a midpoint of potential benchmark fuels that were studied. EPA also believed that a 90th percentile analysis represented a reasonable upper bound of what is found in all fuels capturing variability both with each fuel category and in the case of the composite approach, between categories. However, when the individual fuel samples were compared to the benchmark specifications, EPA found that at the 50th percentile composite *none* of the virgin fuel samples met the specification and at the 90th percentile composite only 40 percent met the specification. This appears to confirm the commenter's concern over joint probability, and reflects on the degree to which the comparable fuels exclusion would actually be useable. It was EPA's goal to base the comparable fuel specifications on the 99th percentile, a level near which 90 percent of EPA's individual fuel samples would meet the specification. However, the size of the data base precluded the calculating of a 99th percentile constituent specification. Therefore, in this case, the Agency used the largest measured value to approximate an upper percentile. In the future, EPA may choose alternative methods of evaluating any new data that may be submitted suggesting that these specifications need to be modified. After re-calculating the specification taking joint probability into account, the composite at the largest value more closely represents what EPA intended to propose with the 90th percentile, a reasonable upper bound that is also useable in practice. The 90th percentile closely represents what EPA intended with the proposed 50th percentile, i.e., a midpoint.

Some commenters did support the 50th percentile because they argued it was more protective. The majority of commenters supported the 90th percentile and some commenters argued for the use of a higher percentile, i.e., 95th or 99th. Because none of EPA's own fuel samples meet this specification, the 50th percentile is overly conservative. If EPA selected the 50th percentile, comparable fuels would have to be "cleaner" than *all* commercial liquid fuels (or at least all of those in the Agency's current database), which would greatly restrict the utility of the provision. Also, with such a strict approach, additional quantities of virgin oils with higher contaminant levels would be burned, leading to greater emissions than if a higher percentile was chosen. Therefore, EPA agrees with commenters that a higher percentile better reflects the liquid fossil fuels burned nationally and is a better benchmark.

After considering the issue of joint probability, EPA has decided to promulgate a composite specification based on the largest measured value to approximate what 90 percent of individual benchmark fuels are likely to meet. This approach has the virtue of being representative of a range of fuels that are burned nationally in combustion devices.

Based on the proposal, EPA had the option of choosing between an individual fuel specification approach and a composite approach. The majority of commenters supported using the composite specification plus the suite of individual fuel specifications that could be used irrespective of the fuel displaced.

The composite approach has advantages over the individual fuel specification approach. One issue associated with the single fuel specification approach is that gasoline has relatively higher levels of volatile organic compounds while No. 6 fuel oil has higher levels of semi-volatile organic compounds and metals. If a potential comparable fuel were to have a volatile organic constituent concentration below the gasoline specification but higher than the others and a particular metal concentration lower than the No. 6 fuel oil specification but higher than gasoline, it would not be a comparable fuel since it meets no single specification entirely. Therefore, EPA is concerned that establishing specifications under thi

[5] For the gasoline sample analysis, the resulting detection limits for volatile organic compounds were an order of magnitude higher than the other fuel specifications. EPA believes analysis of comparable fuels will more likely result in detection limits much lower than gasoline and similar to those associated with analysis of fuel oils. To address this issue, EPA has performed an analysis of a fuel oil-only composite (one which does not include gasoline in the composite) to use as a surrogate for the volatile organic gasoline non-detect values. Therefore, the volatile organic gasoline non-detect values used in the development of the composite and individual gasoline specification were based on this fuel oil-only composite.

option would significantly limit the utility of the exclusion without any obvious advantage in terms of the technical basis of the specifications themselves.

Compositing all the fuels has the advantage that it may better reflect the range of fuel choices and potential for fuel-switching available nationally to burners. A facility would be allowed to use the composite fuel specification regardless of which fuel(s) it burns. In addition, the composite well represents the constituent makeup of liquid fossil fuels currently burned nationally. Because allowing individual specifications would unnecessarily complicate the Agency's implementation oversight, EPA has decided not to allow the individual specifications as an alternative. Furthermore, EPA notes that because it has chosen to promulgate constituent standards for comparable fuels based on the largest measured value, the composite approach will provide industry with greater flexibility in using the exclusion. A composite specification provides a simpler regulatory framework, which would facilitate implementation of the exclusion. Therefore, in this final rule, EPA is promulgating a composite specification for comparable fuels.

C. Parameters for the Comparable Fuel Specification

Using the benchmark approach discussed above, EPA is promulgating a set of technical specifications. The specifications address the following [6]:

(1) Physical specifications:
—Heating value (BTU/lb);
—Kinematic viscosity (centistokes, cs, as-fired),
(2) General constituent specifications for:
—Total Halogens (ppmw, expressed as Cl)
—Nitrogen, total (ppmw), and
(3) Individual hazardous constituent specifications, for:
—Individual Metals (ppmw),
—Individual Appendix VIII Toxic Organics (ppmw)

The constituent specifications and heating value would apply to both gases and liquids. The kinematic viscosity would not apply to gases. (See Section D, below, which discusses synthesis gases specifically.)

1. Physical Specifications

a. *Heating Value.* The Agency is concerned with the acceptability of the potential fuel and wants to ensure that comparable fuels have a legitimate use as a fuel. As discussed below, the comparable fuels exclusion only applies to waste fuels that are ultimately burned. In addition, the Agency has relied on a heating value of 5,000 Btu/lbm (11,500 J/g) as a reasonable heating value specification for determining if a waste is being burned for energy recovery; that is, wastes with this Btu value or higher are considered to be burned for energy recovery. (See § 266.103(c)(2)(ii). 50 FR at 49173n.24 (November 29, 1985)). [7] This type of minimum Btu value specification is appropriate here as well as for the overall fuel (note that this is a different issue than finding the appropriate Btu value by which to correctly determine if the individual constituent specifications are being met, discussed below). EPA is thus setting a 5,000 Btu/lbm limit today as a minimum heating value for a comparable fuel to ensure that comparable fuels are in fact legitimate fuels. See § 261.38(a)(1)(i).

b. Kinematic viscosity. Viscosity is an important specification to help ensure that a comparable fuel is as readily burnable as the benchmark fuel. Viscosity is important to the proper atomization and feed to the burning device and is an important design specification of the burner assembly. EPA proposed two options for setting a viscosity specification: (1) Using a value derived from the analyses EPA conducted; or (2) using the ASTM viscosity specification for fuel oil. (61 FR at 17465). Under the ASTM option for the composite fuel viscosity specification, EPA took comment on using the second highest ASTM viscosity specification. This would have the effect of not considering the extremes, viscosity of No. 6 fuel oil (50.0 cs at 100°C) and using as the specification the viscosity of No. 4 fuel oil (24.0 cs at 40°C).

Given the choice of EPA-derived viscosity values and ASTM values, the majority of commenters supported the use of the ASTM physical specification for viscosity. In addition, several commenters argued that the viscosity specification should apply at the point (temperature) that the fuel is fired rather than the point of generation. Commenters pointed out that it is common practice to reduce the as-fired viscosity to promote good atomization and combustion through blending with less viscous fuels or by warming the fuel to above-ambient temperature before firing. For example, while No. 6 fuel oil has an elevated viscosity at ambient conditions, it is typically stored and fired at temperatures which promote atomization and combustion.

EPA is persuaded by commenters that basing our viscosity specification on No. 4 fuel oil would possibly limit comparable fuels similar to No. 6 fuel oil (one of the benchmark fuels) from qualifying for the exclusion. EPA agrees that the viscosity specification should be based on ASTM standard for No. 6 fuel oil (50 cs at 100°C). The ASTM standard represents the typical temperature and viscosity at which No.6 fuel oil is fired. Thus, it is appropriate for a comparable fuel, when fired, to have the same viscosity as No. 6 fuel when fired. This will allow for a specification that is achievable for all liquid fossil fuels.

Therefore, in this final rule, EPA is promulgating a kinematic viscosity specification of 50 cs, as-fired . The specification for viscosity will only pertain to non-gaseous fuels, because gases are inherently less viscous than liquids. See § 261.38(a)(1)(ii).

c. Flashpoint (proposed, but not promulgated). EPA proposed two options for setting a minimum flashpoint specification: (1) Using a value derived from the analyses EPA conducted; or (2) using the requirements for flashpoint specified by ASTM. Under the ASTM option for the composite fuel flashpoint specification, EPA took comment on using the second lowest flash point as the specifications. (61 FR at 17465). This would have the effect of not considering the extremes, flash point of gasoline (−42°C) and using as the specification the flash point of No. 2 fuel oil (38°C).

Several commenters opposed setting specifications for flash point. Commenters argued that DOT and OSHA have developed and promulgated regulations that control the hazards such materials can pose. Commenters also argued that the specification would preclude burning materials that are normally fuels such as methanol. EPA agrees with commenters that DOT (49 CFR Parts 171 through 180) and OSHA (29 CFR Part 1910) regulations adequately address the transportation and handing of low flashpoint material and setting a flashpoint specification under RCRA would be unnecessarily redundant with no ostensible gain in protectiveness. In addition, by limiting the exclusion to units subject to Federal/State/local air emission requirements, comparable fuels will be burned in units subject to OSHA requirements. (See Section H, below,

[6] Note that ppmw is an alternate way of expressing the units mg/kg.

[7] The 5,000 Btu/lb measure is not, however, an unvarying measure of legitimate versus insufficient energy recovery. See, e.g., 48 FR at 1158 (March 16, 1983).

which discusses this requirement.) Therefore, EPA is not establishing a flashpoint specification for the final rule.

2. General Constituent Specifications

In determining general constituent specifications and in determining individual hazardous constituent specifications (see following discussion), the Agency is concerned with the overall environmental loading. Comparable fuels could have lower heating value than the fossil fuels they would displace. In these situations, more comparable fuel would be burned to achieve the same heat input, with the result that more hazardous constituents would be fired and emitted (e.g., halogenated organic compounds and metals) than if fossil fuel were to be burned. This would lead to greater environmental loading of potentially toxic substances, which is not in keeping with the intent of the comparable fuels exclusion nor with RCRA's overall protectiveness goals.

To address environmental loading, the approach used in this final rule is to establish a minimum heating value specification comparable to the BTU content of the benchmark fossil fuel(s). The Agency is establishing the specification(s) for comparable fuels at a heating value of 10,000 BTU/lb, which is near to what liquid commercial fuels contain.[8] EPA chose 10,000 BTU/lb because it is typical of current hazardous waste burned for energy recovery.[9] However, candidate comparable fuels when generated initially can have heating values very different than 10,000 BTU/lb. Therefore, under this final rule, when determining whether a waste meets the comparable fuel constituent specifications, a generator must first correct the constituent levels in the candidate waste to a 10,000 BTU/lb heating value basis prior to comparing them to the comparable fuel specification tables. In this way, a facility that burns a comparable fuel would not be feeding more total mass of hazardous constituents than if it burned fossil fuels.[10]

a. Specification Levels for Halogenated Compounds. I. Summary. For the final rule, EPA is using its composite benchmark approach to establish a total halogen specification and allowing compliance with a total organic halogen limit in lieu of complying with limits on individual Appendix VIII halogenated compounds. Therefore, a comparable fuels generator would have the option of complying: (a) with a total organic halogen specification of 25 ppm plus the total PCB specification or (b) with the all of the individual Appendix VIII specifications for halogen compounds. In addition, in both cases, the generator would also have to comply with the total halogen limit (which includes both organic and inorganic halogens) of 540 ppm and with a total PCB specification (non-detect at a minimum required detection limit of 1.4 ppm). See § 261.38(a)(2), Table 1.

Compliance with a total organic halogen specification in lieu of limits on individual halogenated compounds will ensure that measurable levels of halogenated compounds will be no greater than in benchmark fuels. In addition, the total organic halogen specification will result in less sampling and analysis costs. Finally, the total halogen limit (both organic and inorganic) will create a presumption that halogenated products of incomplete combustion (PICs) generated from burning a comparable fuel will not be emitted at higher levels than from burning a benchmark fossil fuel.

ii. Total Halogen Rationale. Although total halogens are not listed in Appendix VIII, Part 261, EPA proposed a total halogen specification to establish a presumption that halogenated products of incomplete combustion (PICs) generated from burning a comparable fuel would not be emitted at higher levels than from burning a benchmark fossil fuel. See proposal (61 FR at 17461) and subsequent notices of data availability (61 FR 43502, August 23, 1996 and 61 FR 47402, September 9, 1997). PICs resulting from the burning of halogenated organic compounds can pose a particular hazard to human health and the environment.[11] Using the benchmark approach, EPA proposed a composite fuel total halogen limit of 25 ppm.

At the time of the proposal, EPA intended to establish a total halogen limit that included both organic and inorganic halogens. However, the total halogen data used by EPA in the proposed rule for its No. 4 and No. 6 fuel oils were based on analytical methods measuring only total organic halogens, not both organic and inorganic halogens. Commenters raised concerns about including total halogen data that did not include inorganic halogens because it did not represent typical halogen content found in benchmark fuels. EPA was persuaded by commenters' arguments and noticed additional total halogen data gathered from its own database (i.e., Certifications of Compliance (CoC) required by the Boilers and Industrial Furnace Rule) and data submitted by one commenter. In addition, EPA will continue to use its original gasoline and No. 2 fuel oil halogen data, which included both organic and inorganic halogens. Using the additional data, the total halogen specification would be 540 ppm for the composite benchmark data. For further discussion, see NODA 61 FR at 47402.

In response to EPA's NODA, commenters argued that some of the data should not be used to establish the total halogen specification due to the use of inappropriate analytic methods. In particular, commenters believe that CoC data from two facilities (Huntsman Polypropylene Corporation and American Cyanamid) should not be included because the analytical method used measured organic halogens only. In addition, commenters believe that CoC data from another facility (Dow Chemical) should not be included because the detection limit of the method used to analyze for total halogens (ASTM Standard D 808) is not sensitive below 1000 ppm, and unless some other, more sensitive analytical method were followed afterward, the method could not have been effective at the levels reported. EPA is persuaded by these commenters' arguments and has excluded the data from these three facilities from its halogen data set. Using this revised data set, the total halogen specification would be 540 ppm for the composite benchmark data. For the final rule, EPA is promulgating a total halogen specification of 540 ppm.

In response to the initial proposal, some commenters argued that EPA should consider solid fuels like wood and coal in the development of a total halogen specification. As discussed above, EPA has decided not to include solid fuels in its benchmark specification. Thus, EPA is not inclined to consider using solid fuels to set one of the specifications. Also, EPA is concerned about the formation of halogenated PICs from comparable fuels containing halogens. At this time, EPA has no data to support a conclusion tha the higher halogen levels in solid fuels would not cause an increase in

[8] Constituent levels presented in today's final rule have been corrected from the fuel's heating value (approximately 20,000 BTU/lb) to 10,000 BTU/lb.

[9] Consult USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

[10] Note that the heating value correction would apply only to allowable constituent levels in fuels, not to detection limits. Detection limits would not be corrected for heating value.

[11] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

halogenated PIC formation compared to benchmark fuels.

The Agency also received comment on an emissions-based equivalency determination to qualify for the total halogen specification. One commenter argued that the Agency should consider the commenter's candidate comparable fuel as a comparable fuel even though it cannot meet the comparable fuel specification for total halogens. The Agency considered the situation but, as indicated in the September 9, 1997 NODA (62 FR at 47403), continues to maintain that an emissions-based equivalency determination to the halogen specification on a national regulatory basis would be inappropriate and infeasible at this time.

In response to EPA's NODA, the commenter argued that an equivalency determination would not be administratively complex and that it could involve a demonstration by the person applying for the equivalency determination that the chemistry of the fuel is such that it is incapable of forming halogenated PICs. EPA is not persuaded by the commenter's arguments. For hydrocarbon-based fuels, combustion conditions (such as oxygen level, mixing, temperature, etc.) will have an impact on non-chlorinated and/or chlorinated PIC emissions. Additionally, chlorine in both inorganic and organic forms in the waste fuel can contribute to chlorinated PIC emissions. Dioxin/furans and other chlorinated PICs have been detected from sources burning both inorganic (e.g., salts) and/or organic chloride (e.g., plastics) containing wastes.[12] Furthermore, if the Agency were to develop an equivalency determination for total halogens, the implementation details needed in a national regulation to ensure proper combustion of halogenated wastes would be numerous, including, for example, provisions on burner operating parameters, performance testing, and monitoring. These details would almost certainly result in a complicated conditional exclusion from the definition of solid waste that is viewed as both potentially unworkable and very difficult to implement on a national basis.

Therefore, EPA is not inclined at this time to consider developing any national equivalency determination to the total halogen specification. At some future point, perhaps as the Agency's understanding of cause-and-effect relationships regarding emissions from a wider variety of sources grows, EPA may be able to address aspects of the commenter's recommendations if appropriate and feasible.

iii. Total Organic Halogen Rationale. As an additional part of its proposal, EPA invited comment on whether a total halogen specification could act as a surrogate for limits on individual halogenated compounds found in Appendix VIII. In this case, EPA's proposed limit of 25 ppm for total organic halogens would act as the surrogate for the individual halogenated organics. Commenters supported the surrogate approach and indicated that it would reduce the testing and recordkeeping costs on the regulated community. EPA agrees that this approach will simplify the comparable fuels specification and possibly mean fewer and less costly sampling and analyses of comparable fuel streams for generators.

However, some commenters raised concerns that a total halogen analysis will not be an effective screen for some of the more hazardous halogenated Appendix VIII constituents which could constitute a potential risk at low detection levels (e.g., tetrachlorodibenzo-p-dioxins). EPA calculated the equivalent constituent concentrations using the minimum detection limit values for these hazardous halogenated organics and determined that the 25 ppm total organic halogen limit will be an effective screen for all of the chlorinated dibenzofurans and chlorinated dibenzodioxins (i.e., the tetra- through octa-congeners). The minimum detection limits calculated for these congeners ranged from 30 to 150 ppm and the 25 ppm organic halogen specification will limit these congeners' concentrations to below those minimum detection limits. Additional factors in this decision to use the 25 ppm halogen limit as a screen for dioxins include the following:

(1) In particular, waste codes F020, F021, F022, F023, F026 and F028 have been designated as "inherently waste-like" under 40 CFR 261.2(d) and therefore are not eligible for the comparable fuel exclusion;

(2) Wastes listed because they contain dioxins would also be expected to contain significant levels of other halogenated organics. (The reader should note that the compounds in question are typically formed from the breakdown and reaction of other halogenated organics.) The higher concentrations of these other halogenated organics would drive the total organic halogen content of the waste up and, thus, the contribution of any chlorinated dibenzofurans and dioxins would have to be significantly less than the 25 ppm limit; and

(3) Waste codes expected to contain significant levels of other halogenated organics can be readily discerned from their list descriptions in 40 CFR 261 Subpart D (e.g., F001 and F002 solvent wastes are defined as halogenated solvents; F024 includes waste from production of halogenated organics.) In addition, Appendix III to Part 268 lists the halogenated organics typically found in hazardous wastes and that are subject to land disposal restrictions under 40 CFR 268.32. By comparing these, a person implementing today's rule could easily determine the most likely waste codes that could contain halogenated organics in excess of the 25 ppm limit, and thus easily identify wastes not eligible for the comparable fuels exclusion. See also Section E below for point of generation and blending/treatment discussions.

Commenters are also concerned that the use of a total organic halogen surrogate will possibly mask illegal PCB disposal. Since low analytical detection limits for PCBs (i.e., 1.4 ppm) in the benchmark fuel matrices have been well-demonstrated, the 25 ppm total organic halogen limit would not be a sufficient screen. Since PCBs are relatively common halogenated contaminants in fuel-like wastes and the probability of finding them is non-trivial, EPA is keeping the limits on PCBs to ensure levels no greater than from benchmark fuels. EPA also points out that there are several relatively inexpensive analytical screening methods that have been developed specifically for the determination of total PCBs.

With regard to analysis methodology, commenters have indicated that the test method (ASTM Method 4929) used by EPA to analyze for organic halogens may not be appropriate to analyze their candidate comparable fuel. EPA recognizes that the methods used in its own analysis of the benchmark fuels may not be appropriate for some candidate comparable fuels. Thus, in the final rule EPA is allowing the use of alternate methods or modifications to current methods that meet the performance based criteria in section § 261.38(c)(7). It is the responsibility of the generator to ensure that the sampling and analysis is unbiased, precise, and representative of the waste. For further details, see Section G. Sampling and Analysis, below.

b. Specification Levels for Nitrogenated Compounds. Although total nitrogen is not listed on Appendix VIII, Part 261, EPA proposed a total

[12] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

nitrogen specification to ensure that nitrogenated products of incomplete combustion (PICs) from burning a comparable fuel would not be emitted at higher levels than from burning a benchmark fossil fuel. See proposal (61 FR at 17462) and a subsequent notice of data availability (61 FR 43502, August 23, 1996). PICs resulting from burning nitrogenated organic compounds can also pose a particular hazard to human health and the environment.[13]

Commenters generally did not address the issue of formation of nitrogenated PICs. Instead, most commenters disagreed with the need to establish a specification for nitrogen under RCRA's comparable fuel specification when this pollutant (as NOx) is controlled under the Clean Air Act (CAA). Commenters argued that EPA has the authority under the CAA to control certain criteria pollutants, such as nitrogen oxides and, in fact, has promulgated primary and secondary National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen. EPA believes that a total nitrogen specification is necessary. The counter-arguments advanced do not address EPA's rationale for establishing a total nitrogen limit. The CAA NAAQS do not themselves ensure control of individual combustion units in a manner that prevents formation of nitrogenated PICs, nor do they ensure that a hazardous waste-derived fuel would contain no greater amounts of nitrogenated compounds than fossil fuels. EPA is therefore establishing a total nitrogen specification to ensure that concentrations of nitrogenated PICs in comparable fuels will be no greater than in benchmark fuels.

As an additional part of its proposal, similar to total halogens, EPA invited comment on whether a total nitrogen specification could act as a surrogate for limits on individual nitrogenated compounds found in Appendix VIII. EPA believes that a surrogate approach would simplify the comparable fuels specification and possibly mean fewer and less costly sampling and analyses of comparable fuel streams for generators. However, analysis of EPA's composite data results in a total nitrogen specification of 4,900 ppm. The detection limits for EPA's analysis of individual nitrogenated compounds in its benchmark fuels ranged from 1 to 2200 ppm. Since detection limits for nitrogenated compounds in the benchmark fuels have been demonstrated well below 4,900 ppm, a total nitrogen specification would not be a sufficient screen for individual Appendix VIII nitrogenated compounds.

Therefore, for nitrogen compounds, EPA is promulgating a total nitrogen specification of 4,900 ppm with individual Appendix VIII nitrogen specifications. See § 261.38(a)(2), Table 1. This approach ensures that levels of individual nitrogenated compounds and the total nitrogen concentration are no greater than the benchmark fuels and creates a presumption that concentrations of nitrogenated PICs from burning a comparable fuel are no greater than burning a benchmark fuel.

3. Individual Hazardous Constituent Specifications

To limit the Part 261, Appendix VIII constituents in comparable fuels to those found in benchmark fossil fuels, the Agency calculated concentration limits using the Agency's analysis of individual benchmark fuel samples. Where EPA did not detect a particular Appendix VIII constituent in the benchmark fuel, the Agency set the constituent specification using one of two approaches. For constituents that the Agency did not detect and did not have reason to believe would be present in a benchmark fuel (e.g., halogenated organics), the comparable fuel specification is "non-detect" with an associated, specified minimum required detection limit for each compound. The detection limit is a statistically-derived level based on the quantification limit determined for each sample. While these constituents should not be present, the Agency will allow non-detects lower than the detection limits that EPA was able to obtain. However, EPA will not allow measured or quantified results below the specified minimum required detection limit where "non-detect" is the comparable fuel specification. For metals, hydrocarbons, and oxygenates, the Agency followed a different approach, which is described below.

a. Individual CAA and Appendix VIII Metals. EPA proposed concentration levels or minimum required detection limits for all CAA metals and RCRA Appendix VIII metals (61 FR at 17460). Commenters argued that the Agency should modify its approach with respect to non-detect levels and allow the hazardous constituent to be present in the comparable fuel up to the detection limit. In particular, commenters argued that metals are expected to be present in petroleum products, resulting from the formation process or the production process, and, therefore, it is reasonable to assume that non-detect metals in EPA's benchmark analysis would be present up to the detection limit. EPA agrees that metals could be present in fossil fuels but below EPA's detection limits. Therefore, the final rule allows metals to be present at any concentration less than or equal to the detection limits in EPA's analysis.

In addition, as proposed, EPA is setting limits for two metals that are not found on Part 261, Appendix VIII: cobalt and manganese. EPA included these metals in the analysis because they are listed in the Clean Air Act as hazardous air pollutants (HAPs). See CAA, section 112(b) and proposal (61 FR at 17460). By including these metal HAPs and the RCRA metals listed on Appendix VIII, Part 261, the Agency will ensure that the specification limits all toxic metals of concern in hazardous wastes to levels present in the benchmark fossil fuels. Therefore, EPA is promulgating constituent levels for the all CAA metals and RCRA Appendix VIII metals at the largest value composite of EPA fossil fuel data. See § 261.38(a)(2), Table 1.

b. Individual Appendix VIII Toxic Organics. EPA is promulgating constituent levels or minimum required detection limits for all Part 261, Appendix VIII, toxic organic constituents, unless otherwise noted. See § 261.38(a)(2), Table 1. Some Appendix VIII compounds were not analyzed because a routine analytical method is not available. Because EPA did not analyze for some compounds in Appendix VIII, EPA will not be promulgating standards for these remaining Appendix VIII constituents. These compounds are not listed in today's specifications, and a comparable fuel generator will not have to comply with specifications for these compounds. EPA believes it highly unlikely that a hazardous waste-derived fuel would contain only these undetectable Appendix VIII constituents.

i. Specification Levels for Undetected Pure Hydrocarbons. EPA proposed allowing pure hydrocarbons on Appendix VIII to be present at any concentration less than or equal to the detection limits in EPA's analysis. Since fossil fuels are comprised almost entirely of pure hydrocarbons[14] in varying concentrations, it is possible that many pure hydrocarbons in Appendix VIII, Part 261, could be present in fossil fuel but below detection limits. These materials, which include compounds such as fluoranthene, might not be considered solid wastes v[illegible]

[13] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

[14] Excluding sulfur, carbon [illegible] comprise 99.6 to 100% a[illegible]

their pure carbon form since they are themselves products. See § 261.2(c)(2)(ii), and see proposal (61 FR at 17461).

Some commenters argued that no comparable fuels specifications should be established for pure hydrocarbon compounds because pure hydrocarbons will burn cleanly. EPA disagrees for the purpose of today's rule because establishing no limits for Appendix VIII hydrocarbons would depart from the basic comparable benchmark approach and even relatively clean-burning compounds may produce some toxic emissions. EPA's analysis confirms that these compounds are not present in the benchmark fuels above the minimum detection limits. However, it is reasonable to assume that the "non-detect" pure hydrocarbons could in fact be present in fossil fuels up to the detection limit since fossil fuels are comprised entirely of pure hydrocarbons. Therefore, the final rule allows hydrocarbons in Appendix VIII to be present at any concentration less than or equal to the detection limits in EPA's analysis. See § 261.38(a)(2), Table 1.

Some commenters argued that toluene, a typical fuel component, should be allowed without limitation in comparable fuels. As discussed above for all hydrocarbons, EPA disagrees with not establishing any limits on toluene, or establishing a different specification not based on fuel data, because this would depart from the comparable benchmark approach. EPA has established the toluene specification at the fuel data-based concentration found in its benchmark fuel analysis. However, because toluene can be a fuel component, setting a different data-based specification for toluene may be warranted at some point in the future, and therefore EPA will continue to remain open to considering further action.

ii. Specification Levels for Undetected Oxygenates. In addition to the pure hydrocarbon compounds, EPA invited comment on whether oxygenates should be allowed up to the detection limits in EPA's analysis and on what would be an appropriate minimum oxygen-to-carbon ratio to identify an oxygenate. (61 FR at 17461). Oxygenates are organic compounds comprised solely of hydrogen, carbon, and oxygen and can serve as fuels or fuel additives. Examples of oxygenates (not in Appendix VIII and thus not RCRA regulated) include alcohols such as ethanol, and ethers such as methyl tert-butyl ether (MTBE). Appendix VIII oxygenates are not routinely found in fossil fuels and only a few oxygenates were detected in EPA's sampling and analysis program.

Several commenters supported allowing oxygenates at any concentration less than or equal to the detection limit but also argued that EPA should go a step further and set no specification limits for oxygenated compounds. Commenters argued that oxygenates (like isobutyl alcohol) burn well and promote good combustion of other constituents in a fuel. Again, for the purpose of today's rule, EPA disagrees with not establishing any limits on oxygenates because this would depart from the basic comparable benchmark approach. EPA's analysis confirms that these compounds are not present in the benchmark fuel above the minimum detection limits and establishing a specification without fuel data containing oxygenates would depart from the comparable fuel approach. Furthermore, oxygenates are listed on Appendix VIII for their toxicity and in particular, one group of organic oxygenates, organic peroxides, can be extremely hazardous to manage. However, since most oxygenates burn well and are not likely to produce significant PICs, EPA will allow these compounds at any concentration less than or equal to the detection limits found in EPA's analysis.

EPA notes that the Clean Air Act provides for the use of some oxygenates (like isobutyl alcohol) as additives in unleaded gasoline and it may be appropriate to consider their use in a comparable fuel. However, at the time of this final rulemaking, EPA had no fuel data in which these oxygenates were used as gasoline additives and thus was not able to set a specification different than in today's final rule. As discussed above, any approach without using fuel data would depart from the comparable fuel approach. However, setting data-based specifications for certain oxygenates may be warranted at some point in the future, and therefore EPA will continue to remain open to considering further action.

With regard to a minimum oxygen-to-carbon ratio to define an oxygenate, one commenter recommended defining oxygenates simply as aliphatic compounds comprised of carbon, hydrogen, and oxygen. If EPA was intent on defining an oxygen-to-carbon ratio, other commenters recommended a ratio of 0.266, which is the ratio for MTBE. Defining an oxygenate with a minimum oxygen-to-carbon ratio or limiting the definition to only aliphatics is more conservative than necessary. Instead, EPA is defining an oxygenate as any compound comprised solely of hydrogen, carbon, and oxygen.

In summary, the final rule allows oxygenates, defined as any compound comprised solely of hydrogen, carbon, and oxygen, at any concentration less than or equal to the detection limits in EPA's analysis. See § 261.38(a)(2), Table 1.

D. Parameters for the Synthesis Gas Fuel Exclusion

In today's final rule, EPA is also excluding from the regulatory definition of solid waste (and, therefore regulation as hazardous waste) a particular type of hazardous waste-derived fuel, namely a type of synthesis gas ("syngas") fuel meeting particular specifications. The exclusion applies to syngas that results from the thermal reaction of hazardous wastes by a process designed to generate both hydrogen gas (H_2) and carbon monoxide (CO) as usable fuel. See proposal (61 FR at 17465).

Some commenters stated that synthesis gas fuels are beyond EPA's regulatory authority because they are uncontained gases. EPA has broad statutory authority to regulate fuels produced from hazardous wastes. RCRA section 3004 (q) (1); see also *Horsehead Resource Development Co.* v. *Browner*, 16 F. 3d 1246, 1262 (D.C. Cir. 1994) (broadly construing this authority). The fact that syngas (by definition) is a gas, rather than a solid or liquid, does not appear to raise jurisdictional issues. It is still produced from the hazardous wastes that are being processed thermally. See § 261. 2 (c) (2) (A) and (B) (defining such materials as solid wastes). EPA believes its authority to be clear under these provisions.

EPA also received a number of comments from persons operating synthetic gasification processes within the petroleum industry. These comments also argued that the Agency was without legal authority to regulate the fuel output of these processes even if the processes use hazardous waste as a feed material. The Agency has in fact adjudicated the status under existing regulations of such a unit, indicating that while both the process and the fuel output are within RCRA subtitle C jurisdiction, the process is a type of exempt recycling unit under 40 CFR 261.6(c)(1) and the fuel is also exempt under § 261.6(a)(3). Letter of Michael Shapiro (Director of Office of Solid Waste) to William Spratlin (Director RCRA Division EPA Region VII) (May 25, 1995).

Upon reflection, it appears that these petroleum gasification operations may be similar to other within-petroleum industry recycling activities that EPA has proposed to exclude from Subtitle C jurisdiction in the petroleum listing rule

proposed on November 20, 1995. 60 *FR* 57747. It therefore appears more appropriate to consider this overall jurisdictional issue in the context of that rulemaking. However, EPA is not at this time limiting the synthetic gas fuel exclusion insofar as it potentially applies to the output of gasification operations conducted as part of normal petroleum refining (SIC Code 2911). Thus, these syngas fuels can also be eligible for the exclusion in today's rule.

To ensure that any excluded hazardous waste-derived syngas contains low levels of hazardous compounds relative to levels in fossil fuels, the Agency is setting a series of syngas specifications addressing:

(1) physical specifications:

—Minimum Btu value (Btu/scf);

(2) general constituent specifications for:

—Total halogen (ppmv)
—Total nitrogen (ppmv)
—Hydrogen Sulfide (ppmv)

(3) individual hazardous constituent specifications, for:

—Individual Appendix VIII constituents (ppmv)

1. Physical Specifications

a. Minimum Btu value. Like the comparable fuel specification, EPA proposed that syngas fuel have a minimum Btu value of 5,000 Btu/lb. Commenters had several concerns with this specification. First, commenters noted that the heating value of a gas is almost universally measured in units of Btu per unit volume ("scf"). Second, commenters argued that due to the efficiencies of combustion, a gas can be used as a fuel even though its heating value, when expressed in terms of Btu per pound, is less than 5000. Commenters argued that using fuels with significantly higher Btu per scf could actually degrade efficiency of gas turbine electric generation systems and increase air emissions. For example, syngas with a heating value of 5000 Btu per pound would have to be diluted to reduce its heating value to enable a combustion turbine to meet NO_x emission limits. Furthermore, commenters argued that in many potential applications, syngas produced from hazardous waste would be used as a substitute for syngas produced from fossil fuels or syngas produced from non-hazardous secondary materials. Syngas produced from coal, coke, and certain types of secondary materials, with heating values less than 5000 Btu per pound (when expressed in these terms), are currently used as fuels.

EPA agrees with commenters' concerns with regard to the heating value of syngas. To set an appropriate heating value, EPA investigated the heating values of syngas currently manufactured for use as a fuel.[15] For fuel usage related purposes, syngas is classified as either medium- or low-Btu gases (medium-Btu generally being produced with pure oxygen, low-Btu generally with air). Medium-Btu syngas generated from the gasification of fuels (including coal, fuel oil, biomass, municipal solid wastes, plastics, etc.) with pure oxygen typically has heating values from 200 to 400 Btu/scf. Medium-Btu syngas can typically be used as a fuel for power production in a gas turbine. Low-Btu syngas generated from the gasification of fuels with air has heating values from about 100 to 200 Btu/scf. In most cases, low-Btu syngas does not achieve temperature and expansion ratios needed for thermodynamically efficient power generation. Low-Btu syngas is usually mixed with higher energy sources and is not generally desired for most applications. However, EPA notes that there are certain specifically designed gas turbines (with very large "silo" combustion chambers) that can handle very low-Btu (100 Btu/scf) syngases for power generation. Thus, a heating value of 100 Btu/scf is reasonable for syngas because it represents fuels used as legitimate energy sources. Therefore, EPA is establishing a minimum Btu value of 100 Btu/scf for synthesis gas. See § 261.38(b)(1).

2. General Constituent Specifications

a. Total Halogen Specification. As proposed, EPA is promulgating a total halogen specification for synthesis gas fuels of less than 1 ppmv. Like comparable fuels, EPA is establishing a total halogen specification to limit the formation of halogenated PICs from the burning of the hazardous waste-derived syngas fuel. EPA has looked at syngas manufactured from non-hazardous waste sources, such as coal, and concludes that 1 ppmv is a reasonable specification for total halogen for a synthesis gas fuel. See § 261.38(b)(2).

b. Total Nitrogen Specification. EPA proposed a total nitrogen specification of less than 1 ppmv of total nitrogen, other than diatomic nitrogen (N_2). Like comparable fuels, EPA was concerned about the formation of nitrogenated PICs from the nitrogen contained in the hazardous waste-derived syngas fuel. Commenters argued that regardless of whether nitrogen is present in the syngas, when syngas is burned, NO, NO_2 and NO_x will always form, as nitrogen present in the air combines with oxygen in the syngas, the air or both. In addition, commenters argued that the Agency or authorized states already regulate the emissions of these air pollutants through the issuance of air permits. Furthermore, commenters argued that nitrogen in the syngas would not lead to the formation of PICs.

EPA disagrees with the commenters that a total nitrogen specification is unnecessary and believes that the comments did not address EPA's rationale for a total nitrogen limit. EPA is establishing a total nitrogen specification to limit the formation of nitrogenated PICs. Diatomic nitrogen is not included in a total nitrogen specification because only organic-bound nitrogen compounds are expected to form PICs. However, a total nitrogen specification based on syngas used as a fuel is a more appropriate specification. EPA has looked at syngas currently manufactured for use as a fuel to establish a total nitrogen specification. Nitrogen compounds in syngas (other than N_2) are mostly in the form of HCN or NH_3. Syngas manufactured from coal can have HCN and NH_3 levels of 100 to 300 ppmv.[16] A total nitrogen specification of 300 ppm would ensure that concentrations of nitrogenated PICs in waste-derived syngas will be no greater than syngas manufactured from coal. Therefore, in today's final rule, EPA is promulgating a total nitrogen specification of 300 ppmv, other than diatomic nitrogen (N_2) for synthesis gas fuel. See § 261.38(b)(3).

c. Hydrogen Sulfide Specification. EPA proposed a hydrogen sulfide (H_2S) specification of 10 ppmv for syngas fuels. Commenters argued that the H_2S specification is not necessary because the Clean Air Act has specifications that restrict the amount of sulfur that can be emitted by sources that would likely burn syngas fuel (i.e., boilers, combustion turbines). In addition, commenters argued that the potential of facilities that burn syngas as a fuel to emit sulfur compounds is low in comparison to facilities burning fossil fuels. For example, facilities that produce power by burning syngas produced from the gasification of coal emit approximately one-fifth of the level of sulfur compounds emitted by similar facilities burning coal.

EPA disagrees with the commenters that no hydrogen sulfide specification

[15] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

[16] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

should be promulgated. EPA is establishing the syngas exclusion by limiting Part 261 Appendix VIII constituents, one of which is hydrogen sulfide. However, a more appropriate specification would be based on current applications where syngas is used as a fuel, rather than the proposed specification of 10 ppmv. To set an appropriate hydrogen sulfide specification, EPA investigated the hydrogen sulfide levels in syngases currently manufactured from non-hazardous waste sources for use as a fuel.

The sulfur content of the material used to produce the syngas is converted to almost entirely H_2S in the gasification process, with smaller amounts of carbonyl sulfide (COS). Syngas produced from low sulfur content material does not contain appreciable H_2S. The H_2S content of high sulfur coal-based syngas can be over 1000 ppmv. However, in these cases, H_2S is removed during the gasification process. The amount of H_2S removal is dependent on how the syngas will be used. In the case of syngas used for chemical feedstock, the H_2S removal can be to a level under 1 ppmv. For the case of syngas used for fuel, H_2S removal can range to levels between 50 and 200 ppmv (above 200 ppmv leads to corrosion of down stream gas handling equipment, such as turbine blades.[17] Thus, 200 ppmv represents the level of H_2S in gas currently used in applications where syngas is used as a fuel. Therefore, in this final rule, EPA is promulgating a H_2S specification of 200 ppmv for synthesis gas fuels. See § 261.38(b)(4). EPA further notes that H_2S removal is considered as part of the gasification process and a syngas generator is required to meet the H_2S specification after this removal process.

3. Individual Hazardous Constituent Specifications

As proposed, EPA is promulgating specifications of less than 1 ppmv for each hazardous constituent listed in Appendix VIII of part 261 (that could reasonably be expected to be in the gas). Having received no comments to the contrary, this a reasonable specification for Appendix VIII constituents in a synthesis gas fuel. See § 261.38(b)(5). Since EPA is promulgating a total halogen specification for syngas and since this specification ensures that the excluded syngas has less than 1 ppmv of individual halogenated compounds, a syngas generator would not be expected to analyze for the individual halogenated compounds in Appendix VIII. However, a syngas generator would be expected to analyze for the individual nitrogenated compounds in Appendix VIII since a total nitrogen specification of 300 ppmv would not ensure that individual nitrogenated compounds would be limited to 1 ppmv. In addition, a syngas generator would be expected to analyze for the Appendix VIII constituents identified in the comparable fuels specification. See § 261.38(a)(2) Table 1.

E. Meeting the Comparable Fuel Specifications

1. Potential Applicability of Today's Rule to Specific Waste Codes

The probability of today's rule being applicable to any specific hazardous waste is highly dependent upon the waste codes assigned to that waste as well as the industry generating the waste. In developing the Land Disposal Restrictions (40 CFR part 268) and in developing the listings of hazardous wastes (40 CFR part 261), the majority of the listed hazardous wastes were analyzed for concentrations of specific hazardous constituents. EPA has already determined that the majority of listed hazardous wastes (i.e., those having codes beginning with "F", "K", "U" or "P") are known to contain at least one of the hazardous constituents that are restricted by today's rule to "non-detect" levels. Appendix VII to Part 261 provides a partial list of hazardous constituents that are known to be present in each Listed Waste code, and the Treatment Standards for Hazardous Wastes (40 CFR 268.40) indicate constituents (and concentrations) that are specifically regulated for land disposal for each waste code. The majority of these constituents and waste codes are restricted to "non-detect" levels in today's rule and so a potential comparable fuel containing these constituents either could not be used, or would have to be treated so that the hazardous constituents are removed or destroyed to non-detect levels. See treatment discussion below, Section E.4. It is possible, however, that an organic solvent or oil could carry one of these codes, based on the derived-from rule only, and could comply with the limits in today's rule. As such, EPA did not restrict the application of today's rule to any waste code, except in the case of wastes listed for the presence of dioxins or furans. See 261.38(c)(12). However, EPA does not expect that corrosive or reactive wastes would be candidate comparable fuels because of the detrimental impacts on the burning unit that would occur.

At the same time, there are specific listed waste codes that EPA expects to contain only those constituents for which today's rule sets maximum allowable concentrations. As such, some wastes with these codes would be likely candidates for compliance with the corresponding constituent limits. These applicable wastes are primarily expected to be: ignitable solvent wastes (F003 and F005), wastes from petroleum production (F037, F038, and K048–51), and wastes from coking operations (K060, K087, K141–145, K147 and K148). Table 1 also lists a set of U waste codes and their corresponding constituents that may be applicable depending upon their concentrations.

It is expected that today's rule will primarily be applied to wastes that are classified as hazardous only because they exhibit the hazardous characteristic of ignitability (D001) and/or corrosivity (D002). In comparing the regulatory levels for characteristic metal wastes (D004–D011) and the corresponding allowable limits for these metals in today's rule, there is an extremely small window of applicability for some wastes identified as D006 (cadmium) or D009 (mercury) and likewise a relatively small window of applicability for some D008 wastes (lead). All other characteristic metal wastes fail the limit restrictions for metals. D003 wastes that are classified as hazardous due to their cyanide (CN) content are expected, for the most part, to fail to meet the specification for total nitrogen. Except for D018 wastes (benzene), wastes that are characteristic for organics (D012–D043) are also expected to be unable to comply with either the limits or the "non-detect" requirements.

All wastes consisting primarily of alcohols (e.g., ethanol or isopropanol), petroleum distillates, oils, or other ignitable organic liquids) are the most likely candidates for applying today's rule. This is quite logical in that these chemicals tend to have good fuel value when compared to the fuels examined for today's rule. The most probable listed wastes that are expected to be able to comply with today's rule are F003 and F005 solvents (except those F005 wastes containing carbon disulfide, pyridine, or nitrobenzene). There are an additional number of "U" wastes identified in Table 2 that are also good candidates for compliance with today's rule. These chemicals are either hydrocarbons or oxygenated hydrocarbons for which today's rule does not establish any limits.

Because of the potential for cross-contamination, wastes from facilities

[17] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Rule. Development of Comparable Fuels Specifications", May 1998.

(e.g., pesticide manufacturers and halogenated solvent manufacturers) known to manufacture concentrated forms of the chemicals restricted by today's rule, are the most likely to require closer scrutiny and testing. However, wastes generated by these facilities that are not expected to be cross-contaminated would include non-contact solvents, hydraulic or lubricating oils, and solvent-based wastes from the production of unregulated constituents.

TABLE 1.—LISTED "U" WASTES WITH CORRESPONDING CONSTITUENT LIMITS

Constituent for which the code was listed	Waste code
Acetophenone	U004
Benz[a]anthacene	U018
Benzene	U019
Benzo(a)pyrene	U022
Bis(2-ethylhexyl) phthalate	U028
Chrysene	U050
Creosote	U051
Cresol cresylic acid (total cresols)	U052
Dibenz[a,h]anthracene	U063
Di-n-butyl phthalate	U069
Diethyl phthalate	U088
7,12-Dimethylbenz[a]anthracene	U094
Di-n-octyl phthalate	U107
Fluoranthene	U120
Indeno(1,2,3-cd) pyrene	U137
3-Methylcholanthrene	U157
Naphthalene	U165
Toluene	U220
Acrolein	P003
Allyl alcohol	P005
Endothall	P088
Propargyl alcohol	P102
Ethyl methacrylate	U118
Isobutyl alcohol	U140
Isosafrole	U141
Methyl ethyl ketone [2-Butanone] [MEK].	U159
Methyl methacrylate	U162
1,4-Naphthoquinone	U166
Phenol	U188
Safrole	U203
2-Ethoxyethanol [Ethylene glycol monoethyl ether].	U359

TABLE 2.—LISTED "U" WASTES WITH NO CORRESPONDING CONSTITUENT LIMITS

Constituent for which the waste was listed	Waste code
Acetaldehyde [Ethanal]	U001
Acetone [2-Propanone]	U002
2-Acetylaminofluorene [2-AAF]	U005
Acrylic acid	U008
Benz[c]acridine	U016
n-Butyl alcohol [n-Butanol]	U031
Carbon oxyfluoride	U033
Crotonaldehyde	U053
Cumene [Isopropyl benzene]	U055
Cyclohexane	U056
Cyclohexanone	U057
Dibenzo[a,i]pyrene	U064
1,2:3,4-Diepoxybutane [2,2'-Bioxirane]	U085
∝,∝-Dimethyl benzyl hydroperoxide	U096
2,4-Dimethylphenol	U101
Dimethyl phthalate	U102
1,4-Dioxane [1,4-Diethyleneoxide]	U108
Ethyl acetate	U112
Ethyl acrylate	U113
Ethylene oxide	U115
Ethyl ether	U117
Formaldehyde	U122
Formic Acid	U123
Furan	U124
Furfural	U125
Glycidylaldehyde	U126
Maleic anhydride	U147
Methanol	U154
Methyl ethyl ketone peroxide	U160
Methyl isobutyl ketone [4-Methyl-2-pentanone].	U161
Paraldehyde	U182
1,3-Pentadiene	U186
Phthalic anhydride	U190
Quinone [p-Benzoquinone]	U197
Resorcinol	U201
Tetrahydrofuran	U213
Xylenes, mixed isomers [Xyenes, total].	U239

2. General

The proposal provided several methods by which a hazardous waste could qualify as a comparable fuel. The final rule retains these methods and adds clarifying conditions to ensure that the methods do not violate existing policy with regard to blending and treatment. The person claiming that a hazardous waste meets the exclusion criteria of this rule will be referred to as the "comparable fuel generator," in the case of excluded liquid fuel, or "syngas fuel generator," in the case of excluded syngas fuel. In today's final rule, a hazardous waste can meet the comparable fuel hazardous constituent, heating value and viscosity specifications of § 261.38(a) in several ways. However, in each case, the generator claiming the exclusion is responsible for demonstrating eligibility. In addition, just meeting the hazardous constituent, heating value and viscosity specifications would not qualify a hazardous waste for the exclusion. The implementation requirements of § 261.38(c) (e.g., notification, certification, sampling and analysis, recordkeeping) must also be satisfied for a hazardous waste to be excluded as a comparable fuel.

A waste can meet the § 261.38(a)(2) hazardous constituent specification if the hazardous waste "as generated," i.e. without any processing, blending or other alteration: (a) Meets the hazardous constituent specification; or (b) does not meet the hazardous constituent specification, but undergoes treatment, pursuant to § 261.38(c)(4), so that the hazardous constituents of concern are destroyed or removed to concentrations that meet the exclusion specification.

A waste can meet the § 261.38(1)(i) heating value specification if the hazardous waste as generated without processing: (a) Meets the heating value specification; or (b) does not meet the hazardous constituent specification, but undergoes treatment, pursuant to § 261.38(c)(4), that destroys or removes material to increase the heating value to meet the exclusion specification.

A waste can meet the § 261.38(a)(1)(ii) viscosity specification if the hazardous waste as generated without processing: (a) Meets the viscosity specification; (b) does not meet the viscosity specification, but through blending, pursuant to § 261.38(c)(3) with fossil fuel, another excluded comparable fuel, or other non-waste changes the viscosity to meet the exclusion specification; or (c) does not meet the viscosity specification, but undergoes treatment, pursuant to § 261.38(c)(4) that destroys or removes material to decrease the viscosity to meet the exclusion specification.

3. Blending

Commenters supported allowing the blending of a hazardous waste that meets the constituent and heating value specifications for the purpose of decreasing viscosity. However, commenters were concerned that blending could dilute toxic constituents and said that blending should only be allowed if toxic constituents in the hazardous waste would not be diluted. In today's final rule, the Agency allows an as-generated hazardous waste, which meets the hazardous constituent and heating value specifications, but does not meet the viscosity specification, to be blended to meet the viscosity specification (see § 261.38(a)). The generator must document that the hazardous waste, as generated without processing, meets the hazardous constituent and heating value specifications prior to any blending. It is also the responsibility of the generator to document that the blending does not violate the dilution prohibition of § 261.38(c)(6). This provision states that the hazardous constituent and heating

value specifications cannot be met through dilution; i.e. they can only be met through treatment which destroys or removes hazardous constituents, or by the waste as-generated. See generally 61 FR at 15586–87 (April 8, 1996) (extending dilution prohibition in § 268.3 to include combustion of inorganic wastes). Allowing blending to meet the hazardous constituent or heating value specification simply increases the amounts of hazardous constituents emitted when the fuels are burned, and would increase these amounts above those emitted if fossil fuels were burned instead. This is at inconsistent with the whole premise of comparable fuels, and also is inconsistent with the section 3004(m) hazardous waste treatment provisions (which, although not directly applicable, articulate important overall statutory objectives) which require hazardous constituents to be removed or destroyed by treatment, not diluted. *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 16 (D.C. Cir. 1992). As noted earlier, such burning can be viewed as part of the waste management problem, and EPA may validly condition the exclusion to prevent that result.

Blending of a hazardous waste pursuant to § 261.38(c)(3) to meets the viscosity specification obviously may be performed only in regulated units: at a permitted RCRA treatment, storage facility; a regulated interim status treatment, storage facility; or at a 90-day generator unit meeting the requirements of § 262.34.

4. Treatment

Commenters also supported the proposal to allow a hazardous waste to be treated to meet the comparable fuel specifications. Many of the same commenters also expressed concerns that any treatment allowed should reduce emissions of hazardous constituents, i.e. treatment must destroy or remove the constituents or materials of concern. The Agency agrees, and § 261.38(c)(4) specifically states that only treatment which destroys or removes hazardous constituents or materials is permissible. Moreover, as noted above, the waste remains subject to subtitle C control during treatment and thus treatment can only occur in regulated units. (Treatment by blending to meet the viscosity specification likewise can only occur in regulated units, for the same reason.)

It is the responsibility of the generator claiming the exclusion to demonstrate eligibility. See generally § 261.2(f). It should be noted that just meeting the hazardous constituent, heating value and viscosity specifications would not qualify a hazardous waste for the exclusion; the implementation requirements of § 261.38(c) (e.g., notices, certification, sampling and analysis, recordkeeping, etc.) also must be satisfied for a hazardous waste to be excluded as a comparable fuel. The person that treats the hazardous waste to generate a comparable fuel must also demonstrate that the treatment of the hazardous waste destroys or removes the hazardous constituents or materials of concern from the waste. The treater must: (1) Document that the unit that will treat the hazardous waste has been demonstrated to effectively remove or destroy the hazardous constituents (at the levels present in the waste) or materials of concern from the type of waste being treated; or (2) treat the waste in a unit that removes or destroys the constituents of concern, then reanalyze the waste, in accordance with the requirements of § 261.38(c)(8), to document that the constituent specifications have been satisfied.

If a hazardous waste is treated to produce a comparable fuel, only the waste-derived fuel would be excluded from RCRA subtitle C regulation upon a determination that it met the specification. The hazardous waste would be regulated under Subtitle C from the point of generation until the generation of a comparable fuel that meets the exclusion specifications and implementation requirements. This means that the generation, transport, storage, and treatment of the hazardous waste, until exclusion as a comparable fuel, remains subject to applicable Subtitle C regulations.

In addition, residuals from the treatment of a hazardous waste remain solid waste and, if hazardous, are subject to applicable Subtitle C regulations. Thus, if comparable fuel is produced from treatment of listed hazardous waste, the wastes from that process are automatically hazardous by virtue of the derived from rule. (See the derived-from rule in § 261.2(d).)

F. Meeting the Syngas Specifications

Commenters felt the proposal was not very specific in describing ways in which a syngas fuel could be generated from hazardous waste. The final rule makes clear that a hazardous waste can meet the syngas fuel constituent and heating value specifications through the treatment of the hazardous waste. As with comparable fuels, it is the responsibility of the generator claiming the exclusion to demonstrate eligibility. The treatment of a hazardous waste to generate a syngas fuel can occur in either: (1) A unit subject to applicable Subtitle C treatment, storage and disposal requirements (i.e., Parts § 264, § 265 or § 262.34); or (2) a recycling unit exempt under § 261.6(c).

The generator of the syngas fuel must demonstrate that the treatment of the hazardous waste destroys or removes the hazardous constituent of concern from the waste. A generator of syngas fuel from the treatment of hazardous waste must: (1) Document that the unit that will process the hazardous waste has been demonstrated to effectively remove or destroy the hazardous constituents of concern from the type of waste being treated; and (2) process the hazardous waste in a unit that removes or destroys the constituents of concern, then analyze the waste in accordance with the requirements of § 261.38(c)(8) to document that the exclusion specifications have been satisfied. If a hazardous waste is processed to produce a syngas fuel that meets the exclusion specifications, only the syngas fuel would be excluded from RCRA subtitle C regulation.

In addition, residuals from the treatment of a hazardous waste to generate an excluded syngas fuel remain solid waste and are subject to applicable Subtitle C regulations if they are also hazardous wastes. Residuals from the treatment of a listed hazardous waste to generate a syngas fuel remain hazardous wastes due to the derived-from rule: the residuals are derived from treatment of listed hazardous wastes.

G. Sampling and Analysis

Commenters expressed concern that the Agency proposed: (1) To initially require sampling and analysis for all Appendix VIII constituents; (2) to require the use of SW–846 methods to conduct sampling and analysis of Appendix VIII constituents; and (3) to also require the use of the same methods for syngas as for comparable fuels. In response to commenters concerns, the Agency is finalizing the following approaches to sampling and analysis of comparable fuel and syngas fuel.

1. Use of Process Knowledge

A majority of commenters believed that EPA should allow the use of process knowledge under limited circumstances in determining which constituents to test for in the initial scan as well as any follow up testing. The Agency agrees with commenters. Generators of hazardous wastes should have adequate knowledge of their waste to allow the use of process knowledge in determining which constituents may and may not be present in their waste.

The use of process knowledge may only be used by the original generator of

the hazardous waste. If the generator of the hazardous waste and generator of the comparable/syngas fuel are different, then the generator of the comparable/syngas fuel may not use process knowledge to determine that constituents are not present in the waste. The generator of the comparable/syngas fuel, if not the original generator of the hazardous waste, must test for all of the constituents and properties in § 261.38(a)(2) Table 1 of the regulations. This is because the Agency believes that only the original generator may have intimate knowledge of the constituents in the waste to make such a determination. See § 268.7, where EPA uses the same approach for analyzing compliance with LDR treatment standards; *see also Hazardous Waste Treatment Council v. EPA*, 886 F. 2d 355, 368–71 (D.C. Cir. 1989) (upholding this approach).

Therefore, the final rule allows the use of process knowledge under certain circumstances. Today's rule requires testing for all constituents except those the initial generator of the hazardous waste determines should not be present in the waste. The following cannot be determined to "not be present" in the waste: (1) A hazardous constituent that causes the waste to exhibit the toxicity characteristic for the waste or hazardous constituents that were the basis for the listing of the waste; (2) a hazardous constituent detected in previous analysis of the waste; (3) a hazardous constituent introduced into the process that generates the waste; or (4) a hazardous constituent that is a byproduct or side reaction to the process that generates the waste.

It is the responsibility of the original generator/comparable fuel generator to document their claim that specific hazardous constituents meet the exclusion specifications based on process knowledge. Regardless of which method a generator uses, testing or process knowledge, the generator is responsible for ensuring that the waste meets all constituent specifications at all times. If at any time the comparable fuel fails to meet any of the specifications, that fuel is in violation of Subtitle C requirements.

2. Waste Analysis Plan

As in the proposal, the final rule requires comparable fuel generators to develop a waste analysis plan prior to sampling and analysis of their hazardous waste to determine if the waste meets the exclusion specifications. This is consistent with the usual requirement throughout the Subtitle C rules that persons generating and treating hazardous waste must prepare a waste analysis plan. See, e.g. § 264.13 (general waste analysis plans) and § 268.7(a)(4) (requiring even generators using 90-day units for treatment to prepare waste analysis plans with respect to hazardous waste prohibited from land disposal). To ensure that the chemical/physical measurements of the waste are sufficient, accurate and precise, the Agency is requiring comparable fuel generators to develop a waste analysis plan, and suggest doing so in accordance with Agency guidance. Chapter Nine of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846) addresses the development and implementation of a scientifically credible sampling plan. Chapter One of SW–846 describes the basic elements to be included in a Quality Assurance Project Plan (QAPP), as well as information describing basic quality assurance (QA) and quality control (QC) procedures. Chapter Two of SW–846 aids the analyst in choosing the appropriate methods for samples, based upon sample matrix and the analytes to be determined.

Comparable fuel generators may want to follow the SW–846 guidance in developing their waste analysis plans. As specified in the recordkeeping section of the rule (§ 261.38(c)(10)) the generator also must have documentation of the: (1) Sampling, analysis, and statistical analysis protocols that were employed; (2) sensitivity and bias of the measurement process; (3) precision of the analytical results for each batch of waste tested; and (4) results of the statistical analysis.

3. Methods To Analyze Comparable Fuels

In the proposal, EPA required the use of SW–846 methods for the sampling and analysis of wastes to determine if the waste meets the comparable fuel exclusion constituent specifications. Based on commenter response and the Agency's overall increased use of alternative methods to those specified in SW–846, the final rule allows the use of alternate methods that meet the performance based criteria in section § 261.38(c)(8).

The approach allows comparable/syngas fuel generators to use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis is unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator must demonstrate that: (1) Each constituent of concern is not present above the specified specification level at the 95% upper confidence limit around the mean; and (2) the analysis could have detected the presence of the constituent at or below the specified specification level at the 95% upper confidence limit around the mean. (See Guidance for Data Quality Assessment—Practical Methods for Data Analysis, EPA QA/G–9, January 1998, EPA/600/R–96/084).

The Agency will consider that the exclusion level was achieved in the waste matrix if an analysis in which the constituent is spiked at the exclusion level indicates that the analyte is present at that level within analytical method performance limits (e.g., bias and precision). In order to determine the performance limits for a method, EPA recommends following the quality control (QC) guidance provided in Chapters One and Two of SW–846, and the additional QC guidance provided in the individual methods.

The Office of Solid Waste's (OSW) standing policy on the Appropriate Selection and Performance of Analytical Methods for Waste Matrices Considered to be "Difficult-to-Analyze" was stated in a January 31, 1996 memorandum from Barnes Johnson, Director of the Economics, Methods, and Risk Assessment Division, to James Berlow, Director of the Hazardous Waste Minimization and Management Division. The following excerpts are appropriate to this rulemaking.

Inadequate recovery of target analytes from the RCRA-regulated waste matrices of concern demonstrates that the analytical conditions selected are inappropriate for the intended application. Proper selection of an appropriate analytical method and analytical conditions (as allowed by the scope of that method) are demonstrated by adequate recovery of spiked analytes (or surrogate analytes) and reproducible results. Quality control data obtained must also reflect consistency with the data quality objectives and intent of the analysis.

(a) For extractable organics in standard RCRA matrices, e.g., groundwater, aqueous leachates, soils, OSW considers a sample preparation method appropriate for use if it generates an analyte recovery of 70% or greater (Method 8270C, Sec. 1.1). For extractable organics in "difficult matrices", e.g., sludges, ash, stabilized wastes, OSW considers a sample preparation method appropriate for use if it generates an analyte recovery of 50% or greater.

(b) For volatile organics, using relative recoveries, i.e., standard curves established by purge-and-trap, or other

techniques for the preparation of standards, OSW considers a sample preparation method appropriate if it generates a relative analyte recovery of 80% or greater (Methods 8260B, 8015B).

(c) For inorganic analytes in almost all matrices, an absolute recovery and precision of 80–120% can generally be achieved with the proper choice of acid digestion procedure and determinative method for the analyte of interest."

4. Syngas Waste Analysis Plan and Analysis Methods

a. General. EPA is concerned that tested and generally accepted methods may not exist for the sampling and analysis of gases from pressurized systems that will ensure an accurate, unbiased, and precise representation of the hazardous constituents present in the gas.

Hazardous constituents present in a gas at high pressure and high temperature may be difficult to analyze accurately due to possible physical and chemical changes in the constituents when a sample is drawn into a low pressure and temperature environment for analysis. For example, some constituents, while present as a gas under high pressure and temperature, may solubilize into liquids that have condensed or adhere to the sampling components as the pressure and temperature drops in the sampling device. If this were to occur, the analysis of the sampled gas would not accurately represent the concentrations of the constituents in the original gas.

The Agency also shares the general concern stated in comments that enforcement of the exclusion specifications could be compromised because of the difficulty in applying or potential absence of accepted sampling and analysis methods for these gases. Therefore, the final rule requires syngas generators to submit for approval, prior to sampling and analysis, a waste analysis plan to the appropriate regulatory authority (see § 261.38(c)(7)(iii)). At a minimum, the plan must specify: (1) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters; (2) the test methods which will be used to test for these parameters; (3) the sampling method which will be used to obtain a representative sample of the waste to be analyzed; and (4) the frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and (5) if process knowledge is used in the waste determination, any information prepared by the facility owner or operator in making such determination.

b. Analysis. A syngas fuel generator also may use the performance-based approach (§ 261.38(c)(8)) to demonstrate that the performance of the methods selected is appropriate to meet the exclusion specifications (as described in 3 above). Guidance on demonstration of appropriate method performance can be found in Chapter One of SW–846 and the Quality Control sections of the individual methods.

5. Non-Detects

EPA proposed that for a waste to meet a non-detect standard, the analysis must achieve a detection limit equal to or less than the EPA specified number and also not detect the constituent of concern in the waste (61 FR 17358). However, some commenters believe that the Agency should develop numerical levels for each parameter in the benchmark where results are "non-detect." They are concerned that a potential comparable fuel that has any measurable levels of Appendix VIII constituents below the Agency's detection limits would not qualify as a comparable fuel.

The final rule maintains the proposed approach for non-detect constituent specifications, except in the case of metals, hydrocarbons and oxygenates (see Section C. above). The Agency believes that allowing concentrations of constituents not found in the benchmark fuels to be present in the comparable fuel is counter to the comparable approach and could allow higher emissions of toxic compounds from burning excluded waste than from benchmark fuels. Additionally, commenters noted that the detection limit, referenced as the "maximum" detection limit, should more accurately be referred to as the "minimum" detection limit that must be achieved. The Agency agrees and the final rule requires that analysis for a constituent with a specification of non-detect must: (1) Meet a detection limit at or less than the minimum required detection limit listed for the constituent; and (2) not detect the constituent of concern in the waste (see § 261.38(a) and (b)).

Commenters also indicated that it may be difficult to achieve the detection limits specified for the non-detect specifications. The Agency continues to believe that the detection limits can be met. This is due in part to the fact that the detection limits are primarily based on the limits found for the No. 6 fuel oil analysis. EPA believes that the matrix for No. 6 fuel oil is a more difficult matrix to analyze than what the Agency believes will be the matrix for the majority of comparable fuels—a light solvent matrix. In addition, to assist generators who may have difficult matrices to analyze, the final rule provides the latitude to use any method that will ensure an unbiased and precise analysis of the waste.

H. Notification, Certification, and Documentation

1. Who Must Make the Exclusion Notification

The person claiming that a hazardous waste meets the exclusion criteria of this rule is known as the "comparable fuel generator" in the case of excluded liquid fuel or "syngas fuel generator" in the case of excluded syngas fuel. The comparable/syngas fuel generator need not be the person who originally generates the hazardous waste. The comparable/syngas fuel generator can be the first person who documents and certifies that a specific hazardous waste meets the exclusion criteria.

2. Notification Requirements

Most commenters agreed with the proposal that a one-time notification was appropriate; however, some commenters said that the exclusion should not be self-implementing and should require some type of review and approval by the implementing authority. The Agency continues to believe that a one-time notification in combination with the other requirements of this section, gives sufficient notice to the regulating officials (i.e., State RCRA and CAA officials). Since this is a self-implementing exclusion, in order to ensure delivery, the notification must be sent certified mail and until the notification of exclusion is received the waste is still a hazardous waste and must be managed as such. Only after the receipt of such notification that the hazardous waste-derived fuel meets the requirements of this rule is the waste excluded and free to be managed in accordance with the requirements for a comparable or syngas fuel. If a comparable/syngas fuel generator loses its exclusion, the generator must renotify for the exclusion, after coming into compliance with the requirements of this section. If necessary the generator must also comply with any applicable Subtitle C requirements for the waste.

a. EPA Regional or State Notification. Prior to managing any waste as an excluded comparable/syngas fuel under this section, the generator must send to, in States not authorized to implement this Section, the EPA Regional RCRA and CAA Directors, and, in authorized States, to the State RCRA and CAA Directors. The notification of the exclusion claim should be sent via

certified mail, or other mail service that provides written confirmation of delivery. Notification of the RCRA and CAA Directors will provide notification of the exclusion and appropriate documentation to both the RCRA and CAA implementing officials. The Agency's intent is for copies of the exclusion information to reach both the RCRA and CAA implementing officials because of the nature of this exclusion—a RCRA excluded waste being burned in CAA regulated units. If the comparable/syngas is to be burned in a State other than the generating State, then the comparable/syngas fuel generator must also provide notification to that State's or Region's RCRA and CAA Directors.

The notification shall contain the following items: (1) The name, address, and RCRA ID number of the person/facility claiming the exclusion; (2) the applicable EPA Hazardous Waste Codes for the hazardous waste; (3) the name and address of the units, meeting the requirements of § 261.38(c)(2), that will burn the comparable/syngas fuel; and (4) the following statement signed and submitted by the person claiming the exclusion or his authorized representative:

"Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all waste identified in this notification. Copies of the records and information required at 40 CFR 261.38(c)(10) are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. Public Notification. As a self-implementing exclusion effective upon receipt of the notification by the implementing authority, there is no decision prior to exclusion being made by the implementing authority regarding the waste. The opportunity exists at all times for the public to bring to the implementing authority's attention any circumstance that might aid that authority in its monitoring and enforcement efforts. The public, furthermore, would have the ability to bring a citizen suit for a claimant's failure to comply with any requirement of the exclusion. Based on comments received on the proposal, the Agency believes that requiring the comparable/syngas fuel burner to provide a simple public notification of an exclusion claim would aid the public in its efforts. In most cases, the Agency believes the burner will also be the generator of the fuel.

Therefore, under the final rule, the comparable/syngas fuel burner must submit for publication in a major newspaper of general circulation local to the site where the comparable/syngas fuel will be burned, a notice entitled "Notification of Burning of Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information: (1) Name, address, and RCRA ID number of the claimant's facility; (2) name and address of the unit(s) that will burn the comparable/syngas fuel; (3) a brief, general description of the manufacturing, treatment, or other process generating the comparable/syngas fuel; (4) an estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; (5) name and mailing address of the State or Regional Directors to whom the claim is being submitted. This notification must be published in the newspaper prior to the burning of the comparable/syngas fuel. Notification is only necessary once for each waste stream excluded.

c. Burner Certification. As proposed, the final rule requires comparable/syngas fuel to be burned only in units subject to Federal/State/local air emission requirements. The Agency believes that limiting the burning of comparable/syngas fuels to industrial furnaces or industrial boilers, or hazardous waste incinerators, along with a certification from the burner, would ensure that the fuel was burned in a unit subject to Federal/State/local air emission regulations. Industrial furnaces or industrial boilers, or hazardous waste incinerators are believed to be a universe of units that are capable of handling comparable/syngas fuels and that would be subject to Federal/State/local air emission requirements. In response to comments, the Agency believes that these excluded hazardous wastes are best handled and burned in the types of units specified in § 261.38(c)(2). To ensure that comparable/syngas fuels burned off-site are burned in a unit specified in § 261.38(c)(2) (see discussion below), the Agency is requiring the generator to obtain from the burner a one-time written, signed certification that: (1) The comparable/syngas fuel will be burned only in an industrial furnace or boiler, or hazardous waste incinerator subject to Federal, State, or local air emission requirements; (2) identifies the name and address of the units that will burn the comparable/syngas fuel; and (3) the state in which the burner is located is authorized to exclude wastes as comparable fuels (i.e., under the provisions of § 261.38). This requirement coupled with the requirement to notify the State or Regional Directors will enable regulatory officials to take any measure that may be appropriate to ensure that excluded fuel is burned in conformance with applicable regulations and so does not become part of the waste management problem.

If the generator or burner intends to change the unit where the comparable/syngas fuel is burned (i.e., burn a comparable/syngas fuel in a unit that has not previously been included in a certification), then prior to burning, the generator must again follow the requirements for: (1) Obtaining a burner certification; (2) notifying the public; and (3) submitting a revised notification to the State or Regional Directors. Once the revised notification has been received by the State or Regional Directors and the notification has been published in the newspaper, the generator/burner may burn the fuel as an excluded waste.

I. Exclusion Status

Some commenters requested clarification of the regulatory status of the comparable/syngas fuel if the conditions of the exclusion were not met. After the exclusion for a waste has become effective, the conditions of the exclusion must continue to be met in order to maintain the exclusion.

Separate and distinct from any requirement or condition established in this final rule, all generators—including comparable/syngas fuel generators under this exclusion—have a continuing obligation to identify whether they are generating a hazardous waste and to notify the appropriate government official if they are generating a hazardous waste. Section 3010; 40 CFR 262.11. If a comparable fuel claimed as excluded under today's rule fails to meet the exclusion requirements of sections § 261.38(a)–(c), that comparable/syngas fuel and subsequently generated comparable/syngas fuel would be required to be managed as a hazardous waste—including compliance with all notification requirements—until testing demonstrated that the waste was below the exclusion specifications.

A comparable/syngas fuel that is not ultimately burned remains a hazardous waste and is subject to all applicable Subtitle C regulations (unless another exclusion from RCRA applies).

in the proposal, the only allowable treatment or disposal method for a comparable/syngas fuel is burning. Any disposal method other than burning is a RCRA violation, unless the comparable/syngas fuel is properly managed as a hazardous waste meeting applicable Subtitle C regulations. The implications of not burning are that any prior management of the waste was subject to Subtitle C requirements.

Excluded comparable/syngas fuel generators, transporters and burners are subject to the speculative accumulation requirements under § 261.2(c)(4). Thus, there must be turnover of a given percentage of comparable fuel stock each calendar year, and the persons holding such fuels must be able to demonstrate that such turnover is occurring. See § 261.2(f). Since ultimate users are notified that they are receiving comparable fuels, they may feasibly comply with this requirement by documenting how much such fuel is received when it is burned.

If a generator knows or should have known that a waste fails to meet the constituent specifications, the exclusion ends as of the point of determination and the material must be managed as a hazardous waste.

J. Recordkeeping

1. General

Some commenters believed that the recordkeeping requirements in the proposal were excessive, while others felt they were too lenient. The Agency, however, believes that because of the self-implementing nature of this exclusion, maintenance of the proper information on-site is essential to the proper implementation of the exclusion.

The final rule requires the comparable/syngas fuel generator to maintain the following files (see § 261.38(c)(10)) at the facility generating the fuel: (1) All information required to be submitted to the State RCRA and CAA Directors as part of the notification of the claim: (i) the name, address, and RCRA ID number of the person claiming the exclusion; (ii) the applicable EPA Hazardous Waste Codes for the hazardous waste; (2) a brief description of the process that originally generated the hazardous waste and process that generated the excluded fuel; (3) an estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded; (4) documentation for any claim that a constituent is not present in the hazardous waste as required under § 261.38(8); (5) the results of all analyses and all quantitation limits achieved for the fuel; (6) documentation as required for the treatment or blending of a waste to meet the exclusion specifications; (7) a certification from the burner if the waste is to be shipped off-site; and (8) the certification signed by the person claiming the exclusion or his authorized representative.

The generator must also maintain documentation of the waste analysis plan and the results of the sampling and analysis that includes the following: (1) the dates and times waste samples were obtained, and the dates the samples were analyzed; (2) the names and qualifications of the person(s) who obtained the samples; (3) a description of the temporal and spatial locations of the samples; (4) the name and address of the laboratory facility at which analyses of the samples were performed; (5) a description of the analytical methods used, including any clean-up and sample preparation methods; (6) all quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred; (7) all laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and (8) all laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in § 261.38(c)(11) and also provides for the availability of the documentation to the generator upon request. These records and those required for off-site shipments must be maintained for the period of three years. A generator must maintain a current waste analysis plan during that three year period.

2. Off-Site Shipments

The final rule requires that for each shipment of comparable/syngas fuel a generator sends off-site for burning in an industrial furnace or boiler, or hazardous waste incinerator, a record of the shipment must be kept by the generator on-site. Because these fuels are not required to be accompanied by a manifest, it is the Agency's belief, supported by commenters, that to ensure that comparable/syngas fuels are transported to and burned in only those units approved for such burning some type of tracking mechanism is warranted. Therefore, the final rule requires for off-site shipments the following information be maintained by the generator on-site: (1) The name and address of the facility receiving the comparable/syngas fuel for burning; (2) the quantity of comparable/syngas fuel delivered; (3) the date of shipment or delivery; (4) a cross-reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/syngas fuel meets the specifications; and (5) the one-time certification by the burner.

K. Transportation and Storage

Commenters concurred with the Agency's belief that the Department of Transportation (DOT) and the Occupational Safety and Health Agency (OSHA) requirements for the transportation and handling of comparable/syngas fuels will be adequate to ensure the safe management of these excluded fuels. The final rule does not require comparable/syngas fuel handlers to comply with the RCRA storage and transportation requirements. It should be noted that excluded comparable/syngas fuel transporters are required to comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR parts 171 through 180.

Anyone who stores an excluded comparable/syngas fuel (e.g., generator, transporter, burner) is required to comply with all applicable requirements under the Occupational Safety and Health Agency regulations in 29 CFR part 1910. The occupational safety and health standards for flammable and combustible liquids can be found in Subpart H—Hazardous Materials section 1910.106 and standards for compressed gases in section 1910.101.

L. Comparable Fuels Exclusion and Waste Minimization

1. Introduction

In its April 1996 NPRM (61 FR 17464), EPA solicited comment on the effects of the comparable fuels provision on facilities' efforts to promote pollution prevention and waste minimization measures (i.e., source reduction and environmentally sound recycling). In particular, EPA wanted to determine the extent to which companies might: (1) Shift from hazardous waste recycling practices to burning wastes as fuel in broader markets; (2) continue to recycle these wastes for product recovery; (3) undertake source reduction for those wastes currently failing the comparable fuel specifications; or (4) continue to burn the excluded waste fuel in either an hazardous waste incinerator, light weight aggregate kiln, or cement kiln.

EPA received many comments on this issue, most of which indicated there

would probably be a shift from recycling toward combustion, but the Agency received very little quantitative information that would allow the Agency to assess the extent and impact of potential shifts. Consequently, EPA used data from the RCRA Biennial Reporting System, which is a census of waste stream information from all large quantity hazardous waste generators, and the National Hazardous Waste Constituent Survey (NHWCS), which contains data on the composition and properties of waste streams for certain industries, to develop two approaches for assessing the impacts of the comparable fuels provision on pollution prevention and recycling. This approach is described in the next section.

The results of EPA's analysis conclude that about three-fourths of hazardous wastes now meeting the comparable fuels specifications are already being combusted; the remainder (about one-fourth) is recycled. The 70,000 tons of hazardous wastes, that qualify for the comparable fuels exclusion and are currently recycled annually, could shift to the comparable fuels market, if all generators responded the same way, a possibility which seems unlikely. This figure represents less than a one percent annual increase in the amount of hazardous waste combusted, but it represents a decrease of about 20% in the amount of hazardous wastes recycled annually.

If the comparable fuels provision were implemented alone, a 20% decrease in recycling might appear to have a negative effect on pollution prevention and waste minimization. However, as one commenter pointed out, some generators will install pollution prevention and waste minimization measures (i.e., to prevent high levels of constituents from becoming part of the waste) in order to qualify for the comparable fuels exclusion. This would have the effect of increasing pollution prevention. Furthermore, EPA fully expects that the increased cost of upcoming MACT standards will cause the regulated community to seek cost effective pollution prevention and waste minimization solutions to offset the higher costs (a response seen, for example, in the RCRA land disposal restrictions program). EPA is examining this effect in the regulatory impact analysis for the upcoming MACT standards. On balance, the impact of the comparable fuels provision on pollution prevention and waste minimization in the context of MACT standards appears to be negligible.

2. Major Concerns of Commenters

EPA received comments generally expressing either concerns or support for the exclusion. There was some concern that the comparable fuels exclusion would lead to combustion of spent solvents and other high-energy wastes low in halogens and metals that would otherwise be recovered as product. Conversely, others supported the exclusion pointing to incentives it may create to source reduce and conserve resources by replacing fossil fuels with comparable fuels. In addition, concerns were raised over the role of energy recovery in the waste management hierarchy, and the impact of fuel blending on comparable fuels.

Impact on Source Reduction and Recycling: Several commenters stated that EPA failed to investigate whether the comparable fuels exclusion would encourage combustion of wastes now being recycled. Some of these commenters took positions on how the comparable fuels exclusion would impact the recycling-combustion balance. One group claimed that the comparable fuels exclusion would encourage combustion at the expense of recycling. A smaller group of commenters stated that the comparable fuels exclusion would offer an incentive for generators to use more source reduction to lower the levels of toxic constituents to the specification levels. The commenters provided little quantitative information describing these changes.

As noted above, EPA used data from the RCRA Biennial Reporting System (BRS), which is a census of waste stream information from all large quantity hazardous waste generators, and the National Hazardous Waste Constituent Survey (NHWCS), which contains data on the composition and properties of waste streams for certain industries, to develop two approaches for assessing the impacts of the comparable fuels provision on pollution prevention and recycling. Results from both analyses indicate that about three-fourths of wastes likely to meet the comparable fuel specifications are already combusted rather than recycled, and that the remaining wastes could shift from the current recycling market to the comparable fuels depending on the economics and individual company preferences. The methodologies used are summarized below. A full discussion of these analyses is provided in the docket.

Analysis #1: EPA searched the 1993 BRS data to identify waste streams that would be most likely contain wastes that could meet comparable fuel specifications for energy value and low levels of contaminants. EPA focused its search on D001/ignitable wastes because this waste typically contains spent nonhalogenated solvents. EPA also used the BRS data to determine how these wastes were managed after generation, and found that about three-fourths of D001 wastes are combusted, while the remaining one-fourth goes to recycling for solvent recovery.

Analysis #2: Using waste stream specific laboratory analysis data from the NHWCS, EPA identified those waste streams in the survey that meet the comparable fuels specifications for about half of the recycled wastes reported in the BRS. Using this data, EPA was able to estimate the total amount of recycled wastes that could be comparable fuels, and how much waste currently sent to combustion meets the comparable fuels specifications. Analysis of these estimates indicates that about 75% of waste streams meeting the comparable fuels criteria is combusted while the remainder is recycled.

The "Economic Analysis Report for the Combustion MACT Fast-Track Rulemaking" (contained in the docket) predicts savings to generators who can begin to combust hazardous wastes as comparable fuels rather than as hazardous wastes. EPA believes this offers generators incentives to achieve the comparable fuels specifications through source reduction. However, since the costs of source reduction initiatives vary widely from facility to facility, EPA could not reliably estimate net cost savings that facilities could achieve by turning hazardous wastes into comparable fuels through upstream source reduction. Therefore we did not attempt such an estimation.

In addition, many solvent recycling facilities could begin to combust streams meeting the comparable fuels specifications instead of continuing to recycle them. EPA's comparison of recycling costs and revenues with costs for combusting these streams as comparable fuels indicate that in many cases facilities may find the combustion option more economical. Since solvent recycling costs and revenues vary considerably from facility to facility and also fluctuate in time according to the market values of virgin solvent (fuel costs also fluctuate), EPA could not and did not estimate the extent of this shift. Individual facilities may continue to recycle wastes rather than combust them as comparable fuels.

Recycling and the Waste Management Hierarchy: Some commenters stated that letting wastes similar to fuels be burned is evidence of an Agency preference

combustion over recycling. EPA disagrees: The comparable fuels exclusion is based on the fact that some hazardous waste fuels very closely resemble fossil fuels and do not warrant the full slate of RCRA Subtitle C controls. This does not suggest that the Agency has altered its commitment to the hierarchy. The underpinning of the comparable fuels exclusion is simply a determination on the degree of regulatory oversight needed for fuel-like waste materials, which does not translate to any change of view on the waste management hierarchy.

Burning for Energy Recovery: Some commenters claim that burning for energy recovery is waste minimization. While EPA is clearly providing greater flexibility to burn wastes that closely resemble virgin fuels, EPA distinguishes this from waste minimization. Waste minimization includes source reduction and environmentally sound recycling, but does not include any "method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume." (40 CFR 260.10)(emphasis added).

Blenders and Third Parties: Some commenters expressed concern that EPA would allow blending of hazardous wastes to meet the concentration specifications for a comparable fuel, thereby raising the issue of dilution to avoid RCRA regulation. Similarly, commenters objected to allowing third parties, such as fuel blenders, to handle and blend wastes between generation and combustion. Commenters pointed out that blending and third-party involvement would constitute impermissible dilution. It would also undermine any incentive to minimize the volume or toxicity of these wastes. The Agency agrees that blending hazardous wastes to bring them within the comparable fuels concentration specifications would constitute dilution which is not only impermissible but also would likely inhibit waste minimization. Today's rule explicitly prohibits any blending or other "treatment" which does not remove or destroy hazardous constituents. Blending of two wastes already meeting the comparable fuels specifications is, however, allowed only to achieve the viscosity specification. The rationale for this limited use of blending is discussed in that section of today's preamble.

Opportunities for Source Reduction: One commenter commented that the Standards for the Management of Used Oil (40 CFR Part 279) offered generators an incentive for keeping used oil streams clean by requiring oil exceeding certain concentration specifications for metals and chlorine to be managed as hazardous waste, and predicts that the comparable fuels exclusion will result in similar incentives for source reductions to achieve the comparable fuel exclusion criteria, particularly for generators of D001 (ignitable) wastes. EPA agrees with this view, but did not receive industry-specific information from commenters with which to complete an analysis of this issue.

IV. RCRA Permit Modifications for Hazardous Waste Combustion Units

A. Introduction

The Clean Air Act (CAA) sets a maximum time frame of three years for facility owners or operators to comply with Maximum Achievable Control Technology (MACT) emission standards once final standards are published in the **Federal Register**. EPA expects that many facility owners or operators will need to make changes to their process(es) in order to come into compliance with the new standards. For facilities operating under a RCRA permit, these changes may have to be incorporated into the permit before they may be put in place at the facility. To facilitate meeting the three year deadline, EPA is revising the RCRA permit modification procedures to explicitly address changes to a facility's design or operations that are necessary to comply with the new MACT emission standards. The revised modification process offers streamlined procedures that will help facility owners and operators meet two compliance concerns—compliance with their RCRA permits and compliance with the new MACT standards.

EPA anticipates that a substantial number of requests to modify facility design or operations will be submitted in a relatively short period of time following promulgation of the final MACT standards. Although the states could always use their current modification process, the revised procedures offer a potentially more viable way for states to handle the anticipated volume of requests in a more timely manner.

In most cases, state permitting agencies have been authorized by EPA to issue and modify RCRA permits. Authorized states that wish to implement the revised procedures may have to modify their state procedures, consistent with today's rule, before they may use the streamlined procedures to respond to MACT-related modification requests from facility owners or operators. Once the final MACT standards are promulgated, facility owners and operators have three years to begin operating under the lower emissions levels. The Agency believes that these three years are better used for processing modification requests, and subsequently implementing the necessary changes, than for modifying state regulations and going through the authorization process. By promulgating the revised procedures on an expedited schedule (i.e., before the final MACT standards), EPA hopes to provide ample time for states to develop comparable standards and obtain EPA authorization before they need to process MACT-related modification requests from facility owners or operators. It should be noted that states which currently have temporary authorization procedures equivalent to the federal 40 CFR 270.42(e) procedures may also use these, in many cases, to approve facility changes needed to come into compliance with MACT standards. However, these procedures would allow operation under the modified conditions only up to 180 days (with a possible extension of up to 180 additional days), followed by a full class 2 or 3 permit modification. Therefore, EPA encourages states to adopt procedures comparable to those in today's rule.

Combining the streamlined modification procedures with the expedited schedule for promulgating them sets up a procedural framework to promote compliance with the MACT standards. But even this combination does not guarantee that other factors will not ultimately interfere with a facility's efforts to comply. As part of a common sense approach to implementing, and enforcing, its programs, EPA would like to make sure that the consequences of non-compliance are commensurate with the causes. With regard to the three-year deadline for operating under the lower emissions levels required by MACT, EPA is further examining potential consequences of non-compliance, particularly if the causes are beyond the facility's control (e.g., a permitting agency's administrative procedures or workload cause delays, necessary equipment is back ordered, or testing contractors are unavailable). For example, the Agency is looking into the possibility of using standard

enforcement procedures under the Clean Air Act (CAA), rather than requiring more stringent consequences through regulations (e.g., requiring a facility to stop burning hazardous waste until it receives a permit or revoking a permit). The potential consequences of non-compliance are discussed in more detail in the Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, Notice of Data Availability (62 FR 24212, May 2, 1997).

EPA is not going to pursue any of the three companion implementation options discussed in the proposed rule (see 61 FR 17456, April 19, 1996). Those options were intended to address possible permit implementation conflicts which may have occurred if a State did not become authorized to carry out the provisions of the proposed MACT rule in time to handle necessary modifications. By promulgating the revised modification procedures prior to the remainder of the proposed rule, EPA anticipates that States will have adequate time to receive authorization to process the requisite modifications. Thus, the need to put in place a separate implementation mechanism no longer exists. Today's rule does not address any of the longer-term implementation options discussed in the proposed rule (e.g., placing the MACT standards in a Clean Air Act permit, in a RCRA permit, or in both permits). Implementation will be discussed in the final rule promulgating revised standards for hazardous waste combustors.

B. Overview

1. Background on RCRA Permit Modification Procedures

Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards that are "necessary to protect human health and the environment." EPA, or EPA-authorized States, implement these standards by issuing RCRA permits to these types of facilities. Once a permit has been issued to a facility, the facility must operate in compliance with the conditions in the permit; any subsequent changes to the facility's design or operations are incorporated into the permit in accordance with the Agency's, or authorized State's, permit modification procedures.

EPA's regulations concerning permit modifications requested by facility owners or operators are set forth in 40 CFR 270.42. The regulations break the types of potential modifications into three classes (see § 270.42 Appendix I). Class 1 modifications cover administrative or routine changes, including replacing equipment with functionally equivalent equipment. They are relatively straightforward and in most cases do not require Agency approval before being made. Class 2 modifications cover somewhat more complex changes, for example, to address common variations in the types and quantities of wastes managed, where the changes can be implemented without substantially altering the design specifications or management practices prescribed by the permit. Class 3 modifications involve substantial changes to facility operating conditions or waste management practices and are subject to principally the same review and public participation procedures as permit applications. Each class of modification request requires varying degrees of facility preparation, Agency review time, and public involvement. The various degrees have a significant impact on the amount of time needed to put the change into effect. For example, Class 1 modifications typically can be implemented in a very short time, where Class 2 and 3 modifications may take several years.

Prior to promulgating the Class 1, 2, 3 procedures, modifications were divided into two categories, major and minor. States authorized to implement the RCRA program were not required to adopt the Class 1, 2, 3 procedures, since they were considered less stringent than the predecessor major/minor system. As a result, both systems are in use today. EPA would like to point out that, in converting to the new system, many of the modifications that had been designated as minor were placed into Class 1, or Class 1 with prior Agency approval. EPA presumes that modifications listed in Appendix I as Class 1, or Class 1 requiring prior Agency approval, are most likely processed as minor modifications in states that continue to use that system.

2. Shortcomings of the Current Procedures

EPA did not consider, in developing the modification classes and procedures, that changes to RCRA permit conditions might be necessary in order to comply with other environmental statutes. Similarly, the Agency did not anticipate changes to comply with upgrades to existing regulations (although the process was developed to include changes for new regulations). EPA developed the Class 1 through 3 modification scheme within the context of the RCRA program to provide both incentives to facility owners and operators to pursue facility changes that lead to improved management of hazardous wastes, and greater flexibility for timely processing of change requests, e.g., by tailoring the level of review to the type of change (see Permit Modifications for Hazardous Waste Management Facilities; Final Rule, 53 FR 37912, September 28, 1988). EPA is now concerned, however, that the RCRA permit modification procedures, as a practical matter, will not allow enough time to meet statutory deadlines for implementing new standards under the Clean Air Act.

3. How Today's Rule Impacts the Procedures

EPA proposed several options for amending RCRA permit modification procedures to accommodate the Clean Air Act requirement that facilities comply with MACT standards within three years of publishing a final rule in the **Federal Register** (61 FR 17454, April 19, 1996). In all five of the proposed options, the Agency tried to balance the need to develop a process that would enable facilities to comply with more stringent emissions standards within the allotted time with the need to provide adequate opportunities for public participation in the process. The level of regulatory oversight that would take place under each option was also discussed. The Agency requested comments on the proposed options, as well as on any combinations thereof, or any other feasible approaches.

EPA has decided to finalize, with some adjustments, its originally proposed recommended approach, i.e., to establish a new section in the permit modification table for changes to existing permit conditions necessary to come into compliance with MACT standards. This approach best meets the Agency's objective of implementing a process that enables facilities to meet the three year statutory deadline. This approach also allows for public notification of the modification request.

Today's final rule establishes a new section in Appendix I of 40 CFR 270.42 for technology changes that are necessary for a facility to achieve compliance with the MACT standards. The new section is designated as Class 1 modifications, with prior Agency approval. As such, the Agency will have an opportunity to review the proposed physical and operational changes to the facility before they are implemented, in order to ensure that these changes do not have other undesirable consequences. Agency experience suggests that steps intended to reduce emissions may not, in all cases, lead to overall enhanced environmental protection. For example, decreasing combustion temperature as a way to

decrease air pollution control device (ACPD) inlet temperature, in order to reduce dioxin emissions could increase organic emissions by allowing poor combustion.

The new section in 40 CFR 270.42 Appendix I, specifically, section L(9) "Technology Changes Needed to Meet MACT Standards Under 40 CFR Part 63 Subpart EEE—National Emissions Standards for Hazardous Air Pollutants From Hazardous Waste Combustors," is limited to technology changes to existing permits to allow a facility to come into compliance with the new Part 63 standards. General retrofitting changes outside the framework of meeting MACT-related technology, or subsequent changes for maintaining compliance with Part 63 standards, are outside the scope of this category. The permitting agency director will determine whether the types of modifications requested qualify as "technology changes needed to meet standards under 40 CFR part 63 Subpart EEE." The Agency anticipates that the distinction between technology changes necessary to allow a facility to operate under the lower emissions levels and general retrofitting changes will be clear. EPA expects that the same types of changes to comply with the MACT standards will be needed at most facilities, thus the requests submitted under section L(9) should be fairly uniform.

EPA, in response to public comments, is also incorporating a time default into the modification procedures for changes requested under section L(9) only. Section 270.42(a) is being amended to add a paragraph specifying that the permitting agency Director has 90 days, with a possible one-time 30 day extension, to make a decision about modifications requested under section L(9). If the Director does not make a decision, then the permittee may consider the request approved. EPA is also requiring owners or operators to comply with the requirements for the Notification of Intent to Comply (NIC) (see 40 CFR 63.1211) in order to benefit from the streamlined modification process.

C. Discussion of RCRA Permit Modifications Procedures for Facilities Coming Into Compliance With MACT requirements

1. Summary of Proposed Options

EPA is in the process of developing final MACT standards imposing more stringent (lower) emissions levels for hazardous waste combustion activities; facilities will have to operate in compliance with these standards within three years of their promulgation, with a possible one year extension (for a total of four years). The Agency expects that a large number of facilities will need to modify their design or operations to meet the more stringent emissions standards required under MACT. For example, incinerators that currently operate above the MACT emissions standard for particulate matter (PM) might have to add electrostatic precipitators (ESP) or baghouses to reduce emissions; similarly, incinerators that need to reduce dioxin emissions to meet the MACT standards may need to implement additional controls on temperature or employ carbon injection; or light weight aggregate kilns (LWAKs) with high acid gas emissions may need to add a control technology, such as wet scrubbers.

For these facilities to remain in compliance with their RCRA permits, they will need to modify their permits to allow any design or operational changes needed to achieve compliance with the MACT standards. The Agency proposed five options for handling these "MACT related" RCRA permit modifications. The options, which varied with regard to the level of procedural requirements and administrative review required, were: (1) Provide facilities with "self-implementing" authority to proceed with necessary changes without Agency review; (2) categorize the changes needed to comply with MACT standards as Class 1 modifications that do not require prior Agency approval; (3) categorize the changes as Class 1 modifications that do require prior Agency approval (this option was discussed in the proposal as the recommended option); (4) categorize the changes as Class 1 modifications requiring prior Agency approval, but give the Director authority to elevate change requests to Class 2; and, (5) retain the current scheme for modifying the RCRA permits. Under the current scheme, the MACT-related changes would likely be categorized as Class 2 or 3 modifications.

2. Summary of Public Comments

In general, there were three recurring themes in the comments received by the Agency in this area. First, commenters expressed concern about being able to meet the three year time frame. They cited, as reasons, (1) that three years are insufficient to allow state agencies to obtain authorization for the rule and to subsequently process the anticipated volume of modification requests, and (2) that the modification procedures themselves are too long. Secondly, commenters emphasized the need to allow sufficient public participation, but with the caveat that the modification process not be unduly delayed by public participation activities (this being yet another factor in potentially being unable to meet the three year deadline). Finally, commenters were concerned that the consequences of non-compliance are too severe (e.g., having to stop burning), given that delays in achieving compliance could be the result of permitting agencies being unable to process modification requests in a timely manner (and not a consequence of the facility's activities).

The Agency received a wide variety of comments on the options themselves. Each of the proposed options received support, with most commenters favoring the first three options for their more streamlined procedures. A few commenters suggested that incorporating a time limit into the modification review process would aid in coming into compliance with the MACT standards. Many commenters expressed the importance of developing a streamlined permit modification process that would allow facilities to make the necessary technology upgrades in a timely fashion, while retaining enough regulatory oversight to ensure that the changes have a proper degree of "buy-in" by the permitting agency. Some commenters expressed concern that options 4 and 5 would delay implementation of MACT-related changes beyond the three year deadline mandated by Congress. A few commenters preferred options 4 and 5 since they incorporate a greater degree of public participation into the review process. Additionally, some commenters thought that options 4 and 5 might be more readily accepted by and implemented in authorized States that chose to remain with the original permit modification structure composed of minor and major changes. [Note: States were not required to adopt the Class 1, 2, 3 structure since it was determined to be less stringent than the major/minor structure.]

Finally, some commenters requested that the Agency consider as a possible alternative that a Class 3 modification could be reclassified as Class 2 for the purposes of MACT compliance.

3. Response to Comments and Discussion of Final Provisions

EPA agrees with commenters that streamlined modification procedures for MACT-related changes are essential. The three year time frame for complying with the MACT standards has been set by Congress; it is the Agency's responsibility to ensure that facilities are able to comply with those

requirements without violating other areas of their environmental responsibilities, like their RCRA permit. As discussed earlier, EPA anticipates that many facilities will need to make some changes to meet the lower emissions levels imposed by MACT, and that these changes will have to be incorporated into their RCRA permits. EPA does not want the RCRA permit modification procedures to hinder a facility's ability to comply with MACT.

As discussed in the Section B.1. Background on RCRA Permit Modifications Procedures, Class 1 modifications may be done quickly, whereas Class 2 or 3 modifications may take several years to process. The combination of the time normally required to completely process Class 2 or 3 modification requests, and the anticipated volume of requests from facilities striving to meet MACT emission levels, would make meeting the three year deadline unrealistic. Permitting agencies would not have the resources to meet the workload demand. This leads EPA to concur with commenters on the need to embrace a more streamlined approach than would be provided by options 4 or 5. Similarly, EPA chose not to pursue the option suggested by some commenters to reclassify changes from Class 3 to Class 2. A streamlined approach is consistent with general efforts within the Agency (e.g., through the Permits Improvement Team) to improve the permitting process by focusing on performance standards rather than on a detailed review of the technology requirements.

The Agency acknowledges the validity of the concerns expressed by some commenters that the options offering the more streamlined procedures offer fewer opportunities for public participation. It is important to strike an appropriate balance between streamlined modification procedures that promote coming into compliance sooner with more stringent standards and public participation. The Agency has repeatedly emphasized its commitment to a common-sense approach to permitting—one that minimizes regulatory burden and provides flexibility to tailor activities to specific situations. In carrying this commitment to today's rule, EPA wants to ensure three things; (1) that the permit modification process is not an obstacle for complying with the MACT standards; (2) that facilities are not forced to operate outside of their permitted conditions in order to comply with MACT standards; and (3) that public participation is not streamlined out of the process.

EPA believes that Option 3, with some modifications, provides the best framework for meeting these objectives and responding to public comments. This option was supported by many commenters, particularly because the streamlined procedures will facilitate meeting the three year deadline for complying with the more stringent emission levels. There has been a precedent set in the past for streamlining the modifications process. To ensure that facilities implemented timely changes necessary to meet land disposal restriction (LDR) levels for newly listed or newly identified hazardous waste, the Agency designated the modifications needed to meet the LDR levels for newly identified wastes as Class 1 modifications (see 54 FR 9596, March 7, 1989).

The prior agency approval under Option 3 provides the regulatory oversight requested by commenters, since the permitting agency will have the opportunity to review the proposed physical and operational changes to the facility before they are implemented. EPA concurs with commenters who encouraged retaining some amount of regulatory oversight in the modifications. As discussed previously, sometimes changes to one part of a facility's design or operations that have a positive effect, like reducing one type of emissions, may cause detrimental effects to other parts of the facility's operations. It is important for permitting agencies to have the opportunity to review proposed changes to make sure they do not lead to other undesirable impacts.

Some commenters expressed concern, however, that a facility's ability to begin implementing the change(s) might be delayed by requiring regulatory oversight (i.e., if the Agency failed to respond to the request in a timely manner). EPA recognizes the validity of this concern, given the anticipated volume of requests from facilities striving to meet the new emissions standards; therefore, the Agency is incorporating a time default for reviewing the requests into the final modification process. The time default for review, codified in a new paragraph 270.42(a)(4), specifies that if a determination to approve or deny the Class 1 permit modification request submitted under item L(9) is not made within 90 days (with the possibility of a one-time extension for up to 30 days) from the time the request was received by the permitting agency, the request is to be considered approved, and the facility can proceed with the modification(s). In some situations, the Director of the permitting agency may deny a request, for example, if the request contained insufficient information upon which to base a decision. The permittee could revise its request to address the shortfalls and resubmit it to the permitting agency. Such a resubmittal would initiate a new 90 day review period.

EPA anticipates that the incorporation of the time default, coupled with the fact that the revised modification procedures are being promulgated on an expedited schedule, will alleviate commenters' concerns about non-compliance. Although the consequences of non-compliance are outside the scope of this rule, this approach (streamlined modification procedures coupled with expedited promulgation) establishes a procedural framework through which there is a greater chance that permitting agencies will not cause undue delays in facilities' compliance with the MACT standards. Under the new streamlined process, permitting agencies should be able to process the modification requests with sufficient time remaining for facility owners or operators to make the changes within the three year time frame.

Some commenters expressed concern that option 3 does not provide the same levels of public participation that would be available through options 4 and 5. Those options would require facilities to request Class 2 or 3 permit modifications for MACT-related changes. The procedures for Class 2 and 3 modifications include public meetings, notices, and comment periods. Class 1 modifications, even those requiring prior Agency approval, only require that the facility owner or operator send a notice of the change to the facility mailing list within 90 days of approval being given.

EPA is committed to enhancing public participation in all of its processes, and has established additional requirements in today's rule to provide opportunities, beyond the public notice requirements associated with Class 1 (with prior approval) modifications, to involve the public in permitting changes required to comply with MACT standards. These opportunities are being incorporated into requirements for a Notification of Intent to Comply (NIC), discussed in more detail in Section V. One goal of the NIC development process is to promote interaction between the facility and its host community, for example, by requiring the facility to host an informal meeting with the community before submitting the final NIC to the permitting agency. Since the NIC must describe anticipated activities for coming into compliance with the MACT

standards, the technology changes that trigger the RCRA permit modification would be a natural component of the NIC and the public meeting. EPA expects that the meeting will be similar in style and intent to the pre-application meetings required under 40 CFR 124.31.

The final rule requires facility owners or operators to complete the NIC in order to benefit from the streamlined modification procedures. This requirement means that owners or operators will need to submit a final NIC either before, or at the same time as, they submit the modification request. If they do not comply with the NIC requirements, they will need to follow the otherwise applicable modification scheme, i.e., the permitting agency Director will likely reclassify their request to Class 2 or 3. EPA is not requiring documentation in the modification request that the permittee completed the NIC. Since both items are submitted to the permitting agency, EPA assumes the permitting agency will be aware of whether the permittee has indeed complied with the NIC requirements.

EPA expects that information about anticipated changes to facility design or operations to comply with the more stringent standards will be included in the NIC, and thus will be available for public review and discussion during the NIC public meeting. Through this meeting, communities have an early vehicle for learning, among other things, about potential changes to facility design and operations necessary to meet the lower emission levels. Of course, in accordance with the current requirements concerning Class 1 modifications, the permittee must also inform the public about the modifications within 90 days of their approval by the permitting agency (see 40 CFR 270.42(a)(1)(ii)).

EPA would like to point out that although similar information about facility design or operation changes may be included in both the NIC and the modification request, the Agency does not believe it is redundant to have both documents. The two have different purposes, and the formats and levels of detail may differ accordingly. The modification request would most likely differ from the NIC, since the request has to tie directly to the permit itself. For example, the NIC may talk in general terms about adding baghouses to reduce emissions, but the modification request would have to specifically cite the section(s) of the permit being modified to include information on the baghouses.

Today's requirements would not, of course, preclude additional public participation activities beyond the regulations, where appropriate on a facility-specific basis. At certain RCRA facilities, in fact, permitting agencies and facilities have implemented a variety of public involvement activities, such as additional fact sheets or information availability sessions, that have helped affected communities to understand and participate in permit decision-making. EPA has published a practical how-to guidance manual designed to help all stakeholders in the permitting process (permit writers, industry, and communities) determine what types of public participation activities might be helpful. The RCRA Public Participation Manual (EPA530-R-96–007, September 1996) also offers tips on how to conduct a wide variety of activities. Supplemental public participation activities on a site-specific level, geared for a particular facility's operations and tailored to meet the host community needs, could be used to augment community understanding of the changes taking place to comply with MACT standards. In closing, EPA would like to reiterate that facilities are making changes to meet more stringent standards. Requiring facilities to comply with lower emissions levels in a relatively short time frame does offer significant benefits to public health and the environment that the Agency believes communities will generally welcome.

In response to the comments that options 4 and 5 might be more compatible with permit modification procedures in authorized states, EPA is aware that States have to evaluate new regulations in terms of their specific structures. Promulgating the revised modification procedures in today's rule, however, will provide ample time for states to obtain authorization before they actually begin processing modification requests following promulgation of the final MACT standards. EPA encourages states to expedite their requests for authorization to implement the provisions in today's rule. EPA expects that States using the Class 1, 2, 3 modification system would incorporate the provisions by reference, and that States using the major/minor system would incorporate the provisions as minor modifications. As discussed in Section B.1. Background on RCRA Permit Modification Procedures, many changes that were formerly classified as minor were converted to Class 1, or Class 1 requiring prior Agency approval. Thus, EPA believes it is consistent for states using the major/minor system to incorporate this category of changes into the minor classification.

If the states cannot adopt an approach that ensures expeditious implementation of the MACT standards, however, then the Agency expects that changes necessary to comply with MACT standards may well be accomplished under a compliance order, with a specified schedule to come into compliance.

F. RCRA Changes in Interim Status Procedures

RCRA facilities operating under interim status are allowed to implement certain facility changes in accordance with requirements and procedures set forth in 40 CFR 270.72(a). (Note: EPA anticipates that the types of changes a facility may need to make to comply with the MACT standards would be allowable under this section). Section 270.72(b) imposes a limit, however, by stating that the changes cannot amount to "reconstruction" (defined in the regulation as "when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility"). As discussed in the preamble to the proposed rule, the Agency does not anticipate that the costs to perform facility changes necessary to come into compliance with the MACT standards would exceed the 50 percent reconstruction limit. However, since the limit is cumulative for all changes at the interim status facility, there could conceivably be situations where the cost for MACT-related changes might push a facility over the limit.

To ensure that the reconstruction clause does not present an obstacle for interim status facilities trying to implement changes to meet the new emissions levels, the Agency proposed adding a new paragraph to § 270.72(b) exempting changes necessary to comply with the MACT standards from the reconstruction limit. The Agency did not receive any adverse comments, and so is finalizing this provision in today's rule.

It is important to note that facilities operating under interim status will, like permitted facilities, be required to comply with the NIC requirements. Thus, the public will have the opportunity to review planned changes as part of the NIC and to participate in the public meeting. EPA anticipates that owners or operators of interim status facilities will hold the meeting and complete the NIC before proceeding with any changes to facility design or operations necessary to comply with the MACT standards.

V. Notification of Intent To Comply and Progress Report

A. Background

In the proposed rule (61 FR 17358), the Agency requested comments on strategies to identify and encourage or require affected sources to comply with the final emission standards at the earliest possible date. The Agency also asked for views on how best to determine when a source can realistically conclude whether it will comply with the final standards. A number of commenters suggested that the Agency require a submission from affected sources that would identify whether the facility intends to comply with the final standards, and outline the procedures the facility would employ to achieve compliance. This primary purpose of this submission (referred to by the commenters as a "Notification of Intent to Comply") would be to identify the sources that will choose as a compliance strategy to stop burning hazardous waste, so that those sources could be required to terminate waste burning activities as soon as possible following the effective date of the final Hazardous Waste Combustor (HWC) rule.

Other commenters suggested that EPA require submission of a plan that outlines the procedures a facility will follow to comply with the final standards. However, the purpose of this submission would be to begin an early process of communication between the public and the facility through the public disclosure of the facility's compliance strategy to meet the final HWC standards.

The Agency reviewed these comments and found the suggestions for an early notification persuasive. In the Notice of Data Availability (NODA) published in the **Federal Register** on May 2, 1997 (Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, 62 FR 24241), EPA described its strategy to promote early compliance planning through a Public and Regulatory Notice of Intent to Comply (PRNIC). The discussion laid out a process by which an affected source would be required to develop a draft document including anticipated plans for coming into compliance with the new emissions standards, hold an informal meeting with the public to discuss the draft planning document, and to subsequently provide a final planning document to the permitting agency. The information to be covered in the document and during the meeting would include such topics as a description of waste minimization and pollution control technique(s) being considered and their effectiveness, a description of emission monitoring techniques being considered, and an outline of key dates for activities the source would need to accomplish in order to operate within the MACT standards.

The intended purpose of the PRNIC, as described in the NODA, was twofold. First, the PRNIC was intended to provide for public involvement in a source's compliance planning process. EPA envisioned that this involvement would also serve to offset public participation opportunities that may be "lost" if a source is able to take advantage of the new streamlined RCRA modification procedures for HWCs, since modifications required under RCRA would naturally be part of the source's overall plan for achieving compliance with the standards. Secondly, the PRNIC would provide an expeditious notice to the permitting Agency as to whether sources would be able to come into compliance with the new standards. Having information about plans for compliance might prove helpful to permitting agencies in planning the most efficient use of their resources during the three year compliance period.

B. Summary of Final Provisions

EPA is moving forward with an early compliance planning requirement. However, the final rule contains certain changes from the PRNIC discussed in the NODA; the Agency has revised the requirements based on public comments received following the NODA's publication and based as well on the original proposal. EPA is finalizing new requirements in § 63.1211 for facility owners and operators to develop and submit a Notification of Intent to Comply (NIC), and in § 63.1212 to develop and submit a Progress Report. Section 63.9(h) "notification of compliance status" requires facilities to submit such notification when a source becomes subject to a relevant CAA standard. As such, today's requirement is an enhancement of this requirement to give notification of intent to comply prior to the three year compliance date of the emissions standards. The source can use the NIC to notify either the source's intent to come into compliance with the new standards, or the source's intent not to come into compliance with the new standards. The NIC must be submitted to the permitting agency within a year of the final standards being promulgated, and the Progress Report within two years.

As proposed, the primary purpose of the NIC is to serve as a planning and outreach tool for achieving compliance with the MACT standards. The contents of the NIC, set forth in § 63.1211(a)(1), are similar to those presented in the NODA discussion on the PRNIC with modifications based on comments received on the NODA. Also as discussed in the NODA, sources will have to make a draft of the document available to the public as part of the process of developing the NIC. They will also have to provide notice of and conduct an informal meeting with the public to discuss anticipated plans for achieving compliance with the standards. The purpose of the Progress Report is to help permitting agencies determine if sources are making reasonable headway in their efforts to come into compliance. In deciding on this approach to compliance planning—the NIC followed by the Progress Report—EPA determined (1) that one year is sufficient time for a source to establish its general "plan of attack" for achieving compliance, and (2) that during the second year a source should be well on its way to making necessary modifications, if it plans to meet the MACT limits, or to making alternate arrangements for handling the hazardous waste, if it does not intend to meet the MACT limits.

The final rule does not contain provisions for updates to the final NIC following a significant change in the facility's implementation strategy, as considered in the NODA. Since the Agency decided to implement a requirement for a Progress Report at the end of the second year, there is no purpose served by having a revised NIC. EPA anticipates that any significant changes to a facility's compliance plan would necessarily be reflected in the Progress Report.

C. Discussion of Public Comments and Final NIC Provisions

1. General.

The majority of commenters supported the concept of early compliance planning, particularly with regard to the public involvement component. Those advocating early involvement indicated that the PRNIC concept appears reasonable, not overly burdensome, and represents a positive step to ensure public involvement in the MACT process. Many lauded the Agency's effort to bring the spirit of the recently promulgated RCRA enhanced public participation requirements (see 69 FR 63417 (Dec. 11, 1995)) to the MACT arena and the strong RCRA goal of public participation for decisions involving permitted hazardous waste management facilities (RCRA section 7004(b)). Commenters opposing the

additional public involvement required as part of the PRNIC development process stated that the activities (e.g., the public meeting) would create more controversy and impose additional burdens on both sources and permitting agencies at a time when they will be faced with a substantial workload. Some commenters expressed concern that the additional activities would provide no real benefit, since neither the permitting agencies nor the public have authority to disapprove of a source's chosen control options, as long as the source operates within the MACT limits. One commenter noted that the concept of a PRNIC was unprecedented for CAA sources; they said a PRNIC was not required under the CAA and it was beyond EPA's authority to impose such a requirement.

The Agency agrees with commenters who recognize the value of early public involvement. EPA has repeatedly emphasized its commitment to enhancing public participation in all of its programs (see National Waste Minimization and Combustion Strategy and Enhanced Public Participation Rule). Experience has shown that hazardous waste combustors spark a tremendous amount of legitimate public interest; many communities have expressed a desire to be involved at all stages of combustor operations and permitting activities. Given this background, EPA fully expects the promulgation of the final MACT standards to receive significant and appropriate public scrutiny. As one commenter points out, HWCs are already subject to RCRA regulations, and many of them operate under risk-based permits that were subject to extensive public review. EPA anticipates that the fact that HWCs will now be regulated under CAA is likely to remain of vital interest. People will know that new emissions limits are being imposed, and will want to know how the source plans on meeting them. The NIC provides this information, and the NIC meeting opens the door for the public to communicate directly with the owners or operators.

EPA does not share the concern expressed by commenters that the public involvement activities impose a substantial burden with no commensurate benefit. The effort associated with drafting a NIC and holding the NIC meeting is not overly burdensome. Facilities will most likely need to compile the information for their own uses, in order to effectively decide which compliance option(s) they will pursue. Making the information available to the public and discussing it during an informal meeting could provide benefits in many areas, even if the permitting agency and the public do not have the authority to approve or disapprove of the compliance method(s) ultimately selected. For example, it could save time and money at the end of the permitting process. Talking to people early on about what can and cannot be accomplished in a given situation, asking their input on decisions that need to be made, and explaining the rationale behind decisions that have already been made, can lead to fewer challenges on draft permit conditions. EPA also believes the public could provide useful information to owners or operators that might contribute to a quality plan for achieving compliance with the MACT standards. The level of knowledge on environmental matters exhibited by the public (at public meetings, in correspondence, for example) appears to be increasing. As the public's knowledge base grows, so might the quality of input they can provide into technical decisions.

EPA disagrees also that there is no precedent for the concepts inherent in the NIC, and that EPA does not have authority to impose such a requirement. Since EPA has chosen to provide the maximum amount of time for compliance allowed under the CAA (3 years), requiring sources to identify their compliance plans is particularly appropriate. As stated before, EPA is committed to enhancing public involvement in environmental matters. Providing the compliance plans to the public is one of many ways the Agency is implementing this policy. Precedent for early public involvement has been set both in the Agency's Hazardous Waste Minimization and Combustion Strategy and in the enhanced RCRA public participation requirements promulgated in December, 1995 (see 69 FR 63417, December 11, 1995).

2. Purpose of the NIC

As discussed in the background part of this section, the original purpose of the PRNIC was to promote public involvement and to assist in compliance planning. Commenters supported these goals, which continue to be the compelling motives for adopting the NIC requirement. The primary purpose of the NIC is thus to serve as a planning tool for achieving compliance with the MACT standards. In other words, the NIC is designed to ensure that facility owners or operators get an early start on evaluating their options for meeting the new standards, and to serve as a vehicle for public involvement. EPA's intent is to facilitate dialogue regarding a facility's compliance strategy. The NIC also serves the purpose of having sources identify to the regulators and the public their intent to comply or not to comply with the applicable emission control requirements of this Subpart. The NIC and public meeting will foster mutual understanding of the compliance options, including consideration of both technical (e.g., equipment changes to upgrade air pollution control devices) and operational (e.g, process changes to minimize waste generation) alternatives. Ideally, it will also result in the selection of a method that will meet the goals of both the facility and the community.

The NIC will not serve as a basis for requiring facilities to cease burning hazardous waste if they intend to comply with the emission standards of this Subpart. If, however, a facility indicates in its NIC that it does not intend to meet the emission standards of this Subpart, then the source must stop burning hazardous waste within two years of the standards being promulgated. This requirement is discussed in more detail in Section D. Discussion of Public Comments and Progress Report. EPA would like to clarify that its intent has never been to shut a source down completely. The source might be required to cease burning hazardous waste; however, it would not be precluded from burning non-hazardous waste or other alternative fuels. However, those sources who indicate in the NIC their intent not to comply with the applicable emission control requirements of this Subpart will be required to stop burning hazardous waste within two years of the effective date of the emission control requirements.

Although the NIC will not be used to cause sources to stop burning, there are enforceable requirements associated with it. Sources must provide a draft NIC for public review, advertise and conduct an informal meeting, and submit a final NIC to the permitting agency. If these activities do not take place within the time frames specified in the regulations, sources will be in violation of the requirements, and subject to appropriate enforcement action. The key milestone dates contained in the schedule submitted with the NIC are not enforceable, however; the requirement to submit a schedule containing key dates is the enforceable requirement.

Finally, one commenter suggested that the NIC be used to identify RCRA permit conditions that would "disappear" when MACT limits are set. EPA is not using the NIC for this purpose. EPA will address permitting

schemes, and the process for transitioning from a RCRA permit to a Title V permit, in the final rule promulgating MACT standards for HWCs. The NIC is not the appropriate vehicle for accomplishing this task.

3. Timing

In the PRNIC discussion in the May 2, 1997 NODA, EPA said that the final PRNIC would be due to the permitting agency within 270 days following the effective date of the final MACT standards. A draft of the document would have to be available within 210 days, and at least 30 days before the informal public meeting was to be held.

Although several of commenters considered the time frame too long, many others said it would be difficult to prepare a quality compliance planning document so quickly. They also expressed concern about meeting with the public at such an early stage. The commenters' position was that any draft plan put together within 7 months after the standards are finalized would be tentative only. They were reluctant to go to the public with a tentative plan that was likely to change significantly before it was final.

EPA agrees with commenters that the time frames are tight. In order to be operating within the new limits by the end of the compliance period, it is imperative to start the planning process immediately. In recognition of commenters' concerns about preparing the draft plan, EPA is extending the time frames in the final rule. In accordance with the provisions in § 63.1211, the final NIC will be due to the permitting agency within one year of promulgation of the final standards. The NIC meeting must be held no later than 10 months following promulgation, and the draft NIC made available at least 30 days before the meeting is held. So, facilities basically have 2 extra months to prepare a draft document, and 3 extra months to submit a final NIC to the permitting agency. The revised time frames should provide sufficient time not only to prepare the initial draft, but also to revise it, as appropriate, to reflect discussions from the public meeting and final engineering decisions about the source's operation.

The Agency understands the concerns expressed by commenters about sharing draft material with the public. However, EPA does not expect, nor should facilities or the public expect, the draft NIC to describe all of the technical aspects of the compliance options in extensive detail. Similarly, discussion of the options at the public meeting should not focus on minute details. The purpose of sharing the draft and discussing the options at the public meeting is to capture major ideas in a planning document, to facilitate dialogue regarding a facility's compliance strategy, and to discuss possible courses of action. The information in the draft NIC should be sufficient to stimulate this level of discussion. The more in-depth technical discussion can be incorporated into the final document. Since all sources are required to have the final NIC submitted to the permitting agency one year after the final standards are promulgated, anyone may request a copy of it from the permitting agency at that time.

4. NIC Meeting

EPA is requiring facilities to provide notice of and host an informal meeting with the community to discuss anticipated plans for complying with the MACT emissions standards (see § 63.1211(b)). The meeting must take place within 10 months of the final standards being promulgated. At least 30 days before the meeting takes place, the facility must provide public notice of the meeting, and must make the draft NIC available for public review.

Commenters were generally supportive of EPA's intent to require a public meeting to discuss compliance planning. Some commenters had specific concerns, ranging from the timing issues addressed above, to the methods for providing notice, and the potential for being required to conduct several redundant meetings to meet various purposes.

EPA had listed three mechanisms in the NODA for providing notice of the public meeting: a display ad in a newspaper, a sign at the facility, and a broadcast announcement. These were the same mechanisms used to provide notice of the RCRA pre-application meeting, and EPA believes they are appropriate for the NIC meeting as well. At least one commenter thought the mechanisms were too broad, and that a notice via newspaper and a sign at the facility would be enough. Another commenter suggested that a notice be sent to the facility mailing list as well. EPA decided not to limit the notice methods for the NIC meeting, but did add the facility mailing list to the methods in § 63.1211(b)(3). Each of these notices must include the date, time and location of the meeting, a brief description of the purpose, a brief description of the facility, a statement asking people who need special access to notify the facility in advance, the name of a contact for the NIC, and a statement describing how the draft NIC can be obtained.

Commenters who were concerned about redundant public meetings described a few possible scenarios. For example, in states that do not adopt the streamlined RCRA modification procedures a facility might be required to conduct a public meeting as part of a Class 2 or 3 RCRA modification, as well as the NIC meeting. Federal facilities might have public meeting requirements under the National Environmental Policy Act (NEPA). Other facilities might be facing RCRA pre-application meetings, either for initial permits or those up for renewal. Or, some facilities might have routine meetings scheduled with communities as part of Responsible Care or Good Neighbor agreements.

It is not EPA's intent in imposing the NIC meeting requirement to create duplicative requirements for public meetings. To do so would burden both the facility and the public. Everyone's time is valuable, and most people would probably prefer not to go to several meetings if one will do. EPA recognizes this, and would like to clarify that nothing in today's rule precludes a facility from combining meetings as long as the purposes of each are served. EPA sees combining events, particularly public involvement activities, as a first step in moving towards a multi-media approach to environmental management. Thus, if a facility has to complete a class 2 or 3 RCRA modification because it is located in a state that has not adopted the RCRA streamlined modification process, EPA would expect, and fully encourage, the facility to set up one meeting that would serve both the RCRA requirements and the CAA NIC requirements. The same is true for combining the NIC meeting with a RCRA pre-application meeting, if the facility has to host one for either an initial RCRA permit or because its permit is up for renewal, or with other types of public meetings the facility may have scheduled.

A few commenters expressed concerns about responding to public comments on the draft NIC, either during or following the public meeting. They cited time as the driving reason for this concern; they suggested their time would be better spent finalizing their plans for complying than formally responding to comments. One commenter noted that it was unclear in the NODA whether the draft NIC would be available prior to the meeting. In response, EPA would like to clarify that facilities are not required to formally respond to any comments, oral or written. However, it is important to keep in mind that the public may request a copy of the final NIC, and will

be reviewing the facility's final plans for coming into compliance. Facilities must also submit a summary of the meeting to the permitting agency as part of the final NIC, so the permitting agency will be apprised of the discussions that took place. EPA believes that this provides incentive for the facility to address any significant issues raised by the public in the NIC meeting.

EPA expects that the exchange between the facility and the community that takes place during the meeting will be much like it is for RCRA pre-application meetings. That is, the Agency intends for the meeting to provide an open, flexible and informal occasion for the facility and the public to discuss various aspects of the facility's compliance strategy. The Agency anticipates that the facility and the public will share ideas, and build a framework for a solid working relationship. The final NIC should reflect, to the extent appropriate, ideas or suggestions raised by the public.

The final provisions in § 63.1211 clarify that the draft NIC must be made available to the public at least 30 days before the meeting is to take place. This will provide sufficient time for people to review the facility's intended strategy. EPA did not prescribe in the regulations the manner in which the draft NIC must be provided. There is not a "one-size-fits-all" approach to getting information out to the public. It is more logical to allow the facility to make that decision in the context of their particular situations. For example, if a facility has an information repository established, the draft NIC may be made available there. Or they could make it available upon request, since the name, phone number, and address of the NIC contact must be in the meeting notice.

5. Relation Between NIC and Other Notification Requirements

The requirements for the NIC are being promulgated in a new subpart applicable to HWCs in the Part 63 CAA regulations. Several commenters did not believe it necessary to add these new requirements, arguing that existing provisions under both the CAA and RCRA would fulfill the purpose of the NIC. They cited the initial notification requirements in § 63.9(b), the notifications of compliance status in § 63.9(h), Title V permit application requirements in § 70.5(c), and RCRA public involvement requirements in § 270.42 (permit modification procedures).

EPA has reviewed the requirements in each of these sections, and is not persuaded that the information or the timing of the submittals are sufficient to meet the objectives of the NIC. In terms of the information, the NIC actually seems to fall between the initial notification and the notification of compliance status. The information included in the NIC supplements the initial notification requirements in 40 CFR Part 63.9(b). The initial notification requirements in § 63.9(b) address basic information such as name and address of the owner and the source, and a brief description of the source. The focus is on the source as it exists, not as it may need to be modified to meet new standards. The information in the NIC provides this next step—it focuses on what types of changes might have to take place in order to achieve the emission limits set by MACT. The types of changes may be physical, such as adding or replacing air pollution control devices, or they may be operational, for example, achieving lower emissions by minimizing the waste generated elsewhere that is subsequently used as fuel for the combustor.

The information required in the NIC will enable the public to engage in a meaningful dialogue about the facility's compliance strategy, including a discussion of the various options under consideration. For example, when a facility identifies and describes the type of control technique(s) being considered, it would be ideal for the facility to have examined all of the waste minimization and/or pollution control options available, including emission control through process modification, feed restriction, and pollution control equipment, (e.g., Hg control by production process changes, recovery, segregation, feedrate restriction, carbon injection, carbon bed, wet scrubbing, etc.). The compliance notification requirements in § 63.9(h), on the other hand, have a different objective. They focus not on options for coming into compliance, but rather on how compliance will be demonstrated and monitored.

EPA chose not to tie the NIC requirements to the Title V permitting process. In terms of timing, the Title V process may not always be appropriate. It is important to keep in mind that MACT standards set forth in Part 63 are self-implementing; activities associated with them often take place outside of the permitting process. When MACT standards are promulgated, sources must begin adhering to the regulations, regardless of where they stand in the Title V permit process. For example, sources that already have Title V permits do not have to reopen them until renewal, if they are within 3 years of the expiration date. This time frame obviously is too long to meet the goals of the NIC. In addition, Title V permits contain all applicable requirements for all sources at a facility. To use the Title V process just for hazardous waste combustors is not practical.

The Agency has also determined that the information requirements for Title V applications do not meet the spirit of the NIC. Like the § 63.9(h) compliance notification requirements, the Title V information does not address options for achieving compliance, particularly with regard to waste minimization and pollution prevention techniques being considered. Of course, the NIC is not intended to be the primary vehicle for waste minimization or pollution prevention planning. EPA expects that these are ongoing areas of exploration for facilities. EPA does expect, however, that to the extent these may be used to achieve compliance with the MACT standards, facilities will investigate them as viable options and will discuss them as such with the public.

Some commenters suggested that facilities having to follow Class 2 or 3 RCRA permit modification procedures (e.g., because they are located in states that do not adopt the RCRA streamlined modification procedures) not be required to submit a NIC, since public meetings are a required step in those procedures. Another suggested that RCRA interim status facilities not be subject to NIC requirements, because they are not "losing" any public involvement in a modification process (since they have no permit to modify). EPA disagrees with these suggestions. The NIC is broader in scope than just facility modifications that may have to be incorporated into a RCRA permit or that may be accomplished by following the procedures in 40 CFR 270.72(a) for allowable changes under interim status. The NIC is intended to lay out for discussion the source's overall plan for achieving compliance; this goal is relevant regardless of whether the facility is operating under a permit or under interim status. Facility changes under RCRA would just be one piece of the overall document, and one segment of the public discussion. As stated in the previous section, however, there is nothing in today's rule that precludes a facility having to follow Class 2 or 3 permit modification procedures from combining the public meeting required as part of the modification process with the public meeting required as part of the NIC process. EPA would expect, and fully encourage, a facility in this situation to set up one meeting that would serve both purposes.

D. Discussion of Public Comments and Progress Report

1. Overview

The Clean Air Act requires the Administrator to establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided via a one year extension. CAA section 112(i)(3). EPA believes that compliance as expeditiously as practicable will have numerous benefits for human health and the environment. In particular, for those sources that do not intend to ultimately come into compliance with the emission standards of this Subpart, expeditious compliance would be achieved by ceasing to burn hazardous waste. The Agency anticipates that numerous sources will choose not to come into compliance with the requirements of this rule, and will cease burning hazardous waste prior to issuance of the rule or at some later date, but prior to the compliance date. This section is intended to expeditiously limit the burning of hazardous waste by those sources who do not intend to come into compliance with the requirements of the emission standards of this Subpart, but continue to burn hazardous waste after the effective date of the emission standards of this Subpart. These sources are, quite simply, able to meet the standards earlier than the three years allowed for sources which will continue to burn hazardous waste. Thus, for this class of facilities, EPA is creating a means of compliance "as expeditiously as practicable" (CAA section 112(i)(3)).

In the April 1996 proposal, the Agency invited comment on how sources could be identified and strategies that could be used to encourage or require these types of sources to comply at the earliest possible date. Several commenters suggested methods to require sources to identify their intent to comply or not comply with the emission standards soon after the promulgation of the final rule for these standards. They also suggested that those sources that did not intend to come into compliance would be required to stop burning hazardous waste.

2. Summary of Progress Report Requirements

The Agency has adopted in the final rule a variation of the concept commenters suggested along the lines of the April 1996 concept EPA proposed. The final rule requires those sources subject to the rule to signify in their NIC an intent to comply or not to comply with the requirements of the emission standards of this Subpart. Sources who make the decision not to comply with the rule must stop burning hazardous waste on or before two years after the effective date of the emission standards of this Subpart. The Agency believes that two years is an adequate length of time for these sources to arrange for alternate management of their hazardous waste through process changes to minimize the waste, use of alternate on-site management, or the use of off-site management. Those sources who intend to come into compliance with the emission standards will have the full three years to come into compliance as intended by the statute.

The sources who do not intend to comply with this rule must include in their NIC a schedule that includes key dates for the steps to be taken to stop burning hazardous waste. Key dates include the date for submittal of RCRA closure documents. The types of closure documents that would need to be submitted will most likely vary depending on the source's status. For example, if a source is in interim status, it may need to submit a closure plan. If the source is permitted, it will probably need to update its closure plan (that is part of the permit); thus, the "document" may be a permit modification request.

a. Submittal. Commenters suggested that sources submit progress reports to track source's actions toward compliance. The Agency also believes that a progress report would be a useful tool to evaluate a source's progress toward compliance. In the final rule, EPA requires those sources to submit to the regulatory authority a progress report on or before two years after the effective date of the emission standards of this Subpart. Any sources burning waste on and/or after two years following the effective date of the emission standards of this Subpart will be required to submit a progress report.

b. Demonstration. The Agency believes that any source which intends to come into compliance with the emission standards of this Subpart, except for those sources in compliance on the effective date of the emission standards of this Subpart, will be required to make modifications to the source to come into compliance. To gauge the progress of these modifications, the final rule requires sources to submit with their progress report information demonstrating that the source has: (1) Completed engineering design for any physical modifications to the source needed to comply with the emissions standards of this Subpart; (2) Submitted applicable construction applications to the applicable regulatory authority; and (3) Entered into a binding contractual commitment to purchase, fabricate, and install any equipment, devices, and ancillary structures needed to comply with the emission requirements of this Subpart. Those sources which fail to make this demonstration in their progress report or who fail to submit a progress report shall stop burning hazardous waste on or before the date two years after the effective date of this Subpart.

Because the types of modifications that sources will have to make are anticipated to require the commitment of substantial resources, sources are required to demonstrate that they have entered into a binding contractual commitment to purchase the resources necessary to make those modifications. Some examples of binding contractual commitments follow; however, EPA may judge other demonstrations adequate on a case-by-case basis. In some cases, EPA will allow evidence of an in-house construction plan to satisfy the demonstration. If on-site labor by facility personnel will be used, a statement of commitment must be provided by upper management, and such other evidence of a commitment as is available, such as company memoranda or annual budgets committing funds, purchase orders, or copies of contracts with any suppliers of equipment or materials. EPA expects that, in most cases, sources will use off-site resources in their modifications. To demonstrate commitment in these cases, sources must provide copies of binding contracts with companies to perform tasks or supply equipment that will facilitate bringing the source into compliance.

There may be a limited number of sources who intend to come into compliance, but will not need to undertake any of the activities identified in the demonstration criteria above to do so. These sources are required to submit instead documentation: (1) Demonstrating that the source, at the time of the progress report, is in compliance with the emissions requirements; or (2) specifying the steps that will be taken to bring the source into compliance, without undertaking any of the activities identified in the demonstration criteria. The Agency anticipates that few if any sources will not need to enter into binding contracts in order to come into compliance with the emission standards of this Subpart.

Those sources who indicated in the NIC their intent not to comply with the

emission control requirements of this Subpart must still submit a progress report. These sources, however, must only indicate that they have stopped burning hazardous waste and have submitted the required RCRA closure documents.

c. Schedule. To determine that facilities are undertaking the steps necessary to come into compliance by the compliance date, the progress report shall contain a schedule. This schedule must take into account the key dates listed in 63.1211(a)(1)(ii) for projects that will bring the source into compliance with the emission standards. The schedule must cover the time frame from the submittal of the progress report through the compliance date of the emission standards. EPA is requiring that the following key dates, as applicable to each source, be contained in their schedule: (1) Bid and award dates for construction contracts and equipment supply contractors; (2) milestones such as ground breaking, completion of drawings and specifications, equipment deliveries, intermediate construction completions, and testing; (3) the dates on which applications were submitted for or obtained operating and construction permits or licenses; (4) the dates by which approvals of any permits or licenses applied for are anticipated; and (5) the projected date by which the source will be in compliance with emission standards. The Agency anticipates that many sources will be able to update the schedule included with their NIC in submitting a schedule for the progress report.

d. Sources That Do Not Intend To Comply. The Agency anticipates that some facilities, which intended to comply at the time of their NIC submittal, may make the determination not to comply based on engineering studies or evaluations by the time of their progress report submittal. Those sources that signify in their progress report, submitted on or any time before two years after the effective date of the emission standards of this Subpart, their intention not to comply with the requirements of this Subpart must stop burning hazardous waste on or before the date two years after the effective date of the emissions standards of this Subpart. Sources who, at the time of their NIC submittal, have any belief or concern that they may decide not to comply with the emission standards should consider planning alternate waste management alternatives well in advance of the two year stop burning deadline.

e. Facilities with Multiple Sources. Commenters stated that some facilities may have multiple units at the same site subject to the MACT requirements. These facilities may decide to bring a portion of the sources into compliance and cease burning hazardous waste in the other portion of their sources. If a facility did decide to upgrade one or more units, it may be necessary to utilize the remaining unit, in which it intended to stop burning hazardous waste prior to the compliance date, to handle the capacity of the unit being upgraded until the installation of controls was complete. The commenters believed that it was unjustified to close a source at the two year deadline in the case where a source: (1) Was designated for closure at or before the three year compliance date; and (2) was handling the waste from another on-site source being upgraded to comply with the MACT standards or in order to install source reduction modifications eliminating the need for further combustion of wastes.

The Agency agrees that the intent of the requirement for sources that did not intend to comply to stop burning hazardous waste should not apply to these types of sources. Therefore, the requirement to stop burning hazardous waste at the two year deadline does not apply to a source if: (1) The source was designated in the NIC as a source that would stop burning hazardous waste on or before the compliance date; and (2) the source was shown in the NIC to be necessary to handle the capacity of another on-site source while that source was unable to handle the waste and undergoing modifications to come into compliance with the emission standards of this Subpart or in order to install source reduction modifications eliminating the need for further combustion of wastes.

E. Certification

To ensure that information submitted by a source is true and accurate, all NIC and progress reports submitted shall contain the following certification signed and dated by an authorized representative of the source: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

An authorized representative should be a responsible corporate officer (for a corporation), a general partner (for a partnership), the proprietor (of a sole proprietorship), or a principal executive officer or ranking elected official (for a municipality, State, Federal, or other public agency).

F. Extension of the Compliance Date

The CAA provides sources that intend to come into compliance, but because of the need to install controls will not meet the compliance date, the ability to request an extension of the compliance date for one year. The Agency believes facilities that choose to install process changes (which are essentially pollution prevention or waste minimization measures) and/or other controls that are appropriate for meeting MACT standards are eligible to request a one year extension of the compliance date to install these controls (CAA Section 112(i)(3)(B)). Facilities that request an extension to install pollution prevention and/or waste minimization measures may use part 63.1216 below, which describes the pollution prevention related information to be submitted. Facilities that request an extension for installing only end-of-pipe emission controls may use part 63.6(i)(4) requirements. In either case, the extension request shall be filed at least one year prior to the compliance date of this Subpart.

G. Sources Which Become Affected Sources After the Effective Date of This Subpart

The Agency is concerned that there may be sources who become subject to the emission standards of this Subpart after the effective date of the emission standards of this Subpart. The following is intended to clarify the requirements and time frames that must be met by such sources. A source which begins to burn hazardous waste after the effective date of the emission standards of this Subpart, therefore becoming an affected source, but prior to 9 months after the effective date of the emission standards of this Subpart, shall comply with all the requirements of this section and associated time frames for public meetings and document submittals.

A source which intends to begin burning hazardous waste after 9 months after the effective date of the emission standards of this Subpart, therefore becoming an affected source, shall meet all the requirements concerning the NIC and progress report prior to burning hazardous waste. Such sources shall make a draft NIC available, notice their public meeting, hold their public meeting, and submit a final NIC prior to burning hazardous waste. Such sources also shall submit their progress report at

the time of the submittal of their final NIC.

VI. Waste Minimization and Pollution Prevention

A. Overview

Pollution prevention is widely recognized as the most preferable form of environmental management. Indeed, the Clean Air Act, the Pollution Prevention Act, and the Resource Conservation and Recovery Act explicitly make pollution prevention the preferred tool in our nation's environmental management toolbox. The States have been strong leaders as well in moving pollution prevention to the forefront. Over the past decade, 30 states have passed legislation that promotes pollution prevention.[18] Those States have embarked on a variety of programs that move pollution prevention more into the mainstream of their environmental management strategies—ranging from pollution prevention based permits and inspections, to mandatory pollution prevention planning programs, to voluntary partnerships and technical assistance. Nearly every State operates some form of pollution prevention technical assistance program to help companies reduce as much waste as possible at the source.

EPA has embarked on several experimental programs, including, for example, Project XL and the Common Sense Initiative, to identify barriers in Federal regulations that impede cleaner, cheaper, smarter environmental solutions, and to demonstrate ways of redrafting regulations to provide greater flexibility in solving environmental problems.

In 1994, EPA began an extensive outreach effort to begin identifying pollution prevention barriers and incentives affecting hazardous waste combustion. Over the course of the past four years, EPA has worked extensively with the States, industry, environmental groups, and citizens, in many dozens of discussions and correspondences to explore a broad range of approaches to pollution prevention in the combustion arena. Today's rulemaking puts in place several incentive based pollution prevention and waste minimization incentives that derive from that long term effort, and that will provide the regulated community with additional flexibility to use pollution prevention technologies where it makes sense to do so. Some barriers were identified that are not easily solvable within the limits of the Clean Air Act, such as time limits on compliance that sometimes force companies to install end-of-pipe emission controls, instead of pollution prevention process changes, because they are faster and less risky to install. Nevertheless, today's rule suggests an approach that can address even this problem.

Today's rule contains incentives that provides the regulated community:

—several months of planning time before the MACT compliance period begins to explore cost effective pollution prevention alternatives that might reduce the cost of hazardous waste combustion,

—the opportunity to extend the compliance period by one year where the additional time is needed to install pollution prevention controls that reduce the amount of hazardous waste entering combustion units, and

—the opportunity to engender public support on pollution prevention alternatives that reduce the amount of waste that will be combusted.

The six pollution prevention alternatives EPA published for comment, the comments received and a description of the incentives contained in today's rule are discussed further below.

B. Background

The goals of the Clean Air Act clearly express Congress' intent to use pollution prevention as a fundamental tool for protecting our nation's air resources:

"A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local government actions, consistent with the provisions of this chapter, for pollution prevention." (Clean Air Act, Section 101 (c)).''

"Air pollution prevention (that is, the reduction or elimination , through any measures, of the amount of pollutants produced or created at the source) * * * is the primary responsibility of States and local governments." (Clean Air Act, Section 101 (a)(3)).''

Congress' intent in the CAA is consistent, if not identical, to the policies set in the Pollution Prevention Act of 1990 (PPA) and the Hazardous and Solid Waste Amendments to RCRA of 1984, RCRA Section 1003(b) and Section 6602 (a).

More specifically, we note the definition of pollution prevention as used in the CAA is best captured in the operational definition used in Section 112 (d)(2). This section requires EPA to consider pollution prevention techniques in addition to "end of pipe" emission controls and other methods in the setting of MACT standards. Pollution prevention is used here to include: "measures, processes, methods, systems, or techniques including, but not limited to, measures which * * * (A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitutions of materials or other modifications, * * * or (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) * * *''

To avoid some of the historical confusion that has occurred over the definitions of pollution prevention and waste minimization, it is useful to compare the CAA definition to those in the PPA and in the Hazardous and Solid Waste Amendments to RCRA of 1984.

The PPA (at Section 6603(5)(A)) defines pollution prevention as source reduction activities, which includes any practice that reduces the amount of hazardous substance, pollutant or contaminant entering a waste stream, or otherwise prior to recycling, treatment or disposal. It includes such activities as: equipment or technology modifications, reformulation or redesign of products, substitution of raw materials, improvements in work practices, maintenance, training, and inventory control. The meaning contained in the PPA is essentially the same meaning referred to in Section 112(d)(2) of the CAA. Both focus on reducing waste generation at the source by making changes in the way things are manufactured.

The PPA excludes from pollution prevention any practice which "alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service." (Section 6603(5)(B). In essence, this definition excludes waste management, recycling (except for closed loop recycling that is integrated into production processes), burning for energy recovery, waste treatment, and disposal.

Since many of the facilities affected by today's rulemaking are simultaneously regulated by RCRA, it is important to also explain the use of the term waste minimization, under RCRA.

Waste minimization includes pollution prevention (or source reduction) and environmentally sound recycling, i.e., recycling that does not constitute disposal (see 40 CFR 261.1(c)). It does not include treatment—i.e, any "method, technique, or process, including neutralization,

[18] *Pollution Prevention 1997, A National Progress Report* (June, 1997). U.S. Environmental Protection Agency, EPA 742–R–97–00, Washington, D.C.

designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume." (40 CFR 260.10). RCRA also contains requirements for hazardous waste generators and permitted waste management facilities to make routine certifications that they have a "waste minimization program in place," and large generators must also report waste minimization activities biennially.

The environmental literature and public statements of many companies provide strong evidence of the potential benefits to industry and the environment that result from using pollution prevention over waste generation and management. For example, pollution prevention techniques can help companies reduce the amount of raw materials purchased and the amount of waste generated. These reductions can reduce the amount spent on waste management and can also reduce worker exposure to hazardous substances. Pollution prevention can help companies improve product yield and find ways to recover materials that might otherwise be destroyed or landfilled.

The literature also points to barriers that may impede a company's ability to pursue pollution prevention. Barriers may include, for example: little or no access to technical information on pollution prevention technologies, concern over the impact of process changes on product quality, a lack of access to capital, requirements in existing environmental regulations that conflict with pollution prevention objectives.

Today's regulation focuses on reducing several potential regulatory barriers that could interfere with pollution prevention solutions. The incentive based approach contained in today's rule is explained further below.

C. Summary of Proposed Pollution Prevention/Waste Minimization Incentives and Comments Received

EPA requested comment on six alternatives for promoting pollution prevention and waste minimization at hazardous waste incinerators, cement kilns and LWAKs. Three were proposed in the Agency's April 1996 NPRM and three were proposed in the Agency's Notice of Data Availability (NODA) published in the **Federal Register** on May 2, 1997 (Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, 62 FR 24241). All six incentive based alternatives were designed to promote the identification and installation of pollution prevention and waste minimization techniques that reduce or eliminate the amount and/or toxicity of hazardous wastes entering combustion feedstreams, either as an alternative to end-of-pipe combustion measures, or in combination with combustion measures, to meet MACT standards.

Two of the six alternatives proposed focused on using waste minimization facility planning as a tool that would cause regulated facilities to identify pollution prevention/waste minimization measures that could be used to reduce the amount and/or the toxicity of hazardous wastes entering combustion feedstreams. Two additional alternatives focused on extending compliance deadlines to allow additional time for companies to fully explore pollution prevention/waste minimization measures and combustion measures that may be necessary to meet MACT standards. A fifth alternative requested comment on an approach that would harness the power of public involvement during the initial stage of corporate compliance planning. The sixth alternative proposed promulgating pollution prevention and waste minimization incentives several months before the MACT standards are promulgated—which would provide companies several months of advance planning time before the MACT compliance period begins. The alternatives were not designed to be exclusive. Today's rule promulgates a combination of three of these options, encourages States to adopt two others, and recommends an alternative voluntary approach for the sixth. The options, comments received and EPA's response to major comments are discussed below. EPA's response to each comment is contained in the docket.

EPA received over 40 comments on the options contained in the April 1996 NPRM and the NODA. Most of the commenters addressed one or more of the following topics:

—Time-based incentives, including the opportunity to enter into enforcement agreements beyond four years,
—The effectiveness of pollution prevention planning and planning criteria,
—Perceived effectiveness of pollution prevention in the context of this rulemaking,
—Setting MACT standards based on pollution prevention/waste minimization,
—Public review of pollution prevention and waste minimization,
—The role of pollution prevention and waste minimization in waste management,
—The definition of pollution prevention and waste minimization, and
—Applicability of pollution prevention incentives to commercial facilities.

EPA asked for comments on the appropriateness of two options requiring pollution prevention/waste minimization facility planning. One option would require facilities to complete a waste minimization facility plan that identifies alternatives for reducing the amount of hazardous waste managed by combustion. While this approach would not require facilities to select any particular pollution prevention technology, it presumes that going through the process of exploring alternatives would cause a company to consider more pollution prevention options than they would have otherwise and select any that are cost-effective.

In the second waste minimization planning option, EPA proposed to allow States and EPA Regions (in cases where States are do not have an approved CAA Title V program) to require pollution prevention planning on a case-by-case basis. Determining which facilities should be required to complete a pollution prevention/waste minimization facility plan could take into account several factors, including, for example, whether an existing state program had already accomplished this objective, the extent to which this requirement may be too burdensome for some states, and the extent to which facility specific conditions indicate emissions could be controlled by feed stream management and waste minimization at the source.

A variety of commenters addressed this issue. Four states and one state association commented pollution prevention/waste minimization should be the highest priority waste management approach, though they had diverse and sometimes conflicting opinions about the specific options proposed. One State commented that mandatory planning should be required for all facilities that generate and combust waste on-site, and that planning should be required on a case-by-case basis for commercial off-site combustion facilities. One State and the State association stated that the mandatory planning requirement should be expanded to include all facilities that generate waste managed by combustion. A fourth State said that no waste minimization incentives should be included in this rule because the

regulated community has had many years to reduce waste generation through pollution prevention/ waste minimization, and should have already considered waste minimization as an approach to compliance. One state did not comment specifically on the pollution prevention planning options but was in favor of encouraging pollution prevention incentives in this rule.

This diversity of opinion among States leads EPA to believe that the pollution prevention/waste minimization incentives contained in this rule must allow broad flexibility for State programs. EPA is also aware, from discussions outside the context of this rulemaking, that some states are specifically opposed to mandatory pollution prevention requirements, and a few states have not yet established pollution prevention programs.

Several dozen comments were received from industry. Most of the comments from companies who generate and combust waste on-site were in favor of pollution prevention/ waste minimization as the most desirable form of waste management. However, most were opposed or silent regarding required pollution prevention planning. Only one argued that mandatory pollution prevention planning is not appropriate, and that the case by case option provides greater flexibility and is therefore more appropriate.

Commercial combustion facilities generally oppose pollution prevention planning requirements because they have virtually no control over what types or how much waste their customers generate for combustion. However, one company argued strongly for the Agency to require mandatory pollution prevention planning by all regulated units to identify pollution prevention alternatives that eliminate or reduce the amount and toxicity of combusted wastes. The commenter further argued that pollution prevention should be used to leverage the closing of combustion units where wastes could more effectively be eliminated or reduced. Another commercial company believes EPA should implement "good actor" incentives for companies that educate their customers regarding available waste minimization resources. Such incentives could include reduced inspection frequencies, reduced performance testing, and a recognition program. This approach was not suggested by any other commenters. EPA believes this approach might be appropriate for further exploration at a later time. One Federal agency commented in favor of a case-by-case approach.

EPA considered several factors regarding this approach. First, the CAA clearly envisions States as the primary implementers of the Title V program, and the pollution prevention programs operated by the States are clearly diverse. While 15 States have enacted mandatory pollution prevention planning programs, the remaining States continue to emphasize voluntary pollution prevention programs and technical assistance to encourage pollution prevention.

Available data shows that mandatory pollution prevention planning can be an effective State tool. It is not clear how effective this approach would be for a broad array of states. In a review of seven states that have chosen to implement mandatory pollution prevention planning programs, the National Pollution Roundtable concludes that mandatory pollution prevention planning produces beneficial results for the regulated community and the environment, and encourages other states to consider this direction.[19] However, New Jersey (one of the seven States reviewed) notes in a separate report that its companies began making significant reductions through pollution prevention well before the State passed legislation requiring mandatory pollution prevention planning. In this case, the State is not able to pinpoint why this occurred.[20]

Of the 21 commercial hazardous waste incinerators and the 141 on-site hazardous waste incinerators (i.e., incinerators co-located with a company manufacturing facilities), 58 percent are located in states which have legislated pollution prevention programs already in place. Nearly all of the remaining facilities are located in States that provide pollution prevention technical assistance. In addition, all of these facilities are co-regulated by RCRA and have been required since 1984 to certify on an annual basis, that they have a waste minimization program in place. Therefore, it is not clear what additional pollution prevention benefits would result from a mandatory requirement. Based on its analysis, EPA believes that a federal requirement for pollution prevention planning is not appropriate.

EPA also considered the impact Federal pollution prevention planning requirements would have on the Agency's paperwork reduction commitments. EPA is committed to decreasing its information collection request budget. In light of the baseline requirements and voluntary programs States have already established in this area, EPA concludes this requirement would increase federal paperwork without necessarily creating a commensurate improvement in environmental quality.

EPA has also expanded the availability of voluntary pollution prevention incentives available—which in turn reduce the need for mandatory federal pollution prevention requirements. For example, EPA has recently released the "Waste Minimization Prioritization Tool."[21] This tool is an easy-to-use computer program that allows industrial, government and public users to quickly identify their highest hazard wastes as targets for pollution prevention efforts. The tool allows the user to enter information on particular waste streams and develop a screening-level assessment of chemicals based on their persistence, bioaccumulation potential, and human and ecological toxicity. The system ranks about 900 chemicals that have "complete" data on chemical persistence, bioaccumulation potential, and human and ecological toxicity, and it includes partial data for 3,800 others. This tool has received much review and is targeted for widespread distribution in the regulated community.

EPA continues to provide $5–$8 million dollars per year in grant funds to States that develop innovative pollution prevention approaches, and EPA is promoting pollution prevention innovation in States through the National Environmental Performance Partnership System (NEPPS). NEPPS agreements give the States flexibility to combine individual program grants to maximize achieve environmental goals, including using funds for pollution prevention that have historically been used for end-of-pipe pollution controls. Texas, New Jersey, and Ohio (which oversee a total of 45 hazardous waste incinerators) are among the states that signed NEPPS agreements in 1996. Thirty states were scheduled to negotiate NEPPS agreements in 1997.

In addition, a variety of government-industry partnerships are producing pollution prevention results. For example, 163 industry members of Texas' Clean Industries 2000 program

[19] "Facility Pollution Prevention Planning Requirements: An Overview of State Program Evaluations," National Pollution Prevention Round table (August 8, 1997), Washington, D.C. 20036.

[20] Aucott, M., Wachspress, D., & Herb J., (May, 1996). "Industrial Pollution Prevention in New Jersey," New Jersey Department of Environmental Protection, Trenton, N.J.

[21] "Waste Minimization Prioritization Tool, Version 1.0: User's Guide and System Documentation," (EPA 530–R–97–019, June, 1997). U.S. Environmental Protection Agency, Washington, D.C.

are committed to reducing emissions of Toxic Release Inventory (TRI) chemicals by 50 percent by the year 2000. A twenty-nine percent reduction was reached by the year 1994.

Balancing all of the above factors, EPA believes mandatory and case-by-case pollution prevention planning approaches are not necessary to achieve the pollution prevention goals of the CAA. A combination of strong incentives and broad flexibility for States and the regulated community, including some of the options discussed below and contained in today's rule, will accomplish the pollution prevention goals of the CAA.

Two options were proposed that would allow the MACT compliance period to be extended for facilities that demonstrate the need for extra time to install pollution prevention measures. One of these options would allow facilities to apply for a one-year compliance extension to the MACT compliance period under Section 112(i)(3)(B) where additional time is needed to install pollution prevention or waste minimization measures that reduce or eliminate hazardous wastes entering the combustion feedstreams of regulated facilities. Of course, such applications must still be evaluated on a case-by-case basis CAA 112(b)(3). However, the following discussion provides an indication of how EPA might evaluate such applications based on pollution prevention.

Facilities that apply for this one-year extension would be required to provide a description of the pollution prevention/waste minimization measures that would significantly reduce or eliminate the volume and/or toxicity of hazardous wastes entering combustion feedstreams, a reduction goal (i.e., how much waste will no longer enter combustion feedstreams of the regulated unit(s)), a discussion of additional combustion or other treatment technology that will be installed to meet MACT standards, and a schedule of milestones necessary to achieve compliance. The pollution prevention/waste minimization measures installed could be used either alone to meet MACT standards (e.g., in cases where elimination of certain combusted waste streams will either achieve MACT standards for the regulated unit(s), or will eliminate the need for the regulated unit(s)), or in combination with combustion or other treatment technologies that enable the facility to comply with MACT standards. We emphasize that identifying expected reductions in combustion feedstreams is required, but identifying reductions in emissions as a result of installing pollution prevention measures is not required. EPA recognizes this would not be practical. The compliance date for facilities that are granted a one year extension by the permitting agency would be four years after the promulgation of MACT standards, rather than three years after the date of promulgation.

EPA recognized in its proposal that States operate very diverse pollution prevention programs. However, to ensure some degree of consistency in granting one year extensions, EPA proposed four flexible factors to be considered in approving or denying requests for one-year compliance extensions for hazardous waste burning incinerators, LWAKs, and cement kilns. These factors included: (1) The extent to which the process changes (including waste minimization measures) proposed as a basis for the extension reduce or eliminate hazardous wastes entering combustion feed streams and are technologically and economically feasible, (2) whether the magnitude of the reductions in hazardous wastes entering combustion feed streams through process changes are significant enough to warrant granting an extension, (3) a clear demonstration that reductions of hazardous wastes entering combustion feed streams are not shifted as increases in pollutants emitted through other regulated media, and (4) a demonstration that the design and installation of process changes, which include waste minimization measures, and other measures that are necessary for compliance cannot otherwise be installed within the three year compliance period.

EPA received no adverse comments on the four factors for ensuring consistency. Companies that operate on-site units (many of which are large chemical plants which operate complex production processes and which generate diverse and complex waste streams) commented that they prefer to use pollution prevention and waste minimization measures wherever they are cost effective. However, in the instant rulemaking, the dual tasks of designing, testing and installing pollution prevention process changes and combustion or other treatment equipment is not practical in a three year compliance period plus a one-year extension. Some commented that meeting the compliance date may often force companies to install combustion controls at great expense and forego exploration of pollution prevention options.

The four states and one State association that commented on the compliance extension options had diverse opinions. Two states commented that pollution prevention/waste minimization should be encouraged in this rulemaking. However, they believe three years plus a one-year extension may not be enough time for companies to identify and install waste minimization measures. A third State said that pollution prevention/waste minimization incentives should not be included in this rule because companies have had more than ample time to pursue pollution prevention/waste minimization as an approach to compliance. A fourth State and State association commented that facilities have had ample time to identify and install pollution prevention solutions—however, one year compliance extensions should be considered in cases where it will promote further pollution prevention.

Two commercial hazardous waste treatment organizations commented that a one-year extension for pollution prevention/waste minimization purposes is not appropriate since the companies generating the waste have had several years to consider pollution prevention and waste minimization measures as a waste management alternative.

EPA believes that compliance extensions provide a strong incentive for pollution prevention, and provide States additional flexibility. EPA agrees that, in some cases, three years plus a one-year extension may not be sufficient time to identify and install waste minimization measures that achieve compliance. However, the one year extension is the maximum allowable under the CAA. EPA disagrees with the commenters opposing the extension because pollution prevention and waste minimization should be viewed as an on-going process that adopts new pollution prevention technologies as they become available. In some cases, the economics of complying with new MACT standards may make pollution prevention more cost-effective than it would have otherwise been.

In today's rule, EPA has chosen to implement the one-year compliance extension approach. In evaluating extension requests, EPA urges permitting agencies to give first preference to facilities that request the extra time to install pollution prevention measures (either alone or in addition to combustion controls) over facilities that request an extension only for installing combustion controls. EPA has also simplified the factors that must be considered by permitting agencies in making determinations for one year extensions by making them identical to

the factors facilities must include in requests for extensions.

In its 1997 NODA, EPA encouraged facilities that wish to apply for a one-year extension to coordinate the development the application for extension with the information contained in Notice of Intent to Comply (NIC), which is also described in today's rulemaking. Based on the comments received from industry and States noting the need for extra time to consider and then install pollution prevention measures, EPA would expect to see a reasonable degree of consistency between pollution prevention alternatives discussed in the NIC and pollution prevention technologies identified in a subsequent request for a one year extension to install pollution prevention technologies. Requests for a one-year compliance extension from facilities who did not address pollution prevention in the NIC should be viewed with caution to guard against last minute attempts to delay compliance.

The second compliance extension option, proposed in the 1997 NODA, would allow certain facilities to enter into a written consent agreement or consent order in cases where pollution prevention/waste minimization technologies would significantly reduce wastes entering combustion feed streams, but would take more than four years (i.e., three years plus a one-year extension). EPA could use this alternative using the principles articulated in the Agency's "Policy on Encouraging Self-Policing and Voluntary Correction" (also known as the "Audit Policy" 60 FR 66706, December 22, 1995).

Very few commenters addressed this option. Some industry commenters expressed limited interest in this approach, since entering into a consent agreement would provide no shield against citizen suits.

EPA agrees that longer than four years may be needed in some cases. However, based on the comments received and after further evaluation, the Agency has decided not to pursue this proposal as part of this rulemaking. Instead, EPA believes its Project XL program provides a better opportunity for EPA to work with companies who are interested in undertaking projects which hold the promise of superior environmental results in exchange for regulatory flexibility. The XL program is also designed to include public involvement early in the process, which would hopefully reduce the likelihood of citizen suits. Project XL proposals should be developed and submitted well in advance of the deadline for meeting this MACT standard, possibly before the promulgation of MACT standards. See the May 22, 1995 **Federal Register** Notice [FRL–5197–9] for further information on developing and submitting a proposal.

EPA proposed a fifth pollution prevention/waste minimization incentive in the 1997 NODA which focused on harnessing the power of public involvement to encourage companies to consider pollution prevention alternatives. The NODA proposed to require facilities to make public, within ten months after promulgation of the MACT standards, a draft Notice of Intent to Comply (NIC) that contains a description of technologies that will be used to achieve compliance with MACT standards, including pollution prevention and waste minimization technologies. Regulated facilities would also be required to hold a public meeting on its compliance plan and to submit a final NIC to the permitting agency no later than one year after the promulgation of standards. In this setting, the public would be able to review a company's draft compliance plan and make known its concerns and views regarding the use of pollution prevention, combustion or other treatment methods.

Several commenters responded to the pollution prevention/waste minimization components of the NIC proposal. One industry trade organization commented that the NIC requirements are unnecessary since its members already participate in a responsible care program that includes pollution prevention and community involvement. Another commenter argued strongly that the public involvement opportunity provided by the NIC process is inadequate, and that the point at which the public interacts with the facility is too late to influence decisions to encourage the installation of pollution prevention technology that may reduce or eliminate the need for combustion.

It is crucial to provide the public with information and a public meeting on the pollution prevention/waste minimization and combustion measures that are planned at individual facilities. The NIC process occurs early enough in the compliance process to provide meaningful public involvement, and the NIC process provides a strong lever for citizens to voice their opinions. The pollution prevention aspects of the NIC requirements are further discussed in the NIC portion of today's preamble.

The sixth pollution prevention/waste minimization option proposed involved promulgating a "fast track" rule in advance of MACT standards to provide the regulated community time to explore, plan and possibly begin implementation of pollution prevention and waste minimization measures several months before the promulgation of MACT standards.

One commenter strongly urged this option because it provides facilities with additional planning time to identify pollution prevention options before the MACT compliance period begins. Although no other commenters specifically addressed this option, EPA believes it provides States additional flexibility, and comports with the variety of comments that expressed general support for pollution prevention as a top priority environmental management strategy.

D. Waste Minimization Incentives Contained in Today's Rule

Today's rulemaking provides three incentives to encourage the use of pollution prevention measures to reduce or amount and/or toxicity of hazardous wastes entering combustion feedstreams. Wastes that cannot be reduced at the source should be recycled in an environmentally sound manner, i.e., in a manner that does not constitute disposal. Wastes that cannot be reduced at the source or recycled should be either burned for energy recovery, treated, or disposed in accordance with environmental standards. Today's incentive based approach encourages and rewards facilities that significantly reduce the amount of combusted hazardous waste using pollution prevention measures as a method for achieving MACT standards, and it provides the flexibility needed by the States to build on or expand existing pollution prevention programs.

Today's rule (at Section 63.1216) allows owners/operators of hazardous waste burning incinerators, cement kilns and lightweight aggregate kilns to request a one-year extension to the MACT compliance period in cases where additional time is needed to install pollution prevention and waste minimization measures that reduce the amount of hazardous waste entering combustion feedstreams. The Administrator or State with an approved Title V program is authorized to grant one-year extensions for this purpose under Section 112(i)(3)(B) of the CAA. Pollution prevention and waste minimization measures that can be considered in this determination include: process changes (including closed loop recycling), raw material substitutions, design changes, equipment changes, work practice changes, changes in operational standards or other similar measures that

EPA or State permitting agencies may determine is pollution prevention or waste minimization. Waste minimization activities that may be considered for an extension include pollution prevention activities and recycling measures, as defined in 40 CFR 261.1(c) and conducted in accordance with RCRA regulations.

The term recycling, as defined in defined in 40 CFR 260.10 does not include burning for energy recovery or treatment activities. Therefore, burning for energy recovery will not be considered for an extension. Companies who burn for energy recovery are presumed, in accordance with their RCRA waste minimization program in place certification (discussed above), to have determined that wastes burned for energy recovery could not be economically source reduced or recycled prior to burning. EPA believes this approach is completely consistent with past Agency policy and provides the regulated community with greater flexibility in managing its non-product outputs.

Requests for a one-year extension must reasonably document that the waste minimization measures, and whatever additional compliance measures are necessary to achieve compliance, could not otherwise be installed in time to meet the three-year compliance period. Stronger consideration should be given to requests that contain, for example: (1) A schedule to redesign a production process that eliminates the use of solvents and the generation of spent solvents (which are currently combusted in an on-site hazardous waste incinerator), (2) a commitment to reduce by 25% the amount of hazardous wastes entering the incinerator feedstream (as a result of the waste minimization process change), (3) a description and schedule for designing and installing combustion controls to treat remaining wastes, and (4) evidence that the extension reflects the reality that the design specs and schedule for the remaining combustion controls can not be completed or installed without first having information on waste minimization related feedstream changes. In contrast, requests that propose to simply send wastes off-site for recycling, for example, without first exploring on-site process changes or operating practices, should receive little or no consideration for an extension because there is nothing in this action that would require extensive time.

Decisions to grant one-year extensions will be made by EPA or state programs that have delegated the authority to implement and enforce the emission standard for that source. In light of the wide range of approaches States employ regarding waste minimization planning, it is appropriate to encourage some degree of consistency in how these decisions are made, without superseding State approaches. Therefore, EPA is requiring that permitting agencies must consider all of the information required in Section 63.1216 in approving or denying requests for one-year compliance extensions for hazardous waste burning incinerators, LWAKs, and cement kilns. EPA will also work with States to develop separate guidance, with examples, of how to review requests for an extension, based on pollution prevention/waste minimization efforts.

The second pollution prevention/waste minimization incentive promulgated in today's rule is the requirement for regulated facilities to include in their Notice of Intent to Comply (NIC) a description of pollution prevention and waste minimization activities proposed to reduce the amount and/or toxicity of hazardous waste entering the facility's combustion feedstream(s). This approach will harness the power of public involvement, through the NIC review and public meeting process, to encourage facilities to consider pollution prevention measures in their MACT compliance plan. The requirements for the NIC process are described in today's preamble.

It is important to note here that companies should consider coordinating the development of a NIC process with any subsequent requests for a one year extension. For example, it would seem logical that pollution prevention measures identified in the NIC (prepared in the first year of the compliance period), would also appear in a subsequent request for a one year extension (prepared in the second year of the compliance period). In contrast, requests for a one year extension from companies that did not consider pollution prevention in their NIC might be looked at with more caution.

As a third pollution prevention incentive, EPA is promulgating today's rule several months in advance of promulgating MACT standards to provide companies with several valuable months of advance planning time to identify waste minimization measures can be used to meet, or assist in meeting MACT standards. The timing of today's rule, therefore, serves as a valuable pollution prevention incentive.

Taken together, the tailored incentives contained in today's rule provide strong encouragement for regulated companies to pursue cost effective pollution prevention and waste minimization measures in their individual approaches to meeting MACT standards.

As a final note, a substantial amount of free technical information, assistance and guidance on pollution prevention and waste minimization is available from the Federal government and States, and from a variety of private sources. EPA's "Pollution Prevention Facility Planning Guide" (May, 1992; NTIS # PB92–213206) describes the series of analytical steps that are often used by companies to identify waste minimization measures. Additional EPA references include: "Waste Minimization Opportunity Assessment Manual (EPA 625/7–88/003, July 1988), Interim Final "Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program In Place,"(May 1993), "An Introduction to Environmental Accounting As a Business Management Tool" (EPA 742–R–95–001, June 1995), the "P2/Finance User's Manual: Pollution Prevention Financial Analysis and Cost Evaluation System for Lotus 1–2–3 (EPA 742–B–94–003, January 1994), and Enviro$ense, an electronic library of information on pollution prevention, technical assistance, and environmental compliance. Many of these and other documents can be accessed by contacting the RCRA Hotline toll-free at 1–800–424–9346. Enviro$ense can be accessed by contacting a system operator at (703) 908–2007, or on the Internet at http://wastenot.inel.gov/enviro-sense. Information on State waste minimization programs can be obtained through Enviro$ense, directly from the State pollution prevention program offices, or from the National Pollution Prevention Roundtable at E-mail address 75152.1416@compuserve.com, by phone at 202–466–7272 in Washington, D.C.

VII. State Authority

A. RCRA State Authorization

Under RCRA section 3006, EPA may authorize a State to administer and enforce the RCRA hazardous waste program. See 40 CFR part 271. After receiving authorization, the State administers the program in lieu of the Federal government, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Because the new Federal requirements in today's final rule are promulgated under non-HSWA authority, they are not Federally enforceable in an authorized State until the State has adopted equivalent (or more stringent) standards under its authorized laws and regulations, and those changes have

been approved by EPA. See RCRA section 3006, 42 U.S.C. 6926. Thus, upon their effective date, these requirements will be applicable only in those States that do not have authorization.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. RCRA section 3009 allows States to impose standards that are more stringent than those in the Federal program (see also 40 CFR 271.1(i)(1)). Thus, for those Federal changes that are less stringent, or reduce the scope of the Federal program, States are not required to modify their programs. The revisions to the Federal RCRA Subtitle C program that are promulgated today are considered to be less stringent than the existing Federal regulations. However, EPA believes that their adoption by States will greatly enhance the implementation of the upcoming MACT standards, and ease the permitting burden on the States. Thus, EPA strongly urges States to adopt all aspects of today's final rule as quickly as their legislative and regulatory processes will allow.

B. Program Delegation Under the Clean Air Act

Today's final rule adds notification procedures for hazardous waste combustors under Title III. Specifically, today's rule requires sources to provide to the permitting agency a Notification of Intent to Comply (NIC) within a year following promulgation of new emissions standards in 40 CFR part 63 Subpart EEE, and a Progress Report within two years. As part of the process of developing a NIC, the source is also required to conduct additional public involvement activities, in particular an informal meeting with the community. Section 112(l) of the Clean Air Act allows EPA to approve State rules or programs for the implementation and enforcement of emission standards and other requirements for air pollutants subject to section 112. Under this authority, EPA has developed delegation procedures and requirements located at 40 CFR Part 63, Subpart E, for NESHAPS under Title III of the CAA (See 57 FR 32250, July 21, 1992).

Submission of rules or programs by States under 40 CFR Part 63 is voluntary. Once a State receives approval from EPA for a standard under section 112(l) of the CAA, the State is delegated the authority to implement and enforce the approved State rules or programs in lieu of the otherwise applicable federal rules (the approved State standard would be federally enforceable). States may also apply for a partial Title III program, such that the State is not required to adopt all rules promulgated in 40 CFR Part 63. EPA will administer any rules federally promulgated under section 112 of the CAA that have not been delegated to the State.

VIII. Administrative Requirements/ Compliance With Executive Order

A. Regulatory Impact Analysis Under Executive Order 12866

Under Executive Order No. 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that today's final rule is not "significant" under points one through three above. The Agency is sensitive, however, to interpretations that may define today's action as "significant" under point number four above, due to the nature of the policy issues raised and recognizes today's action as significant. The Agency has examined economic impacts potentially associated with the three key elements of today's action: the comparable fuel exclusion, waste minimization incentives, and streamlined RCRA permitting modifications. The comparable fuels exclusion in today's final rule will result in national annual cost savings to generators ranging from approximately $11 to $36 million, net of the cost of gaining the exclusion. Blending and combustion facilities, however, are estimated to experience reduced receipts for managing hazardous wastes, coupled with the costs of replacing these materials with more expensive substitutes. The combined impact is estimated to cost these firms an additional $3 to $13 million per year. Today's action also allows sources to apply for up to a one year extension of the three-year compliance period for implementation of waste minimization procedures. Overall, this extension is likely to provide a greater incentive for facilities with on-site combustion units to implement waste minimization options rather than to continue burning hazardous wastes and implement appropriate control technologies. The degree to which this incentive will change the waste burning behavior of combustion facilities is undetermined. EPA is also implementing streamlined procedures for modifying RCRA permits at hazardous waste combustion units. Only those states that regulate combustion units and choose to adopt the streamlined modification system would have to undergo rulemaking and authorization for the streamlined permitting process. The Agency estimates that approximately half of the states with MACT-regulated combustion units will not alter their current permitting system. Based on the average cost to a state for rulemaking and authorization, the Agency estimates aggregate national costs for those states that would modify their systems at a one-time cost of no more than $685,000. In addition to rulemaking and authorization costs, the aggregate national cost for permit review may be as high as $3.8 million. For more information on the cost impacts of today's final rule, see the Economic Analysis Report for the Combustion MACT Fast-Track Rulemaking, March 1998, which is part of the docket for this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

EPA has determined that today's rule will primarily affect large scale facilities. Furthermore, since today's final notice generally provides savings

over current requirements, EPA believes that any small entities engaged in activity covered by the rule will not be adversely affected. Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C., I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. A more detailed discussion of small entity impacts is presented in the Economic Analysis Report.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0073.

The incremental annual public reporting and record keeping burden for this collection of information is estimated to be 55,196 hours at a cost of about $5,164,000. For those generators applying for the comparable/syngas fuel exclusion, the average annual respondent reporting burden is estimated to be 0.5 hours per facility and the average annual record keeping burden is estimated to be 47.3 hours per facility. For burners of comparable/syngas fuels, there is no reporting burden and the annual record keeping burden is 8.0 hours per facility. For HWCs complying with the notification of intent to comply regulations, the average annual reporting burden is 300.5 hours per facility and the average annual record keeping burden is 9.0 hours per facility.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

During its review of the proposed rule ICR, OMB offered comments concerning the burdens associated with the proposed testing requirements and records retention for the comparable fuel/syngas exclusion. In the final rule, EPA is allowing generators to use process knowledge and requiring testing for only those constituents the generator determines should be in the waste. The frequency of the testing will be specified by the generator in the waste analysis plan. With regards to records retention, the final rule will require the retention of records of all comparable and syngas fuel-related information for three years. EPA also received several public comments on the final rule ICR which was noticed on January 28, 1998 at 63 FR 4249. EPA has responded to those comments in the supporting statement for the ICR.

EPA estimates that the addition of the comparable fuels exclusion will cause the BIF universe to decrease by 25 facilities. Although the burden reduction is not reflected in the ICR, EPA expects reporting and recordkeeping requirements for BIFs to decrease by 70,743 hours (18 percent) and $7,493,221 (15 percent) annually. EPA will revise the ICR to reflect this burden reduction when it finalizes the emissions standards for hazardous waste combustors.

EPA is also amending the table of currently approved ICR control numbers issued by OMB for various regulations. This amendment updates the table to display accurately this final rule. This display of the OMB control numbers and their subsequent codification in the Code of Federal Regulations (CFR) at 40 CFR Part 9 satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR Part 1320.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M Street, S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated that the total potential cost to State, local, and Tribal governments would not exceed approximately $4.5 million over ten years. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

IX. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2), therefore, the effective date of the rule is not affected.

X. Environmental Justice

A. Applicability of Executive Order 12898

EPA is committed to address environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Potential Effects

Today's final rule is not expected to cause any disproportionate impacts to minority or low income communities versus affluent or non-minority communities.

XI. Children's Health

Executive Order 13045: The Executive Order 13045 applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and safety Risks (62 FR 19885, April 23, 1997), because: (a) "This is not an economically significant regulatory action as defined by E.O. 12866."

XII. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA is not finalizing any new test methods or other technical standards as part of today's final rule. Thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and record keeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Emergency responses, Hazardous materials transportation, Hazardous waste, Permit application requirements, Permit modifications, Reporting and recordkeeping requirements.

Dated: June 5, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 63, 261, and 270 are amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding Subpart EEE, to read as follows:

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

Sec.

§ 63.1211 Notification requirements.

(a) *Notification of Intent To Comply (NIC).* (1) All hazardous waste combustors subject to this subpart shall prepare a Notification of Intent to Comply that includes the following information:

(i) General information:

(A) The name and address of the owner/operator and the source;

(B) Whether the source is a major or an area source;

(C) Waste minimization and emission control technique(s) being considered;

(D) Emission monitoring technique(s) being considered;

(E) Waste minimization and emission control technique(s) effectiveness;

(F) A description of the evaluation criteria used or to be used to select waste minimization and/or emission control technique(s); and

(G) A statement that the source intends to comply with this subpart by controlling emissions from the combustion of hazardous waste pursuant to the standards of this subpart.

(ii) Information on key activities and estimated dates for these activities that will bring the source into compliance with emission control requirements of this subpart. The submission of key activities and dates is not intended to be static and may be revised by the source during the period the NIC is in effect. Revisions shall be submitted to the regulatory authority and be made available to the public. The following are the key activities and dates that shall be included:

(A) The dates for beginning and completion of engineering studies to evaluate emission control systems or process changes for emissions;

(B) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(C) The date by which construction applications will be submitted;

(D) The date by which on-site construction, installation of emission control equipment, or process change is to be initiated;

(E) The date by which on-site construction, installation of emission control equipment, or process change is to be completed; and

(F) The date by which final compliance is to be achieved. The individual dates and milestones listed in paragraphs (a)(1)(ii)(A) through (F) of this section as part of the NIC are not requirements and therefore are not enforceable deadlines; the Agency is

requiring paragraphs (a)(1)(ii)(A) through (F) of this section as part of the NIC only to inform the public of the source's intentions towards coming into compliance.

(iii) A summary of the public meeting required under paragraph (b) of this section.

(iv) For any source that does not intend to comply, but will not stop burning hazardous waste as required under paragraph (c) of this section, a certification that the designated source will:

(A) Stop burning hazardous waste on or before the compliance date of the emission standards of this Subpart; and

(B) Be necessary to combust the hazardous waste from another on-site source, during the year prior to the compliance date of the emission standards of this Subpart, because that other source is:

(*1*) Installing equipment to come into compliance with the emission standards of this Subpart; or

(*2*) Installing source reduction modifications to eliminate the need for further combustion of wastes.

(2) A draft of the NIC must be made available for public review no later than 30 days prior to the public meeting required under paragraph (b)(1) of this section.

(3) The final NIC must be submitted to the permitting agency no later than one year following the effective date of the emission standards of this subpart.

(b) *NIC Public Meeting and Notice.* (1) Prior to the submission of the NIC to the permitting agency, and no later than 10 months after the effective date of the emission standards of this subpart, the source shall hold at least one informal meeting with the public to discuss anticipated activities described in the draft NIC for achieving compliance with the MACT standards promulgated in this subpart. The source must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(2) The source shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b)(1) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as part of the final NIC, in accordance with paragraph (a)(1)(iii) of this section.

(3) The source must provide public notice of the NIC meeting at least 30 days prior to the meeting. The source shall provide public notice in all of the following forms:

(i) *Newspaper advertisement.* The source shall publish a notice in a newspaper of general circulation in the county or equivalent jurisdiction of the source. In addition, the source shall publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdiction where such publication would be necessary to inform the affected public. The notice must be published as a display advertisement.

(ii) *Visible and accessible sign.* The source shall post a notice on a clearly marked sign at or near the source. If the source places the sign on the source's property, then the sign must be large enough to be readable from the nearest spot where the public would pass by the source.

(iii) *Broadcast media announcement.* The source shall broadcast a notice at least once on at least one local radio station or television station.

(iv) *Notice to the facility mailing list.* The source shall provide a copy of the notice to the facility mailing list in accordance with § 124.10(c)(1)(ix) of this chapter.

(4) The notices required under paragraph (b)(3) of this section must include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the source and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the source location;

(iv) A statement encouraging people to contact the source at least 72 hours before the meeting if they need special access to participate in the meeting;

(v) A statement describing how the draft NIC can be obtained; and

(vi) The name, address, and telephone number of a contact person for the NIC.

(c) *Sources that do not intend to comply.* Those sources subject to the requirements of this subpart, except those sources meeting the requirements of paragraph (a)(1)(iv) of this section:

(1) Who signify in their NIC an intent not to comply with the requirements of this Subpart, must stop burning hazardous waste on or before two years after the effective date of the emmission standards of this subpart;

(2) Who do not intend to comply with this subpart must include in their NIC a schedule that includes key dates for the steps to be taken to stop burning hazardous waste. Key dates include the date for submittal of RCRA closure documents.

§ 63.1212 Progress reports.

(a) *General.* Not later than two years after the effective date of the emission standards of this subpart, all sources subject to this Subpart except those hazardous waste combustion sources that comply with paragraph (b)(2) of this section shall:

(1) Complete engineering design for any physical modifications to the source needed to comply with the emissions standards of this subpart;

(2) Submit applicable construction applications to the applicable regulatory authority; and

(3) Enter into a binding contractual commitment to purchase, fabricate, and install any equipment, devices, and ancillary structures needed to comply with the emission requirements of this subpart.

(b) *Demonstration* (1) Hazardous waste combustion sources shall submit to the regulatory authority a progress report on or before two years after the effective date of the emission standards of this subpart which contains information demonstrating that the source has met the requirements of paragraph (a) of this section. This information will be used by the regulatory authority to determine if the source has made adequate progress towards compliance with the applicable emission standards.

(2) Sources that intend to come into compliance with the emissions standards of this subpart, but can do so without undertaking any of the activities described in paragraph (a) of this section, shall submit documentation either:

(i) Demonstrating that the source, at the time of the progress report, is in compliance with the emissions requirements; or

(ii) Specifying the steps that will be taken to bring the source into compliance, without undertaking any of the activities listed in paragraphs (a)(1) through (3) of this section.

(3) Sources that fail to comply with paragraph (a) above or paragraph (b)(2) of this section shall stop burning hazardous waste on or before the date two years after the effective date of the emission standards of this subpart.

(c) *Schedule.* (1) The progress report shall contain a detailed schedule that lists key dates for all projects that will bring the source into compliance with the requirements of this subpart (i.e., key dates for the activities required under paragraphs (b)(1)(i) through (iii) of this section). Dates shall cover the time frame from the progress report through the compliance date of the emission standards of this subpart.

(2) The schedule shall contain the following dates:

(i) Bid and award dates for construction contracts and equipment supply contractors;

(ii) Milestones such as ground breaking, completion of drawings and specifications, equipment deliveries, intermediate construction completions, and testing;

(iii) The dates on which applications were submitted for or obtained operating and construction permits or licenses;

(iv) The dates by which approvals of any permits or licenses are anticipated; and

(v) The projected date by which the source will be in compliance with the requirements of this subpart.

(d) *Notice of intent to comply.* The progress report shall contain a statement that the source intends or does not intend to come into compliance with the applicable emission control requirements of this subpart.

(e) *Sources that do not intend to comply.* (1) Sources that: indicated in their NIC their intent not to comply with this subpart and stop burning hazardous waste prior to the submittal of a progress report; or meet the requirements of paragraph (a)(1)(iv) of this section are not required to include the requirements of paragraphs (b) and (c) of this section to their progress report, but shall include in their progress report: the date on which the source stopped burning hazardous waste; and the date(s) on which RCRA closure documents were submitted.

(2) Those sources that signify in the progress report, submitted not later than two years after the effective date of the emission standards of this subpart, their intention not to comply with the requirements of this subpart must stop burning hazardous waste on or before the date two years after the effective date of the emission standards of this subpart.

§ 63.1213 Certification.

(a) The Notice of Intent to Comply (NIC) and Progress Report submitted shall contain the following certification signed and dated by an authorized representative of the source:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) An authorized representative should be a responsible corporate officer (for a corporation), a general partner (for a partnership), the proprietor (of a sole proprietorship), or a principal executive officer or ranking elected official (for a municipality, State, Federal, or other public agency).

§ 63.1214 Extension of the compliance date.

(a) A source that intends to come into compliance with the requirements of this subpart, but due to the installation of controls will not meet the compliance date, may request an extension of the compliance date for one year.

(b) Sources subject to this subpart shall follow the requirements of § 63.6(i)(4) or § 63.1216 to request an extension of the compliance date.

§ 63.1215 Sources that become affected sources after the effective date of the emission standards of this subpart.

(a) A source that begins to burn hazardous waste after the effective date of the emission standards of this subpart, therefore becoming an affected source, but prior to 9 months after the effective date of the emission standards of this subpart shall comply with all the requirements of §§ 63.1211 through 63.1213 and associated time frames for public meetings and document submittals.

(b) A source that intends to begin burning hazardous waste more than 9 months after the effective date of the emission standards of this subpart, therefore becoming an affected source, shall meet all the requirements of §§ 63.1211 through 63.1213 prior to burning hazardous waste.

(1) Such sources shall make a draft NIC available, notice their public meeting, hold their public meeting, and submit a final NIC prior to burning hazardous waste.

(2) Such sources also shall submit their progress report at the time of the submittal of their final NIC.

§ 63.1216 Extension of the compliance date to install pollution prevention or waste minimization controls.

(a) *Applicability.* The owner or operator of any source subject to the requirements of this subpart may request from the Administrator or State with an approved Title V program an extension of one year to comply with the emission standards in this subpart, if the owner or operator can reasonably document that the installation of pollution prevention or waste minimization measures will significantly reduce the amount and/or toxicity of hazardous wastes entering the feedstream(s) of the combustion device(s) subject to this subpart, and that the facility could not otherwise install the necessary control measures and comply within three years after the effective date of the emission standards of this subpart.

(b) *Requirements for requesting an extension.* Requests for a one-year extension must be in writing, must be received not later than 12 months before the affected source's compliance date, and must contain the following information:

(1) A description of pollution prevention or waste minimization controls that, when installed, will significantly reduce the amount and/or toxicity of hazardous wastes entering the feedstream(s) of the combustion device(s) subject to this subpart. Pollution prevention or waste minimization measures may include: equipment or technology modifications, reformulation or redesign of products, substitution of raw materials, improvements in work practices, maintenance, training, inventory control, or recycling practices conducted as defined in 40 CFR 261.1(c);

(2) A description of other pollution controls to be installed that are necessary to comply with the emission standards;

(3) A reduction goal or estimate of the annual reductions in quantity and/or toxicity of hazardous waste(s) entering combustion feedstream(s) that will occur by installing the proposed pollution prevention or waste minimization measures;

(4) A comparison of reductions in the amounts and/or toxicity of hazardous wastes combusted after installation of pollution prevention or waste minimization measures to the amounts and/or toxicity of hazardous wastes combusted prior to the installation of these measures; and, if the difference is less than a fifteen percent reduction, a comparison to pollution prevention and waste minimization reductions recorded during the previous five years;

(5) Reasonable documentation that installation of the pollution prevention or waste minimization changes will not result in a net increase (except for documented increases in production) of hazardous constituents released to the environment through other emissions, wastes or effluents;

(6) Reasonable documentation that the design and installation of waste minimization and other measures that are necessary for compliance cannot otherwise be installed within the three year compliance period, and

(7) The information required in 40 CFR 63.6(i)(6)(i)(B) through (D).

(8) Documentation prepared under an existing State required pollution prevention program that contains the information may be enclosed with a

request for extension in lieu of paragraphs (b)(1) through (7) of this section.

(c) *Approval of request for extension of compliance.* Based on the information provided in any request made under paragraph (a) of this section, the Administrator or State with an approved Title V program may grant an extension of compliance with the emission standards identified in paragraph (a) of this section. The extension will be in writing in accordance with §§ 63.6(i)(10)(i) through 63.6(i)(10)(v)(A). EPA and States must consider the information required in paragraph (a) of this section in approving or denying requests for one-year compliance extensions.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by adding paragraph (a)(16) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(16) Comparable fuels or comparable syngas fuels (i.e., comparable/syngas fuels) that meet the requirements of § 261.38.

* * * * *

3. Section 261.38 is added to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

Wastes that meet the following comparable/syngas fuel requirements are not solid wastes:

(a) *Comparable fuel specifications.*—(1) *Physical specifications.*—(i) *Heating value.* The heating value must exceed 5,000 BTU/lbs. (11,500 J/g).

(ii) *Viscosity.* The viscosity must not exceed: 50 cs, as-fired.

(2) *Constituent specifications.* For compounds listed in table 1 to this section the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1).

(b) *Synthesis gas fuel specification.*—Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:

(1) Have a minimum Btu value of 100 Btu/Scf;

(2) Contain less than 1 ppmv of total halogen;

(3) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N_2);

(4) Contain less than 200 ppmv of hydrogen sulfide; and

(5) Contain less than 1 ppmv of each hazardous constituent in the target list of Appendix VIII constituents of this part.

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Total Nitrogen as N	na	4900	
Total Halogens as Cl	na	540	
Total Organic Halogens as Cl	na	25 or individual halogenated organics listed below.	
Polychlorinated biphenyls, total [Arocolors, total] [a]	1336–36–3	Non-detect	1.4
Cyanide, total	57–12–5	Non-detect	1.0
Metals:			
Antimony, total	7440–36–0	7.9	
Arsenic, total	7440–38–2	0.23	
Barium, total	7440–39–3	23	
Beryllium, total	7440–41–7	1.2	
Cadmium, total	7440–43–9	1.2	
Chromium, total	7440–47–3	2.3	
Cobalt	7440–48–4	4.6	
Lead, total	7439–92–1	31	
Manganese	7439–96–5	1.2	
Mercury, total	7439–97–6	0.24	
Nickel, total	7440–02–0	58	
Selenium, total	7782–49–2	0.15	
Silver, total	7440–22–4	2.3	
Thallium, total	7440–28–0	23	
Hydrocarbons:			
Benzo[a]anthracene	56–55–3	1100	
Benzene	71–43–2	4100	
Benzo[b]fluoranthene	205–99–2	960	
Benzo[k]fluoranthene	207–08–9	1900	
Benzo[a]pyrene	50–32–8	960	
Chrysene	218–01–9	1400	
Dibenzo[a,h]anthracene	53–70–3	960	
7,12-Dimethylbenz[a]anthracene	57–97–6	1900	
Fluoranthene	206–44–0	1900	
Indeno(1,2,3-cd)pyrene	193–39–5	960	
3-Methylcholanthrene	56–49–5	1900	
Naphthalene	91–20–3	3200	
Toluene	108–88–3	36000	
Oxygetes:			

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Acetophenone	98–86–2	1900	
Acrolein	107–02–8	37	
Allyl alcohol	107–18–6	30	
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117–81–7	1900	
Butyl benzyl phthalate	85–68–7	1900	
o-Cresol [2-Methyl phenol]	95–48–7	220	
m-Cresol [3-Methyl phenol]	108–39–4	220	
p-Cresol [4-Methyl phenol]	106–44–5	220	
Di-n-butyl phthalate	84–74–2	1900	
Diethyl phthalate	84–66–2	1900	
2,4-Dimethylphenol	105–67–9	1900	
Dimethyl phthalate	131–11–3	1900	
Di-n-octyl phthalate	117–84–0	960	
Endothall	145–73–3	100	
Ethyl methacrylate	97–63–2	37	
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110–80–5	100	
Isobutyl alcohol	78–83–1	37	
Isosafrole	120–58–1	1900	
Methyl ethyl ketone [2-Butanone]	78–93–3	37.	
Methyl methacrylate	80–62–6	37.	
1,4-Naphthoquinone	130–15–4	1900.	
Phenol	108–95–2	1900.	
Propargyl alcohol [2-Propyn-l-ol]	107–19–7	30.	
Safrole	94–59–7	1900.	
Sulfoted Organics:			
Carbon disulfide	75–15–0	Non-detect ..	37
Disulfoton	298–04–4	Non-detect ..	1900
Ethyl methanesulfonate	62–50–0	Non-detect ..	1900
Methyl methanesulfonate	66–27–3	Non-detect ..	1900
Phorate	298–02–2	Non-detect ..	1900
1,3-Propane sultone	1120–71–4	Non-detect ..	100
Tetraethyldithiopyrophosphate [Sulfotepp]	3689–24–5	Non-detect ..	1900
Thiophenol [Benzenethiol]	108–98–5	Non-detect ..	30
O,O,O-Triethyl phosphorothioate	126–68–1	Non-detect ..	1900
Nitrogenated Organics:			
Acetonitrile [Methyl cyanide]	75–05–8	Non-detect ..	37
2-Acetylaminofluorene [2-AAF]	53–96–3	Non-detect ..	1900
Acrylonitrile	107–13–1	Non-detect ..	37
4-Aminobiphenyl	92–67–1	Non-detect ..	1900
4-Aminopyridine	504–24–5	Non-detect ..	100
Aniline	62–53–3	Non-detect ..	1900
Benzidine	92–87–5	Non-detect ..	1900
Dibenz[a,j]acridine	224–42–0	Non-detect ..	1900
O,O-Diethyl O-pyrazinyl phophoro-thioate [Thionazin]	297–97–2	Non-detect ..	1900
Dimethoate	60–51–5	Non-detect ..	1900
p-(Dimethylamino)azobenzene [4-Dimethylaminoazobenzene]	60–11–7	Non-detect ..	1900
3,3′-Dimethylbenzidine	119–93–7	Non-detect ..	1900
α,α-Dimethylphenethylamine	122–09–8	Non-detect ..	1900
3,3′-Dimethoxybenzidine	119–90–4	Non-detect ..	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99–65–0	Non-detect ..	1900
4,6-Dinitro-o-cresol	534–52–1	Non-detect ..	1900
2,4-Dinitrophenol	51–28–5	Non-detect ..	1900
2,4-Dinitrotoluene	121–14–2	Non-detect ..	1900
2,6-Dinitrotoluene	606–20–2	Non-detect ..	1900
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88–85–7	Non-detect ..	1900
Diphenylamine	122–39–4	Non-detect ..	1900
Ethyl carbamate [Urethane]	51–79–6	Non-detect ..	100
Ethylenethiourea (2-Imidazolidinethione)	96–45–7	Non-detect ..	110
Famphur	52–85–7	Non-detect ..	1900
Methacrylonitrile	126–98–7	Non-detect ..	37
Methapyrilene	91–80–5	Non-detect ..	1900
Methomyl	16752–77–5	Non-detect ..	57
2-Methyllactonitrile [Acetone cyanohydrin]	75–86–5	Non-detect ..	100
Methyl parathion	298–00–0	Non-detect ..	1900
MNNG (N-Metyl-N-nitroso-N′-nitroguanidine)	70–25–7	Non-detect ..	110
1-Naphthylamine, [α-Naphthylamine]	134–32–7	Non-detect ..	1900
2-Naphthylamine, [β-Naphthylamine]	91–59–8	Non-detect ..	1900
Nicotine	54–11–5	Non-detect ..	100

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
4-Nitroaniline, [p-Nitroaniline]	100–01–6	Non-detect ..	1900
Nitrobenzene	98–95–3	Non-detect ..	1900
p-Nitrophenol, [p-Nitrophenol]	100–02–7	Non-detect ..	1900
5-Nitro-o-toluidine	99–55–8	Non-detect ..	1900
N-Nitrosodi-n-butylamine	924–16–3	Non-detect ..	1900
N-Nitrosodiethylamine	55–18–5	Non-detect ..	1900
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86–30–6	Non-detect ..	1900
N-Nitroso-N-methylethylamine	10595–95–6	Non-detect ..	1900
N-Nitrosomorpholine	59–89–2	Non-detect ..	1900
N-Nitrosopiperidine	100–75–4	Non-detect ..	1900
N-Nitrosopyrrolidine	930–55–2	Non-detect ..	1900
2-Nitropropane	79–46–9	Non-detect ..	30
Parathion	56–38–2	Non-detect ..	1900
Phenacetin	62–44–2	Non-detect ..	1900
1,4-Phenylene diamine, [p-Phenylenediamine]	106–50–3	Non-detect ..	1900
N-Phenylthiourea	103–85–5	Non-detect ..	57
2-Picoline [alpha-Picoline]	109–06–8	Non-detect ..	1900
Propythioracil [6-Propyl-2-thiouracil]	51–52–5	Non-detect ..	100
Pyridine	110–86–1	Non-detect ..	1900
Strychnine	57–24–9	Non-detect ..	100
Thioacetamide	62–55–5	Non-detect ..	57
Thiofanox	39196–18–4	Non-detect ..	100
Thiourea	62–56–6	Non-detect ..	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95–80–7	Non-detect ..	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823–40–5	Non-detect ..	57
o-Toluidine	95–53–4	Non-detect ..	2200
p-Toluidine	106–49–0	Non-detect ..	100
1,3,5-Trinitrobenzne, [sym-Trinitobenzene]	99–35–4	Non-detect ..	2000
Halogenated Organics [b]:			
Allyl chloride	107–05–1	Non-detect ..	37
Aramite	104–57–8	Non-detect ..	1900
Benzal chloride [Dichloromethyl benzene]	98–87–3	Non-detect ..	100
Benzyl chloride	100–44–77	Non-detect ..	100
Bis(2-chloroethyl)ether [Dichloroethyl ether]	111–44–4	Non-detect ..	1900
Bromoform [Tribromomethane]	75–25–2	Non-detect ..	37
Bromomethane [Methyl bromide]	74–83–9	Non-detect ..	37
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101–55–3	Non-detect ..	1900
Carbon tetrachloride	56–23–5	Non-detect ..	37
Chlordane	57–74–9	Non-detect ..	14
p-Chloroaniline	106–47–8	Non-detect ..	1900
Chlorobenzene	108–90–7	Non-detect ..	37
Chlorobenzilate	510–15–6	Non-detect ..	1900
p-Chloro-m-cresol	59–50–7	Non-detect ..	1900
2-Chloroethyl vinyl ether	110–75–8	Non-detect ..	37
Chloroform	67–66–3	Non-detect ..	37
Chloromethane [Methyl chloride]	74–87–3	Non-detect ..	37
2-Chlorophthalene [beta-Chlorophthalene]	91–58–7	Non-detect ..	1900
2-Chlorophenol [o-Chlorophenol]	95–57–8	Non-detect ..	1900
Chloroprene [2-Chloro-1,3-butadiene]	1126–99–8	Non-detect ..	37
2,4-D [2,4-Dichlorophenoxyacetic acid]	94–75–7	Non-detect ..	7.0
Diallate	2303–16–4	Non-detect ..	1900
1,2-Dibromo-3-chloropropane	96–12–8	Non-detect ..	37
1,2-Dichlorobenzene [o-Dichlorobenzene]	95–50–1	Non-detect ..	1900
1,3-Dichlorobenzene [m-Dichlorobenzene]	541–73–1	Non-detect ..	1900
1,4-Dichlorobenzene [p-Dichlorobenzene]	106–46–7	Non-detect ..	1900
3,3′-Dichlorobenzidine	91–94–1	Non-detect ..	1900
Dichlorodifluoromethane [CFC–12]	75–71–8	Non-detect ..	37
1,2-Dichloroethane [Ethylene dichloride]	107–06–2	Non-detect ..	37
1,1-Dichloroethylene [Vinylidene chloride]	75–35–4	Non-detect ..	37
Dichloromethoxy ethane [Bis(2-chloroethoxy)methane	111–91–1	Non-detect ..	1900
2,4-Dichlorophenol	120–83–2	Non-detect ..	1900
2,6-Dichlorophenol	87–65–0	Non-detect ..	1900
1,2-Dichloropropane [Propylene dichloride]	78–87–5	Non-detect ..	37
cis-1,3-Dichloropropylene	10061–01–5	Non-detect ..	37
trans-1,3-Dichloropropylene	10061–02–6	Non-detect ..	37
1,3-Dichloro-2-propanol	96–23–1	Non-detect ..	30
Endosulfan I	959–98–8	Non-detect ..	1.4
Endosulfan II	33213–65–9	Non-detect ..	1.4

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Endrin	72–20–8	Non-detect ..	1.4
Endrin aldehyde	7421–93–4	Non-detect ..	1.4
Endrin Ketone	53494–70–5	Non-detect ..	1.4
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106–89–8	Non-detect ..	30
Ethylidene dichloride [1,1-Dichloroethane]	75–34–3	Non-detect ..	37
2-Fluoroacetamide	640–19–7	Non-detect ..	100
Heptachlor	76–44–8	Non-detect ..	1.4
Heptachlor epoxide	1024–57–3	Non-detect ..	2.8
Hexachlorobenzene	118–74–1	Non-detect ..	1900
Hexachloro-1,3-butadiene [Hexachlorobutadiene]	87–68–3	Non-detect ..	1900
Hexachlorocyclopentadiene	77–47–4	Non-detect ..	1900
Hexachloroethane	67–72–1	Non-detect ..	1900
Hexachlorophene	70–30–4	Non-detect ..	1000
Hexachloropropene [Hexachloropropylene]	1888–71–7	Non-detect ..	1900
Isodrin	465–73–6	Non-detect ..	1900
Kepone [Chlordecone]	143–50–0	Non-detect ..	3600
Lindane [gamma-Hexachlorocyclohexane] [gamma-BHC]	58–89–9	non-detect ...	1.4
Methylene chloride [Dichloromethane]	75–09–2	non-detect ...	37
4,4'-methylene-bis(2-chloroaniline)	101–14–4	non-detect ...	100
Methyl iodide [Iodomethane]	74–88–4	non-detect ...	37
Pentachlorobenzene	608–93–5	non-detect ...	1900
Pentachloroethane	76–01–7	non-detect ...	37
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	82–68–8	non-detect ...	1900
Pentachlorophenol	87–86–5	non-detect ...	1900
Pronamide	23950–58–5	non-detect ...	1900
Silvex [2,4,5-Trichlorophenoxypropionic acid]	93–72–1	non-detect ...	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746–01–6	non-detect ...	30
1,2,4,5-Tetrachlorobenzene	95–94–3	non-detect ...	1900
1,1,2,2-Tetrachloroethane	79–34–5	non-detect ...	37
Tetrachloroethylene [Perchloroethylene]	127–18–4	non-detect ...	37
2,3,4,6-Tetrachlorophenol	58–90–2	non-detect ...	1900
1,2,4-Trichlorobenzene	120–82–1	non-detect ...	1900
1,1,1-Trichloroethane [Methyl chloroform]	71–55–6	non-detect ...	37
1,1,2-Trichloroethane [Vinyl trichloride]	79–00–5	non-detect ...	37
Trichloroethylene	79–01–6	non-detect ...	37
Trichlorofluoromethane [Trichlormonofluoromethane]	75–69–4	non-detect ...	37
2,4,5-Trichlorophenol	95–95–4	non-detect ...	1900
2,4,6-Trichlorophenol	88–06–2	non-detect ...	1900
1,2,3-Trichloropropane	96–18–4	non-detect ...	37
Vinyl Chloride	75–01–4	non-detect ...	37

[a] Absence of PCBs can also be demonstrated by using appropriate screening methods, e.g., immunoassay kit for PCB in oils (Method 4020) or colorimetric analysis for PCBs in oil (Method 9079).

[b] Some minimum required detection limits are above the total halogen limit of 540 ppm. The detection limits reflect what was achieved during EPA testing and analysis and also analytical complexity associated with measuring all halogen compounds on Appendix VIII at low levels. EPA recognizes that in practice the presence of these compounds will be functionally limited by the molecular weight and the total halogen limit of 540 ppm.

(c) *Implementation.*—Waste that meets the comparable or syngas fuel specifications provided by paragraphs (a) or (b) of this section (these constituent levels must be achieved by the comparable fuel when generated, or as a result of treatment or blending, as provided in paragraphs (c)(3) or (4) of this section) is excluded from the definition of solid waste provided that the following requirements are met:

(1) *Notices*—For purposes of this section, the person claiming and qualifying for the exclusion is called the comparable/syngas fuel generator and the person burning the comparable/syngas fuel is called the comparable/syngas burner. The person who generates the comparable fuel or syngas fuel must claim and certify to the exclusion.

(i) State RCRA and CAA Directors in Authorized States or Regional RCRA and CAA Directors in Unauthorized States.—

(A) The generator must submit a one-time notice to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the comparable/syngas fuel will be burned, certifying compliance with the conditions of the exclusion and providing documentation as required by paragraph (c)(1)(i)(C) of this section;

(B) If the generator is a company that generates comparable/syngas fuel at more than one facility, the generator shall specify at which sites the comparable/syngas fuel will be generated;

(C) A comparable/syngas fuel generator's notification to the Directors must contain the following items:

(*1*) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(*2*) The applicable EPA Hazardous Waste Codes for the hazardous waste;

(*3*) Name and address of the units, meeting the requirements of paragraph (c)(2) of this section, that will burn the comparable/syngas fuel; and

(4) The following statement is signed and submitted by the person claiming the exclusion or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all waste identified in this notification. Copies of the records and information required at 40 CFR 261.28(c)(10) are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(ii) Public notice.—Prior to burning an excluded comparable/syngas fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information:

(A) Name, address, and RCRA ID number of the generating facility;

(B) Name and address of the unit(s) that will burn the comparable/syngas fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the comparable/syngas fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; and

(E) Name and mailing address of the Regional or State Directors to whom the claim was submitted.

(2) *Burning.*—The comparable/syngas fuel exclusion for fuels meeting the requirements of paragraphs (a) or (b) and (c)(1) of this section applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable CAA MACT requirements:

(i) Industrial furnaces as defined in § 260.10 of this chapter;

(ii) Boilers, as defined in § 260.10 of this chapter, that are further defined as follows:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter or applicable CAA MACT standards.

(3) *Blending to meet the viscosity specification.*—A hazardous waste blended to meet the viscosity specification shall:

(i) As generated and prior to any blending, manipulation, or processing meet the constituent and heating value specifications of paragraphs (a)(1)(i) and (a)(2) of this section;

(ii) Be blended at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter; and

(iii) Not violate the dilution prohibition of paragraph (c)(6) of this chapter.

(4) *Treatment to meet the comparable fuel exclusion specifications.*—(i) A hazardous waste may be treated to meet the exclusion specifications of paragraphs (a)(1) and (2) of this section provided the treatment:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this Chapter; and

(C) Does not violate the dilution prohibition of paragraph (c)(6) of this seciton.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.

(5) *Generation of a syngas fuel.*—(i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (b) of this section provided the processing:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter or is an exempt recycling unit pursuant to § 261.6(c) of this chapter; and

(C) Does not violate the dilution prohibition of paragraph (c)(6) of this chapter.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a syngas fuel remain a hazardous waste.

(6) *Dilution prohibition for comparable and syngas fuels.*—No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the exclusion specifications of paragraph (a)(1)(i), (a)(2) or (b) of this section.

(7) *Waste analysis plans.* The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The waste analysis plan shall be developed in accordance with the applicable sections of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846). The plan shall be followed and retained at the facility excluding the waste.

(i) At a minimum, the plan must specify:

(A) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the waste to be analyzed;

(D) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the waste determination, any information prepared by the generator in making such determination.

(ii) The waste analysis plan shall also contain records of the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating that the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the

documentation to be maintained by the laboratory for the period specified in paragraph (c)(11) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of a syngas fuel as an excluded waste, a waste analysis plan containing the elements of paragraph (c)(7)(i) of this section to the appropriate regulatory authority. The approval of waste analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the waste analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(8) *Comparable fuel sampling and analysis.* (i) General. For each waste for which an exclusion is claimed, the generator of the hazardous waste must test for all the constituents on appendix VIII to this part, except those that the generator determines, based on testing or knowledge, should not be present in the waste. The generator is required to document the basis of each determination that a constituent should not be present. The generator may not determine that any of the following categories of constituents should not be present:

(A) A constituent that triggered the toxicity characteristic for the waste constituents that were the basis of the listing of the waste stream, or constituents for which there is a treatment standard for the waste code in 40 CFR 268.40;

(B) A constituent detected in previous analysis of the waste;

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste.

Note to paragraph (c)(8): Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the waste above the exclusion specifications.

(ii) For each waste for which the exclusion is claimed where the generator of the comparable/syngas fuel is not the original generator of the hazardous waste, the generator of the comparable/syngas fuel may not use process knowledge pursuant to paragraph (c)(8)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(2) and (b) of this section have been met.

(iii) The comparable/syngas fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator must demonstrate that:

(A) Each constituent of concern is not present in the waste above the specification level at the 95% upper confidence limit around the mean; and

(B) The analysis could have detected the presence of the constituent at or below the specification level at the 95% upper confidence limit around the mean.

(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with their waste analysis plan developed under paragraph (c)(7) of this section.

(vii) Syngas fuel and comparable fuel that has not been blended in order to meet the kinematic viscosity specifications shall be analyzed as generated.

(viii) If a comparable fuel is blended in order to meet the kinematic viscosity specifications, the generator shall:

(A) Analyze the fuel as generated to ensure that it meets the constituent and heating value specifications; and

(B) After blending, analyze the fuel again to ensure that the blended fuel continues to meet all comparable/syngas fuel specifications.

(ix) Excluded comparable/syngas fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change the chemical or physical properties of the waste.

(9) *Speculative accumulation.* Any persons handling a comparable/syngas fuel are subject to the speculative accumulation test under § 261.2(c)(4) of this chapter.

(10) *Records.* The generator must maintain records of the following information on-site:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA facility ID number of the person claiming the exclusion;

(B) The applicable EPA Hazardous Waste Codes for each hazardous waste excluded as a fuel; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the hazardous waste and process that generated the excluded fuel, if not the same;

(iii) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the hazardous waste as required under paragraph (c)(8)(i) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (c)(8) of this section;

(vi) If the excluded waste was generated through treatment or blending, documentation as required under paragraph (c)(3) or (4) of this section;

(vii) If the waste is to be shipped off-site, a certification from the burner as required under paragraph (c)(12) of this section;

(viii) A waste analysis plan and the results of the sampling and analysis that includes the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (c)(11) of this section and also

provides for the availability of the documentation to the claimant upon request; and

(ix) If the generator ships comparable/syngas fuel off-site for burning, the generator must retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the comparable/syngas fuel for burning;

(B) The quantity of comparable/syngas fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/syngas fuel meets the specifications as required under paragraph (c)(8) of this section; and

(E) A one-time certification by the burner as required under paragraph (c)(12) of this section.

(11) *Records retention.* Records must be maintained for the period of three years. A generator must maintain a current waste analysis plan during that three year period.

(12) *Burner certification.* Prior to submitting a notification to the State and Regional Directors, a comparable/syngas fuel generator who intends to ship their fuel off-site for burning must obtain a one-time written, signed statement from the burner:

(i) Certifying that the comparable/syngas fuel will only be burned in an industrial furnace or boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (c)(2) of this section;

(ii) Identifying the name and address of the units that will burn the comparable/syngas fuel; and

(iii) Certifying that the state in which the burner is located is authorized to exclude wastes as comparable/syngas fuel under the provisions of this section.

(13) *Ineligible waste codes.* Wastes that are listed because of presence of dioxins or furans, as set out in Appendix VII of this part, are not eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart D—Changes to Permits

2. Section 270.42 is amended by adding a new paragraph (j) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(j) *Combustion facility changes to meet part 63 MACT standards.* The following procedures apply to hazardous waste combustion facility permit modifications requested under Appendix I of this section, section L(9).

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1211 before a permit modification can be requested under this section.

(2) If the Director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Director may, at his or her discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.

3. In § 270.42 Appendix I is amended by adding entry L(9) to read as follows:

Appendix I to § 270.42—Classification of Permit Modification

Modification	Class
L. Incinerators, Boilers and Industrial Furnaces	
* * * * * * * *	
9. Technology Changes Needed to meet Standards under 40 CFR part 63 (Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(i) are followed	[1]
* * * * * * * *	

[1] Class 1 modifications requiring Agency prior approval.

* * * * *

Subpart G—Interim Status

4. Section 270.72 is amended by adding paragraph (b)(8) to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(b) * * *

(8) Changes necessary to comply with standards under 40 CFR part 63, Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

[FR Doc. 98–15843 Filed 6–18–98; 8:45 am]

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Karen
7/23/98

Karen

WEST VIRGINIA MANUFACTURERS ASSOCIATION
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wvma@wvma.com

July 21, 1998

John H. Johnston, Chief
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311-2599

Re: Comments on 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

Dear Mr. Johnston:

Enclosed herewith for filing are the comments of the West Virginia Manufacturers Association on the proposed regulation of the Division of Environmental Protection, Office of Air Quality, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

Please do not hesitate to contact me with any questions or comments you may have.

Very truly yours,

Karen S. Price/skl

Karen S. Price

KSP/skl

Enclosure

COMMENTS OF THE

WEST VIRGINIA MANUFACTURERS ASSOCIATION

ON THE

PROPOSED REGULATION OF THE

DIVISION OF ENVIRONMENTAL PROTECTION

OFFICE OF AIR QUALITY

TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

45 CSR 25

July 21, 1998

COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON THE
PROPOSED REGULATION
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES 45 CSR 25

July 21, 1998

I. INTRODUCTION

The Office of Air Quality ("OAQ") of the Division of Environmental Protection ("DEP") proposed for promulgation revisions to the regulation entitled, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities," 45 CSR 25, also known as "Reg 25," on June 17, 1998. Comments of interested persons are to be filed with the OAQ by July 21, 1998.

The West Virginia Manufacturers Association ("WVMA") files these comments in accordance with the notice of proposed rule-making discussed above. The WVMA is an organization comprised of a large number of business, manufacturing, and other interests of all sizes located throughout West Virginia. WVMA members are subject to and greatly affected by environmental regulations such as the one now proposed by the Office of Air Quality, and historically have been interested and involved in legislative and regulatory actions that affect the

manufacturing community. Through its routine and informed participation the WVMA seeks to ensure the development of a reasonable and consistent regulatory programs for West Virginia facilities.

II. COMMENTS

A. Incorporation by Reference

The WVMA continues to support the incorporation of the federal rules by reference as required by W.Va. Code § 22-1-3. Incorporation by reference creates consistency between the federal and state regulatory requirements, avoids duplication and unnecessarily lengthy state rules, provides correlative guidance from the federal programs, and facilitates EPA's approval of the State program.

B. Consolidation of DEP Hazardous Waste Programs

The WVMA urges the DEP to consolidate the regulation of air emissions from hazardous waste facilities. This aspect of the regulatory program, including permitting of these facilities, has traditionally been distributed between the Office of Air Quality and the Office of Waste Management ("OWM"), and covered by two separate rules, 33 CSR 20 and 45 CSR 25. The WVMA suggests that the DEP promulgate a single rule and issue a single permit for activities governed by the State Hazardous Waste Management Act. This recommendation does not affect enforcement which would continue to be administered by both OAQ and OWM personnel, however, permitting would be consolidated.

For years implementation of the regulation of air emissions from hazardous waste treatment, storage and disposal facilities was vested in the Air Pollution Control Commission ("APCC.") With the passage of the DEP Reorganization Bill in 1994, the Office of Air Quality assumed the statutory authority of the old APCC.

The WVMA understands that the OAQ maintains a staff of two to handle permits relating to air emissions from hazardous waste management facilities. It is further the WVMA's understanding that the OAQ receives monies from the OWM to implement the air portion of the hazardous waste management program. Moreover, an entire separate rule continues to be maintained to address the air aspects of hazardous waste management. The WVMA submits that this unnecessary duplication of efforts results in wasting limited agency resources and burdens the regulated community which is obliged to comply with the duplicative regulations. Accordingly, an executive decision needs to be made to consolidate the air and waste subparts of hazardous waste management including promulgation of a single rule and a single permit.

At the very least, a single permit process needs to be coordinated between the OWM and the OAQ so that public participation requirements set forth in 33 CSR 20, §11 need only be accomplished once. Recently proposed public participation requirements include numerous notices to the public, meetings with interested persons and other requirements that will be time consuming. Resources of the OWM, OAQ and the permittee will be conserved by coordination and consolidation of these requirements. Specifically, the WVMA urges that, where a permit application is filed, the public participation requirements be coordinated so that the requisite procedures only need to be undertaken a single time.

C. Specific Comments

1. Sections 4.5, 4.6 and 4.7

For clarity, the WVMA submits that the stricken language in each of these sections which reference specific subparts § 40 CFR Parts 264 and 265 be reinstated as each is specific to emissions from the type of treatment, storage and disposal activity managing hazardous waste, i.e, 4.5 addresses containers, 4.6 addresses tanks, and 4.7 addresses surface impoundments. Each specifically includes reference to whether 40 CFR 264, subparts AA, BB or CC apply. Thus, leaving the current language will provide clearer guidance to the user of the rule.

2. Section 8.1.b -- Activity Fees

The OAQ proposes to remove the word "major" from modifications or renewals of permit for hazardous waste management facilities. The effect of the proposal is that <u>every</u> modification will trigger the same fee. Yet, there is no fiscal impact (revenue increase) stated in the Fiscal Note of the proposed rule. The fee remains at $1,000; however, the WVMA questions how much additional review will be derived from applying the fee to all modifications or renewals and not just "major" modifications or renewals.

The WVMA submits that Class I modifications, as set forth in 40 CFR 270.42, include only ministerial changes that do not require substantial agency review. A Class I modification, for example, encompasses administrative and informational changes; correction of typographical errors; equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls); changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee (to provide for more frequent monitoring,

reporting, sampling, or maintenance); changes in name, address, or phone number of coordinators or other persons or agencies identified in the contingency plan. Any review of the proposed change by the OWM is commensurately simple. Accordingly, the fee ought to reflect the minimal effort involved in review of the Class I permit modifications. The Office of Water Resources has recognized the minimal effort in processing a minor permit modification in the WV NPDES program and has reflected this effort in their $50 fee. See 47 CSR 26, § 6.6. Therefore, the WVMA submits Class I permit modification fees ought to be no greater than $50. Class 2 and 3 modifications would then retain the $1,000 fee. This revision correlates to a better degree the amount of human resources expended by the OAQ in effecting the permit application change.

III. CONCLUSION

The WVMA is committed to being an advocate for reasonable regulatory standards, and, in the spirit of continued cooperation, submits these comments in anticipation that the OAQ will give them due consideration. If the OAQ has any questions or if additional information is desired, please contact the WVMA.

Respectfully submitted this 21st day of July, 1998.

Karen S. Price, President
West Virginia Manufacturers Association
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUL 15 1998

Mr. John Johnston, Chief
Office of Air Quality
West Virginia Division of Environmental Protection
1558 Washington Street
Charleston, West Virginia 25311

Re: 45 CSR 25 Proposed Regulations

Dear Mr. Johnston:

Enclosed are the formal comments of the U.S. Environmental Protection Agency (EPA) on proposed revisions to the Office of Air Quality's hazardous waste regulations for the State of West Virginia.

Our review of the proposed regulations was conducted in the context of assisting West Virginia to adopt a set of hazardous waste regulations consistent with the Federal program, and which, upon proper application by the State, will result in EPA's revision authorization of West Virginia's hazardous waste program.

Our Office would like to extend our appreciation for the dedication demonstrated by your staff who have worked on these regulations for WV's hazardous waste program.

Thank you for the opportunity to comment on the State's proposed hazardous waste regulations. We look forward to working with the State throughout the regulatory adoption and EPA authorization process.

Sincerely,

John J. Humphries, III, Chief
State Programs Branch

Enclosures

cc: Ms. Lucy Pontiveros, WV OAQ
Mr. H. Michael Dorsey, WV OWM

EPA COMMENTS ON 45CSR25
OFFICE OF AIR QUALITY PROPOSED REGULATIONS

Necessary for Authorization

The Office of Air Quality (OAQ) at 45-25-1.5.b incorporates the provisions contained in 33CSR20 (the Office of Waste Management's regulations) effective July 1, 1998. This incorporation of the Office of Waste Management (OWM) regulations is necessary to coordinate the hazardous waste program between the two State Agencies. The July 1, 1998 OWM regulations incorporates the Federal program through July 1, 1996.

Our concerns arise with the second portion of the citation at 1.5.b. The citation is written correctly and does not need to be revised, however, EPA is requesting through this document that specific rewritten regulatory text, as suggested below, be added to 45CSR25.

The OAQ is correct in excepting the OWM's incorporation of the Federal Code since both of the State Agencies have proposed to incorporate the Federal Code as of July 1, 1997 in other citations. However to maintain coordination among the two State Agency programs, OAQ needs to incorporate the OWM's regulations. Since OAQ can not incorporate prospectively, they have incorporated the July 1, 1998 OWM regulations. The 1998 OWM regulations include areas which have been rewritten to suit the needs of your State. EPA has requested changes to the July 1, 1998 OWM rewritten regulations during this past year. The OWM has agreed to make the suggested changes and have since rewritten Section 33-20-11.

As these newly OAQ proposed regulations incorporate the OWM regulations effective July 1, 1998 they have incorporated rewritten State regulations which will not be current and acceptable for authorization of the State's hazardous waste program.

Recent changes made to the OWM regulations (now being concurrently proposed) need to be added to the OAQ regulations as a separate section under 45CSR25 for both of the Agencies to be current and approvable for State Authorization. Attached are copies of the proposed OWM 33-20-11 along with our comments on these regulations. Since these additional comments are only editorial in nature, the OAQ and the OWM should discuss these changes and make the necessary corrections prior to the OAQ adding this additional section to it's proposed 45CSR25 regulations.

Suggested for Regulatory Adoption

EPA has recently promulgated two new rules which may be of interest to the State for considering adoption during this Legislative Session. These rules are as follows:

12/8/97- Hazardous Waste Treatment, Storage and Disposal Facilities and Hazardous Waste Generators: Organic Air Emission Standards for Tanks, Surface Impoundments and Containers.

6/19/98 - Hazardous Waste Combustors, Final Rule. Part 1
This rule covers RCRA comparable fuel exclusion, permit modifications for hazardous waste combustion units trying to comply with the MACT, Notification of Intent to Comply for MACT subject facilities, and waste minimization and pollution prevention criteria for compliance extensions. This rule is considered less stringent than the existing Federal regulations. Adoption of this rule will greatly enhance the implementation of the upcoming MACT standards and ease the permitting burden on the States.

If the State is interested in adopting these new rules, the OAQ and the OWM should discuss how changes should be made to encompass the incorporation within 45CSR25 and 33CSR20 to ensure consistency within the program. The State can incorporate the specific federal register notices into their regulations.

OFFICE OF WASTE MANGEMENT

33-20-11 PROPOSED REGULATIONS

~~11.14 of this rule which identified and supports any change made in the draft permit and any new material placed in the record under that subsection;~~

~~(6) Other documents contained in the supporting file for the permit;~~

~~(7) An addendendum to the fact sheet if needed; and~~

~~(8) The final permit.~~

~~**11.15.c.** The administrative record shall be complete on the date the final permit is issued.~~

~~**11.15.d.** Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 11.15.a. and 11.15.b. of this rule, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.~~

~~**11.16. 40 CFR § 270.12.** The provisions of 40 CFR § 270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W. Va. Code, § 22-18-12 and subsection 11.7. of this rule.~~

~~**11.17. 40 CFR § 270.24.** The provisions of 40 CFR § 270.24 are excepted from incorporation by reference. Consult the rules of the office of air quality regarding emissions from process vents.~~

~~**11.18. 40 CFR §§ 270.60(b) and 270.64.** The provision of 40 CFR §§ 270.60(b) and 270.64 are excepted from incorporation by reference. Consult the rules of the office of water resources and the environmental quality board regarding the requirements for underground injection wells.~~

11.1. 40 CFR Part 270. -- The provisions of the 40 CFR part 270 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

11.2. 40 CFR §270.1. -- The provisions of 40 CFR §270.1(c)(2)(viii)(C) are amended to read as follows:

(C) Thermostats and mercury containing lamps as described in 40 CFR §273.4.

11.3. 40 CFR 270.2 Definitions.

11.3.a. Definition of "RCRA permit". -- For purposes of this section, the term "RCRA permit" means "West Virginia hazardous waste management permit". The following additional requirements

shall apply to obtain a hazardous waste management permit in West Virginia. All references in 40 CFR part 270 to 40 CFR part 124 shall be deemed to be references to the applicable provisions of subsections 11.4. through 11.14. of this rule. To the extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein shall control.

11.4. Application Fees.

11.4.a. Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, shall submit as part of said application a money order or cashier's check payable to "The Hazardous Waste Management Fund" of the state treasury. Persons required to obtain a permit-by-rule pursuant to these regulations are not required to pay a permit application fee.

11.4.b. Such fee shall be determined by the schedule set forth in table 1 of this rule. If the cumulative total of application fees imposed under this section equals or exceeds fifty thousand dollars ($50,000) then the person required to pay the fees may, at the person's option, elect to submit the fee payments in installments over a three year period. The installments submitted to the division of environmental protection may not be less frequent than annually and the amount submitted annually may not be less than one-third of the total amount due.

11.4.c. The chief reserves the right to promulgate rules establishing a permit renewal fee at a later date.

11.5. Pre-application Public Meeting and Notice

11.5.a. Applicability. The requirements of this section 11.5. shall apply to West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to West Virginia hazardous waste management Part B permit applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a Class 3 permit modification (See 40 CFR 270.42 for a description of permit modifications). The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

11.5.b. Prior to the submission of a West Virginia hazardous waste management Part B permit application for a facility, the applicant must hold at least one meeting with the public in order

to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

11.5.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 11.5.b. of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b).

11.5.d. The applicant must provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

11.5.d.1. The applicant shall provide public notice in all of the following forms:

11.5.d.1.A. A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in subsection 11.5.d.2. of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the chief shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the chief determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

11.5.d.1.B. A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subsection 11.5.d.2. of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

11.5.d.1.C. A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in subsection 11.5.d.2. of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the chief.

11.5.d.1.D. A notice to the permitting agency. The applicant shall send a copy of the newspaper notice to the permitting agency and the chief shall forward copies to the appropriate units of State and local government having jurisdiction over the area where the facility is, or is proposed to be, located; and to each state agency having any authority under State law with respect to the construction or operation of

the facility.

11.5.d.2. The notices required under subsection 11.5.d.1. of this section must include:

11.5.d.2.A. The date, time, and location of the meeting;

11.5.d.2.B. A brief description of the purpose of the meeting;

11.5.d.2.C. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

11.5.d.2.D. A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

11.5.d.2.E. The name, address, and telephone number of a contact person for the applicant.

11.6 Public Notice Requirements at the Application Stage

11.6.a. Applicability. The requirements of this section 11.6. shall apply to all West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to hazardous waste management Part B permit applications seeking renewal of permits for such units upon the expiration of the existing permit. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

11.6.b. Notification. The chief shall provide public notice as required in this section 11.6. when a Part B permit application has been submitted. The chief shall provide public notice to:

11.6.b.1. The applicant;

11.6.b.2. All persons on a mailing list developed under 11.12.d.1.D.

11.6.b.3. The appropriate units of state and local government having jurisdiction over the area where the facility is proposed to be located; and to each state agency having any authority under State law with respect to the construction or

operation of the facility, that a part B permit application has been submitted to the chief and is available for review.

11.6.b.4. Any person otherwise entitled to receive notice under subsection 11.6.b. of this rule may waive the right to receive notice for any classes and categories of permits.

11.6.c. The notice shall be published within a reasonable period of time after the application is received by the chief. The notice must include:

11.6.c.1. The name and telephone number of the applicant's contact person;

11.6.c.2. The name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

11.6.c.3. An address to which people can write in order to be put on the facility mailing list;

11.6.c.4. The location where copies of the permit application and any supporting documents can be viewed and copied;

11.6.c.5. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

11.6.c.6. The date that the application was submitted.

11.6.d. Concurrent with the notice required under section 11.6.b. of this section, the chief must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

11.7. Information Repository

11.7.a. Applicability. The requirements of this section apply to all applications seeking West Virginia hazardous waste management permits for hazardous waste management units.

11.7.b. The chief may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the chief shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If

the chief determines, at any time after submittal of a permit application, that there is a need for a repository, then the chief shall notify the facility that it must establish and maintain an information repository.

11.7.c. The information repository shall contain all documents, reports, data, and information deemed necessary by the chief to fulfill the purposes for which the repository is established. The chief shall have the discretion to limit the contents of the repository.

11.7.d. The information repository shall be located and maintained at a site chosen by the facility. If the chief finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the chief shall specify a more appropriate site.

11.7.e. The chief shall specify requirements for informing the public about the information repository. At a minimum, the chief shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

11.7.f. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the chief. The chief may close the repository at his or her discretion, based on the factors in 11.7.b. of this section.

11.8. Application for a Permit

11.8.a. Any person who requires a permit under this rule shall complete, sign, and submit to the chief an application for each permit required under this rule. Applications are not required for hazardous waste permits by rule pursuant to 40 CFR § 270.60. The chief shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Permit applications must comply with the signature and certification requirements of 40 CFR § 270.11.

11.8.b. If the applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provisions of WV Code §22-18-1 et seq.

11.8.c. If the chief decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

11.8.d. The effective date of an application is the date on which the chief notifies the applicant that the application is complete as provided for in 11.7.b. of this section.

11.8.e. For each application the chief shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the chief intends to:

11.8.e.1. Prepare a draft permit;

11.8.e.2. Give public notice;

11.8.e.3. Complete the public comment period, including any public hearing;

11.8.e.4. Issue a final permit.

11.9 Modification, Revocation and Reissuance, or Termination of Permits

11.9.a. Permits may be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the chief's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR §§ 270.41 or 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

11.9.b. If the chief decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the chief may be appealed to the Environmental Quality Board in accordance with section 15 of this rule.

11.9.b.1. If the chief tentatively decides to modify or revoke and reissue a permit under 40 CFR §§270.41 or 270.42 (c), he or she shall prepare a draft permit under section 11.9. incorporating the proposed changes. The chief may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the chief shall require the submission of a new application.

11.9.b.2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this

section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

11.9.b.3. "Classes 1 and 2 Modifications" as defined in 40 CFR §270.42 (a) and (b) are not subject to the requirements of this section.

11.9.c. If the chief tentatively decides to terminate a permit under 40 CFR § 270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any draft permit prepared under section 11.10.

11.10. Draft Permits.

11.10.a. Once an application is complete, the chief shall tentatively decide whether to prepare a draft permit or to deny the application.

11.10.b. If the chief tentatively decides to deny the permit application, he or she shall issue a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. If the chief's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

11.10.c. If the chief tentatively decides to issue a permit, he or she shall prepare a draft permit that contains the following information:

11.10.c.1. All conditions under 40 CFR §§270.30 and 270.32;

11.10.c.2. All compliance schedules under 40 CFR § 270.33;

11.10.c.3. All monitoring requirements under 40 CFR §270.31; and,

11.10.c.4. Standards for treatment, storage, and/or disposal and other permit conditions under 40 CFR §270.30.

11.10.d. All draft permits prepared by the chief under this section shall be accompanied by a fact sheet and shall be based on the administrative record, publicly noticed and made available for public comment.

11.11 Fact Sheet

11.11.a. A fact sheet shall be prepared for every draft permit for a major hazardous waste management facility, or for each draft permit which the chief finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in preparing the draft permit. The chief shall send the fact sheet to the applicant and, on request, to any other person.

11.11.b. The fact sheet shall include when applicable:

11.11.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;

11.11.b.2. The type and quantity of waste, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

11.11.b.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

11.11.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

11.11.b.5. A description for reaching a final decision on a draft permit including;

11.11.b.5.A. The beginning and the ending dates of the comment period and the address where comments will be received;

11.11.b.5.B. Procedures for requesting a hearing and the nature of that hearing; and

11.11.b.5.C. Any other procedures by which the public may participate in the final decision.

11.11.b.6. Name and telephone number of a person to contact for additional information.

11.12. Public Notice of Permit Actions and Public Comment Period

11.12.a Scope. The chief shall give public notice if the following actions have occurred:

11.12.a.1. A draft permit has been prepared.

11.12.a.2. A hearing has been scheduled.

11.12.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under section 11.10. Written notice of that denial shall be given to the requester and to the permittee.

11.12.c. Timing. Public notice of the preparation of a draft permit (including a Notice of Intent to Deny a Permit Application) required under section 11.12.a. shall allow at least forty-five (45) days for public comment. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

11.12.d. Public notice of activities described in section 11.12.a. of this section shall be given by the following methods:

11.12.d.1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits);

11.12.d.1.A. The applicant;

11.12.d.1.B. Any other agency which the chief knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act or West Virginia Code §22-5-1 et. seq., NPDES, 42 U.S.C. §1344, or sludge management permit for the same facility or activity;

11.12.d.1.C. Federal and state agencies with jurisdiction over fish, shell fish and wildlife resources and over coastal zones management plans, the advisory council on historic preservation, and the state historic preservation office, as applicable.

11.12.d.1.D. Persons on a mailing list developed by:

(a) Including those who request in writing to be on the list;

(b) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(c) Notifying the public of the opportunity to be put on the mailing list through periodic public in the public press and in such publications as regional and state

funded newsletters, environmental bulletins, or state law journals. (The Chief may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Chief may delete from the lists the name of any person who fails to respond to such request.)

11.12.d.1.D.i. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

11.12.d.1.D.ii. To each state agency having any authority under state law with respect to the construction or operation of such facility.

11.12.d.2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

11.12.d.3. In a manner constituting legal notice to the public under state laws; and

11.12.d.4. Any other method reasonably calculated to give actual notice of the action in question to the person potentially effected by it, including press releases or any other forum or medium to elicit public participation.

11.12.e. All public notices issued under this section shall contain the following minimum information:

11.12.e.1. Name and address of the office processing the permit action for which notice is being given;

11.12.e.2. Name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit.

11.12.e.3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

11.12.e.4. Name, address and telephone number of a person from who interested persons may obtain further information, including copies of the draft permit and fact sheet; and

11.12.e.5. A brief description of the comment procedures required by sections 11.13. and 11.14. and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final decision.

11.12.e.6. The location of the administrative record, the times that which the record will be open for public inspection;

11.12.e.7. Any additional information considered necessary or proper.

11.12.f. Public notices for hearings. In addition to the general public notice described in section 11.12.e. of this section, the public notice of a hearing shall contain the following information:

11.12.f.1. Reference to the date of previous public notices relating to the permit;

11.12.f.1.A. Date, time, and place of the hearing;

11.12.f.1.B. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

11.12.g. In addition to the general public notice described in section 11.12.e. of this section, all persons identified in section 11.12.d.1.A, 11.12.d.1.B, and 11.12.d.1.C of this section shall be mailed a copy of the fact sheet, the permit application and the draft permit, as applicable.

11.13. Public Comments and Requests for Public Hearings

During the public comment period provided under section 11.12., any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in section 11.17.

11.14 Public Hearings

11.14.a. The chief shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit.

11.14.b. The chief may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

11.14.c. The chief shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit

and a request for a hearing within forty-five (45) days of public notice under section 11.12.c.; whenever possible the chief shall schedule a hearing under this section at a location in convenient to the nearest population center to the proposed facility.

11.14.c.1. Public notice of the hearing shall be given as specified in section 11.12.

11.14.d. Whenever a public hearing will be held the chief shall designate a presiding officer for the hearings who shall be responsible for its scheduling and orderly conduct.

11.14.e. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under section 11.12. shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

11.14.f. A tape recording or written transcript of the hearing shall be made available to the public.

11.15. Reopening of the Public Comment Period

11.15.a. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the chief may take one or more of the following actions:

11.15.a.1. Prepare a new draft permit, appropriately modified, under Section 11.9. of these rules.

11.15.a.2. Prepare a revised fact sheet under Section 11.11. of these rules and reopen the comment period.

11.15.a.3. Reopen or extend the comment period under Section 11.15. of these rules to give interested persons an opportunity to comment on the information or arguments submitted.

11.15.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 11.12. of these rules shall define the scope of the reopening.

11.16. Issuance and Effective Date of Permit

11.16.a. After the close of the public comment period on a draft permit the chief shall issue a final permit decision. The chief shall notify the applicant and each person who has

submitted written comments or requested notice of the final permit decision. The notice shall include reference to the procedures for appealing a decision on the permit. For purposes of this section the final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

11.16.b. A final permit decision shall become effective thirty (30) days after the service of Notice of Decision unless:

11.16.b.1. A later effective date is specified in the decision; or

11.16.b.2. Review is requested or evidentiary hearing is requested; or

11.16.b.3. No comments requested change in the draft permit, in which case the permit shall become effective immediately upon issuance.

11.17. Response to Comments

11.17.a. At the time that any final permit decision is issued, the chief shall issue a response to comments. This response shall:

11.17.a.1. Specify which provisions, if any, on the draft permit have been changed in the final permit decision, and the reasons for the change; and

11.17.a.2. Briefly describe and respond to all significant comments on draft permit or the permit application raised during the public comment period, or during any hearing.

11.17.b. The response to comments shall be available to the public.

11.18. Administrative Record

11.18.a. The provisions of a draft permit prepared under subsection 11.10. of this rule shall be based on the administrative records consisting of:

11.18.a.1. The application and any supporting data furnished by the applicant;

11.18.a.2. The draft permit or notice of intent to deny the application or to terminate the permit;

11.18.a.3. The fact sheet;

11.18.a.4. All documents cited in the fact sheet; and

11.18.a.5. Other documents contained in the supporting file for the draft permit.

11.18.b. The chief shall base final permit decisions on the administrative record consisting of:

11.18.b.1. Administrative record for the draft permit;

11.18.b.2. All comments received during the public comment period provided under subsection 11.12. of this rule (including any extension or reopening under subsection 11.15. of this rule);

11.18.b.3. The tape or transcript of any hearing(s) held under subsection 11.14. of this rule;

11.18.b.4. Any written material submitted at such hearing;

11.18.b.5. The response to comments required by subsection 11.17. of this rule which identified and supports any change made in the draft permit and any new material placed in the record under that subsection;

11.18.b.6. Other documents contained in the supporting file for the permit;

11.18.b.7. An addendendum to the fact sheet if needed; and

11.18.b.8. The final permit.

11.18.c. The administrative record shall be complete on the date the final permit is issued.

11.18.d. Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 11.18.a. and 11.18.b. of this rule, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

11.19. Public Access to Information.

11.19.a. Any records, reports, or information and any permit, permit applications, and related documentation within the chief's possession shall be available to the public for inspection and copying; provided, however, that upon a

satisfactory showing to the chief that such records, reports, permit documentation, or information, or any part hereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the chief shall consider, treat, and protect such records as confidential.

11.19.b. It shall be the responsibility of the person claiming any information as confidential under the provision of subsection 11.19. of this rule to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

11.19.c. Any document submitted to the chief which contains information for which claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the chief. The document shall be submitted in two (2) separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross-references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

11.19.d. No information shall be protected as confidential information by the chief unless it is submitted in accordance with the provisions of subdivision 11.19.c. of this rule and no information which is submitted in accordance with the provision of subdivision 11.19.c. of this rule shall be afforded protection as confidential information unless the chief finds that such protection is necessary to protect trade secrets. The person who submits information claimed to be confidential shall receive written notice from the chief as to whether the information has been accepted as confidential or not.

11.19.e. All information which meets the tests of subdivision 11.19.d. of this rule shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If said person fails to satisfactorily demonstrate to the chief that such information in the form presented to him meets the criteria of subdivision 11.19.d. of this rule, the chief shall mark the information "REJECTED" and promptly returned such information to the person submitting such information. The chief shall retain a copy of such information for reference.

11.19.f. Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the chief or his designee.

11.19.g. Nothing in subsection 11.19. of this rule may be construed as limiting the disclosure of information by the

division to any officer, employee, or authorized representative of the State or federal government concerned with effecting the purposes of subsection 11.19. of this rule.

11.19.h. Persons interested in obtaining information pursuant to subsection 11.19. of this rule should submit a request in accordance with the environmental quality board rule 46 CSR 8.

11.20. 40 CFR §270.12. The provision of 40 CFR §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provision of W. Va. Code, §22-18-12 and subsection 11.17. of this rule.

11.21. 40 CFR §270.24. The provisions of 40 CFR §270.24 are excepted from incorporation by references. Consult the rules of the office of air quality regarding emissions form process vents.

11.22. 40 CFR §§270.60(b) and 270.64. The provision of 40 CFR §§270.60(b) and 270.64 are excepted from incorporation by reference. Consult the rules of the office of water resources and the environmental quality board regarding the requirements for underground injection wells.

§ 33-20-12. DEED AND LEASE DISCLOSURE; NOTICE IN DEED TO PROPERTY.

12.1. Recording Requirement. -- The owner of the property on which a hazardous waste management facility is located must record, in accordance with state law, a notation on the deed or lease to the facility property -- or on some other instrument that is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:

12.1.a. The land has been used to manage hazardous wastes; and

12.1.b. Its use is restricted under 40 CFR § 264.117(c).

12.2. Upon actual transfer of property which contains hazardous wastes that have been stored, treated, or disposed of, the previous owner shall notify the chief in writing of such transfer.

12.3. Other Requirements. -- Nothing contained in this section of this rule shall relieve any person from complying with the requirements on deed and lease disclosures set forth in W. Va. Code, § 22-18-21.

§ 33-20-13. UNIVERSAL WASTE RULE.

EPA COMMENTS ON PROPOSED REGULATIONS

RCRA Regulatory Citation	Corresponding State Regulatory Citation	Comments
Specific Comments:		
1. 124.5(c)	11.9.b.1., p. 28	In the first sentence, the State should correct the internal reference "11.9" to read "11.10" which addresses "Draft Permits".
2. 124.10(a)(2)	11.12.b., p. 30	In the first sentence, the State should correct the internal reference "11.10" to read "11.9" which addresses "Modification, Revocation and Reissuance, or Termination of Permits"
3. 124.14(b)(1)	11.15.a.1, p. 33	The State should correct the internal reference to "11.9" to read "11.10" which addresses "Draft Permits".
4. 124.14(b)(3)	11.15.a.3, p. 34	The State should correct the internal reference to "11.15" to read "11.12" to properly correspond to the Federal code's reference to § 124.10.
5. 124.17(a)(1)	11.17.a.1., 34	In the first sentence, West Virginia should correct "on the draft permit" to read "of the draft permit".
6. 124.17(a)(2)	11.17.a.2., p. 34	The State should insert "the" between "on" and "draft". This typographical error was addressed in specific comment 14 of the initial review.
7. 270.2 "RCRA permit"	11.3.a., p. 22	In the third sentence, the State should change "11.4 through 11.14" to "11.5 through 11.18" to be consistent with the reorganization of 33-20-11.
8. 270.12	11.20., p. 37	In the last line of this provision, West Virginia should replace "11.17" with "11.19" which addresses "Public Access to Information".
9. 124.10(c)(1)(ix)(C)	11.12.d.1.D.(c), p. 31	In the parenthetical, West Virginia may want to replace both occurrences of "Chief" with "chief". Throughout the rules the State does not capitalize the word "chief".
10. 124.14(b) & ©	11.15., pp. 33-34	Throughout this section, the State capitalizes the word "Section" which is inconsistent with the use of the word in other provisions. The State may want replace "Section" with "section" for internal consistency.

RCRA Regulatory Citation	Corresponding State Regulatory Citation	EQ 1/ MS LS BIS NIS CL UK INC	Comments
Specific Comments			
1. 124.3(f) 124.3(g)	11.8.d., p. 27 11.8.e., p. 27	CL	In the proposed rules addressed by the initial review, West Virginia included analogs to 124.3(c)-(g) at 11.7.b. through 11.7.f. These provisions are not required for authorization. In the final proposed rules, the State has removed its analog to 124.3(c) (previously 11.7.b.) while retaining the analogs to 124.3(d)-(g) at 11.8.b. through 11.8.e. The provision at 11.8.d. defines "effective date" by referencing "11.7.b". In addition, the provision at 11.8.e. relies on this definition of "effective date". For clarity, the State should either: (1) remove the provisions at 11.8.d. and 11.8.e. since the State no longer has an analog to 124.3(c), or (2) adopt an analog to 124.3(c) and at 11.8.d., replace "11.7.b." with the State's analog to 124.3(c).
2. 124.8(a)	11.11.a., p. 29	CL	The provision at 11.11.a. explains when the State must prepare a fact sheet for a draft permit. However, at 11.10.d. the State requires that all draft permits prepared by the chief be accompanied by a fact sheet. For clarity, West Virginia should remove the phrase "for a major hazardous waste management facility, or for each draft permit which the chief finds is the subject of wide-spread public interest or raises major issues". The first sentence should be changed to "A fact sheet shall be prepared for every draft permit."
3. 124.10(c)(1)(ii)	11.12.d.1.B., p. 30 (was 11.11.c.1.B. in draft proposed regs.)	CL	West Virginia has revised this provision based on the suggestions in specific comment 4 of the initial review. However, where the Federal provision refers to "404" permits the State incorrectly refers to "42 U.S.C. § 1344". The correct citation for § 404 of the Federal Water Pollution Control Act is 33 U.S.C. § 1344. For clarity, the State should either replace "42 U.S.C. § 1344" with "404",or correct the citation.

	RCRA Regulatory Citation	Corresponding State Regulatory Citation	EQ 1/ MS LS BIS NIS CL UK INC	Comments
4.	124.10(c)(1)(x)(A) & (B)	11.12.d.1.D.i., p. 31 11.12.d.1.D.ii., p. 31	CL	The State has adopted these provisions as subparagraphs of the provision found at 11.12.d.1.D. which is analogous to 124.10(c)(1)(ix). For clarity, West Virginia should not have these provisions as subparagraphs of 11.12.d.1.D. because the provisions are unrelated. The provision at 11.12.d.1.D. requires notice to be given to persons on a mailing list, while the provisions at 11.12.d.1.D.i. and 11.12.d.1.D.ii. require notice to be given to specified units of government. The State can correct this problem by redesignating 11.12.d.1.D.i. and 11.12.d.1.D.ii. as 11.12.d.1.E.i. and 11.12.d.1.E.ii.
5.	124.10(d)(1)(iv)	11.12.e.4., p. 32 (was 11.11.d.1.D in draft proposed regs.)	CL	West Virginia has revised this provision based on the suggestions in specific comment 6 of the initial review. However, the State has removed the language referring to the permit application. For clarity, the State should revise "of the draft permit and fact sheet" to "of the draft permit, fact sheet, and the application".
6.	124.12(a)(3)	11.14.c.1. and 11.14.d. through 11.14.f, p. 33	CL	The provision at 11.14.c.1. should not be a subparagraph of 11.14.c. The provision at 11.14.c.1. requires that public notice of a hearing be given as specified in 11.12. This requirement should apply to public hearings conducted pursuant to 11.14.a. and 11.14.b., too. For clarity, the State should redesignate 11.14.c.1. as 11.14.d. and redesignate 11.14.d. through 11.14.f. as 11.14.e. through 11.14.g.
7.	124.14(b) and (c)	11.15, pp. 33&34	CL	West Virginia has included this section regarding the reopening or extension of the public comment period. This section, which was not included in the draft proposed rules, is analogous to 40 CFR 124.14(b) and (c) which are not required for authorization. However, the State has not adopted an analog to 124.14(e) which requires that a public notice be issued for the actions described in 124.14(b)&(c).For additional clarity and consistency with the Federal code, West Virginia should add an analog to 124.14(e) to explicitly require public notice be issued under 11.12.
8.	124.32.(b)(1)	11.6.b.2., p. 25	CL	For clarity, the State may want to replace the period at the end of this provision with "; and" because this provision is the second item in a list of three items found at 11.6.b.1. through 11.6.b.3.

West Virginia Part 124 Consequential Comments

RCRA Regulatory Citation	Corresponding State Regulatory Citation	EQ 1/ MS LS BIS NIS CL UK INC	Comments

1/ EQ = Equivalent
LS = Less Stringent
NIS = Narrower in Scope
UK = Unknown how equivalency is affected
MS = More Stringent
BIS = Broader in Scope
CL = Clarity Issue
INC = Inconsistent

45CSR25

TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

RESPONSE TO COMMENTS

At the public hearing on proposed revisions to 45CSR25 conducted on July 21, 1998, no one submitted oral comments. However, the Division of Environmental Protection Office of Air Quality (OAQ) did receive two written comments on the rule. The comments were from the West Virginia Manufacturers Association and the U.S. Environmental Protection Agency (EPA) Region III. The OAQ has summarized these comments and provides the following response.

I. Commenter: West Virginia Manufacturers Association

COMMENT A. *Consistency of Federal and State rule*

This comment noted that the incorporation by reference of federal rules is desirable because it creates consistency between federal and state regulatory requirements, avoids duplication and lengthy state rules, provides guidance from the federal programs, and facilitates EPA's approval of the State program.

RESPONSE A. The OAQ responds that it has used the device of incorporation by reference throughout the proposed rule, except where it is not feasible or practical to do so.

COMMENT B. *Consolidation of DEP Hazardous Waste Programs*

The OAQ should consolidate the air and waste subparts of hazardous waste management. There should be a single rule and a single permit for activities governed by the State Hazardous Waste Management Act to avoid unnecessary duplication of effort. At the very least, the air and waste program should consolidate and coordinate the public participation requirements of their respective programs.

RESPONSE B. The OAQ does not believe that consolidation of the air and waste programs is necessary or appropriate under the circumstances. Both the Office of Waste Management and the Office of Air Quality have legal authority and jurisdiction to regulate air emissions from hazardous waste facilities. Furthermore, W.Va. Code §22-18-6 (a)(13) requires that two separate permits be issued. The OAQ, however, recognizes the need to eliminate any unnecessary duplication and/or inconsistencies between the two programs and the OAQ has drafted 45CSR25 with that purpose in mind. Incorporation by reference of the requirements of 33CSR20 should greatly assist in this regard, although it should be noted that the proposed rule does not rely as heavily on incorporation by reference as the rule adopted, effective May 1, 1998, due to the agency's efforts to make the rules consistent and in response to comments by EPA. (See comment and response below).

Additionally, EPA is in the process of shifting the federal hazardous waste combustor rule to the Clean Air Act under 40 CFR Part 63. Part 1of that rule was promulgated June 19, 1998 for Hazardous Waste Combustors (incinerators, cement kilns, and light weight aggregate kilns). Part of the rule provides a new RCRA permit modification provision which is intended to make it easier for facilities to make changes to their

existing RCRA permits when adding air pollution control equipment or making other changes in equipment or operation needed to comply with the new air emission standards known as MACT standards (40CFR Part 63). Part 2 of the rule is expected to be finalized in December of 1998. Evidently, with these changes, two separate permits will be issued. Based on EPA schedules, the Boilers and Industrial Furnaces rule is expected to be promulgated under 40 CFR Part 63 in the year 2000.

Regarding the suggestion that the two offices coordinate their public participation procedures, the offices have met and discussed ways this might be accomplished. However, a single public notice and other combined public participation procedures may not be feasible for several reasons. The combustion requirements administered by the OAQ are highly technical compared with other parts of the hazardous waste management program. The review of trial burn plans and risk assessment protocols are time consuming and require specialized knowledge. Also, the federal public participation requirements for combustion units at 40 CFR Part 270 (previously incorporated by reference in 45CSR25) are more extensive than those for other parts of the hazardous waste program in that the public is given notice and an opportunity to comment at the early stage of trial burn plan submission. This notice is in addition to the public notice and comment period given later in the process after the agency has prepared a draft permit.

COMMENT C.

Specific Comments # 1
The stricken language in Sections 4.5, 4.6, and 4.7 which references specific subparts of § 40 CFR Parts 264 and 265 should be reinstated to provide clearer guidance to the user of the rule.

Specific Comments #2
The removal of the term"major" for modifications or renewals of permit for hazardous waste management facilities will trigger the same activity fee for all types of modifications and the rule's fee of $1000.00 is not warranted for the processing of more minor modifications, such as Class I modifications. Rather, the fee should be $50.00 for such modifications.

RESPONSE C-1

The OAQ does not agree with this comment and believes the rule is sufficiently clear with respect to which parts of the federal regulations are incorporated . (See Table 25-A). The revisions to these three subsections were proposed by the agency due to the fact that there may provisions of the federal regulations, other than 40 CFR Parts 264 and 265, which apply to these types of units, for example certain provisions of Part 270.

RESPONSE C-2

In response to this comment, the proposed rule has been revised to create a separate fee for Class 1 modifications. Some Class I modifications require the agency's technical review and evaluation and can be time-consuming. For example, a Class 1 modification may be requested for combustion equipment replacement or upgrading with functionally equivalent component such as pipes, valves, pumps, controls. This request is required to be justified by equipment design information. Therefore, as suggested, a separate fee for Class 1 permit modifications has been included in the proposed rule.

To facilitate this change, the fiscal note has been revised.

II. COMMENTER: United States Environmental Protection Agency

1. Necessary for Authorization

EPA recommends consistency in both 45CSR25 and 33CSR20 in the permit process.

The OAQ agrees with EPA's comment pertaining to consistency and has made revisions to the proposed rule. Per EPA recommendations, and for the purpose of the final state authorization for hazardous waste management programs, OAQ's proposed rule mirrors the 33CSR20 current proposed rule regarding the adoption of 40 CFR Part 124. OAQ's 45CSR25, Sections 5.1 to 5.14 is the counterpart to OWM's 33CSR20, Sections 11.5 to 11.18.

The modifications and changes in 33CSR20 and 45CSR25 are a joint effort of the Office of Air Quality and Office of Waste Management to maintain consistency, and to attain the Final Authorization of the West Virginia Hazardous Waste Management Program.

2. Suggested for Regulatory Adoption

EPA has recently promulgated two new rules which may be of interest to the State for considering adoption during this Legislative Session.

12/8/97- *Hazardous Waste Treatment, Storage and Disposal Facilties and Hazardous Waste Generators: Organic Air Emission Standards for Tanks, Surface Impoundments and Containers.*

RESPONSE. This has been adopted by reference in 45CSR25 Section 1.5.c.

6/19/98 *Hazardous Waste Combustors, Final Rule. Part 1*

RESPONSE. This has been adopted by reference in 45CSR25 Section 6.3.

3. Specific Comments (40 CFR 124) Note that the page numbers may have changed, due to the changes and additions made in this rule.

COMMENT A. *EPA's first comment pointed out 10 typographical errors in the rule.*

RESPONSE A. Correction has been made by making the indicated changes in the rule under 45 CSR 25 Section 5.

COMMENT B-1. *Page 27, OWM Section 11.8.d. and e (OAQ Section 5.4.b. and 5.4.e.). State should either: (1) remove the provisions at 11.8.d. and 11.8.e. since the State no longer has an analogue to 124.3(c), or (2) adopt an analogue to 124(c) and at 11.8.d., replace "11.7.b." with the State's analogue to 124(c).*

RESPONSE B-1 Correction has been made by adopting the 124(c) as specified in OAQ Section 5.4.b. (33CSR20 Section 11.8.b.)

COMMENT B-2. *Page 29, OWM Section 11.11.a. (OAQ Section 5.7.a.). The State should remove phrase "for a major hazardous waste management facility, or for each draft permit which the chief finds is the subject of wide-spread public interes or raises major issues". The first sentence should be changed to "A fact sheet shall be prepared for*

every draft permit."

RESPONSE B-2. Corrections have been made in sections 5.6.d. and 5.7.a. to clarify that a fact sheet is required to the same extent as required by the federal regulation.

COMMENT B-3. *Page 30, OWM Section 11.12.d.1.B., (OAQ Section 5.8.d.1.B.). The correct citation for §404 of the Federal Water Pollution Control Act is 33 U.S.C. § 1344.*

RESPONSE B-3 Correction has been made to this rule.

COMMENT B-4. *Page 31, OWM Section 11.12.d.1.D.i., and 11.12.d.1.D.ii, (OAQ Section 5.8.d.1.D.i and 5.8.d.1.D.ii.). The State should redesignate 11.12.d.D.i. and 11.12.d.1.D.ii as 11.12.d.1.E.i. and 11.12.d.1.E.ii.*

RESPONSE B-4. Correction has been made by making the indicated changes in this rule.

COMMENT B-5. *Page 32, OWM Section 11.12.e.4. (OAQ Section 5.8.e.4.). The State should revise "of the draft permit and fact sheet" to "of the draft permit, fact sheet, and the application".*

RESPONSE B-5. Correction has been made by making the indicated changes in this rule.

COMMENT B-6. *Page 33, OWM Section 11.14.c.1. and 11.14.d. through 11.14.f. (OAQ Section 5.10.). The State should redesignate 11.14.d. through 11.14.f. as 11.14.e. through 11.14.g.*

RESPONSE B-6. Correction has been made by making the indicated changes in this rule.

COMMENT B-7. *Page 33 & 34, OWM Section 11.15. (OAQ Section 5.11.). The State should add an analogue to 124.14(e) to explicitly require public notice be issued under 11.12.*

RESPONSE B-7. The language from Section 124(e) was adopted and specified under OAQ Section 5.11.c. (OWM Section 11.15.c).

COMMENT B-8. *Page 25, OWM Section 11.6.b.2. (OAQ Section 5.2.b.2.). The State may want to replace the period at the end of this provision with "; and" because this provision is the second item in a list of three items found at 11.6.b.1. through 11.6.b.3.*

RESPONSE B-8. Correction has been made to this rule.

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ADMINISTRATIVE LAW DIVISION

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OFFICE OF SECRETARY OF STATE

FORM #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative ;CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnston, Chief
Office Air Quality
1558 Washington Street East
Charleston WV 25311-2599

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

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AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative ;CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: "Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

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RULE TYPE: Legislative ;CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: "Standards of Performance for New Stationary Sources"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X

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AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative ;CITE AUTHORITY W. Va. Code §§22-5-1 et seq

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED:

TITLE OF RULE BEING AMENDED:

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 24

TITLE OF RULE BEING PROPOSED: "To Prevent and Control Emissions From Hospital/Medical/Infectious Waste Incinerators"

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnston, Chief
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1558 Washington Street East
Charleston, WV 25311-2599

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ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

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AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative ; CITE AUTHORITY W. Va. Code §§22-5-1et seq. & §§22-18-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X

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RULE TYPE: Legislative ;CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 34

TITLE OF RULE BEING AMENDED: "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

COMMENTS LIMITED TO ORAL , WRITTEN , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnston, Chief
Office Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments

The issues to be heard shall be limited to the proposed rule

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

LEG

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SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF SECRETARY OF STATE

FORM #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative ;CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 36

TITLE OF RULE BEING AMENDED: "Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or The Federal Transit Laws, to Applicable Air Quality Implementation Plans (Transportation Conformity)"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL ____, WRITTEN ____, BOTH X

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1.50 w/o attachment
6.50 w/ attachment

WEST VIRGINIA REGISTER

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Issue 26

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CONTENTS

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WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM # 1

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'98

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative ;CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 33

TITLE OF RULE BEING AMENDED: "Acid Rain Provisions and Permits"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

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State of West Virginia. **AFFIDAVIT OF PUBLICATION**

Sandra Riggs of

THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,
THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,

Published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:

PUBLIC HEARING

was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 19TH day of JUNE 1998. Published during the following dates: 06/18/98-06/18/98

Subscribed and sworn to before me this 23 day of June

Printers fee $ 128.52

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LYNN R. FIELDER
3245 PUTNAM AVE.
HURRICANE, WV 25526
My Commission Expires December 11, 2002

Lynn R Fielder

Notary Public of Kanawha County, West Virginia

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD.

On Tuesday, July 21, 1998 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on the following legislative rules:

45CSR8 "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

45CSR9 "Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone"

45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

45CSR24 "To Prevent and Control Emissions from Hospital/ Medical/ Infectious Waste Incinerators"

45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR33 "Acid Rain Provisions and Permits"

45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

45CSR36 "Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or The Federal Transit Laws, to Applicable Air Quality Implementation Plans (Transportation Conformity)"

Upon authorization and promulgation of revisions to 45CSR8, 45CSR9, and 45CSR36, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of 45CSR24, the rule will be submitted to the U.S. Environmental Protection Agency as part of the State Plan for Municipal Solid Waste (MSW) Landfills. Upon authorization and promulgation of revisions of 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR16, 45CSR33 and 45CSR34, the Office of Air Quality will seek federal delegation of authority from the U.S. Environmental Protection Agency to implement and enforce the revised standards.

The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral comments by the public will be accepted during the hearing on July 21st and will be made a part of the rulemaking record. The public may also submit written comment by mail or other delivery to the Office of Air Quality through July 21st for inclusion in the rulemaking record at the following address:

John H. Johnston, Chief
Office of Air Quality
1558 Washington St., E.
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 18, 1998 at the Office of Air Quality's Charleston office at the above address.

(409965)

July 21, 1998

DEP Division of Environmental Protection

Public Hearing on
45CSR8, 45CSR9, 45CSR16, 45CSR24, 45CSR25, Sign-In
45CSR33, 45CSR34, 45CSR36

	Name	Address	I would like to comment YES	NO
1.	James D. Elliott	Robinson & McElwee		✓
2.	Karen Watson	OAQ - 1615 Washington		✓
3.	Lucy Pontiveros	OAQ - 1615 Washington St E		✓
4.				
5.				
6.				
7.				
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45CSR34	"Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"
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1558 Washington Street East
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CECIL H. UNDERWOOD
GOVERNOR

DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

John H. Johnston, Chief

MICHAEL P. MIANO
DIRECTOR

August 5, 1998

Ms. Judy Cooper
Director Administrative Law
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

RE: 45CSR8, 45CSR9, 45CSR16, 45CSR24, 45CSR25, 45CSR33, 45CSR34, 45CSR36
Agency-Approved Rules -- Office of Air Quality

Dear Ms. Cooper:

Pursuant to our telephone conversation last week, please find attached a copy of the public hearing transcript related to each of the above-referenced agency-approved rules. These rules were filed with your office and the Legislative Rule-Making Review Committee on July 31, 1998, and August 3, 1998. We would appreciate your appending the copy with the appropriate rule package previously filed.

As always, we appreciate your assistance and cooperation in this and other rule-making matters. If you have any questions, please call me at my office (304) 558-1213.

Sincerely,

Karen G. Watson

Karen G. Watson,
Attorney

KWG/mes
attachments

PERMITTING & PROGRAMS
1558 Washington Street East, Charleston, WV 25311-2599 Phone: (304) 558-0885 Fax: (304) 558-1222

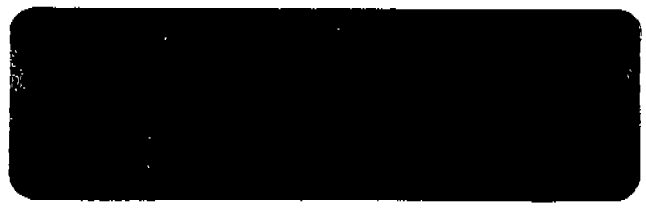
BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities"

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 1558 Washington Street, East, Charleston, West Virginia, 25305, commencing at 6:02 p.m., on the 21st day of July 1998, pursuant to notice.



P R O C E E D I N G S

MS. CHANDLER: This public hearing will now come to order on this 21st day of July, 1998, in the conference room of the West Virginia Division of Environmental Protection, Office of Air Quality, located at 1558 Washington Street, East, Charleston, West Virginia.

The purpose of the public hearing is to hear discussions on the proposed rules filed in the Secretary of State's Office on June 18, 1998 and noticed in the State Register on June 18, 1998. The legislative rules are 45CSR8, 45CSR9, 45CSR16, 45CSR24, 45CSR25, 45CSR22, 45CSR34 and 45CSR36. The rules were noticed in a Class I legal advertisement in both the Charleston Daily Mail and Charleston Gazette, and notice was also sent to various individuals and organizations.

This public hearing is being held pursuant to the provisions of 29A of the West Virginia Code and Section 110 of the Clean Air Act.

By way of introduction, my name is Jeanne Chandler of the Public Information Office of the West Virginia Division of Environmental Protection. I will be the moderator for these proceedings.

In order to obtain separate transcripts for each of the rules, the hearing procedure this evening will be to introduce each rule individually, allow time for oral comments and close the hearing for that particular rule. Written comments for any rule may be submitted at the end of this public hearing tonight. For those of you wishing to make formal comments, a sign-up sheet was provided to the right of me. Please sign up now if you have not already done so. I remind you that the comment period will end at the close of the public hearing.

The court reporter is Ms. Missy Young, Q & A Court Reporters, Inc. If anyone desires a transcript of this proceeding, please contact Ms. Young at 937-2555.

The purpose of the public hearing is to hear discussions on proposed Rule 45CSR25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

The current version of 45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the

public health and safety and the environment from the effects of improper, inadequate or unsound treatment, storage or disposal of hazardous wastes.

The proposed rule changes are required to maintain consistency with the Office of Waste Management's current Rule 33CSR20 and with the current federal regulations. Amendment of this rule is sought to adopt by reference the specific permit requirements for air emission controls for tanks, surface impoundments and containers. The consistency of 45CSR25, 33CSR20 and federal rules is important for final authorization of the West Virginia State RCRA Hazardous Waste Management Program.

A federal counterpart to this proposed rule exists. In accordance with the Director's recommendation, and with limited exception, the Office of Air Quality proposes that the rule incorporate by reference the federal counterparts. Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

The floor is now open for public comment. Please identify yourself and affiliation, if any, prior to making comment.

(No response.)

MS. CHANDLER: With no commentors and there being nothing further, this public hearing for 45CSR25 is concluded.

(WHEREUPON, the public hearing was concluded.)

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a Certified Court Reporter and Commissioner within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 3rd day of August 1998.

Missy L. Young

Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.