

Form #3

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2001 JUL 27 P 3:39

OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE OF RULE BEING PROPOSED:_____

Authorized Signature

Authorized Signature

\$16.80

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 28, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Air Quality
7012 MacCorkle Avenue, Southeast
Charleston, West Virginia 25304

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.

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

June 8, 2001

b. What other notice, including advertising, did you give of the hearing?

Class I legal advertisement; Charleston Daily Mail & Charleston Gazette
Sent a copy of the Public Notice to our agency mailing list
Public Notice placed on Department's and Division's web sites
Press Release

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

Public Hearing - July 12, 2001 Public Comment Period Ended - July 12, 2001

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)

July 27, 2001

- 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 A. Benedict, Deputy Director
7012 MacCorkle Avenue, SE
Charleston, WV 25304

Cindy Lawson, Administrative Secretary
10 McJunkin Road
Nitro, WV 25143-2506

Phone: (304) 926-3647
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clawson@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

DEPARTMENT 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 current 45CSR25 incorporates by reference certain provisions of the federal counterpart regulations effective through July 1, 1999, along with three amendments in the Federal Register adopted after that date. The proposed revisions to this rule will update the rule by incorporating the counterpart federal regulations effective July 1, 2000, along with additional amendments in the Federal Register dated July 10, 2000, May 14, 2001, which vacates the Notice of Intent to Comply provision for hazardous waste combustors, and July 3, 2001, which makes improvements to the implementation of emission standards. In addition, the proposed rule changes are required to maintain consistency with the Division 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.

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

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division 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 Secretary 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 its May 29, 2001 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

□
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

7012 MacCorkle Avenue, SE

Address: Charleston, WV 25304-2943

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & 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 there will be 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 implementation of the D.C. Circuit Court of Appeals' order which vacated the Notice of Intent to Comply provision of EPA's rules relating to the standards for hazardous waste combustors(66 FR 24270; 5/14/01) and revisions which make improvements to the implementation of emission standards, (66 FR 35087; 7/3/01). The proposed rule also deletes federal regulations inapplicable to sources in West Virginia and makes minor changes related to 33CSR20. The proposed rule changes are important for EPA approval/authorization of the WV RCRA Hazardous Waste Management Program.

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

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 requirements.

C. Economic Impact on Citizens/Public at Large.

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

Date: _____

Signature of Agency Head or Authorized Representative:

45CSR25

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

FILED

2001 JUL 27 P 3:40

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

OFFICE WEST VIRGINIA
DEPARTMENT OF STATE

§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~~ Secretary 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. -- ~~June 8, 2001.~~

1.4. Effective Date. -- ~~July 1, 2001.~~

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, ~~1999~~2000.

1.5.b. This rule also incorporates by reference the provisions contained in 33 CSR 20, effective July 1, ~~2000~~ 2001, except for any provisions in 33 CSR 20 which incorporate by reference the Code of Federal Regulations.

1.5.c. This rule also incorporates by reference the provisions of 40 CFR Parts ~~260~~, 261, 262, 264, ~~265~~, ~~266~~, and 270 as amended and finalized in ~~64 Federal Register 52828 (September 30, 1999)~~, ~~64 Federal Register 63209 (November 19, 1999)~~ and 65 Federal Register 42292 (July 10, 2000), 66 Federal Register 24270 (May 14, 2001) and 66 Federal Register 35087 (July 3, 2001).

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

2.9. "~~Division~~ Department of Environmental Protection" or "DEP" means that ~~Division~~ Department of the West Virginia ~~Division~~ Department 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", (July 1, 1999), 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.

2.17. "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, ~~2000~~ 2001, are hereby adopted by reference.

except for any provisions in 33 CSR 20 which incorporate by reference the Code of Federal Regulations.

3.1.a. In case of a conflict between the ~~Office~~ Division 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~~ Secretary has final administrative authority to resolve the conflict.

3.2. Unless otherwise indicated, the provisions contained in the Code of Federal Regulations, effective July 1, ~~1999~~ 2000, 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~~ Secretary" is used, the term means the ~~Director~~ Secretary of the West Virginia ~~Division~~ Department of Environmental Protection.

3.2.c. Whenever the term "Environmental Protection Agency" is used the term also means the West Virginia ~~Division~~ Department 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 33CSR20;

4.1.b. Prevention of Significant Deterioration (PSD) Program under 45CSR14 or the Federal Clean Air Act;

4.1.c. Nonattainment program under West Virginia DEP, ~~Office~~ Division of Air Quality or the Federal Clean Air Act and 45CSR19;

4.1.d. National Emission Standards for Hazardous Air Pollutants (NESHAP) preconstruction approval under 45CSR15, 45CSR34 or the Federal Clean Air Act;

4.1.e. Standards of Performance for New Stationary Sources under 45CSR16 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~~ Secretary 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 requirements 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 requirements 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 requirements 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~~ Secretary 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~~ Secretary 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~~ Secretary finds an imminent and substantial danger to human health or the environment, the ~~Director~~ Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the ~~Director~~ Secretary 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.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~~ Secretary.

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~~ Secretary 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~~ Secretary shall provide public notice as required in this section 5.2. when a Part B permit application has been submitted. The ~~Director~~ Secretary 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~~ Secretary 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~~ Secretary. 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~~ Secretary 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 Secretary may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director Secretary 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 Secretary determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director Secretary 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 Secretary to fulfill the purposes for which the repository is established. The Director Secretary 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 Secretary 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 Secretary shall specify a more appropriate site.

5.3.e. The Director Secretary shall specify requirements for informing the public about the information repository. At a minimum, the Director Secretary 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 Secretary. The Director Secretary 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 Secretary 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 Secretary 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 Secretary shall review every application for completeness. Each application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Director Secretary 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 Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director Secretary shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Director Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Director Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary'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 Secretary 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 Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary 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.

5.6. Draft Permits.

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

5.6.b. If the ~~Director~~ Secretary 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~~ Secretary'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~~ Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The ~~Director~~ Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary 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~~ Secretary 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 this rule.

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

5.11.a.3. Reopen or extend the comment period under section 5.11. of this rule 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 this rule 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 this rule.

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~~ Secretary shall issue a final permit decision. The ~~Director~~ Secretary 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;

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~~ Secretary 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~~ Secretary 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~~ Secretary's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the ~~Director~~ Secretary 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~~ Secretary 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.

§45-25-6. Exclusions and Exemptions.

6.1. Wastes and/or materials excluded in 33CSR20, are also excluded from the requirements of this rule.

6.2. Except for recyclable materials exempt pursuant to section 3 of 33CSR20, 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 62 Federal Register 52622-52642, dated October 8, 1997 (Project XL Site-Specific Rulemaking for Merck & Co., Inc., Stonewall Plant, Elkton, VA: Final Rule) are hereby excluded from the provisions of this rule. These provisions include 40 CFR §§264.1030(d),264.1050(g),264.1080(e),265.1030(c),265.1050(f), and 265.1080(e).

§45-25-7. Application Fees.

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.	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

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

§45-25-8. Inconsistency Between Rules.

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

45CSR25

TABLE 25-A

<u>Item No.</u>	<u>CFR No.</u>		<u>Part No.</u>		<u>Subpart No.</u>		<u>Title</u>
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.			270.42		Appendix	-	Appendix I
		-	270.62, 270.62(b)(6)		F	-	Hazardous Waste
			270.62(d)				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 Equipment Leaks
10.	40 CFR	-	264, 265,		CC	-	Organic Air Emission
			264.179, 265.178		I		Standards for Tanks
			264.200, 265.202		J		Surface Impoundments,
			264.232, 265.231		K		and Containers
			265		Appendix	-	Appendix VI

<u>Item No.</u>	<u>CFR No.</u>		<u>Part No.</u>		<u>Subpart No.</u>		<u>Title</u>
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 - 279.62 279.63	-	G	-	Standards for Used Oil Burners Who Burn Off- Specification Used Oil for Energy Recovery
18.	40 CFR	-	270.14(b)(22)- 270.24(b)(5) - 270.1(c)(2)(viii)(C)-		B A	- -	Part B application General Requirements General Information
19.	40 CFR	-	270.30(m)	-	B	-	Information repository
20.	40 CFR	-	261.6(c)(1) 261.4 261.38	- - -	A D	- -	Requirements for Recyclable Materials Exclusion Comparable/Syngas Fuel Exclusion

21.	40 CFR	-	262.34(a)(1)(i) &(ii)	-	C	-	Accumulation Time
22.	40 CFR	-	260.11	-	B	-	References
23.	40 CFR	-	264.15(b)(4)	-	B	-	General Inspection Requirements
24.	40 CFR	-	264.73(b)(6)	-	E	-	Operating Records

treatment system during the initial and any subsequent performance tests.

(m) * * *

(2) * * *

(ii) Compliance with the segregation requirements specified in § 63.446(c)(3) is demonstrated if the total HAP mass determined in paragraph (m)(2)(i) of this section is equal to or greater than the appropriate mass requirements specified in § 63.446(c)(3).

* * * * *

[FR Doc. 01-12048 Filed 5-11-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 270

[FRL-6978-4]

NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Implementation of court orders.

SUMMARY: In *Chemical Manufacturers Association v. EPA*, 217 F. 3d 861 (D.C. Cir. 2000), the court vacated the Notice of Intent to Comply (NIC) provisions of EPA's rules relating to the standards for hazardous waste combustors. Today's action takes the ministerial step of removing these provisions from the Code of Federal Regulations (CFR). Since the vacated NIC provision is also referenced in the permit modification procedures of RCRA in Part 270, today's action modifies this reference as well. In addition, at EPA's request, the D.C. Circuit vacated certain parameter limits of baghouses and electrostatic precipitators in order for EPA to solicit further comment on these provisions. *CKRC v. EPA*, no. 99-1457 (Order of April 5, 2001). Today's action likewise takes the ministerial step of removing these provisions from the CFR.

DATES: This rule is effective on May 14, 2001.

ADDRESSES: The official record (i.e., the public docket) of this rulemaking is identified as Docket Number F-2001-RC3F-FFFFF, located in RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials or

for information on accessing an electronic copy of those materials, please call 703-603-9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost \$ 0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 5 pm, Eastern Standard Time. For more information on specific aspects of this rule, contact Mr. Shiva Garg at 703-308-8459, garg.shiva@epa.gov, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Vacatur of Requirements for Early Cessation of Hazardous Waste Burning

In anticipation of establishing revised emission standards for cement kilns and incinerators burning hazardous waste, EPA promulgated at 63 FR 33821-2 (June 19, 1998) that sources which elect to stop burning hazardous waste rather than comply with the new emission standards must do so within two years of the effective date of the emission standards (the so-called "early cessation" requirement). These regulations were later recodified as 40 CFR 63.1206(a)(2)(i) and 1211(b)(2)(iii) and (5), at 64 FR 53038, September 30, 1999. Sources that continued to burn hazardous wastes but seek to comply with the new emission limits, such as by improving their emission control capabilities, have three years to comply. 40 CFR 63.1206(a)(1). Both methods of compliance were implemented by submission of two reporting requirements: a Notification of Intent to Comply ("NIC"), and a Progress Report. 40 CFR 63.1210(b), 63.1211(b), and 63.1212.

In the case of sources intending to comply by meeting the emission standards, submittal of a NIC is a condition required for eligibility for accelerated modification of the source's existing permit under the Resource Conservation and Recovery Act ("RCRA"). 40 CFR 70.42(j)(1). These accelerated permit modifications (so-called "Class I modifications") allow sources to modify their existing hazardous waste permits issued pursuant to RCRA by simply submitting an application to the permitting authority rather than waiting for prior

Agency approval and going through public hearings (63 FR 33803, June 19, 1998). Permit modifications are necessary because, unless modified, existing RCRA permits limit the ability of sources to modify their design or operation, and such modifications may be necessary to comply with the Clean Air Act emission standards. *Id.* Accelerated permit modifications are needed (where modifications are needed at all) because usual permit modification procedures entail prior agency approval and public hearings, an often lengthy process which could preclude compliance with the emission standards within the three years allowed (with a possible one-year extension) under section 112(i)(3) of the Clean Air Act (42 U.S.C. 7412(i)(3)), forcing facilities to choose between violating RCRA and violating the Clean Air Act. EPA therefore amended its permitting rules to use the accelerated Class I modification procedures to amend permits to allow sources to make technology changes—such as installation of new air pollution control devices or process modifications—needed to comply with the new air emission standards, provided, as noted above, that the "[f]acility * * * must comply with the Notification of Intent to Comply (NIC) requirements * * * before a permit modification can be requested under this section." 40 CFR 270.42(j)(1) and Appendix I, entry L (9) to § 270.42.

In *Chemical Manufacturers Ass'n v. EPA*, 217 F. 3d 861 (D.C. Cir. 2000) the panel majority held that EPA possesses legal authority to impose an early cessation requirement, but held further that the agency had impermissibly interpreted the statute to allow it to impose the requirement without a showing that it would lead to human health or environmental benefit (benefits such as "the amount of hazardous waste produced, the amount of hazardous waste burned, or the levels of hazardous air pollutant emissions"). 217 F. 3d at 865, 866-67.¹ The Court therefore vacated the early cessation requirement. The Court further held that because it could not determine whether EPA would have promulgated the NIC and Progress Report reporting requirements absent an early cessation provision, the provisions were so

¹ Judge Sentelle dissented, arguing that since the early cessation requirement was in accord with the express statutory command for compliance with section 112 emission standards "as expeditiously as practicable", it was not arbitrary and capricious. CAA section 112(i)(3)(A), 42 U.S.C. 7412(i)(3)(A). 217 F.3d at 868-69.

interlinked as to require vacatur as well. *Id.* at 867-68.

In response to EPA's Motion to Withhold Issuance of Mandate (EPA, Motion to Stay Issuance of Mandate, filed Sept. 8, 2000 in *Chemical Mfrs. Ass'n v. EPA*, no. 99-1236 (D.C. Cir.)), the Court agreed to stay issuance of its mandate for a long enough period to allow affected sources to submit Notices of Intent to Comply so that they would be eligible for Class I permit modifications. EPA worked closely with the regulated community to assure that all sources submitted NICs before the Mandate issued.

This action takes the ministerial step of directing the Office of the Federal Register to remove the vacated provisions from the CFR.

II. Vacatur of Compliance Assurance Monitoring Requirements for Baghouses and Electrostatic Precipitators

The final rule requires sources to establish and monitor limits on the following parameters for electrostatic precipitators (ESPs) and baghouses for compliance assurance: (1) Minimum power (kVA) per field of an ESP; and (2) minimum and maximum pressure drop for each cell of a baghouse. See §§ 63.1209(m)(1)(ii) and (iii). EPA filed a motion with the D.C. Circuit to vacate this provision in order to allow a considered opportunity for notice and comment on the issue (see *CKRC v. EPA*, no. 99-1457, EPA Motion of November 14, 2000). The court granted EPA's motion on April 5, 2001, and ordered the vacatur of the above two paragraphs of § 63.1209. In accordance with the above, we are deleting these two paragraphs of the regulation. Permit writers are, of course, authorized under the provisions of § 63.1209(g)(2), to adopt operating parameters for baghouses and ESps on a case-by-case basis if "necessary to document compliance with the emission standards."

III. Implementation Issues: Sources' Ability To Request a RCRA Permit Modification Using the Streamlined Modification Procedure of § 270.42(j)

In 40 CFR 270.42(j)(1), the regulations require facilities to comply with the NIC requirements of 40 CFR 63.1211 before they can use the streamlined permit modification procedures. This requirement enhances the public participation procedures for these streamlined Class 1 modifications which otherwise would have been classified as Class 2 and Class 3 modifications. Facilities were required to submit their NICs by October 2, 2000,

and EPA worked closely with the regulated community to assure that all sources intending to continue operating submitted these NICs. The court issued its mandate to vacate the NIC provisions on October 11, 2000. Since the mandate did not go into effect until after facilities were required to submit their NICs, we have determined that the court's action does not impact a facility's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42 (j), provided, of course, they submitted the NIC as required by the rule. As long as a facility complied with the NIC provisions, the facility met the requirements in 40 CFR 270.42(j)(1) and is therefore eligible for the streamlined modification process.

We also note, as a matter of technical drafting, that in 40 CFR 270.42(j)(1), the ability to seek a fast-track permit modification by filing a NIC (as referenced by 40 CFR 63.1211) is no longer available. The NIC requirements were promulgated in the fast-track rule (63 FR 33782, June 19, 1998) and placed in 40 CFR 63.1211. In the final rule (64 FR 52828, September 30, 1999), the NIC requirements were moved to 40 CFR 63.1210, but the corresponding reference in 40 CFR 270.42(j)(1) was not changed through oversight. 40 CFR 270.42(j)(1) should have been conformed to reference the NIC requirements of 40 CFR 63.1210.

Although the NIC requirements in 40 CFR 63.1210 are now being removed from the regulations, the substantive requirement to have submitted a NIC in order to use the fast-track permitting option still remains a part of the RCRA rule as explained above. In today's rulemaking, we are therefore clarifying the language in 40 CFR 270.42(j)(1) to reference 40 CFR 63.1210 that was in effect prior to July 1, 2000 and published in "40 CFR Part 63 Revised as of July 1, 2000". Thus, facilities that want to use streamlined permit modification process must have complied with the NIC provisions as specified in the now-vacated § 63.1210(b).

IV. Administrative Requirements

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B),² provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an

opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this action is in direct response to the Court's Mandate, and implements that Mandate. With respect to the rules relating to operating parameters for baghouses and ESps, the rule implements the Court's order vacating those provisions. Thus, notice and opportunity for public comment are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). For the same reason, EPA finds that there is good cause, within the meaning of 5 U.S.C. 553(d)(3), to make the rule immediately effective.

V. Regulatory Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule is also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards, thus the requirements of section 12(d) of National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear

² The provisions of 5 U.S.C. 553(b)(B) of the Administrative Procedure Act apply to this action, even though it arises under the Clean Air Act (to which section 553 normally does not apply). See Clean Air Act section 307(b)(1) (final sentence).

legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 14, 2001, for this rule. EPA will submit 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 United States prior to the publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

VII. Immediate Effective Date

As noted earlier, EPA is making this rule effective immediately. This rule adopts amendments which are purely technical, in that they implement the Court's mandate. Comment on such changes is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reason, there is good cause to make the rule effective immediately pursuant to 5 U.S.C. 553(d)(3).

List of Subjects

40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: May 8, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS 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.*

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

2. Section 63.1206 is amended by revising paragraph (a)(1), removing paragraph (a)(2), and redesignating paragraph (a)(3) as (a)(2) to read as follows:

§ 63.1206 When and how must sources comply with the standards and operating requirements?

(a) * * * (1) *Compliance date for existing sources.* You must comply with the standards of this subpart no later than September 30, 2002 unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

§ 63.1209 [Amended]

3. Section 63.1209 is amended by removing and reserving paragraphs (m)(1)(ii) and (iii).

§ 63.1210 [Amended]

4. Section 63.1210 is amended as follows:

a. In the table to paragraph (a)(1) by removing the entry "63.1210(b) and (c)"; and

b. By removing paragraph (b) and (c) and redesignating paragraph (d) as (b).

§ 63.1211 [Amended]

5. Section 63.1211 is amended by removing paragraph (b) and redesignating paragraphs (c) through (e), as (b) through (d) respectively.

§ 63.1212 [Removed and Reserved]

6. Section 63.1212 is removed and reserved.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

7. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

8. Section 270.42 is amended by revising paragraph (j)(1) to read as follows:

§ 270.42 Permit modifications at the request of the permittee.

* * * * *

(j) * * *

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that was in effect prior to May 14, 2001, (See 40 CFR Part 63 Revised as of July 1, 2000) in order to request a permit modification under this section.

* * * * *

[FR Doc. 01-12043 Filed 5-11-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-6950-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida, (Tyco), formerly Advanced Quick Circuits, L.P., to exclude (or "delist") a certain hazardous waste from the list of hazardous wastes under RCRA regulation. Tyco generates the petitioned waste by treating liquid waste from Tyco's printed circuit board manufacturing processes. The waste so generated is a wastewater treatment sludge that meets the definition of F006. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency has concluded that Tyco's petitioned waste will not adversely affect human health and the environment. This action responds to Tyco's petition to delist this waste on a "generator-specific" basis from the hazardous waste lists, and to public

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of this rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United

States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Chemical accident prevention, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: May 25, 2001.

Kathleen C. Callahan,
Acting Regional Administrator, Region 2.

Part 63, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 63.14 is amended by revising paragraph (d)(2) to read as follows:

§63.14 Incorporations by reference.

* * *

(d) * * *

(2) New Jersey's *Toxic Catastrophe Prevention Act Program*, (July 20, 1998), Incorporation By Reference approved for § 63.99 (a)(30)(i) of subpart E of this part.

* * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by adding a new paragraph (a)(30) to read as follows:

§63.99 Delegated Federal authorities.

(a) * * *

(30) New Jersey

(i) Affected sources must comply with the Toxic Catastrophe Prevention Act Program (TCPA), (July 20, 1998), (incorporated by reference as specified in § 63.14) as described in paragraph (a)(30)(i)(A) of this section:

(A) Except for authorities identified as not being delegated, the regulations incorporated in New Jersey's "Toxic Catastrophe Prevention Act Program," Title 7, Chapter 31, of the New Jersey Administrative Code: Subchapter 1, "General Provisions" (sections 1.1 to

1.10 except for the definition of "What if Checklist"), Subchapter 2, "Hazard Assessment," Subchapter 3, "Minimum Requirements for a Program 2 TCPA Risk Management Program." Subchapter 4, "Minimum Requirements for a Program 3 TCPA Risk Management Program," Subchapter 5, "Emergency Response," Subchapter 6, "Extraordinarily Hazardous Substances," Subchapter 7, "Risk Management Plan and TCPA Submission," and Subchapter 8, "Other Federal Requirements," (effective July 20, 1998), pertain to the sources affected by 40 CFR part 68 and have been approved under the procedures in §§ 63.91, 63.93 and 63.95 to be implemented and enforced in place of 40 CFR part 68, Subparts A through H, as may be amended.

(1) Authorities not delegated:

(i) The New Jersey Department of Environmental Protection is not delegated the Administrator's authority to implement and enforce New Jersey's Toxic Catastrophe Prevention Act Program, Title 7, Chapter 31, of the New Jersey Administrative Code, in lieu of the provisions of 40 CFR part 68 as they apply to the regulation of processes that are covered only because they contain regulated quantities of liquid petroleum gases (LPG) regulated under the New Jersey Liquified Petroleum Gas Act of 1950 (N.J.S.A. 21:1B),

(ii) Pursuant to § 63.90(c) the New Jersey Department of Environmental Protection is not delegated the Administrator's authority to add or delete substances from the list of substances established under section 112(r) and set forth in 40 CFR 68.130.

[FR Doc. 01-16561 Filed 7-2-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 63 and 264**

[FRL-7001-8]

RIN 2050

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on targeted amendments to the regulations for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999 (NESHAP: Final

Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). The revisions make improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. We are approving these revisions to make it easier to comply with the September 30, 1999 final rule.

DATES: This rule is effective on October 16, 2001 without further notice, unless EPA receives adverse comment by August 17, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: If you wish to comment on this direct final rule, you must send an original and two copies of the comments referencing Docket Number F-2001-RC4F-FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002; or, if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the "Supplementary Information" section below.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of the NESHAP portion of this direct final rule, contact Mr. Frank Behan at 703-308-8476, behan.frank@epa.gov, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view these as noncontroversial amendments. We anticipate no adverse comment because we have worked with the interested parties in their development. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to amend the emissions standards for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999, if

adverse comments are filed. This direct final rule will be effective on October 16, 2001 without further notice unless we receive adverse comment by August 17, 2001. If EPA receives adverse comment on one or more distinct amendments of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any of the distinct amendments in today's rulemaking for which we do not receive adverse comment will become effective on the date set above. We will address all public comments in a subsequent final rule based on the proposed rule, including any adverse comment on any distinct amendment, paragraph, or section of today's rule. We will not institute a second comment period on this action. Any parties interested in commenting on any amendment must do so at this time.

Electronic Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. You should identify comments in electronic format with the docket number F-2001-RC4F-FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Acronyms Used in the Rule

BIF—Boilers and industrial furnaces
CAA—Clean Air Act
CEMS—Continuous emissions monitors/monitoring system
CFR—Code of Federal Regulations
DOC—Documentation of Compliance
DRE—Destruction and removal efficiency
dscf—Dry standard cubic feet

dscm—Dry standard cubic meter
EPA/USEPA—United States Environmental Protection Agency
gr—Grains
HAP—Hazardous air pollutant
HWC—Hazardous waste combustor
MACT—Maximum Achievable Control Technology
MTEC—Maximum theoretical emissions concentration
NESHAP—National Emission Standards for Hazardous Air Pollutants
NIC—Notice of Intent to Comply
NOC—Notification of compliance
NODA—Notice of data availability
OPL—Operating parameter limit
PM—Particulate matter
POHC—Principal organic hazardous constituent
ppmv—Parts per million by volume
RCRA—Resource Conservation and Recovery Act
SVM—Semivolatile metals (lead and cadmium)
µg—Microgram

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Part Four: State Authority

Part One: Overview and Background for This Direct Final Rule

I. What Is the Purpose of This Direct Final Rule?

Today's notice makes specific changes to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). After promulgation, commenters (primarily the regulated community) raised numerous potential issues through informal comments and during litigation settlement discussions. After considering the issues raised, we have decided to promulgate a limited number of changes to the final rule, most of them relating to compliance and implementation.

In a separate action today, we are proposing and soliciting comment on several additional amendments to the Phase I rule. If you wish to comment on those amendments, you must submit comments following the directions in the ADDRESSES section of that action.

The remaining sections of this part provide additional background information on the Phase I final rule.

II. What Is the Phase I Rule?

In the Phase I final rule, we adopted National Emissions Standards for Hazardous Air Pollutants to control toxic emissions from the burning of hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. These emission standards created a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA).

Section 112 of the Clean Air Act (CAA) requires emissions standards for hazardous air pollutants to be based on the performance of the Maximum

Achievable Control Technology (MACT). These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's notice, we refer to these three categories collectively as hazardous waste combustors (HWC). Hazardous waste combustors burn about 80% of the hazardous waste combusted annually within the United States. The Phase I HWC MACT standards are expected to achieve significant reductions in the amount of hazardous air pollutants being emitted each year.

Additionally, the Phase I HWC MACT rule satisfies our obligation under RCRA (the main statute regulating hazardous waste management) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. By using both CAA and RCRA authorities in a harmonized fashion, we consolidate regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

More information on the Phase I HWC MACT rule is available electronically from the World Wide Web at www.epa.gov/hwcmact.

III. What Related Actions Have Been Taken Since Publication of the Phase I Rule?

On November 19, 1999, we issued a technical correction to the Phase I HWC MACT final rule (64 FR 63209). It clarified our intent with respect to certain aspects of the Notification of Intent to Comply and Progress Report requirements of the 1998 "Fast Track" final rule (63 FR 33783). Additionally, specific to the Phase I HWC MACT final rule, we corrected several typographical errors and omissions.

On July 10, 2000, we issued a second technical correction to the Phase I HWC MACT final rule (65 FR 42292). This action corrected additional typographical errors and clarified several issues to make the Phase I rule easier to understand and implement. This action also supplied one omission from the technical correction published on November 19, 1999, and made one correction to the related June 19, 1998 "Fast Track" final rule (63 FR 33783).

On July 25, 2000, the Court of Appeals for the District of Columbia decided *Chemical Manufacturers Association v. EPA*, 217 F. 3d 861 (D.C. Cir. No. 99-1236). The court held that EPA had the legal authority to promulgate a requirement of early cessation of hazardous waste burning activity for those sources not intending

to comply with the MACT emission standards. However, the court also held that we had not adequately explained our reasons for imposing the early cessation requirement. As a result, the court vacated the early cessation requirement and the related Notice of Intent to Comply (NIC) and Progress Report requirements. This vacature took effect on October 11, 2000. Since the requirements were not vacated until after sources were required to submit their NICs (on October 2, 2000), we determined that the court's action does not impact a source's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42(j)(1). As long as a source complied with the NIC provisions (including filing the NIC before the provision was vacated), the source has met the requirements in 40 CFR 270.42(j)(1) and is therefore eligible for the streamlined RCRA permit modification process. The court's decision does not impact the emission standards or compliance schedule for the other requirements of the HWC NESHAP Subpart EEE.

On November 9, 2000, we issued a third technical correction to the Phase I HWC MACT final rule (65 FR 67268). It clarified our intent with respect to the applicability of new source versus existing source standards for hazardous waste incinerators. This action also clarified three issues to make the Phase I rule easier to understand and implement.

On May 14, 2001, we issued a final rule implementing two court orders that removed affected provisions of the Phase I HWC MACT final rule from the Code of Federal Regulations (66 FR 24270). This action removed the Notice of Intent to Comply provisions (discussed above) and certain operating parameter limits of baghouses and electrostatic precipitators.

Part Two: NESHAP—Amendments to the HWC Final Rule

I. Hazardous Waste Residence Time

"Hazardous waste residence time" is defined at § 63.1201(a) as the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste, excluding residues that may adhere to combustion chamber surfaces, exit the combustion chamber. As stakeholders recognize, hazardous waste residence time has significant regulatory and enforcement implications. For example, if sources

were to exceed an operating requirement or emission standard after the hazardous waste residence time has expired, it is not a violation if the exceedance occurred because of a start-up, shut-down, or malfunction and sources follow the procedures and corrective measures prescribed in the start-up, shut-down, and malfunction plan. In addition, after the hazardous waste residence time has expired, sources may elect to comply with emission standards the Agency has promulgated under sections 112 and 129 of the Clean Air Act for source categories that do not burn hazardous waste. They would comply with these standards in lieu of the hazardous waste combustor standards of Subpart EEE, Part 63. See § 63.1206(b)(1).

Since promulgation of the hazardous waste combustor rule, stakeholders have raised an issue: what is the hazardous waste residence time for sources that continuously recycle hazardous waste-derived materials?

We are taking direct final action so that recycled hazardous waste-derived materials should not be considered when calculating hazardous waste residence time.¹ See revision to the definition of hazardous waste residence time at § 63.1201(a).

A. What Causes Recycle Loops and What Is the Potential Consequence?

Cement kilns, and possibly other hazardous waste combustors, continuously volatilize and condense toxic constituents derived from hazardous waste in recycle loops within the kiln. For example, chlorine and semivolatile metal hazardous air pollutants, such as lead and cadmium, will volatilize in the kiln and partition to the combustion gas. A portion of these waste-derived, toxic materials will condense before the combustion gas exits the kiln and will partition back into the raw material bed. Thus, these waste-derived, toxic materials are recycled internally within the kiln.

In addition, cement kilns generally recycle a portion of their collected particulate matter, known as cement kiln dust, back into the kiln. This cement kiln dust contains toxic constituents derived from hazardous waste fuel, including metals that are hazardous air pollutants.

¹ Another special case for addressing residence time is vitrification melter units, where certain inorganic waste components are incorporated into the vitrified melt, and where it is not desirable to remove the entire melt (i.e., the melt is removed from the chamber at lengthy, infrequent intervals). In these cases, it may be appropriate for sources to recommend an alternative "effective waste treatment" residence time under § 63.1209(g)(1).

Stakeholders request that these recycle loops not be considered when calculating hazardous waste residence time. Stakeholders note that if the hazardous waste-derived materials in these recycle loops were to be considered in calculating residence time, then: (1) It would be very problematic to document when the recycled waste constituents finally exit the kiln; and (2) the hazardous waste residence time would not elapse for an unnecessarily protracted period of time.

B. How Are We Addressing This Issue?

We conclude that recycle loops need not be considered in calculating hazardous waste residence time to ensure compliance with the emission standards. Emissions of semivolatile metals, low volatile metals, and particulate matter immediately prior to a waste feed cutoff will typically be well below levels demonstrated during the performance test and thus below the emission standard. This is because sources typically spike metals (add extra metals to the waste fuel) during performance testing to establish a wide envelope of operating limits to reflect the maximum operating variability they are likely to encounter in actual operation, providing sufficient operating flexibility for unexpected situations. We do not believe, though, that conditions will invariably reflect this maximum variability before a waste feed cutoff. In addition, notwithstanding recycle loops, hazardous waste-derived metals emissions will begin to decrease upon waste feed cutoff. The levels will continue to decrease while the hazardous waste residence time elapses and will decrease to very low levels after the electrostatic precipitator or baghouse undergoes a cleaning cycle. Therefore, the metal emission standards should not be exceeded due to recycle loops containing hazardous waste-derived materials.

For these reasons, we are revising the definition of hazardous waste residence time at § 63.1201(a).

II. Deletion of One-Time Notification of Compliance With Alternative Clean Air Act Standards

If a source is not feeding hazardous waste and the hazardous waste residence time has expired, the source may elect to comply temporarily with alternative, otherwise applicable standards promulgated under the authority of sections 112 and 129 of the Clean Air Act. If a source makes this election, § 63.1206(b)(1)(ii)(A) currently requires the source to submit to the Administrator a written, one-time

notification documenting compliance with those requirements and standards.

The rule requires this notice to alert regulatory officials that a source claims to have met the regulatory requirements for the otherwise applicable standards (i.e., section 112 and 129 standards the source would be subject to if the source did not burn hazardous waste). For example, a hazardous waste burning cement kiln may elect to comply with the MACT standards and operating requirements applicable to Portland cement manufacturing facilities provided under Subpart LLL after the hazardous waste residence time has transpired. The notice enables regulatory officials to know which sources claim to be in full compliance with such otherwise applicable standards and will assist those officials in establishing source inspection priorities.

Stakeholders have raised two issues since promulgation, however, that have led us to conclude that this notification requirement is unnecessary. First, stakeholders have indicated that virtually all sources are likely to want to have the option to switch temporarily to compliance under otherwise applicable section 112 or 129 standards at some point during their operations. Thus, the notice would not have the intended effect of singling out those sources that chose to do so for the purpose of establishing inspection priorities.

Stakeholders also point out that this notification requirement is duplicative of the title V compliance certification requirement of § 70.5(c)(9) that requires permit applicants to include in their application a detailed description of the source's compliance status and a certification by a responsible official of compliance with all applicable requirements. In addition, stakeholders state that title V sources must submit annual certifications of compliance with all applicable requirements. See § 70.6(c)(5). Thus, stakeholders note that the only scenario where the § 63.1206(b)(1)(ii)(A) notification requirement is not duplicative is for sources that have not yet been required to submit a certification under title V.

In addition, if sources anticipate complying temporarily with the alternative standards for nonhazardous waste combustors after the hazardous waste residence time has expired, sources may include appropriate terms and conditions in the title V permit using the "reasonably anticipated operating scenario" provisions of

§ 70.6(a)(9).² Once both scenarios (i.e., for burning hazardous waste and not burning hazardous waste) are included in the permit, sources simply document in the operating record when they switch from one scenario to another.

Finally, we also note that this notification requirement has been targeted for deletion under the Office of Solid Waste Burden Reduction Project. See 64 FR 32859 for the goals and objectives of this project.

For these reasons, we are deleting the notification requirement of § 63.1206(b)(1)(ii)(A).

III. Use of DRE Data in Lieu of Testing

We are revising two provisions associated with the allowance to use previously collected data in lieu of the initial performance test or the Destruction and Removal Efficiency (DRE) test under §§ 63.1206(b)(6), 63.1206(b)(7), and 63.1207(c)(2). We are taking final action to: (1) Remove the existing restriction preventing the use of DRE test data collected prior to March 1998 to document compliance with the DRE standard³; and (2) eliminate the requirement limiting previous data to only RCRA permit issuance or reissuance testing results.

A. Why Are We Allowing DRE Data Obtained Prior to March 1998 To Be Used in Lieu of a New DRE Test?

Stakeholders question why the rule restricts the age of DRE data for sources required to conduct only one DRE test for the life of the source. For DRE testing, the rule states that if you fire hazardous waste in the flame zone, and the system is not modified, then you are only required to demonstrate compliance with the MACT DRE emissions standard once over the operational life of the device. However, as part of the final rule data in lieu provisions, we limit the use of previous test data submitted for the initial comprehensive performance test to data collected after March 1998.

Stakeholders believe that this limit substantially reduces the number of sources that can submit previous DRE test data in lieu of conducting an additional DRE test. They say that most sources conducted their RCRA trial burns before March 1998 and therefore would be ineligible to submit these tests. Stakeholders point out that if a one-time test is sufficient for the life of the source, then we should not place a

limit on previous RCRA data. We agree with this logic and are revising the rule today to require testing only for those sources that are modified or that fire at a location other than the flame zone.

B. Why Are We Allowing the Use of Data Obtained for Purposes Other Than RCRA Permit Issuance or Reissuance?

Stakeholders also express concern about the restrictions the rule places on the type of data that can substitute for a MACT performance test. The rule now stipulates that only data collected for the purpose of RCRA permit issuance or re-issuance can be submitted as in lieu data. Our primary concern with in lieu data submittals is to ensure data quality. Upon reevaluation, we believe data that is not associated with RCRA permit issuance or re-issuance can be reviewed by the regulatory authority to determine whether they are suitable for demonstrating compliance with the DRE standard and for setting MACT operating limits. We now understand that several sources engage in other types of CAA performance testing with oversight and quality assurance requirements comparable to RCRA testing. This modification will allow sources to coordinate CAA and RCRA testing that may facilitate early compliance. In today's direct final rule, we are modifying the current data in lieu provisions to allow sources to submit any test data in lieu of conducting a MACT performance test provided that the data meet our quality assurance requirements (except for DRE, as discussed above). We emphasize that a data in lieu of request must provide adequate quality assurance and quality control documentation. In most cases, tests conducted without significant regulatory oversight (and particularly without a reasonable opportunity for significant oversight) would not be considered to be of sufficiently known quality for use as data in lieu of testing.

For these reasons, we are revising the requirements of §§ 63.1206(b)(6), 63.1206(b)(7), and 63.1207(c)(2).

IV. Time Extension for Waiving PM and Opacity Standards To Correlate PM CEMS

For facilities voluntarily using a particulate matter (PM) continuous emissions monitoring system (CEMS), the final rule allows the particulate matter standard and operating parameter limits used to ensure compliance with that standard to be waived for up to a 96-hour period during a PM CEMS correlation test. (See 64 FR 53046). This waiver period is necessary because PM CEMS outputs must be correlated to manual method

results and during this time it is sometimes necessary to exceed the applicable operating parameter limits to produce an accurate correlation. The correlation is most accurate over the range of particulate matter emissions tested, so correlation tests should be performed over the full range of expected particulate matter emissions for the particular facility. We determined that allowing a facility to operate above the particulate matter standard for a 96-hour period is reasonable because this is a sufficient amount of time to: (1) Increase emissions to the desired level and reach system equilibrium; (2) perform correlation tests at the equilibrium condition; (3) return to normal equipment settings indicative of compliance with emissions standards and operating parameter limits; and (4) achieve equilibrium at normal conditions. (64 FR 52929).

Stakeholders contend that 96 hours may be too short of a time period to fulfill the testing requirements and that the regulations should allow for a longer time period. From the limited information available on the time required for PM CEMS correlation, they believe that 96 hours may be insufficient to complete the testing, particularly for HWCs that burn a variety of solid wastes. Petitioners suggest we change this provision to allow periods longer than 96 hours with the Administrator's approval.

In a March 2, 2000 letter to EPA, stakeholders describe the time necessary to complete PM CEMS correlation tests at an Eli Lilly incinerator as an indication of the need for additional time beyond the existing 96 hours. In Phase II of Eli Lilly's CEMS tests, Eli Lilly needed approximately 54 hours to achieve a successful correlation (Eli Lilly collected 34 data points requiring approximately three hours per data point above the particulate matter standard). This 54 hours only represented the testing time and did not include pre-and post-testing adjustments or the time before and after the tests when the incinerator was reaching equilibrium. The petitioners also point out that Eli Lilly had personnel with extensive experience in adjusting their incinerator to achieve desired HWC MACT particulate matter concentrations. Facilities with personnel who do not have this experience will go through a lengthy learning process and may need even more time. Therefore, stakeholders believe the current 96-hour allowance is not adequate to correlate a PM CEMS device in an accurate manner.

² Note that Subpart EEE incorporates this provision as § 63.1209(q), operating under different modes of operation.

³ If hazardous waste is fed at a location other than the normal flame zone, sources must conduct periodic DRE testing. See § 63.1206(b)(7)(ii).

Based on the Eli Lilly experience and discussions with PM CEMS testing personnel, we agree that the 96-hour period may not be sufficient for hazardous waste combustors to correlate their PM CEMS. Furthermore, we do not want a 96-hour time limit to be a disincentive to use of PM CEMS. We conclude a site specific extension is the appropriate mechanism to ensure accurate calibrations and to encourage the use of particulate matter continuous emissions monitoring systems. Therefore, we are adding the phrase "unless more time is approved by the Administrator" to § 63.1206(b)(8)(v).

V. Alternative Hydrocarbon Monitoring Location for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the "Hot" End of the Kiln

Section 63.1206(b)(13)(i) requires new and existing cement kilns to comply with a main stack hydrocarbon standard of 20 ppmv if hazardous waste is fed at a location other than the kiln end where fuels are normally fired and products are normally discharged (this is also described as the "hot" end of the kiln). These other locations can include firing hazardous waste at midkiln, at the upper end of the kiln where raw materials are fed, or in the calciner. In addition, if hazardous waste is fed at these other locations, the rule does not give a cement kiln the option to comply with a carbon monoxide standard in the main stack in lieu of the hydrocarbon standard.

After promulgation of the final rule, stakeholders provided additional information supporting an alternative to the mandatory monitoring location for hydrocarbons in the main stack for short, dry process cement kilns. In today's notice, we are revising the requirements of § 63.1206(b)(13) to allow short, dry process cement kilns to continuously monitor hydrocarbons in both the alkali by-pass duct and at a "preheater tower combustion gas monitoring location" as an alternative to hydrocarbon monitoring in the main stack.⁴ In addition, we are revising the requirements of § 63.1206(b)(13) to allow short dry process cement kilns to continuously monitor both carbon monoxide in the alkali by-pass duct and hydrocarbons at a "preheater tower combustion gas monitoring location" under limited circumstances.

⁴ In today's action, we are defining "preheater tower combustion gas monitoring location." See definition in § 63.1201.

A. Why Are We Finalizing an Alternative to Hydrocarbon Monitoring in the Main Stack for Certain Cement Kilns?

At the time of the final rule, we were not aware of any short, dry process cement kilns firing hazardous waste at other locations than the kiln end where clinker product is discharged. As a result, we adopted the approach used in the Boiler and Industrial Furnace (BIF) rule⁵ to control emissions of organic hazardous air pollutants from cement kilns that fire hazardous waste at these other locations as the best regulatory model. The BIF rule requires cement kilns that fire hazardous waste at locations other than the kiln end where clinker product is normally discharged to comply with a hydrocarbon limit in the main stack. Since promulgation of the rule, however, stakeholders submitted information about a new precalciner⁶ cement kiln that will fire hazardous waste at locations other than the kiln end where clinker is normally discharged. One stakeholder also indicated that the main stack hydrocarbon standard may not be achievable due to hydrocarbons released from the raw materials in the upper stages of the preheater tower. Therefore, we are finalizing an alternative to main stack hydrocarbon monitoring that addresses a hazardous waste firing scenario not specifically considered during the development of the rule.

B. What Alternative to Hydrocarbon Monitoring in the Main Stack Are We Finalizing for Cement Kilns?

As an alternative to hydrocarbon monitoring in the main stack,⁷ we are allowing short, dry process cement kilns to continuously comply with a hydrocarbon limit, and, under limited circumstances, a carbon monoxide limit at two separate locations within the kiln system. The two monitoring locations are: (1) In the alkali by-pass duct; and (2) in the upper stages of the preheater tower. The latter location is termed a "preheater tower combustion gas monitoring location." These two locations are located downstream (in terms of gas flow) of all hazardous waste firing locations. In addition, all

combustion gases pass one of these two locations.

The stakeholders claim that continuously monitoring hydrocarbons at both locations provides the best assessment of the quality of combustion and offers the same level of assurance that hazardous waste is effectively combusted as does a main stack hydrocarbon standard. Monitoring for efficient combustion of the hazardous wastes at these two locations also avoids the potential problem of hydrocarbons generated from organics in the raw materials and entrained in the gas stream.

1. Why Is Hydrocarbon Monitoring in the Alkali By-Pass Duct Appropriate?

Short, dry process cement kilns may be equipped with an alkali by-pass system where 10–30 percent of the rotary kiln combustion gas is diverted to a separate air pollution control device and sometimes to a separate stack. These kiln gases are diverted to avoid a build-up of metal salts that can adversely affect cement manufacturing operations. Hydrocarbon levels in the by-pass duct are indicative of the combustion efficiency of hazardous waste and fossil fuels fired in the rotary kiln. This is because the by-pass duct draws off combustion gases from the kiln prior to the point that hydrocarbons generated by organic materials in the raw material can be problematic.

We are finalizing a hydrocarbon standard of 10 ppmv in the by-pass duct (in addition to the preheater tower combustion gas monitoring location standards discussed below) for new and existing cement kilns that fire hazardous waste at a location other than the kiln end that clinker product is discharged because this level is indicative of good combustion conditions in the rotary kiln. Limiting hydrocarbons to 10 ppmv in the by-pass is identical to how a cement kiln with a by-pass duct or midkiln sampling system that only feeds hazardous waste at the kiln end where clinker product is normally discharged is regulated in the final rule. See §§ 63.1204(a)(5)(i)(B) and (b)(5)(i)(A)(2). For the same reasons a hydrocarbon standard of 10 ppmv was adopted in the rule, we likewise believe a hydrocarbon standard of 10 ppmv is appropriate in this situation. See 64 FR at 52887.

In today's direct final rule, with the exception discussed below, we are not allowing new and existing short, dry process cement kilns the option to comply with a carbon monoxide standard in the alkali by-pass duct when feeding hazardous wastes at any point in the rotary kiln downstream (in terms of gas flow) of the kiln end where

⁵ See 56 FR at 7158.

⁶ See "Final Technical Support Document for Hazardous Waste Combustor MACT Standards, Volume I: Description of Source Categories," July 1999, for a process description of precalciner cement kilns.

⁷ The alternative hydrocarbon standard would not replace the hydrocarbon standard of 20 ppmv in the main stack as provided in § 63.1206(b)(13)(i). Cement kilns would continue to have the option to monitor hydrocarbons in the main stack.

clinker product is normally discharged. We do not allow this option because we do not have sufficient emissions data, using this alternative hazardous waste firing scenario, to fully evaluate the impacts. We are concerned that organic compounds in the hazardous waste could be thermally cracked to form pyrolysis by-products rather than be completely combusted. If so, little carbon monoxide may be generated by the process and monitoring carbon monoxide alone would not ensure that hydrocarbons were minimized. Without these emissions data, we believe hydrocarbon monitoring is a more conservative, direct surrogate for control of organic hazardous air pollutants than are carbon monoxide emissions.

2. Under What Circumstances Is Monitoring of Carbon Monoxide in the Alkali By-Pass Appropriate?

There may be limited circumstances where carbon monoxide monitoring (as an option to hydrocarbon monitoring) in the alkali by-pass duct may be appropriate. An example would be a cement kiln whose only hazardous waste firing location upstream (in terms of gas flow) of the point where combustion gases are diverted into the alkali by-pass duct is at the kiln end where products are normally discharged. Another example would be a cement kiln that only fires hazardous waste at a location(s) downstream (in terms of gas flow) of the point where combustion gases are diverted into the alkali by-pass duct. Firing hazardous waste under these circumstances reduces our concern that organic compounds in the hazardous waste could be thermally cracked to form pyrolysis by-products rather than be completely combusted.

We are finalizing a carbon monoxide standard of 100 ppmv (as an option to hydrocarbon monitoring) in the by-pass duct (in addition to the preheater tower combustion gas monitoring location standards discussed below) for new and existing cement kilns whose only hazardous waste firing location upstream of the point where combustion gases are diverted into the alkali by-pass duct is at the kiln end where products are normally discharged. Thus, if sources feed hazardous waste at the upper end of the kiln where raw materials are fed, or any other location upstream of where gases enter the by-pass duct other than the kiln end where products are discharged, then a cement kiln would not be eligible for this option to monitor carbon monoxide instead of hydrocarbons.

We are finalizing a carbon monoxide standard of 100 ppmv for control of

organic hazardous air pollutants. A level of 100 ppmv is the same level that we established in the rule for cement kilns that only fire hazardous waste at the kiln end where products are normally discharged. See §§ 63.1204(a)(5)(i)(A) and (b)(5)(i)(A)(1). For the same reasons a carbon monoxide standard of 100 ppmv was adopted in the rule, we likewise believe the same carbon monoxide standard of 100 ppmv is appropriate in this situation. See 64 FR at 52887.

In addition, if a source elects to comply with the carbon monoxide standard in the by-pass duct, we are requiring the source to demonstrate compliance with a hydrocarbon standard of 10 ppmv in the by-pass duct during the comprehensive performance test. This is consistent with the requirements for cement kilns that comply with a carbon monoxide standard in the by-pass duct when only firing hazardous wastes at the kiln end where clinker is normally discharged. See §§ 63.1204(a)(5)(i)(A) and (b)(5)(i)(A)(1).

3. Why Is Hydrocarbon Monitoring at the "Preheater Tower Combustion Gas Monitoring Location" Appropriate?

Since only 10–30 percent of combustion gas is routed through the alkali by-pass duct, most short, dry process cement kilns' combustion gas travels through the cyclone stages of the preheater tower. Typically, raw material is introduced at the top of the preheater tower, which is a series of cyclones. Hot kiln flue gases move counter-current through the downward-moving raw material prior to introduction into the cement kiln. The cyclones are used to separate the raw material from the combustion gases and collected raw material sequentially is dropped into the next lower stage. Fossil and hazardous waste fuels can be fired in a calciner burner prior to the series of cyclones to further increase the raw material temperatures prior to introduction into the cement kiln.

A stakeholder identified a flue gas sampling location within the preheater tower where they believe a representative sample of combustion gas can be continuously monitored for hydrocarbons to demonstrate efficient combustion of the hazardous wastes. The stakeholder states that the preheater tower combustion gas monitoring location allows for continuous monitoring of hydrocarbons at a location downstream of the last point of hazardous waste fuel combustion, yet upstream of where non-fuel hydrocarbons from organics in the raw materials are generated and entrained in

the gas stream. This location is termed a "preheater tower combustion gas monitoring location."

We are finalizing a hydrocarbon standard of 10 ppmv at the preheater tower combustion gas monitoring location (in addition to the alkali by-pass duct standards above) as an alternative to the main stack standard of 20 ppmv. Monitoring of hydrocarbons at the preheater tower combustion gas monitoring location is necessary to control emissions of organic hazardous air pollutants. We are finalizing a hydrocarbon standard of 10 ppmv for the same reasons discussed above for monitoring in the alkali by-pass duct. In addition, we are not allowing carbon monoxide monitoring at the preheater tower combustion gas monitoring location as an alternative to hydrocarbon monitoring for the same reasons discussed above for monitoring in the alkali by-pass duct.

VI. Alternative to the Particulate Matter Standard for Incinerators Feeding Low Levels of Metals

The final rule establishes a particulate matter emissions standard of 0.015 gr/dscf for new and existing incinerators as a surrogate to control non-mercury, CAA metal hazardous air pollutants (HAPs).⁶ The rule also offers an alternative particulate matter emissions standard of 0.03 gr/dscf for incinerators that demonstrate the use of superior feedrate control of HAP metals in their hazardous waste feed. See § 63.1206(b)(14). Today, we are eliminating the alternative particulate matter emissions standard and replacing it with an alternative metal emissions control requirement. An incinerator source may elect to comply with this alternative requirement in lieu of complying with the 0.015 gr/dscf particulate matter standard. This source would remain subject to the existing standard for particulate matter in RCRA rules of 0.08 gr/dscf (a standard which would remain in the source's RCRA permit, should a source elect to comply with the alternative standard). See § 264.343(c). We are finalizing this option because we conclude that the alternative metal emissions control requirements control metal HAP emissions to levels based on MACT absent a particulate matter standard.

⁶ Particulate matter is not a CAA HAP. The HWC MACT rule establishes a particulate matter standard to control non-mercury CAA HAP metals that are not directly controlled with an emission standard. See 64 FR at 52846–47.

A. Why Is EPA Eliminating the Alternative Particulate Matter Standard and Replacing It With Alternative Metal Emission Control Requirements?

We included the alternative particulate matter standard in the final rule after receiving comments that a particulate matter standard of 0.015 gr/dscf is not an appropriate surrogate to control metal hazardous air pollutants in situations where the particulate matter does not contain significant levels of metal HAPs. For example, this would include situations where the hazardous waste does not contain metals, and the resulting ash contains only relatively benign salts. (See § 63.1206(b)(14) and 64 FR 52972 for further discussion). To be eligible for the original alternative standard, incinerators must demonstrate that: (1) Non-mercury, metal HAPs are not detected in any feedstream; and (2) the maximum theoretical emission concentrations (MTEC)⁹ for semivolatile and low volatile HAP metals are lower than the corresponding semivolatile and low volatile metal emission standards, assuming that non-detect metals are present at one-half the detection limit.

Based on additional information from stakeholders, we have determined that this approach did not provide the intended relief to incinerators with low levels of hazardous air pollutant metals in their feedstreams for two reasons. First, even for incinerators with very low levels of these metals in their feeds, over time metals measurements above detection limits will occasionally occur. This can occur as a result of trace metal contamination due to corrosion and/or inherent impurities in raw materials, as well as potential anomalies and variability of the analytical measurement method. Second, high detection limits that occur as a result of complex feedstream matrices may prevent a source from demonstrating that the MTECs are less than the low volatile or semivolatile metal emission standards. Because this original approach did not provide the intended relief, we are finalizing a more effective alternative to the particulate matter emission standard.

B. What Alternative Is EPA Finalizing?

In today's notice, we are allowing a source to operate under alternative HAP metal emission control requirements reflecting MACT in lieu of complying with the 0.015 gr/dscf particulate

emission standard. Under the alternative, no particulate matter emission standard will apply to the incinerator under Subpart EEE; however, the incinerator will remain subject to the RCRA particulate matter standard of 0.08 gr/dscf pursuant to § 264.343(c). This is because without a sufficiently protective particulate matter standard under Subpart EEE, we cannot defer our RCRA obligation to provide for a particulate matter requirement to Subpart EEE.¹⁰

The alternative to the particulate matter standard has three components. The first component is simply to meet metal emission standards for semivolatile and low volatile metals. The level of the standard is the same as that which applies to other incinerators, but the standard would apply to all HAP metals, not just those enumerated in the present semi-and low volatile metal standards. The second component is a requirement for the incinerator to demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., a defined metal feedrate that is better than the MACT-defining metal feedrate floor control level.¹¹ The third component is a requirement for the incinerator to demonstrate that its air pollution control system achieves, at a minimum, a 90 percent system removal efficiency for semivolatile metals. These components, which are described separately below, should provide for adequate control of non-mercury HAP metals in lieu of a particulate matter standard.

1. What Emission Limitation Must the Incinerator Comply With Under This Alternative?

Incinerators must comply with the same semivolatile and low volatile metal emission limitations that are specified in the final rule; however, the emission limitations apply to both enumerated and non-enumerated metal HAPs, excluding mercury. As discussed in the rule, enumerated metals are those metals that are directly controlled with a numerical emission standard, i.e., cadmium, lead, arsenic, beryllium, chromium. Non-enumerated metals are those metals, i.e., antimony, cobalt, manganese, nickel, and selenium that

are not controlled directly with an emission standard, but are controlled through the surrogate particulate matter standard. For purposes of these alternative requirements, the non-enumerated metals are classified as either a semivolatile or a low volatile metal, and included in the calculation of compliance with the corresponding emissions limit.

For existing incinerators, the resulting emissions limits are: (1) A semivolatile emission limitation of 240 µg/dscm for the combined emissions of lead, cadmium, and selenium; and (2) a low volatile emission limitation of 97 µg/dscm for combined emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (all emissions corrected to 7% oxygen).

For new sources, the resulting emissions limits are: (1) A semivolatile emission limitation of 24 µg/dscm for combined emissions of lead, cadmium, and selenium; and (2) a low volatile emission limitation of 97 µg/dscm for emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (all emissions corrected to 7% oxygen).

We conclude it is appropriate to incorporate both the enumerated and non-enumerated metals into the semivolatile and low volatile metal emissions limits because this, in combination with the other two requirements discussed below, provides a reasonable approach to directly assure that the non-enumerated metal emissions are controlled to levels representative of MACT, in lieu of a particulate matter standard. This approach, in effect, lowers the existing semivolatile and low volatile metal emissions limits because the contribution of non-enumerated metals must be accounted for when achieving the same numerical semivolatile and low volatile emission limits. We believe this is appropriate because this effectively lower emissions limit for enumerated metals compensates for the lower emission levels that would have been achieved if the source used a particulate matter control device capable of achieving 0.015 gr/dscf, i.e., a control device that is an integral part of MACT control for semivolatile and low volatile metals. Put another way, we regard this emission limitation as an equivalent means of meeting the floor standard for HAP metals (except mercury) already established in the rule.

⁹ We developed the term "Maximum Theoretical Emissions Concentration" to compare metals feedrates across sources of different sizes. MTEC is defined as the metals feedrate divided by the gas flowrate, and is expressed in µg/dscm.

¹⁰ Sources electing to comply with these alternative requirements will be subject to the RCRA PM standard in their RCRA permit. The RCRA permit must include applicable operating limits that ensure compliance with the RCRA PM limit. Permit writers can impose a lower PM limit where necessary pursuant to the omnibus authority under section 3005(c)(3) of RCRA.

¹¹ These MACT defining feedrates are set out in "Final Technical Support Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 6, July 1999.

2. What Hazardous Waste Metal Feedrate Control Requirement Must the Incinerator Comply With Under This Alternative?

Each incinerator that elects to operate under these alternative requirements must demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., it complies with a defined hazardous waste metal feedrate limit that is significantly lower than the MACT-defining metal feedrate floor control level. We define "reasonable hazardous waste metal feedrate control" as a hazardous waste metal HAP feedrate that does not exceed 25 percent of the MACT defining MTEC level.¹² Consistent with the above discussed emission standards, the hazardous waste metal feedrate limits apply to both enumerated and non-enumerated metal HAPs. The non-enumerated metal HAPs are categorized as either semivolatile or low volatile, and are incorporated into a corresponding semivolatile or low volatile hazardous waste metal feedrate limit.¹³

For existing incinerators, the resulting hazardous waste metal feedrate limits are: (1) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 1,325 µg/dscm; and (2) the twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 6,000 µg/dscm.¹⁴

For new sources, the resulting hazardous waste metal feedrate limits are: (1) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 875 µg/dscm; and (2) the twelve-hour rolling average of the maximum theoretical

emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 3250 µg/dscm.

We believe hazardous waste metal feedrate limits are essential parts of these alternative requirements. As discussed in the final rule preamble and in comment response documents, particulate matter control is an integral part of controlling both the enumerated and non-enumerated semivolatile and low volatile metals.¹⁵ Therefore, any source that uses a particulate matter control technique that is less efficient than the MACT particulate floor standard should be required to use a "better than MACT" hazardous waste metal feedrate control (i.e., a level of feedrate control that compensates for the inefficient particulate control collection so that actual emissions of HAP metals reflect MACT). We believe that 25 percent of the MACT feedrate control levels for the combined enumerated and non-enumerated metal HAPs is within a reasonable range of values that are significantly lower than the MACT feedrate control levels. This feedrate control requirement, when combined with the emissions limit and system removal efficiency requirement, provides adequate control of metal HAPs (control equivalent to promulgated MACT).

3. How Efficient Must the Incinerator's Air Pollution Control Equipment Operate in Order To Comply With This Alternative?

If you elect to operate under these alternative requirements, you must demonstrate that the air pollution control system achieves at least a 90 percent system removal efficiency for semivolatile metals. Metal removal efficiency—whether measured by control of the surrogate particulate matter or directly through control of HAP metals—remains an essential element (along with feedrate control of HAP metals) of MACT for the non-mercury HAP metals, as demonstrated by the performance achievable by (and achieved by) the average of the best performing sources. In making this demonstration, you may spike semivolatile metals above 25 percent of

the MACT defining MTEC level provided the emissions limits discussed above are achieved during the test. You may perform this test independently of the comprehensive performance test; however, you must use this test to establish applicable operating parameter limits as described in § 63.1209(n), excluding the § 63.1209(n)(2) metal feedrate limit requirements. These operating limits are needed to assure that a 90 percent semivolatile metal system removal efficiency is achieved during normal operations at the metal feedrates demonstrated during the test.

The 90 percent system removal efficiency requirement is based on the use of a well designed and well operated high energy venturi type wet scrubber. An analysis of hazardous waste incinerator trial burn data shows that systems with well operated and well designed venturi scrubbers have semivolatile metal system removal efficiencies ranging from approximately 90 percent to greater than 99.9 percent.¹⁶ Thus, we are finalizing a semivolatile metal system removal efficiency of 90 percent as a conservative representation of control using a well designed and well operated high energy venturi scrubber. This method to select an appropriate control level is similar to the approach we used to develop the alternative particulate matter standard 0.03 gr/dscf that also was based on the use of well designed and well operated high energy venturi scrubbers.

System removal efficiency provides a direct indicator of the non-mercury metal HAP control efficiency of the hazardous waste incinerator system. The shift away from the use of a direct particulate matter emission standard to control non-mercury metal HAPs is a result, in part, of the reduced need for low metal feeding facilities to control particulate matter. For low metals feeding facilities, particulate matter may be composed primarily of non-metal HAP constituents such as silica, alumina, iron, etc., or HAP metals not present in hazardous waste. Thus, the control of particulate matter is not as strongly related to the control of HAP metals contributed by the hazardous waste compared with facilities which have feeds containing higher levels of those metals.

We also believe it is appropriate to require a 90 percent semivolatile metal system removal efficiency as part of these alternative requirements because,

¹² I.e., the MTEC level that was determined as a result of the aggregate feedrate analysis that was used to determine metal feedrate floor control levels in the September 30, 1999 rule.

¹³ Thus, unlike the current rule where sources can choose whatever means they wish to comply with the emissions standard and so are not required to control feedrates below a regulatory level (so long as they achieve the emission standard), sources are required to comply with a specified metal feedrate limit under the alternative.

¹⁴ These metal feedrate limits correspond to 25 percent of the MACT-defining MTEC levels. These MACT defining feedrates are set out in "Final Technical Support Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 6, July 1999.

¹⁵ See, for example, Table 8-1, pages 2 and 3, "Final Technical Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 3, July 1999, showing that sources with SVM feedrates below the MACT defining level but lacking proper PM control (i.e., emitting more PM than allowed by the PM standard) were unable to achieve the SVM emission standard.

¹⁶ See Figure 4-3, "Draft Technical Support Document for HWC MACT Standards (NODA), Volume 1: MACT Evaluations Based on Revised Database," April 1997.

absent a particulate matter standard, there would be no explicit requirement for sources to use an air pollution control method that effectively removes metal HAPs from the exhaust emissions.¹⁷ This provision therefore requires sources that operate under these alternative requirements to use a particulate matter control device. Even though this control device does not have to be a MACT particulate matter control device (i.e., a control device that achieves 0.015 gr/dscf) we believe that this requirement to achieve a 90 percent system removal efficiency, when combined with the hazardous waste metal feedrate limits and emissions limits, provides for an adequate level of control for HAP metals—that is, a level of control reflecting the level of performance achieved by, and achievable by, the average of the best performing 12 percent of sources.

4. What Operating Requirements Are Associated With This Alternative?

Semivolatile and low volatile metal operating parameter limits will be established to ensure compliance with the alternative emissions limits pursuant to § 63.1209(n), except that the semivolatile and low volatile metal feedrate limits apply to both the enumerated and non-enumerated HAP metals as previously discussed. We believe this approach is consistent with the final rule methodology to assure compliance with the semivolatile and low volatile metal emission standards and should be applied here. Note that the metal feedrate limits established to ensure compliance with the alternative emissions limit are mass feedrate limits for all feedstreams, including nonhazardous feeds. This is in contrast to the hazardous waste metal feedrate limits discussed below that are based only on hazardous waste metal MTEC levels.

You must also establish operating parameter limits to ensure compliance with the 90 percent system removal efficiency requirement. Consistent with the operating limits to ensure compliance with the alternative metal emission limitations, these operating limits would be established pursuant to § 63.1209(n), except that metal feedrate limits are not required for purposes of ensuring compliance with system removal efficiency provision.

¹⁷ Absent a metal system removal efficiency requirement under these alternative requirements, an incinerator could comply with the emission limitations with feedrate control only without the use of particulate matter control. This would not be appropriate if metals are present in the feedstreams because particulate matter control is an integral part of controlling metal HAP emissions.

The twelve-hour rolling average hazardous waste metal feedrate limits are based on the combined hazardous waste feedstreams to the incinerator and may be expressed either as a maximum theoretical emission concentration limit or as a restriction on maximum hazardous waste metals mass feedrate and minimum gas flow rate. In doing so, sources must account for each hazardous waste feedstream when determining compliance with the maximum theoretical emission concentration limits. Metal constituents not detected in hazardous waste feedstreams would be assumed to be present at one-half the detection limit when calculating the maximum theoretical emission concentration for compliance purposes, applicable to each hazardous waste feedstream.

VII. Deletion of Baghouse Inspection Requirements

Section 63.1206(c)(7)(ii) of the final rule prescribes baghouse operation and maintenance requirements for incinerators and lightweight aggregate kilns. These requirements are not applicable to cement kilns equipped with baghouses because cement kilns must continuously monitor opacity and comply with an opacity standard. Nonetheless, cement kilns are required to address baghouse operation and maintenance in the operation and maintenance plan required under § 63.1206(c)(7)(i).

The operation and maintenance requirements under § 63.1206(c)(7)(ii): (1) Prescribe the frequency of inspection of specific baghouse operations; and (2) require the use of a bag leak detector as a continuous monitor. We are today deleting the prescribed baghouse inspection requirements of § 63.1206(c)(7)(ii)(B)(1–10). Instead we will rely on the general operation and maintenance plan requirements under § 63.1206(c)(7)(i) and the use of a bag leak detector to ensure proper operation and maintenance of the baghouse.

Stakeholders question the rationale for prescribing generic inspection frequencies for various baghouse operations, given that each baghouse must be equipped with a bag leak detector. Stakeholders believe that each source should identify appropriate, site-specific inspection intervals for baghouse operations in the facility operations and maintenance plan required under § 63.1206(c)(7)(i). In particular, they highlight two burdensome inspection requirements: (1) Monthly visual inspection of the interior of the baghouse for physical

integrity; and (2) monthly inspection of bags and bag connections.¹⁸

We agree with stakeholders that these generic provisions are unnecessary and therefore are deleting the inspection requirements of § 63.1206(c)(7)(ii)(B)(1–10). We plan to develop guidance recommendations on baghouse inspection procedures that can be used to develop appropriate inspection procedures for the operation and maintenance plan required by § 63.1206(c)(7)(i). In addition, we are deleting the requirements of § 63.1206(c)(7)(ii)(A) requiring submittal of the baghouse operations and maintenance plan to the Administrator. Given that the operation and maintenance plan required under § 63.1206(c)(7)(i) is not submitted to the Administrator for review and approval, we do not see the need to single out the baghouse operation and maintenance plan for review and approval, particularly given that sources must continuously operate a bag leak detector system.

VIII. Feedstream Analysis for Organic HAPs

Section 63.1207(f)(1)(ii) of the final rule requires sources to include in their site-specific comprehensive performance test plan an analysis of all CAA hazardous air pollutants that could reasonably be present in their feedstreams. Regulatory officials will use this analysis to ensure compliance with the destruction and removal (DRE) standards of §§ 63.1203 through 63.1205. Stakeholders raised three questions about this requirement after promulgation: (1) Did we consider the implications of requiring analysis of HAPs rather than the RCRA organic compounds on Appendix VIII, Part 261; (2) why must the test plan for periodic comprehensive performance testing include an analysis of organic HAP compounds for sources that comply with the DRE standard with a one-time test; and (3) did we intend to require analysis of organic compounds for all feedstreams or just the hazardous waste feedstreams.

A. What Are the Implications of Requiring Analysis of CAA HAPs Rather than RCRA Appendix VIII, Part 261 Organic Compounds?

For the DRE standard, the final rule requires demonstration of compliance with one or more principal organic hazardous pollutants (POHCs) selected

¹⁸ Letter from Michelle Lusk, CKRC, Thomas Nilan, CMA, and Melvin Keener, CRWI, to Elizabeth Cotsworth, EPA, Re. Multi-Industry HWC MACT Concerns and Solutions, dated March 2, 2000, p. 29 of the attachment.

from the list of HAPs established by 42 U.S.C. 7412(b)(1), excluding caprolactam. The basis for the HWC MACT DRE standard is the current RCRA requirement to ensure destruction of Appendix VIII, Part 261, organic compounds. In demonstrating compliance under RCRA, sources must select POHCs from the Appendix VIII list of organic compounds.

Stakeholders note that selecting POHCs from the list of organic CAA HAPs rather than RCRA organic compounds has several implications. Stakeholders question whether RCRA DRE test data can be used in lieu of MACT DRE testing if the POHCs selected during the RCRA test are not organic HAPs under the CAA. Stakeholders also question how to ensure DRE of organic HAPs for which thermal stability data (e.g., low oxygen thermal stability; heat of combustion) are not available. In response, we note that, to satisfy the MACT DRE standard, sources must ensure that the POHCs used to demonstrate compliance are representative of the most difficult to destroy organic compounds in their feedstream. For example, if the most difficult to destroy POHCs for RCRA DRE testing were used, those POHCs are also representative of the most difficult to destroy organic HAPs (irrespective of whether thermal stability data are available for a HAP).

B. For Sources That Comply With the DRE Standard With a One-Time Test, Why Must Their Periodic Comprehensive Performance Test Plan Include an Analysis of Organic HAP Compounds?

Section 63.1206(b)(7) allows demonstration of compliance with the DRE standard only once for the life of the source provided the source: (1) Is not modified in a manner than could affect achievability of the DRE standard; and (2) does not feed hazardous waste at a location other than the normal flame zone. Once a source has demonstrated compliance with the DRE standard, stakeholders question why analysis of waste streams for organic HAP compounds must be included with the site-specific test plan for comprehensive performance testing every five years.

The rule requires continued analyses of organic compounds with each comprehensive performance test plan to enable regulatory officials to determine whether the POHCs selected for the original DRE test continue to represent the organic HAPs being fed to the combustor. POHCs are representative of the organic HAPs fed to the combustor if they are equally or more difficult to

destroy than those organic HAPs. In addition, POHCs are selected based on factors including the concentration of the organic compound in the feedstream and the toxicity of particular organic compounds.¹⁹

In retrospect, however, we do not believe that the comprehensive analysis required by § 63.1207(f)(1)(ii)(A)²⁰ is necessary in all cases to ensure that the POHCs continue to be representative of the organic HAPs being fed to the combustor. For example, if a source demonstrates compliance with the DRE standard with POHCs that represent the most difficult to destroy organic compounds, a less rigorous feedstream analysis may be appropriate to address other concerns, e.g., whether the feedstream has changed to include additional organic HAPs that are fed at high concentrations or that are particularly toxic. It may also be appropriate to waive the comprehensive analysis for organic compounds based on the generator's knowledge or on a combination of waste knowledge and sampling and laboratory analysis that the POHCs selected represent the most difficult to destroy organic compounds in the waste. Accordingly, we are amending § 63.1207(f)(1)(ii) to allow regulatory officials to waive the comprehensive analysis of organic compounds if a source documents that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams.

C. We Intended To Require Analysis of Organic HAPs in Hazardous Waste Feedstreams Only

Section 63.1207(f)(1)(ii) implies that sources must analyze all feedstreams for organic HAPs. The rule should have required analysis for hazardous waste feedstreams only. Regulatory officials will use the analysis to ensure that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams. We are amending § 63.1207(f)(1)(ii) accordingly.

¹⁹ In cases where an organic HAP is fed at particularly high concentrations, or where an organic HAP in the feedstream is particularly toxic, it is prudent to select such compounds as POHCs rather than relying only on surrogates that are considered to be equally or more difficult to destroy.

²⁰ That is, all organic HAPs except those that would not reasonably be expected to be found in the feedstream. Further, sources must identify any constituents excluded from the analysis and explain the basis for excluding them.

IX. Revisions to the Metals Feedrate Extrapolation Procedures

For sources using the metal extrapolation procedures, the final rule requires documentation that the levels of metal spiking (adding metals to the waste feed) be sufficient to demonstrate that the extrapolation procedures are as accurate and precise as if full spiking (no extrapolation) were used. See § 63.1207(f)(1)(x)(C). Today we are amending this provision to require documentation that spiking levels result in an extrapolation procedure that adequately assures compliance with the emission standard.

We included this requirement in the final rule to address the uncertainties that may be associated with extrapolating low metal feedrates, as demonstrated during testing, to higher metal feedrate limits. This documentation ensures that the uncertainties associated with the procedure are adequately addressed and that the extrapolated metal feedrate limits ensure compliance with the emission standard(s).

After discussions with stakeholders, we determined that the final rule regulatory language is too prescriptive and does not directly address our goal of assuring compliance with the emission standard. Stakeholders believe that it may not be possible to spike metals to levels such that the extrapolation procedures are as accurate and precise as if full spiking were used. They also question the accuracy and precision of the "fully spiked" feedstream and emissions analyses.

To address these concerns, we are requiring that sources document a level of spiking that ensures the extrapolation methodology is adequate to demonstrate compliance with the emission standard. The content and scope of this documentation should be determined on a site-specific basis, and should consider the uncertainties involved with extrapolating the tested low metal feedrates to higher metal feedrate limits. Examples of types of information that can document that the extrapolation methodology adequately assures compliance with the emission standards may include: (1) A description of the uncertainties associated with the extrapolation procedure, such as a description of the linearity of metal feedrates as compared to metal emission rates; (2) a description of the uncertainties associated with the data to be used in the extrapolation procedure;²¹ and (3) the extent that

²¹ For example, a description of the accuracy of the feedstream metal analysis considering the

Continued

these uncertainties are multiplied by the extrapolation procedure.

X. Feedrate Limits for Undetectable Constituents

The final rule requires sources to establish separate feedrate limits during the comprehensive performance test for semivolatile metals, low volatile metals, mercury, total chlorine, and/or ash for each feedstream that does not contain detectable levels of these constituents. See § 63.1207(n). The rule specifies that these separate feedrate limits must be established as "non-detect" feedrate limits. Under this approach, during normal operations, the feed locations that have "non-detect" limits cannot be fed detectable levels of the constituents unless certain criteria are met. Today, we are deleting this provision and, instead, are requiring sources to document, on a site-specific basis, the method they will use to account for non-detects when establishing feedrate limits.

We included this "non-detect feedrate limit" provision in the rule so sources would use a consistent methodology when establishing feedrate limits that best assures compliance with the emission standards. After discussions with stakeholders, we conclude that our approach to addressing detection limits when establishing feedrate limits is too prescriptive and that there are possibly alternative approaches that adequately assure compliance with the emission standards. Therefore, we are eliminating the requirements of § 63.1207(n) that require use of a specific method to address non-detects when establishing feedrate limits. As a replacement, we are requiring sources, on a site-specific basis, to specify in the comprehensive performance test workplan the method they will use to account for non-detects when establishing their feedrate limits. This will allow the method to be reviewed and approved by the regulatory official on a site-specific basis.

We continue to believe that the approach outlined in the final rule can be used to account for non-detects during the performance test. However, as previously mentioned, there may be alternative approaches that can be used that adequately assure compliance with the standards.²²

representativeness (whether the feedstream is homogenous) of the feedstream samples if actual, unspiked feedstream metal levels are used to calculate metal feedrates.

²² For example, separate limits for each location may not be needed to assure compliance with the standards if the detection limits are low. In this situation, a source could assume the constituent is not present in the non-detect feedstreams, or

We believe today's amendments to address non-detects on a site-specific basis will simplify the operating requirements for many combustors. We anticipate that regulatory officials will evaluate these site-specific approaches in part by considering: (1) Proximity of test results to the regulatory emission standard(s); (2) site-specific detection limit levels; and (3) the method or approach to address feedstream non-detects on a daily basis to demonstrate feedrate compliance. Accordingly, we are removing the requirements of § 63.1207(n) and adding § 63.1207(f)(xxvi).

XI. Revisions To Assist Early Compliance

In the final rule, we did not fully consider situations where sources would conduct performance testing prior to the compliance date. This "early compliance" prior to the September 30, 2002 deadline, is likely to occur to coordinate CAA and RCRA testing or to ensure the deadline for conducting the initial comprehensive performance test (i.e. 180 days after the compliance date) is met. We are particularly concerned that the regulation may inadvertently impede sources that would like to come into early compliance. Therefore, we are eliminating two impediments identified by stakeholders: (1) The requirement to stop burning hazardous waste if a source fails the comprehensive performance test; and (2) the requirement for the Documentation of Compliance.

A. When Is the Compliance Date for Sources that Comply Early?

Sources that choose to comply early are establishing a compliance date for themselves prior to the regulatory compliance date of September 30, 2002. On their compliance date, the source becomes subject to the substantive requirements of Subpart EEE. For example, on the compliance date, an exceedance of an emission standard (e.g., carbon monoxide) is a violation of the standard, and an exceedance of an operating parameter limit is evidence of failure to ensure compliance with an emission standard.

After considering the implications of early compliance, we are identifying the point at which the early complying source becomes subject to the substantive requirements of Subpart

perhaps assume it is present at one-half the detection limit, and establish one total system feedrate limit instead of separate limits. This would be accomplished by adding these assumed non-detect feedrate values to the other known feedrates from the other feed locations.

EEE as the postmark date for the Notification of Compliance (NOC). This is an appropriate point because the NOC is a legally enforceable document that contains all of the standards and operating parameters for a source complying with Subpart EEE.²³ See new § 63.1206(a)(4).

B. Sources That Fail a Comprehensive Performance Test Prior to the Compliance Date Are Not Required To Stop Burning Hazardous Waste

Section 63.1207(l) requires sources that fail a performance test for a mode of operation to stop burning hazardous waste immediately under that mode of operation. In retrospect, we conclude that this requirement is not appropriate for sources that conduct the performance test prior to the compliance date, including early complying sources, because compliance with the substantive requirements Subpart EEE is not yet triggered. Therefore, we are revising the rule accordingly. See revised § 63.1207(l)(1).

C. Early Complying Sources Would Be Exempt From the Documentation of Compliance Requirements

Section 63.1211(d) requires sources to place their Documentation of Compliance (DOC) in the operating record by the regulatory compliance date. The DOC identifies the applicable emission standards under Subpart EEE and the limits on the operating parameters under § 63.1209 that ensure compliance with those emission standards. In addition, the DOC identifies enforceable operating requirements from the compliance date until postmark of the Notification of Compliance. Given that the compliance date for early complying sources is the date the NOC is postmarked, the DOC would serve no purpose. Therefore, we are exempting early complying sources from the DOC requirement. See revised § 63.1211(d).

D. Notification of Testing for Sources That Choose To Comply Early

As with all Subpart EEE sources, those that comply early must notify permit officials of the scheduled performance test date and submit for review and approval the emissions test plan and continuous monitoring system evaluation test plan. See § 63.1207(e). Review and approval of test plans is appropriate for sources that comply early for the same reasons it is

²³ Sources will want to delete RCRA permit requirements that have been superseded by the Subpart EEE standards. See 64 FR at 52988. Modifying the RCRA permit precludes concerns about dual enforcement of emission standards.

appropriate for other sources—to ensure that the source's performance test plans will effectively determine whether the source is in compliance with the requirements of Subpart EEE. We encourage permit officials to review performance test plans expeditiously for sources that elect to comply early.

XII. Accuracy Requirements for Weight Measurement Devices

Section 63.1209(b)(2)(ii) specifies that the accuracy of weight measurement devices used to monitor flowrate of a feedstream must be ± 1 percent of the weight being measured. In addition, sources are required to verify the calibration of the device at least once every three months.

Stakeholders express concerns about these requirements. We concur with many of stakeholders' concerns about the accuracy requirement for weight measurement devices and are revising the rule to specify an accuracy requirement only for activated carbon feedrate measurement devices.

Stakeholders state that the ± 1 percent accuracy requirement is not appropriate for all weight measurement devices. This accuracy requirement is the same as we used in another rulemaking where it is applied only to the device used to measure carbon feedrate in an activated carbon injection system. Stakeholders state that the ± 1 percent accuracy is not achievable by many weight measurement devices, such as devices that measure the weight of raw materials.²⁴ Stakeholders also note that the implementation document for the boiler and industrial furnace standards under Part 266, Subpart H, lists acceptable measurement devices that cannot achieve this level of accuracy.

We agree with the stakeholders' concerns and are revising § 63.1209(b)(2)(ii) so that the accuracy requirement applies only to a carbon injection weight measurement device. Nonetheless, sources must include in the continuous monitoring system evaluation test plan the accuracy and calibration procedures for each monitor required under § 63.1209. This evaluation test plan must be submitted along with the comprehensive performance test plan for review and approval. See § 63.1207(e).

XIII. Deletion of Requirement for Establishing a Scrubber Liquid Minimum pH Operating Parameter Limit for Mercury Control for Wet Scrubbers

The final rule states that mercury emissions from hazardous waste combustors are controlled by: (1) Controlling the feedrate of mercury; (2) wet scrubbing to remove soluble mercury (e.g., mercuric chloride); and (3) carbon adsorption. There are specific operating parameter limits (OPL) that apply to each control technology.

For hazardous waste combustors using wet scrubbers to control mercury the OPLs are identical to those that are required to assure compliance with the hydrochloric acid/chlorine gas emission standard. See §§ 63.1209(l)(2) and (o)(3). We inadvertently established an inappropriate OPL requirement for mercury in developing the final rule. While a minimum pH of the scrubber water is an important parameter for chlorine control as required by § 63.1209(o)(3)(iv), it is not an appropriate OPL for mercury control. The Agency is amending the final rule by deleting the requirement for establishing a scrubber liquid minimum pH as an OPL for mercury control. Today's action does not change the requirements for hydrochloric acid and chlorine, however.

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is a "significant regulatory action" because it may be considered significant under point four above: "Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The aggregate annualized compliance costs for this rule are estimated to be less than \$100 million. Furthermore, this rule is not expected to 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. The benefits to human health and the environment resulting from today's final action have not been monetized but are deemed to be less than \$100 million per year.

We have prepared two economic support documents for this action. These are: Assessment of Potential Costs, Benefits and Other Impacts NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments (Assessment), and, Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments. The Assessment addresses economic impacts of the thirteen direct final amendments to the September 30, 1999 final rule. The Assessment also briefly examines equity considerations and other impacts. The Regulatory Flexibility Screening Analysis (RFSA) briefly examines small entity impacts potentially resulting from this action. This Part presents a summary of findings from the Assessment and the RFSA documents. The complete Assessment and RFSA documents are available in the RCRA docket established for this action. Interested readers are encouraged to read these documents.

A. Why Is This Direct Final Rule Necessary?

The environmental regulations promulgated by EPA seek to correct market failures through the internalization of negative environmental externalities. That is not the case with today's rule. This action is necessary in order to clarify and improve compliance, testing and monitoring requirements, and general

²⁴ For example, a clamshell bucket cannot achieve this level of accuracy for the feedstock because of the large weight of the clamshell relative to the feedstock and because some of the feedstream will stick to the bucket.

implementation efficiency associated with the final rule NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52828, September 30, 1999).

B. Were Non-Regulatory Alternatives First Considered?

Section 1(b)(3) of Executive Order 12866 instructs Executive Branch Agencies to consider and assess available alternatives to direct regulation prior to making a determination for regulation. This regulatory determination assessment should be considered, "to the extent permitted by law, and where applicable." The ultimate purpose of the regulatory determination assessment is to ensure that the most efficient tool, regulation, or other type of action is applied in meeting the targeted statutory objective(s).

We have already employed education and outreach programs designed to help accomplish the objectives of the amendments in this rule. We believe that, at this point, a regulatory approach will ensure appropriate technical clarification and the necessary implementation efficiency designed to fully accomplish our objectives.

C. What Regulatory Options Were Considered?

This is a direct final action that does not facilitate the assessment of alternative regulatory options.

D. What Are the Potential Costs or Cost Savings of This Direct Final Rule?

The thirteen direct final amendments presented in today's action vary considerably in scope and substance. Many of the amendments are anticipated to result in minor to negligible incremental cost impacts (savings or increases) to both the regulated community and the Agency. Three of the amendments are expected to result in more substantive cost impacts to the regulated community. These findings are briefly summarized below. The Assessment document presents a detailed review of our methodology, data, findings, and analytical limitations.

1. Deletion of One-Time Notification of Compliance with Alternative Clean Air Act Standards (Amendment II)

In the final rule, a source that is not feeding hazardous waste when the hazardous waste residence time expires may elect to comply temporarily with alternative standards promulgated under the authority of sections 112 and 129 of the Clean Air Act. If a source chooses this option,

§ 63.1206(b)(1)(ii)(A) requires the source to submit to the Administrator a written, one-time notification documenting compliance with those requirements and standards. Since this stipulation duplicates requirements under title V of the CAA, such a requirement is redundant.

A deletion of this requirement reduces the administrative costs associated with compliance notification. Estimates of labor costs and administrative time spent on such a task suggest that about three hours per respondent would be saved. Out of this, two hours are estimated to be technical time (costed at a rate of \$55 per hour), and one hour is likely to be management time (costed at \$71 per hour). All facilities are likely to benefit from this exemption, thus leading to aggregate industry-wide cost savings of approximately \$31,000 per year.

2. Alternative to the PM Standard for Incinerators Feeding Low Levels of Metals (Amendment VI)

The final rule established a particulate matter emission standard of 0.015 gr/dscf for new and existing sources as a surrogate for control of non-mercury CAA metal hazardous air pollutants (HAPs). The rule also offered an alternative particulate matter emission standard of 0.03 gr/dscf for sources that demonstrate the use of superior federate control of metals in their hazardous waste. Today, we are eliminating the alternative particulate matter emission standard and replacing it with metal emissions control requirements. As a result of this amendment, no particulate matter emissions standard would apply to the incinerator under Subpart EEE. However, the incinerator would remain subject to the RCRA particulate matter standard of 0.08 gr/dscf pursuant to § 264.343(c). In addition to the 0.08 gr/dscf standard, the alternative standard requires sources to comply with the following four requirements: (1) A metal emissions limitation for semivolatile and low volatile metals that applies to all CAA HAP metals, excluding mercury; (2) A requirement for the incinerator to demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., a defined metal feedrate that is better than the MACT defining metal feedrate floor control level; (3) A requirement for the incinerator to demonstrate that its air pollution control system achieves, at a minimum, a 90 percent system removal efficiency for semivolatile metals; and (4) A set of operating requirements pursuant to § 63.1209(n).

These four components collectively provide for MACT control of non-mercury CAA metal HAPs in the absence of a MACT particulate matter standard. Hence, we believe that while this amendment would provide some reduced regulatory requirements to industry, there would be no adverse impact on the environment or any associated social costs.

The cost savings resulting from this amendment will have two components: Savings in up-front capital costs and operation and maintenance cost savings. The capital cost savings would be a result of not needing a control device that meets MACT PM control standards (i.e., a control device that achieves 0.015 gr/dscf). The unit capital cost savings for the five sources that are expected to avail themselves of this standard in a given year are estimated to be \$150,000. Annualizing this amount over ten years, using a discount rate of 7 percent, gives an annual savings of approximately \$21,500 for capital costs per facility.

Operation and maintenance costs for a less complex system would amount to approximately \$120,000 per year per facility. These savings arise from reductions in energy usage (pressure drop devices can be very energy intensive); lower solid waste handling costs, and reduced baghouse maintenance costs. Assuming that five facilities are able to take advantage of this alternative, the total cost savings per year associated with this amendment would be approximately \$707,500. It is important to note that the exact number of facilities that will take advantage of this standard is difficult to determine and is likely to change over time.

3. Feedstream Analysis Requirements for Organic HAPs (Amendment VIII)

Section 63.1207(f)(1)(ii) requires sources to include in their site-specific plan for a comprehensive performance test an analysis of all Clean Air Act hazardous air pollutants that could reasonably be present in "the feedstream." Regulators would use these analyses to ensure compliance with the destruction and removal efficiency standards of §§ 63.1203 through 63.1205.

However, upon further review, we believe that the comprehensive analyses required by § 63.1206(f)(1)(ii)(A) are not necessary in all cases to ensure compliance with the DRE standard. For example, if the source can demonstrate compliance with the DRE standard using POHCs that represent the most persistent organic compounds, a less rigorous analysis may be appropriate to address other concerns, such as whether

feedstream has changed to include additional organic HAPs that are fed at high concentrations or that are particularly toxic.

We are, therefore, amending § 63.1207(f)(1)(ii) to allow regulatory officials to waive the comprehensive analysis of organic compounds if sources can document that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams. This amendment will result in cost savings in operation and maintenance expenses, estimated at \$4,000 per facility per year. With 45 facilities expected to be affected by this amendment per year, the total annual cost savings from this effort amount to approximately \$180,000.

In addition to the cost savings of \$918,500 identified above we estimate that two of the thirteen amendments would result in quantifiable cost burdens to industry and the regulatory agency and/or states. These amendments are projected to result in aggregate cost increases of approximately \$8,700 per year. The net aggregate cost impact associated with the thirteen amendments is estimated to be \$909,800 per year. This cost impact estimate will marginally decrease the total annual social cost projection of \$50 to \$63 million²⁵ estimated for compliance with the final rule. All cost impacts are dependant upon the regional enforcement regime.

II. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, a small entity is defined as: (1) A small business that has fewer than 750, or 500 employees per firm depending upon the SIC code the firm is primarily classified in; (2) a small governmental jurisdiction that is a government of a city, county, town,

school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that only amendment II is likely to impact one or more of the six small hazardous waste combustors. Under our assumed worst-case scenario where the maximum cost impacts of this amendment (\$31,000 savings) are attributed to only these six small sources, we find that no source would experience impacts beyond 0.14 percent of annual gross revenues.²⁶ This does not represent a significant economic impact.

Although this rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of this rule on small entities. Although not specifically directed toward small business outreach, we have met with industry representatives during the developmental phase and requested comment and suggestions on all aspects of this rulemaking. No small business concerns were brought up by these industry representatives.

We have completed the analysis: *Regulatory Flexibility Screening Analysis (RFSA) For NESHA: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments*, in support of the direct final rule. This RFSA document is available for review in the docket established for today's action.

III. Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks"

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Furthermore, we do not have reason to believe that environmental health or safety risks addressed by this action present a disproportionate risk to children.

In addition, these amendments, as part of the HWC MACT standards, are exempt from the requirements of Executive Order 13045 because the final rule is a technology-based regulation rather than a risk-based one. Nevertheless, the amendments would not result in any incremental environmental harm that would affect children's health.

IV. Environmental Justice Executive Order 12898

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3-17).

We have no data indicating that today's rule would result in disproportionately negative impacts on minority or low income communities.

V. Unfunded Mandates Reform Act

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, local, and tribal governments and the private sector. Under section 202 of the UMRA,

²⁵ U.S. Environmental Protection Agency, Office of Solid Waste, "Addendum to the Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule," July 23, 1999.

²⁶ Based on the July 1999 Assessment, we found that the smallest annual firm revenue associated with the six small facilities was \$3.6 million. Dividing \$31,000 by the six facilities results in approximately \$5,200 maximum impact per small facility. (\$5,200/\$3.6 million = 0.14 percent).

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 single year. Before promulgating an EPA rule for which a written statement is needed, 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, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have 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 single year. It is estimated that the direct final amendments will result in increased costs to all states (or the Agency) of approximately \$2,100 per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VI. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule is projected to result in economic impacts to privately owned hazardous waste combustion facilities. Marginal administrative burden impacts may occur to selected States and/or EPA Regional Offices if these entities experience increased administrative needs, enforcement requirements, or information requests. However, this rule will not have substantial direct effects on the States, intergovernmental relationships, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

VII. Consultation With Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action will not significantly or uniquely affect the communities of Indian tribal governments, nor will it impose substantial direct compliance costs on them. Tribal communities are not known to own or operate any hazardous waste combustion facilities, nor are these communities disproportionately located adjacent to or near such facilities. Finally, tribal governments will not be required to assume any administrative or permitting

responsibilities associated with this rule.

VIII. Paperwork Reduction Act

We have prepared an Information Collection Request (ICR) document (ICR No. 1773.03) listing the information collection requirements of this direct final rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has assigned a control number 2050-0171 for this ICR. A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environment Protection Agency (2137), 1200 Pennsylvania Avenue NW., Washington DC 20460, or by calling (202) 260-2740.

Some of the amendments finalized today pertain to RCRA provisions of the rule (i.e., to 40 CFR parts 260 thru 271), and were covered under an earlier ICR No. 1361.08. Today's amendments to these RCRA provisions are all de-regulatory, and do not impose any burden on the regulated community. They only reduce the existing burden shown in that ICR. The ICR No. 1361.08 will be revised to show the reduced burden when the direct final rule is promulgated. The public burden associated with other provisions of this direct final rule (which are under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 1.7 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average \$118 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes 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 be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

IX. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

X. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This direct final rule will be effective on October 16, 2001 unless EPA receives adverse comment by August 17, 2001.

Part Four: State Authority

States can implement and enforce the new MACT standards through their delegated 112(l) CAA program and/or by having title V authority. A State's title V authority is independent of whether it has been delegated section 112(l) of the CAA. Additional information on state authority under the CAA may be found in the HWC MACT rule (64 FR at 52991).

List of Subjects

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste,

Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

Dated: June 18, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS 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. Section 63.1201 is amended by revising the definition of "Hazardous waste residence time" and adding the definition of "Preheater tower combustion gas monitoring location" to paragraph (a) in alphabetical order to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Hazardous waste residence time means the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste (excluding residues that may adhere to combustion chamber surfaces and excluding waste-derived recycled materials such as cement kiln dust and internally recycled metals) exit the combustion chamber. For combustors with multiple firing systems whereby the residence time may vary for the firing systems, the hazardous waste residence time for purposes of complying with this subpart means the longest residence time for any firing system in use at the time of the waste cutoff.

* * * * *

Preheater tower combustion gas monitoring location means a location within the preheater tower of a dry process cement kiln downstream (in terms of gas flow) of all hazardous waste firing locations and where a representative sample of combustion gas to measure combustion efficiency can be monitored.

* * * * *

3. Section 63.1206 is amended by:

a. Adding paragraph (a)(4).

b. Revising paragraphs (b)(1)(ii), (b)(6)(i), (b)(7)(i)(B), (b)(7)(ii)(B), (b)(8)(v), (b)(13)(i), and (b)(14).

c. Revising paragraph (c)(7)(ii).
The revisions and additions read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(4) **Early compliance.** If you choose to comply with the emission standards of this subpart prior to September 30, 2002, your compliance date is the date you postmark the Notification of Compliance under § 63.1207(j)(1).

(b) * * *

(1) * * *

(ii) When hazardous waste is not in the combustion chamber (i.e., the hazardous waste feed to the combustor has been cut off for a period of time not less than the hazardous waste residence time) and you have documented in the operating record that you are complying with all otherwise applicable requirements and standards promulgated under authority of sections 112 (e.g., subpart LLL of this part for cement kilns) or 129 of the Clean Air Act in lieu of the emission standards of §§ 63.1203 through 63.1205; the monitoring and compliance standards of this section and §§ 63.1207 through 63.1209, except the modes of operation requirements of § 63.1209(q); and the notification, reporting, and recordkeeping requirements of §§ 63.1210 through 63.1212.

* * * * *

(6) * * *

(i) If a DRE test performed prior to the compliance date is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during the DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is any test for which the data and results are determined to meet quality assurance objectives (on a site-specific basis) such that the results adequately demonstrate compliance with the DRE standard.

* * * * *

(7) * * *

(i) * * *

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(1) You have not modified the design or operation of your source in a manner that could effect the ability of your source to achieve the DRE standard since the DRE test was performed; and,
(2) The DRE test data meet quality assurance objectives determined on a site-specific basis.

(ii) * * *

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(1) You have not modified the design or operation of your source in a manner that could affect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(2) The DRE test data meet the quality assurance objectives determined on a site-specific basis.

* * *

(8) * * *

(v) The particulate matter and opacity standards and associated operating limits and conditions will not be waived for more than 96 hours, in the aggregate, for a correlation test, including all runs of all test conditions, unless more time is approved by the Administrator.

* * *

(13) * * *

(i) Cement kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the carbon monoxide and hydrocarbon standards of § 63.1204 as follows:

(A) For existing sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(1) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(2) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(3) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per

million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1207(b)(7).

(B) For new sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(1) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(2)(i) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and

(ii) Hydrocarbons in the main stack, if construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(3)(i) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in

excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1207(b)(7).

(ii) If construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, hydrocarbons are limited to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

* * *

(14) *Alternative to the particulate matter standard for incinerators.* (i) *General.* In lieu of complying with the applicable particulate matter standard of § 63.1203(a)(7) or (b)(7), existing and new incinerators may elect to instead comply with the alternative metal emission control requirements described in paragraph (b)(14)(ii) or (b)(14)(iii) of this section, respectively.

(ii) *Alternative metal emission control requirements for existing incinerators.*

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead, cadmium, and selenium in excess of 240 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the

atmosphere that contain arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen; and.

(C) You must comply with the provisions specified in paragraph (b)(14)(iv) of this section.

(iii) *Alternative metal emission control requirements for new incinerators.* (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead, cadmium, and selenium in excess of 24 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(C) You must comply with the provisions specified in paragraph (b)(14)(iv) of this section.

(iv) *Other requirements.* Existing and new incinerators must document in the operating record that they meet the requirements of paragraph (b)(14)(iv)(A) through (C) of this section.

(A) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed:

(1) For existing incinerators, 1,325 µg/dscm.

(2) For new incinerators, 875 µg/dscm.

(B) The twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed:

(1) For existing incinerators, 6,000 µg/dscm.

(2) For new incinerators, 3250 µg/dscm.

(C) You must document that your air pollution control system achieves at least a 90 percent system removal efficiency for semivolatile metals. In making this demonstration, you may spike semivolatile metals above the applicable levels of paragraph (b)(14)(iv)(A) or (B) of this section provided that the applicable alternative emission limitation of paragraph (b)(14)(ii)(A) or (iii)(A) of this section is attained during the test. This test may be performed independently of the comprehensive performance test and must be used to establish applicable operating parameter limits as described

in § 63.1209(n), not including § 63.1209(n)(2), to ensure that a 90 percent semivolatile metal system removal efficiency is achieved during normal operations.

(v) *Operating limits.* (A) Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (b)(14)(ii) and (iii) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits would apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits would apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(B) Twelve-hour rolling average hazardous waste metal feedrate limits required pursuant to paragraphs (b)(14)(iv)(A) and (B) of this section are based on the combined hazardous waste feedstreams to the incinerator and may be expressed either as an maximum theoretical emission concentration limit or as a restriction on maximum hazardous waste metals mass feedrate and minimum gas flow rate.

(C) For purposes of complying with the twelve-hour rolling average hazardous waste metal feedrate limits of paragraphs (b)(14)(iv)(A) and (B) of this section, non-detectable metal constituents in each hazardous waste feed must be assumed to be present at one-half the detection limit.

(c) * * *

(7) * * *

(ii) *Bag leak detection system requirements for baghouses at lightweight aggregate kilns and incinerators.* If you own or operate a hazardous waste incinerator or hazardous waste burning lightweight aggregate kiln equipped with a baghouse (fabric filter), you must continuously operate a bag leak detection system that meets the specifications and requirements of paragraph (c)(7)(ii)(A) of this section and you must comply with the corrective measures requirements of paragraph (c)(7)(ii)(B) of this section:

(A) *Bag leak detection system specification and requirements.* (1) The bag leak detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter or less;

(2) The bag leak detection system shall provide output of relative particulate matter loadings;

(3) The bag leak detection system shall be equipped with an alarm system that will sound an audible alarm when

an increase in relative particulate loadings is detected over a preset level;

(4) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(5) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(6) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the operation and maintenance plan required under paragraph (c)(7)(i) of this section. You must not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(7) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector shall be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

(8) Where multiple detectors are required, the system's instrumentation and alarm system may be shared among the detectors.

(B) *Bag leak detection system corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7)(i) of this section must include a corrective measures plan that specifies the procedures you will follow in the case of a bag leak detection system alarm. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective measures taken to correct the control device malfunction or minimize emissions as specified in this paragraph. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(1) You must initiate the procedures used to determine the cause of the alarm within 30 minutes of the time the alarm first sounds; and

(2) You must alleviate the cause of the alarm by taking the necessary corrective

measure(s) which may include, but are not to be limited to, the following measures:

- (i) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;
- (ii) Sealing off defective bags or filter media;
- (iii) Replacing defective bags or filter media, or otherwise repairing the control device;
- (iv) Sealing off a defective baghouse compartment;
- (v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or
- (vi) Shutting down the combustor.

4. Section 63.1207 is amended by:

- a. Revising paragraph (c)(2)(i).
- b. Revising paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), (f)(1)(ii)(C), and (f)(1)(x)(C).
- c. Revising paragraph (l)(1) introductory text.
- d. Redesignating paragraph (f)(1)(xxvi) as (f)(1)(xxvii).
- e. Adding paragraph (f)(1)(ii)(D).
- f. Adding new paragraph (f)(1)(xxvi).
- g. Removing paragraph (n).

The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

(c) * * *

(2) * * *

(i) You may request that previous emissions test data serve as documentation of conformance with the emission standards of this subpart provided that the previous testing:

(A) Results in data that meet quality assurance objectives (determined on a site-specific basis) such that the results adequately demonstrate compliance with the applicable standards;

(B) Was in conformance with the requirements of paragraph (g)(1) of this section; and,

(C) Was sufficient to establish the applicable operating parameter limits under § 63.1209.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) Except as provided by paragraph (f)(1)(ii)(D) of this section, an identification of such organic hazardous air pollutants that are present in each hazardous waste feedstream. You need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8);

(B) An approximate quantification of such identified organic hazardous air pollutants in the hazardous waste feedstreams, within the precision produced by analytical procedures of § 63.1208(b)(8); and

(C) A description of blending procedures, if applicable, prior to firing the hazardous waste feedstream, including a detailed analysis of the materials prior to blending, and blending ratios.

(D) The Administrator may approve on a case-by-case basis a hazardous waste feedstream analysis for organic hazardous air pollutants in lieu of the analysis required under paragraph (f)(1)(ii)(A) of this section if the reduced analysis is sufficient to ensure that the POHCs used to demonstrate compliance with the applicable DRE standard of § 63.1203, § 63.1204, or § 63.1205, continue to be representative of the organic hazardous air pollutants in your hazardous waste feedstreams;

* * * * *

(x) * * *

(C) Documentation that the level of spiking recommended during the performance test will mask sampling and analysis imprecision and inaccuracy to the extent that the extrapolated feedrate limits adequately assure compliance with the emission standards;

* * * * *

(xxvi) For purposes of calculating semivolatile metal, low volatile metal, mercury, and total chlorine (organic and inorganic), and ash feedrate limits, a description of how you will handle performance test feedstream analytical results that determines these constituents are not present at detectable levels.

* * * * *

(l) * * *

(1) *Comprehensive performance test.* The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to September 30, 2002 (or a later compliance date approved under § 63.6(i).

* * * * *

5. Section 63.1209 is amended by:

- a. Revising paragraph (b)(2)(ii).
- b. Revising paragraph (l)(2).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

* * * * *

(b) * * *

(2) * * *

(ii) *Accuracy and calibration of weight measurement devices for activated carbon injection systems.* If

you operate a carbon injection system the accuracy of the weight measurement device must be ± 1 percent of the weight being measured. The calibration of the device must be verified at least once every three months.

* * * * *

(1) * * *

(2) *Wet scrubber.* If your combustor is equipped with a wet scrubber, you must establish operating parameter limits prescribed by paragraph (o)(3) of this section, except for paragraph (o)(3)(iv).

* * * * *

6. Section 63.1211 is amended by revising paragraph (c)(1) to read as follows:

§ 63.1211 What are the record keeping and reporting requirements?

* * * * *

(c) * * *

(1) By the compliance date, you must develop and include in the operating record a Documentation of Compliance. You are not subject to this requirement, however, if you submit a Notification of Compliance under § 63.1207(j) prior to the compliance date.

* * * * *

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

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

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

8. Section 264.340 is amended by revising the first sentence of paragraph (b)(1) and adding paragraph (b)(3) to read as follows:

§ 264.340 Applicability.

* * * * *

(b) * * *

(1) Except as provided by paragraphs (b)(2) and (b)(3) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE of this chapter.

(3) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with

the alternative to the particulate matter standard of § 63.1206(b)(14) of this chapter.

* * * * *

[FR Doc. 01-16425 Filed 7-2-01; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80-286; FCC 01-162]

Jurisdictional Separations Reform and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules for implementing a five-year interim "Freeze" of the jurisdictional separations process in order to simplify and stabilize the separations process pending more comprehensive separations reform. We believe these modifications will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes, until the comprehensive reform is completed. The Report and Order in CC Docket No. 80-286 was published in the *Federal Register* on June 21, 2001. One of the rules contained information collection requirements.

DATES: Section 36.3(b), published at 66 FR 33202, June 21, 2001, was approved by the Office of Management and Budget (OMB) on June 22, 2001 and became effective on June 22, 2001.

FOR FURTHER INFORMATION CONTACT: Eric Einhorn or Andrew Firth, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400, TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: On May 21, 2001, the Commission released a Report and Order in CC Docket No. 80-286 (Order), 66 FR 33202, June 21, 2001, that took action in response to the Federal-State Joint Board on Jurisdictional Separations' recommended reforms to the jurisdictional separations process codified at part 36 of the Commission's rules, 47 CFR 36 *et seq.*, as a means to simplify and stabilize the separations process pending more comprehensive reform. Specifically, pending further reform, the Commission adopts a five-year freeze of all part 36 category

relationships and jurisdictional allocation factors for price cap incumbent local exchange carriers, and a freeze of all allocation factors for rate-of-return incumbent local exchange carriers. The Commission believes these modifications will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes, until comprehensive reform is completed. A summary of the Order was published in the *Federal Register*. See 66 FR 33202, June 21, 2001. One of the rules contained information collection requirements that required OMB approval. On June 22, 2001, OMB approved the information collections. See OMB No. 3060-0988. The rule amendments adopted by the Commission in the Order took effect on June 22, 2001. This publication satisfies the statement in the Order that the Commission would publish a document in the *Federal Register* announcing the effective date of that rule.

List of Subjects in 47 CFR Part 36

Jurisdictional separations, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01-16651 Filed 7-2-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[DA 01-1239; MM Docket No. 01-37, RM-10065]

Radio Broadcasting Services; Houston and Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the *Federal Register* of June 6, 2001, a document concerning the allotment of channels in the State of Alaska. In that Report and Order, the Commission inadvertently modified the license of Ubik Corporation, licensee of Station KNIK-FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of Channel 287C1. This document corrects that action to modify Station KNIK-FM to Channel 289C1, the correct channel.

EFFECTIVE DATES: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418-2180.

SUPPLEMENTARY INFORMATION: In FR Doc. 01-14017 published in the *Federal Register* of June 6, 2001, (66 FR 30335) Commission inadvertently modified the license of Ubik Corporation, licensee of Station KNIK-FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of Channel 287C1, rather than Channel 289C1, the correct channel.

In rule FR Doc. 01-14017, published on June 6, 2001 (66 FR 30335), make the following correction. On page 30335, in the preamble, in the first column, and in the amendment to § 73.202 in the second column, remove channel "286C1" and add "289C1" in its place.

Federal Communications Commission.

John A Karousos,

Chief, Allocation Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01-16649 Filed 7-2-01; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 97-81; FCC 01-171]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; clarification.

SUMMARY: The document addresses four petitions for reconsideration and/or clarification of the *MAS Report and Order*. Specifically, the Commission responds to requests for reconsideration and/or clarification of issues relating to the types of services classified as private internal, shared use and private carrier service in the private internal bands, grandfathering provisions as they relate to transfers and assignments, service area coverage of the Gulf of Mexico, operational flexibility, and other minor points that help clarify its intentions for the MAS service. In addition, the Commission makes minor changes to certain technical requirements in part 101, as well as, the current application freeze in the 928/959 megahertz (MHz) MAS bands. In this document, the Commission grants two petitions and grants a third petition, in part. The fourth petition is dismissed as moot.

DATES: Effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Shellie Blakeney at (202) 418-0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION:

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of this rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United

States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Chemical accident prevention, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: May 25, 2001.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

Part 63, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 63.14 is amended by revising paragraph (d)(2) to read as follows:

§ 63.14 Incorporations by reference.

* * *

(d) * * *

(2) New Jersey's *Toxic Catastrophe Prevention Act Program*, (July 20, 1998), Incorporation By Reference approved for § 63.99 (a)(30)(i) of subpart E of this part.

* * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by adding a new paragraph (a)(30) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(30) New Jersey

(i) Affected sources must comply with the Toxic Catastrophe Prevention Act Program (TCPA), (July 20, 1998), (incorporated by reference as specified in § 63.14) as described in paragraph (a)(30)(i)(A) of this section:

(A) Except for authorities identified as not being delegated, the regulations incorporated in New Jersey's "Toxic Catastrophe Prevention Act Program," Title 7, Chapter 31, of the New Jersey Administrative Code: Subchapter 1, "General Provisions" (sections 1.1 to

1.10 except for the definition of "What if Checklist"), Subchapter 2, "Hazard Assessment," Subchapter 3, "Minimum Requirements for a Program 2 TCPA Risk Management Program," Subchapter 4, "Minimum Requirements for a Program 3 TCPA Risk Management Program," Subchapter 5, "Emergency Response," Subchapter 6, "Extraordinarily Hazardous Substances," Subchapter 7, "Risk Management Plan and TCPA Submission," and Subchapter 8, "Other Federal Requirements," (effective July 20, 1998), pertain to the sources affected by 40 CFR part 68 and have been approved under the procedures in §§ 63.91, 63.93 and 63.95 to be implemented and enforced in place of 40 CFR part 68, Subparts A through H, as may be amended.

(1) Authorities not delegated:

(i) The New Jersey Department of Environmental Protection is not delegated the Administrator's authority to implement and enforce New Jersey's Toxic Catastrophe Prevention Act Program, Title 7, Chapter 31, of the New Jersey Administrative Code, in lieu of the provisions of 40 CFR part 68 as they apply to the regulation of processes that are covered only because they contain regulated quantities of liquid petroleum gases (LPG) regulated under the New Jersey Liquified Petroleum Gas Act of 1950 (N.J.S.A. 21:1B),

(ii) Pursuant to § 63.90(c) the New Jersey Department of Environmental Protection is not delegated the Administrator's authority to add or delete substances from the list of substances established under section 112(r) and set forth in 40 CFR 68.130.

[FR Doc. 01-16561 Filed 7-2-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 264

[FRL-7001-8]

RIN 2050

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on targeted amendments to the regulations for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999 (NESHAP: Final

Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). The revisions make improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. We are approving these revisions to make it easier to comply with the September 30, 1999 final rule.

DATES: This rule is effective on October 16, 2001 without further notice, unless EPA receives adverse comment by August 17, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: If you wish to comment on this direct final rule, you must send an original and two copies of the comments referencing Docket Number F-2001-RC4F-FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002; or, if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the "Supplementary Information" section below.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of the NESHAP portion of this direct final rule, contact Mr. Frank Behan at 703-308-8476, behan.frank@epa.gov, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view these as noncontroversial amendments. We anticipate no adverse comment because we have worked with the interested parties in their development. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to amend the emissions standards for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999, if

adverse comments are filed. This direct final rule will be effective on October 16, 2001 without further notice unless we receive adverse comment by August 17, 2001. If EPA receives adverse comment on one or more distinct amendments of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any of the distinct amendments in today's rulemaking for which we do not receive adverse comment will become effective on the date set above. We will address all public comments in a subsequent final rule based on the proposed rule, including any adverse comment on any distinct amendment, paragraph, or section of today's rule. We will not institute a second comment period on this action. Any parties interested in commenting on any amendment must do so at this time.

Electronic Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. You should identify comments in electronic format with the docket number F-2001-RC4F-FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Acronyms Used in the Rule

BIF—Boilers and industrial furnaces
CAA—Clean Air Act
CEMS—Continuous emissions monitors/monitoring system
CFR—Code of Federal Regulations
DOC—Documentation of Compliance
DRE—Destruction and removal efficiency
dscf—Dry standard cubic feet

dscm—Dry standard cubic meter
EPA/USEPA—United States Environmental Protection Agency
gr—Grains
HAP—Hazardous air pollutant
HWC—Hazardous waste combustor
MACT—Maximum Achievable Control Technology
MTEC—Maximum theoretical emissions concentration
NESHAP—National Emission Standards for Hazardous Air Pollutants
NIC—Notice of Intent to Comply
NOC—Notification of compliance
NODA—Notice of data availability
OPL—Operating parameter limit
PM—Particulate matter
POHC—Principal organic hazardous constituent
ppmv—Parts per million by volume
RCRA—Resource Conservation and Recovery Act
SVM—Semivolatile metals (lead and cadmium)
µg—Microgram

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Part Four: State Authority

Part One: Overview and Background for This Direct Final Rule

I. What Is the Purpose of This Direct Final Rule?

Today's notice makes specific changes to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). After promulgation, commenters (primarily the regulated community) raised numerous potential issues through informal comments and during litigation settlement discussions. After considering the issues raised, we have decided to promulgate a limited number of changes to the final rule, most of them relating to compliance and implementation.

In a separate action today, we are proposing and soliciting comment on several additional amendments to the Phase I rule. If you wish to comment on those amendments, you must submit comments following the directions in the ADDRESSES section of that action.

The remaining sections of this part provide additional background information on the Phase I final rule.

II. What Is the Phase I Rule?

In the Phase I final rule, we adopted National Emissions Standards for Hazardous Air Pollutants to control toxic emissions from the burning of hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. These emission standards created a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA).

Section 112 of the Clean Air Act (CAA) requires emissions standards for hazardous air pollutants to be based on the performance of the Maximum

Achievable Control Technology (MACT). These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's notice, we refer to these three categories collectively as hazardous waste combustors (HWC). Hazardous waste combustors burn about 80% of the hazardous waste combusted annually within the United States. The Phase I HWC MACT standards are expected to achieve significant reductions in the amount of hazardous air pollutants being emitted each year.

Additionally, the Phase I HWC MACT rule satisfies our obligation under RCRA (the main statute regulating hazardous waste management) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. By using both CAA and RCRA authorities in a harmonized fashion, we consolidate regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

More information on the Phase I HWC MACT rule is available electronically from the World Wide Web at www.epa.gov/hwcmact.

III. What Related Actions Have Been Taken Since Publication of the Phase I Rule?

On November 19, 1999, we issued a technical correction to the Phase I HWC MACT final rule (64 FR 63209). It clarified our intent with respect to certain aspects of the Notification of Intent to Comply and Progress Report requirements of the 1998 "Fast Track" final rule (63 FR 33783). Additionally, specific to the Phase I HWC MACT final rule, we corrected several typographical errors and omissions.

On July 10, 2000, we issued a second technical correction to the Phase I HWC MACT final rule (65 FR 42292). This action corrected additional typographical errors and clarified several issues to make the Phase I rule easier to understand and implement. This action also supplied one omission from the technical correction published on November 19, 1999, and made one correction to the related June 19, 1998 "Fast Track" final rule (63 FR 33783).

On July 25, 2000, the Court of Appeals for the District of Columbia decided *Chemical Manufacturers Association v. EPA*, 217 F.3d 861 (D.C. Cir. No. 99-1236). The court held that EPA had the legal authority to promulgate a requirement of early cessation of hazardous waste burning activity for those sources not intending

to comply with the MACT emission standards. However, the court also held that we had not adequately explained our reasons for imposing the early cessation requirement. As a result, the court vacated the early cessation requirement and the related Notice of Intent to Comply (NIC) and Progress Report requirements. This vacature took effect on October 11, 2000. Since the requirements were not vacated until after sources were required to submit their NICs (on October 2, 2000), we determined that the court's action does not impact a source's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42(j)(1). As long as a source complied with the NIC provisions (including filing the NIC before the provision was vacated), the source has met the requirements in 40 CFR 270.42(j)(1) and is therefore eligible for the streamlined RCRA permit modification process. The court's decision does not impact the emission standards or compliance schedule for the other requirements of the HWC NESHAP Subpart EEE.

On November 9, 2000, we issued a third technical correction to the Phase I HWC MACT final rule (65 FR 67268). It clarified our intent with respect to the applicability of new source versus existing source standards for hazardous waste incinerators. This action also clarified three issues to make the Phase I rule easier to understand and implement.

On May 14, 2001, we issued a final rule implementing two court orders that removed affected provisions of the Phase I HWC MACT final rule from the Code of Federal Regulations (66 FR 24270). This action removed the Notice of Intent to Comply provisions (discussed above) and certain operating parameter limits of baghouses and electrostatic precipitators.

Part Two: NESHAP—Amendments to the HWC Final Rule

I. Hazardous Waste Residence Time

"Hazardous waste residence time" is defined at § 63.1201(a) as the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste, excluding residues that may adhere to combustion chamber surfaces, exit the combustion chamber. As stakeholders recognize, hazardous waste residence time has significant regulatory and enforcement implications. For example, if sources

were to exceed an operating requirement or emission standard after the hazardous waste residence time has expired, it is not a violation if the exceedance occurred because of a start-up, shut-down, or malfunction and sources follow the procedures and corrective measures prescribed in the start-up, shut-down, and malfunction plan. In addition, after the hazardous waste residence time has expired, sources may elect to comply with emission standards the Agency has promulgated under sections 112 and 129 of the Clean Air Act for source categories that do not burn hazardous waste. They would comply with these standards in lieu of the hazardous waste combustor standards of Subpart EEE, Part 63. See § 63.1206(b)(1).

Since promulgation of the hazardous waste combustor rule, stakeholders have raised an issue: what is the hazardous waste residence time for sources that continuously recycle hazardous waste-derived materials?

We are taking direct final action so that recycled hazardous waste-derived materials should not be considered when calculating hazardous waste residence time.¹ See revision to the definition of hazardous waste residence time at § 63.1201(a).

A. What Causes Recycle Loops and What Is the Potential Consequence?

Cement kilns, and possibly other hazardous waste combustors, continuously volatilize and condense toxic constituents derived from hazardous waste in recycle loops within the kiln. For example, chlorine and semivolatile metal hazardous air pollutants, such as lead and cadmium, will volatilize in the kiln and partition to the combustion gas. A portion of these waste-derived, toxic materials will condense before the combustion gas exits the kiln and will partition back into the raw material bed. Thus, these waste-derived, toxic materials are recycled internally within the kiln.

In addition, cement kilns generally recycle a portion of their collected particulate matter, known as cement kiln dust, back into the kiln. This cement kiln dust contains toxic constituents derived from hazardous waste fuel, including metals that are hazardous air pollutants.

¹ Another special case for addressing residence time is vitrification melter units, where certain inorganic waste components are incorporated into the vitrified melt, and where it is not desirable to remove the entire melt (i.e., the melt is removed from the chamber at lengthy, infrequent intervals). In these cases, it may be appropriate for sources to recommend an alternative "effective waste treatment" residence time under § 63.1209(g)(1).

Stakeholders request that these recycle loops not be considered when calculating hazardous waste residence time. Stakeholders note that if the hazardous waste-derived materials in these recycle loops were to be considered in calculating residence time, then: (1) It would be very problematic to document when the recycled waste constituents finally exit the kiln; and (2) the hazardous waste residence time would not elapse for an unnecessarily protracted period of time.

B. How Are We Addressing This Issue?

We conclude that recycle loops need not be considered in calculating hazardous waste residence time to ensure compliance with the emission standards. Emissions of semivolatile metals, low volatile metals, and particulate matter immediately prior to a waste feed cutoff will typically be well below levels demonstrated during the performance test and thus below the emission standard. This is because sources typically spike metals (add extra metals to the waste fuel) during performance testing to establish a wide envelope of operating limits to reflect the maximum operating variability they are likely to encounter in actual operation, providing sufficient operating flexibility for unexpected situations. We do not believe, though, that conditions will invariably reflect this maximum variability before a waste feed cutoff. In addition, notwithstanding recycle loops, hazardous waste-derived metals emissions will begin to decrease upon waste feed cutoff. The levels will continue to decrease while the hazardous waste residence time elapses and will decrease to very low levels after the electrostatic precipitator or baghouse undergoes a cleaning cycle. Therefore, the metal emission standards should not be exceeded due to recycle loops containing hazardous waste-derived materials.

For these reasons, we are revising the definition of hazardous waste residence time at § 63.1201(a).

II. Deletion of One-Time Notification of Compliance With Alternative Clean Air Act Standards

If a source is not feeding hazardous waste and the hazardous waste residence time has expired, the source may elect to comply temporarily with alternative, otherwise applicable standards promulgated under the authority of sections 112 and 129 of the Clean Air Act. If a source makes this election, § 63.1206(b)(1)(ii)(A) currently requires the source to submit to the Administrator a written, one-time

notification documenting compliance with those requirements and standards.

The rule requires this notice to alert regulatory officials that a source claims to have met the regulatory requirements for the otherwise applicable standards (i.e., section 112 and 129 standards the source would be subject to if the source did not burn hazardous waste). For example, a hazardous waste burning cement kiln may elect to comply with the MACT standards and operating requirements applicable to Portland cement manufacturing facilities provided under Subpart LLL after the hazardous waste residence time has transpired. The notice enables regulatory officials to know which sources claim to be in full compliance with such otherwise applicable standards and will assist those officials in establishing source inspection priorities.

Stakeholders have raised two issues since promulgation, however, that have led us to conclude that this notification requirement is unnecessary. First, stakeholders have indicated that virtually all sources are likely to want to have the option to switch temporarily to compliance under otherwise applicable section 112 or 129 standards at some point during their operations. Thus, the notice would not have the intended effect of singling out those sources that chose to do so for the purpose of establishing inspection priorities.

Stakeholders also point out that this notification requirement is duplicative of the title V compliance certification requirement of § 70.5(c)(9) that requires permit applicants to include in their application a detailed description of the source's compliance status and a certification by a responsible official of compliance with all applicable requirements. In addition, stakeholders state that title V sources must submit annual certifications of compliance with all applicable requirements. See § 70.6(c)(5). Thus, stakeholders note that the only scenario where the § 63.1206(b)(1)(ii)(A) notification requirement is not duplicative is for sources that have not yet been required to submit a certification under title V.

In addition, if sources anticipate complying temporarily with the alternative standards for nonhazardous waste combustors after the hazardous waste residence time has expired, sources may include appropriate terms and conditions in the title V permit using the "reasonably anticipated operating scenario" provisions of

§ 70.6(a)(9).² Once both scenarios (i.e., for burning hazardous waste and not burning hazardous waste) are included in the permit, sources simply document in the operating record when they switch from one scenario to another.

Finally, we also note that this notification requirement has been targeted for deletion under the Office of Solid Waste Burden Reduction Project. See 64 FR 32859 for the goals and objectives of this project.

For these reasons, we are deleting the notification requirement of § 63.1206(b)(1)(ii)(A).

III. Use of DRE Data in Lieu of Testing

We are revising two provisions associated with the allowance to use previously collected data in lieu of the initial performance test or the Destruction and Removal Efficiency (DRE) test under §§ 63.1206(b)(6), 63.1206(b)(7), and 63.1207(c)(2). We are taking final action to: (1) Remove the existing restriction preventing the use of DRE test data collected prior to March 1998 to document compliance with the DRE standard³; and (2) eliminate the requirement limiting previous data to only RCRA permit issuance or reissuance testing results.

A. Why Are We Allowing DRE Data Obtained Prior to March 1998 To Be Used in Lieu of a New DRE Test?

Stakeholders question why the rule restricts the age of DRE data for sources required to conduct only one DRE test for the life of the source. For DRE testing, the rule states that if you fire hazardous waste in the flame zone, and the system is not modified, then you are only required to demonstrate compliance with the MACT DRE emissions standard once over the operational life of the device. However, as part of the final rule data in lieu provisions, we limit the use of previous test data submitted for the initial comprehensive performance test to data collected after March 1998. Stakeholders believe that this limit substantially reduces the number of sources that can submit previous DRE test data in lieu of conducting an additional DRE test. They say that most sources conducted their RCRA trial burns before March 1998 and therefore would be ineligible to submit these tests. Stakeholders point out that if a one-time test is sufficient for the life of the source, then we should not place a

limit on previous RCRA data. We agree with this logic and are revising the rule today to require testing only for those sources that are modified or that fire at a location other than the flame zone.

B. Why Are We Allowing the Use of Data Obtained for Purposes Other Than RCRA Permit Issuance or Reissuance?

Stakeholders also express concern about the restrictions the rule places on the type of data that can substitute for a MACT performance test. The rule now stipulates that only data collected for the purpose of RCRA permit issuance or re-issuance can be submitted as in lieu data. Our primary concern with in lieu data submittals is to ensure data quality. Upon reevaluation, we believe data that is not associated with RCRA permit issuance or re-issuance can be reviewed by the regulatory authority to determine whether they are suitable for demonstrating compliance with the DRE standard and for setting MACT operating limits. We now understand that several sources engage in other types of CAA performance testing with oversight and quality assurance requirements comparable to RCRA testing. This modification will allow sources to coordinate CAA and RCRA testing that may facilitate early compliance. In today's direct final rule, we are modifying the current data in lieu provisions to allow sources to submit any test data in lieu of conducting a MACT performance test provided that the data meet our quality assurance requirements (except for DRE, as discussed above). We emphasize that a data in lieu of request must provide adequate quality assurance and quality control documentation. In most cases, tests conducted without significant regulatory oversight (and particularly without a reasonable opportunity for significant oversight) would not be considered to be of sufficiently known quality for use as data in lieu of testing.

For these reasons, we are revising the requirements of §§ 63.1206(b)(6), 63.1206(b)(7), and 63.1207(c)(2).

IV. Time Extension for Waiving PM and Opacity Standards To Correlate PM CEMS

For facilities voluntarily using a particulate matter (PM) continuous emissions monitoring system (CEMS), the final rule allows the particulate matter standard and operating parameter limits used to ensure compliance with that standard to be waived for up to a 96-hour period during a PM CEMS correlation test. (See 64 FR 53046). This waiver period is necessary because PM CEMS outputs must be correlated to manual method

results and during this time it is sometimes necessary to exceed the applicable operating parameter limits to produce an accurate correlation. The correlation is most accurate over the range of particulate matter emissions tested, so correlation tests should be performed over the full range of expected particulate matter emissions for the particular facility. We determined that allowing a facility to operate above the particulate matter standard for a 96-hour period is reasonable because this is a sufficient amount of time to: (1) Increase emissions to the desired level and reach system equilibrium; (2) perform correlation tests at the equilibrium condition; (3) return to normal equipment settings indicative of compliance with emissions standards and operating parameter limits; and (4) achieve equilibrium at normal conditions. (64 FR 52929).

Stakeholders contend that 96 hours may be too short of a time period to fulfill the testing requirements and that the regulations should allow for a longer time period. From the limited information available on the time required for PM CEMS correlation, they believe that 96 hours may be insufficient to complete the testing, particularly for HWCs that burn a variety of solid wastes. Petitioners suggest we change this provision to allow periods longer than 96 hours with the Administrator's approval.

In a March 2, 2000 letter to EPA, stakeholders describe the time necessary to complete PM CEMS correlation tests at an Eli Lilly incinerator as an indication of the need for additional time beyond the existing 96 hours. In Phase II of Eli Lilly's CEMS tests, Eli Lilly needed approximately 54 hours to achieve a successful correlation (Eli Lilly collected 34 data points requiring approximately three hours per data point above the particulate matter standard). This 54 hours only represented the testing time and did not include pre-and post-testing adjustments or the time before and after the tests when the incinerator was reaching equilibrium. The petitioners also point out that Eli Lilly had personnel with extensive experience in adjusting their incinerator to achieve desired HWC MACT particulate matter concentrations. Facilities with personnel who do not have this experience will go through a lengthy learning process and may need even more time. Therefore, stakeholders believe the current 96-hour allowance is not adequate to correlate a PM CEMS device in an accurate manner.

² Note that Subpart EEE incorporates this provision as § 63.1209(q), operating under different modes of operation.

³ If hazardous waste is fed at a location other than the normal flame zone, sources must conduct periodic DRE testing. See § 63.1206(b)(7)(ii).

Based on the Eli Lilly experience and discussions with PM CEMS testing personnel, we agree that the 96-hour period may not be sufficient for hazardous waste combustors to correlate their PM CEMS. Furthermore, we do not want a 96-hour time limit to be a disincentive to use of PM CEMS. We conclude a site specific extension is the appropriate mechanism to ensure accurate calibrations and to encourage the use of particulate matter continuous emissions monitoring systems. Therefore, we are adding the phrase "unless more time is approved by the Administrator" to § 63.1206(b)(8)(v).

V. Alternative Hydrocarbon Monitoring Location for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the "Hot" End of the Kiln

Section 63.1206(b)(13)(i) requires new and existing cement kilns to comply with a main stack hydrocarbon standard of 20 ppmv if hazardous waste is fed at a location other than the kiln end where fuels are normally fired and products are normally discharged (this is also described as the "hot" end of the kiln). These other locations can include firing hazardous waste at midkiln, at the upper end of the kiln where raw materials are fed, or in the calciner. In addition, if hazardous waste is fed at these other locations, the rule does not give a cement kiln the option to comply with a carbon monoxide standard in the main stack in lieu of the hydrocarbon standard.

After promulgation of the final rule, stakeholders provided additional information supporting an alternative to the mandatory monitoring location for hydrocarbons in the main stack for short, dry process cement kilns. In today's notice, we are revising the requirements of § 63.1206(b)(13) to allow short, dry process cement kilns to continuously monitor hydrocarbons in both the alkali by-pass duct and at a "preheater tower combustion gas monitoring location" as an alternative to hydrocarbon monitoring in the main stack.⁴ In addition, we are revising the requirements of § 63.1206(b)(13) to allow short dry process cement kilns to continuously monitor both carbon monoxide in the alkali by-pass duct and hydrocarbons at a "preheater tower combustion gas monitoring location" under limited circumstances.

⁴ In today's action, we are defining "preheater tower combustion gas monitoring location." See definition in § 63.1201.

A. Why Are We Finalizing an Alternative to Hydrocarbon Monitoring in the Main Stack for Certain Cement Kilns?

At the time of the final rule, we were not aware of any short, dry process cement kilns firing hazardous waste at other locations than the kiln end where clinker product is discharged. As a result, we adopted the approach used in the Boiler and Industrial Furnace (BIF) rule⁵ to control emissions of organic hazardous air pollutants from cement kilns that fire hazardous waste at these other locations as the best regulatory model. The BIF rule requires cement kilns that fire hazardous waste at locations other than the kiln end where clinker product is normally discharged to comply with a hydrocarbon limit in the main stack. Since promulgation of the rule, however, stakeholders submitted information about a new precalciner⁶ cement kiln that will fire hazardous waste at locations other than the kiln end where clinker is normally discharged. One stakeholder also indicated that the main stack hydrocarbon standard may not be achievable due to hydrocarbons released from the raw materials in the upper stages of the preheater tower. Therefore, we are finalizing an alternative to main stack hydrocarbon monitoring that addresses a hazardous waste firing scenario not specifically considered during the development of the rule.

B. What Alternative to Hydrocarbon Monitoring in the Main Stack Are We Finalizing for Cement Kilns?

As an alternative to hydrocarbon monitoring in the main stack,⁷ we are allowing short, dry process cement kilns to continuously comply with a hydrocarbon limit, and, under limited circumstances, a carbon monoxide limit at two separate locations within the kiln system. The two monitoring locations are: (1) In the alkali by-pass duct; and (2) in the upper stages of the preheater tower. The latter location is termed a "preheater tower combustion gas monitoring location." These two locations are located downstream (in terms of gas flow) of all hazardous waste firing locations. In addition, all

⁵ See 56 FR at 7158.

⁶ See "Final Technical Support Document for Hazardous Waste Combustor MACT Standards, Volume I: Description of Source Categories," July 1999, for a process description of precalciner cement kilns.

⁷ The alternative hydrocarbon standard would not replace the hydrocarbon standard of 20 ppmv in the main stack as provided in § 63.1206(b)(13)(i). Cement kilns would continue to have the option to monitor hydrocarbons in the main stack.

combustion gases pass one of these two locations.

The stakeholders claim that continuously monitoring hydrocarbons at both locations provides the best assessment of the quality of combustion and offers the same level of assurance that hazardous waste is effectively combusted as does a main stack hydrocarbon standard. Monitoring for efficient combustion of the hazardous wastes at these two locations also avoids the potential problem of hydrocarbons generated from organics in the raw materials and entrained in the gas stream.

1. Why Is Hydrocarbon Monitoring in the Alkali By-Pass Duct Appropriate?

Short, dry process cement kilns may be equipped with an alkali by-pass system where 10–30 percent of the rotary kiln combustion gas is diverted to a separate air pollution control device and sometimes to a separate stack. These kiln gases are diverted to avoid a build-up of metal salts that can adversely affect cement manufacturing operations. Hydrocarbon levels in the by-pass duct are indicative of the combustion efficiency of hazardous waste and fossil fuels fired in the rotary kiln. This is because the by-pass duct draws off combustion gases from the kiln prior to the point that hydrocarbons generated by organic materials in the raw material can be problematic.

We are finalizing a hydrocarbon standard of 10 ppmv in the by-pass duct (in addition to the preheater tower combustion gas monitoring location standards discussed below) for new and existing cement kilns that fire hazardous waste at a location other than the kiln end that clinker product is discharged because this level is indicative of good combustion conditions in the rotary kiln. Limiting hydrocarbons to 10 ppmv in the by-pass is identical to how a cement kiln with a by-pass duct or midkiln sampling system that only feeds hazardous waste at the kiln end where clinker product is normally discharged is regulated in the final rule. See §§ 63.1204(a)(5)(i)(B) and (b)(5)(i)(A)(2). For the same reasons a hydrocarbon standard of 10 ppmv was adopted in the rule, we likewise believe a hydrocarbon standard of 10 ppmv is appropriate in this situation. See 64 FR at 52887.

In today's direct final rule, with the exception discussed below, we are not allowing new and existing short, dry process cement kilns the option to comply with a carbon monoxide standard in the alkali by-pass duct when feeding hazardous wastes at any point in the rotary kiln downstream (in terms of gas flow) of the kiln end where

clinker product is normally discharged. We do not allow this option because we do not have sufficient emissions data, using this alternative hazardous waste firing scenario, to fully evaluate the impacts. We are concerned that organic compounds in the hazardous waste could be thermally cracked to form pyrolysis by-products rather than be completely combusted. If so, little carbon monoxide may be generated by the process and monitoring carbon monoxide alone would not ensure that hydrocarbons were minimized. Without these emissions data, we believe hydrocarbon monitoring is a more conservative, direct surrogate for control of organic hazardous air pollutants than are carbon monoxide emissions.

2. Under What Circumstances Is Monitoring of Carbon Monoxide in the Alkali By-Pass Appropriate?

There may be limited circumstances where carbon monoxide monitoring (as an option to hydrocarbon monitoring) in the alkali by-pass duct may be appropriate. An example would be a cement kiln whose only hazardous waste firing location upstream (in terms of gas flow) of the point where combustion gases are diverted into the alkali by-pass duct is at the kiln end where products are normally discharged. Another example would be a cement kiln that only fires hazardous waste at a location(s) downstream (in terms of gas flow) of the point where combustion gases are diverted into the alkali by-pass duct. Firing hazardous waste under these circumstances reduces our concern that organic compounds in the hazardous waste could be thermally cracked to form pyrolysis by-products rather than be completely combusted.

We are finalizing a carbon monoxide standard of 100 ppmv (as an option to hydrocarbon monitoring) in the by-pass duct (in addition to the preheater tower combustion gas monitoring location standards discussed below) for new and existing cement kilns whose only hazardous waste firing location upstream of the point where combustion gases are diverted into the alkali by-pass duct is at the kiln end where products are normally discharged. Thus, if sources feed hazardous waste at the upper end of the kiln where raw materials are fed, or any other location upstream of where gases enter the by-pass duct other than the kiln end where products are discharged, then a cement kiln would not be eligible for this option to monitor carbon monoxide instead of hydrocarbons.

We are finalizing a carbon monoxide standard of 100 ppmv for control of

organic hazardous air pollutants. A level of 100 ppmv is the same level that we established in the rule for cement kilns that only fire hazardous waste at the kiln end where products are normally discharged. See §§ 63.1204(a)(5)(i)(A) and (b)(5)(i)(A)(1). For the same reasons a carbon monoxide standard of 100 ppmv was adopted in the rule, we likewise believe the same carbon monoxide standard of 100 ppmv is appropriate in this situation. See 64 FR at 52887.

In addition, if a source elects to comply with the carbon monoxide standard in the by-pass duct, we are requiring the source to demonstrate compliance with a hydrocarbon standard of 10 ppmv in the by-pass duct during the comprehensive performance test. This is consistent with the requirements for cement kilns that comply with a carbon monoxide standard in the by-pass duct when only firing hazardous wastes at the kiln end where clinker is normally discharged. See §§ 63.1204(a)(5)(i)(A) and (b)(5)(i)(A)(1).

3. Why Is Hydrocarbon Monitoring at the "Preheater Tower Combustion Gas Monitoring Location" Appropriate?

Since only 10–30 percent of combustion gas is routed through the alkali by-pass duct, most short, dry process cement kilns' combustion gas travels through the cyclone stages of the preheater tower. Typically, raw material is introduced at the top of the preheater tower, which is a series of cyclones. Hot kiln flue gases move counter-current through the downward-moving raw material prior to introduction into the cement kiln. The cyclones are used to separate the raw material from the combustion gases and collected raw material sequentially is dropped into the next lower stage. Fossil and hazardous waste fuels can be fired in a calciner burner prior to the series of cyclones to further increase the raw material temperatures prior to introduction into the cement kiln.

A stakeholder identified a flue gas sampling location within the preheater tower where they believe a representative sample of combustion gas can be continuously monitored for hydrocarbons to demonstrate efficient combustion of the hazardous wastes. The stakeholder states that the preheater tower combustion gas monitoring location allows for continuous monitoring of hydrocarbons at a location downstream of the last point of hazardous waste fuel combustion, yet upstream of where non-fuel hydrocarbons from organics in the raw materials are generated and entrained in

the gas stream. This location is termed a "preheater tower combustion gas monitoring location."

We are finalizing a hydrocarbon standard of 10 ppmv at the preheater tower combustion gas monitoring location (in addition to the alkali by-pass duct standards above) as an alternative to the main stack standard of 20 ppmv. Monitoring of hydrocarbons at the preheater tower combustion gas monitoring location is necessary to control emissions of organic hazardous air pollutants. We are finalizing a hydrocarbon standard of 10 ppmv for the same reasons discussed above for monitoring in the alkali by-pass duct. In addition, we are not allowing carbon monoxide monitoring at the preheater tower combustion gas monitoring location as an alternative to hydrocarbon monitoring for the same reasons discussed above for monitoring in the alkali by-pass duct.

VI. Alternative to the Particulate Matter Standard for Incinerators Feeding Low Levels of Metals

The final rule establishes a particulate matter emissions standard of 0.015 gr/dscf for new and existing incinerators as a surrogate to control non-mercury, CAA metal hazardous air pollutants (HAPs).⁸ The rule also offers an alternative particulate matter emissions standard of 0.03 gr/dscf for incinerators that demonstrate the use of superior feedrate control of HAP metals in their hazardous waste feed. See § 63.1206(b)(14). Today, we are eliminating the alternative particulate matter emissions standard and replacing it with an alternative metal emissions control requirement. An incinerator source may elect to comply with this alternative requirement in lieu of complying with the 0.015 gr/dscf particulate matter standard. This source would remain subject to the existing standard for particulate matter in RCRA rules of 0.08 gr/dscf (a standard which would remain in the source's RCRA permit, should a source elect to comply with the alternative standard). See § 264.343(c). We are finalizing this option because we conclude that the alternative metal emissions control requirements control metal HAP emissions to levels based on MACT absent a particulate matter standard.

⁸Particulate matter is not a CAA HAP. The HWC MACT rule establishes a particulate matter standard to control non-mercury CAA HAP metals that are not directly controlled with an emission standard. See 64 FR at 52846–47.

A. Why Is EPA Eliminating the Alternative Particulate Matter Standard and Replacing It With Alternative Metal Emission Control Requirements?

We included the alternative particulate matter standard in the final rule after receiving comments that a particulate matter standard of 0.015 gr/dscf is not an appropriate surrogate to control metal hazardous air pollutants in situations where the particulate matter does not contain significant levels of metal HAPs. For example, this would include situations where the hazardous waste does not contain metals, and the resulting ash contains only relatively benign salts. (See § 63.1206(b)(14) and 64 FR 52972 for further discussion). To be eligible for the original alternative standard, incinerators must demonstrate that: (1) Non-mercury, metal HAPs are not detected in any feedstream; and (2) the maximum theoretical emission concentrations (MTEC)⁹ for semivolatile and low volatile HAP metals are lower than the corresponding semivolatile and low volatile metal emission standards, assuming that non-detect metals are present at one-half the detection limit.

Based on additional information from stakeholders, we have determined that this approach did not provide the intended relief to incinerators with low levels of hazardous air pollutant metals in their feedstreams for two reasons. First, even for incinerators with very low levels of these metals in their feeds, over time metals measurements above detection limits will occasionally occur. This can occur as a result of trace metal contamination due to corrosion and/or inherent impurities in raw materials, as well as potential anomalies and variability of the analytical measurement method. Second, high detection limits that occur as a result of complex feedstream matrices may prevent a source from demonstrating that the MTECs are less than the low volatile or semivolatile metal emission standards. Because this original approach did not provide the intended relief, we are finalizing a more effective alternative to the particulate matter emission standard.

B. What Alternative Is EPA Finalizing?

In today's notice, we are allowing a source to operate under alternative HAP metal emission control requirements reflecting MACT in lieu of complying with the 0.015 gr/dscf particulate

emission standard. Under the alternative, no particulate matter emission standard will apply to the incinerator under Subpart EEE; however, the incinerator will remain subject to the RCRA particulate matter standard of 0.08 gr/dscf pursuant to § 264.343(c). This is because without a sufficiently protective particulate matter standard under Subpart EEE, we cannot defer our RCRA obligation to provide for a particulate matter requirement to Subpart EEE.¹⁰

The alternative to the particulate matter standard has three components. The first component is simply to meet metal emission standards for semivolatile and low volatile metals. The level of the standard is the same as that which applies to other incinerators, but the standard would apply to all HAP metals, not just those enumerated in the present semi- and low volatile metal standards. The second component is a requirement for the incinerator to demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., a defined metal feedrate that is better than the MACT-defining metal feedrate floor control level.¹¹ The third component is a requirement for the incinerator to demonstrate that its air pollution control system achieves, at a minimum, a 90 percent system removal efficiency for semivolatile metals. These components, which are described separately below, should provide for adequate control of non-mercury HAP metals in lieu of a particulate matter standard.

1. What Emission Limitation Must the Incinerator Comply With Under This Alternative?

Incinerators must comply with the same semivolatile and low volatile metal emission limitations that are specified in the final rule; however, the emission limitations apply to both enumerated and non-enumerated metal HAPs, excluding mercury. As discussed in the rule, enumerated metals are those metals that are directly controlled with a numerical emission standard, i.e., cadmium, lead, arsenic, beryllium, chromium. Non-enumerated metals are those metals, i.e., antimony, cobalt, manganese, nickel, and selenium that

are not controlled directly with an emission standard, but are controlled through the surrogate particulate matter standard. For purposes of these alternative requirements, the non-enumerated metals are classified as either a semivolatile or a low volatile metal, and included in the calculation of compliance with the corresponding emissions limit.

For existing incinerators, the resulting emissions limits are: (1) A semivolatile emission limitation of 240 µg/dscm for the combined emissions of lead, cadmium, and selenium; and (2) a low volatile emission limitation of 97 µg/dscm for combined emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (all emissions corrected to 7% oxygen).

For new sources, the resulting emissions limits are: (1) A semivolatile emission limitation of 24 µg/dscm for combined emissions of lead, cadmium, and selenium; and (2) a low volatile emission limitation of 97 µg/dscm for emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (all emissions corrected to 7% oxygen).

We conclude it is appropriate to incorporate both the enumerated and non-enumerated metals into the semivolatile and low volatile metal emissions limits because this, in combination with the other two requirements discussed below, provides a reasonable approach to directly assure that the non-enumerated metal emissions are controlled to levels representative of MACT, in lieu of a particulate matter standard. This approach, in effect, lowers the existing semivolatile and low volatile metal emissions limits because the contribution of non-enumerated metals must be accounted for when achieving the same numerical semivolatile and low volatile emission limits. We believe this is appropriate because this effectively lower emissions limit for enumerated metals compensates for the lower emission levels that would have been achieved if the source used a particulate matter control device capable of achieving 0.015 gr/dscf, i.e., a control device that is an integral part of MACT control for semivolatile and low volatile metals. Put another way, we regard this emission limitation as an equivalent means of meeting the floor standard for HAP metals (except mercury) already established in the rule.

⁹ We developed the term "Maximum Theoretical Emissions Concentration" to compare metals feedrates across sources of different sizes. MTEC is defined as the metals feedrate divided by the gas flowrate, and is expressed in µg/dscm.

¹⁰ Sources electing to comply with these alternative requirements will be subject to the RCRA PM standard in their RCRA permit. The RCRA permit must include applicable operating limits that ensure compliance with the RCRA PM limit. Permit writers can impose a lower PM limit where necessary pursuant to the omnibus authority under section 3005(c)(3) of RCRA.

¹¹ These MACT defining feedrates are set out in "Final Technical Support Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies." Chapter 6, July 1999.

2. What Hazardous Waste Metal Feedrate Control Requirement Must the Incinerator Comply With Under This Alternative?

Each incinerator that elects to operate under these alternative requirements must demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., it complies with a defined hazardous waste metal feedrate limit that is significantly lower than the MACT-defining metal feedrate floor control level. We define "reasonable hazardous waste metal feedrate control" as a hazardous waste metal HAP feedrate that does not exceed 25 percent of the MACT defining MTEC level.¹² Consistent with the above discussed emission standards, the hazardous waste metal feedrate limits apply to both enumerated and non-enumerated metal HAPs. The non-enumerated metal HAPs are categorized as either semivolatile or low volatile, and are incorporated into a corresponding semivolatile or low volatile hazardous waste metal feedrate limit.¹³

For existing incinerators, the resulting hazardous waste metal feedrate limits are: (1) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 1,325 µg/dscm; and (2) the twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 6,000 µg/dscm.¹⁴

For new sources, the resulting hazardous waste metal feedrate limits are: (1) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 875 µg/dscm; and (2) the twelve-hour rolling average of the maximum theoretical

emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 3250 µg/dscm.

We believe hazardous waste metal feedrate limits are essential parts of these alternative requirements. As discussed in the final rule preamble and in comment response documents, particulate matter control is an integral part of controlling both the enumerated and non-enumerated semivolatile and low volatile metals.¹⁵ Therefore, any source that uses a particulate matter control technique that is less efficient than the MACT particulate floor standard should be required to use a "better than MACT" hazardous waste metal feedrate control (i.e., a level of feedrate control that compensates for the inefficient particulate control collection so that actual emissions of HAP metals reflect MACT). We believe that 25 percent of the MACT feedrate control levels for the combined enumerated and non-enumerated metal HAPs is within a reasonable range of values that are significantly lower than the MACT feedrate control levels. This feedrate control requirement, when combined with the emissions limit and system removal efficiency requirement, provides adequate control of metal HAPs (control equivalent to promulgated MACT).

3. How Efficient Must the Incinerator's Air Pollution Control Equipment Operate in Order To Comply With This Alternative?

If you elect to operate under these alternative requirements, you must demonstrate that the air pollution control system achieves at least a 90 percent system removal efficiency for semivolatile metals. Metal removal efficiency—whether measured by control of the surrogate particulate matter or directly through control of HAP metals—remains an essential element (along with feedrate control of HAP metals) of MACT for the non-mercury HAP metals, as demonstrated by the performance achievable by (and achieved by) the average of the best performing sources. In making this demonstration, you may spike semivolatile metals above 25 percent of

the MACT defining MTEC level provided the emissions limits discussed above are achieved during the test. You may perform this test independently of the comprehensive performance test; however, you must use this test to establish applicable operating parameter limits as described in § 63.1209(n), excluding the § 63.1209(n)(2) metal feedrate limit requirements. These operating limits are needed to assure that a 90 percent semivolatile metal system removal efficiency is achieved during normal operations at the metal feedrates demonstrated during the test.

The 90 percent system removal efficiency requirement is based on the use of a well designed and well operated high energy venturi type wet scrubber. An analysis of hazardous waste incinerator trial burn data shows that systems with well operated and well designed venturi scrubbers have semivolatile metal system removal efficiencies ranging from approximately 90 percent to greater than 99.9 percent.¹⁶ Thus, we are finalizing a semivolatile metal system removal efficiency of 90 percent as a conservative representation of control using a well designed and well operated high energy venturi scrubber. This method to select an appropriate control level is similar to the approach we used to develop the alternative particulate matter standard 0.03 gr/dscf that also was based on the use of well designed and well operated high energy venturi scrubbers.

System removal efficiency provides a direct indicator of the non-mercury metal HAP control efficiency of the hazardous waste incinerator system. The shift away from the use of a direct particulate matter emission standard to control non-mercury metal HAPs is a result, in part, of the reduced need for low metal feeding facilities to control particulate matter. For low metals feeding facilities, particulate matter may be composed primarily of non-metal HAP constituents such as silica, alumina, iron, etc., or HAP metals not present in hazardous waste. Thus, the control of particulate matter is not as strongly related to the control of HAP metals contributed by the hazardous waste compared with facilities which have feeds containing higher levels of those metals.

We also believe it is appropriate to require a 90 percent semivolatile metal system removal efficiency as part of these alternative requirements because,

¹² I.e., the MTEC level that was determined as a result of the aggregate feedrate analysis that was used to determine metal feedrate floor control levels in the September 30, 1999 rule.

¹³ Thus, unlike the current rule where sources can choose whatever means they wish to comply with the emissions standard and so are not required to control feedrates below a regulatory level (so long as they achieve the emission standard), sources are required to comply with a specified metal feedrate limit under the alternative.

¹⁴ These metal feedrate limits correspond to 25 percent of the MACT-defining MTEC levels. These MACT defining feedrates are set out in "Final Technical Support Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 6, July 1999.

¹⁵ See, for example, Table 8-1, pages 2 and 3, "Final Technical Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 3, July 1999, showing that sources with SVM feedrates below the MACT defining level but lacking proper PM control (i.e., emitting more PM than allowed by the PM standard) were unable to achieve the SVM emission standard.

¹⁶ See Figure 4-3, "Draft Technical Support Document for HWC MACT Standards (NODA), Volume 1: MACT Evaluations Based on Revised Database," April 1997.

absent a particulate matter standard, there would be no explicit requirement for sources to use an air pollution control method that effectively removes metal HAPs from the exhaust emissions.¹⁷ This provision therefore requires sources that operate under these alternative requirements to use a particulate matter control device. Even though this control device does not have to be a MACT particulate matter control device (i.e., a control device that achieves 0.015 gr/dscf) we believe that this requirement to achieve a 90 percent system removal efficiency, when combined with the hazardous waste metal feedrate limits and emissions limits, provides for an adequate level of control for HAP metals—that is, a level of control reflecting the level of performance achieved by, and achievable by, the average of the best performing 12 percent of sources.

4. What Operating Requirements Are Associated With This Alternative?

Semivolatile and low volatile metal operating parameter limits will be established to ensure compliance with the alternative emissions limits pursuant to § 63.1209(n), except that the semivolatile and low volatile metal feedrate limits apply to both the enumerated and non-enumerated HAP metals as previously discussed. We believe this approach is consistent with the final rule methodology to assure compliance with the semivolatile and low volatile metal emission standards and should be applied here. Note that the metal feedrate limits established to ensure compliance with the alternative emissions limit are mass feedrate limits for all feedstreams, including nonhazardous feeds. This is in contrast to the hazardous waste metal feedrate limits discussed below that are based only on hazardous waste metal MTEC levels.

You must also establish operating parameter limits to ensure compliance with the 90 percent system removal efficiency requirement. Consistent with the operating limits to ensure compliance with the alternative metal emission limitations, these operating limits would be established pursuant to § 63.1209(n), except that metal feedrate limits are not required for purposes of ensuring compliance with system removal efficiency provision.

The twelve-hour rolling average hazardous waste metal feedrate limits are based on the combined hazardous waste feedstreams to the incinerator and may be expressed either as a maximum theoretical emission concentration limit or as a restriction on maximum hazardous waste metals mass feedrate and minimum gas flow rate. In doing so, sources must account for each hazardous waste feedstream when determining compliance with the maximum theoretical emission concentration limits. Metal constituents not detected in hazardous waste feedstreams would be assumed to be present at one-half the detection limit when calculating the maximum theoretical emission concentration for compliance purposes, applicable to each hazardous waste feedstream.

VII. Deletion of Baghouse Inspection Requirements

Section 63.1206(c)(7)(ii) of the final rule prescribes baghouse operation and maintenance requirements for incinerators and lightweight aggregate kilns. These requirements are not applicable to cement kilns equipped with baghouses because cement kilns must continuously monitor opacity and comply with an opacity standard. Nonetheless, cement kilns are required to address baghouse operation and maintenance in the operation and maintenance plan required under § 63.1206(c)(7)(i).

The operation and maintenance requirements under § 63.1206(c)(7)(ii): (1) Prescribe the frequency of inspection of specific baghouse operations; and (2) require the use of a bag leak detector as a continuous monitor. We are today deleting the prescribed baghouse inspection requirements of § 63.1206(c)(7)(ii)(B)(1–10). Instead we will rely on the general operation and maintenance plan requirements under § 63.1206(c)(7)(i) and the use of a bag leak detector to ensure proper operation and maintenance of the baghouse.

Stakeholders question the rationale for prescribing generic inspection frequencies for various baghouse operations, given that each baghouse must be equipped with a bag leak detector. Stakeholders believe that each source should identify appropriate, site-specific inspection intervals for baghouse operations in the facility operations and maintenance plan required under § 63.1206(c)(7)(i). In particular, they highlight two burdensome inspection requirements: (1) Monthly visual inspection of the interior of the baghouse for physical

integrity; and (2) monthly inspection of bags and bag connections.¹⁸

We agree with stakeholders that these generic provisions are unnecessary and therefore are deleting the inspection requirements of § 63.1206(c)(7)(ii)(B)(1–10). We plan to develop guidance recommendations on baghouse inspection procedures that can be used to develop appropriate inspection procedures for the operation and maintenance plan required by § 63.1206(c)(7)(i). In addition, we are deleting the requirements of § 63.1206(c)(7)(ii)(A) requiring submittal of the baghouse operations and maintenance plan to the Administrator. Given that the operation and maintenance plan required under § 63.1206(c)(7)(i) is not submitted to the Administrator for review and approval, we do not see the need to single out the baghouse operation and maintenance plan for review and approval, particularly given that sources must continuously operate a bag leak detector system.

VIII. Feedstream Analysis for Organic HAPs

Section 63.1207(f)(1)(ii) of the final rule requires sources to include in their site-specific comprehensive performance test plan an analysis of all CAA hazardous air pollutants that could reasonably be present in their feedstreams. Regulatory officials will use this analysis to ensure compliance with the destruction and removal (DRE) standards of §§ 63.1203 through 63.1205. Stakeholders raised three questions about this requirement after promulgation: (1) Did we consider the implications of requiring analysis of HAPs rather than the RCRA organic compounds on Appendix VIII, Part 261; (2) why must the test plan for periodic comprehensive performance testing include an analysis of organic HAP compounds for sources that comply with the DRE standard with a one-time test; and (3) did we intend to require analysis of organic compounds for all feedstreams or just the hazardous waste feedstreams.

A. What Are the Implications of Requiring Analysis of CAA HAPs Rather than RCRA Appendix VIII, Part 261 Organic Compounds?

For the DRE standard, the final rule requires demonstration of compliance with one or more principal organic hazardous pollutants (POHCs) selected

¹⁷ Absent a metal system removal efficiency requirement under these alternative requirements, an incinerator could comply with the emission limitations with feedrate control only without the use of particulate matter control. This would not be appropriate if metals are present in the feedstreams because particulate matter control is an integral part of controlling metal HAP emissions.

¹⁸ Letter from Michelle Lusk, CKRC, Thomas Nilan, CMA, and Melvin Keener, CRWI, to Elizabeth Cotsworth, EPA, Re. Multi-Industry HWC MACT Concerns and Solutions, dated March 2, 2000, p. 29 of the attachment.

from the list of HAPs established by 42 U.S.C. 7412(b)(1), excluding caprolactam. The basis for the HWC MACT DRE standard is the current RCRA requirement to ensure destruction of Appendix VIII, Part 261, organic compounds. In demonstrating compliance under RCRA, sources must select POHCs from the Appendix VIII list of organic compounds.

Stakeholders note that selecting POHCs from the list of organic CAA HAPs rather than RCRA organic compounds has several implications. Stakeholders question whether RCRA DRE test data can be used in lieu of MACT DRE testing if the POHCs selected during the RCRA test are not organic HAPs under the CAA. Stakeholders also question how to ensure DRE of organic HAPs for which thermal stability data (e.g., low oxygen thermal stability; heat of combustion) are not available. In response, we note that, to satisfy the MACT DRE standard, sources must ensure that the POHCs used to demonstrate compliance are representative of the most difficult to destroy organic compounds in their feedstream. For example, if the most difficult to destroy POHCs for RCRA DRE testing were used, those POHCs are also representative of the most difficult to destroy organic HAPs (irrespective of whether thermal stability data are available for a HAP).

B. For Sources That Comply With the DRE Standard With a One-Time Test, Why Must Their Periodic Comprehensive Performance Test Plan Include an Analysis of Organic HAP Compounds?

Section 63.1206(b)(7) allows demonstration of compliance with the DRE standard only once for the life of the source provided the source: (1) Is not modified in a manner than could affect achievability of the DRE standard; and (2) does not feed hazardous waste at a location other than the normal flame zone. Once a source has demonstrated compliance with the DRE standard, stakeholders question why analysis of waste streams for organic HAP compounds must be included with the site-specific test plan for comprehensive performance testing every five years.

The rule requires continued analyses of organic compounds with each comprehensive performance test plan to enable regulatory officials to determine whether the POHCs selected for the original DRE test continue to represent the organic HAPs being fed to the combustor. POHCs are representative of the organic HAPs fed to the combustor if they are equally or more difficult to

destroy than those organic HAPs. In addition, POHCs are selected based on factors including the concentration of the organic compound in the feedstream and the toxicity of particular organic compounds.¹⁹

In retrospect, however, we do not believe that the comprehensive analysis required by § 63.1207(f)(1)(ii)(A)²⁰ is necessary in all cases to ensure that the POHCs continue to be representative of the organic HAPs being fed to the combustor. For example, if a source demonstrates compliance with the DRE standard with POHCs that represent the most difficult to destroy organic compounds, a less rigorous feedstream analysis may be appropriate to address other concerns, e.g., whether the feedstream has changed to include additional organic HAPs that are fed at high concentrations or that are particularly toxic. It may also be appropriate to waive the comprehensive analysis for organic compounds based on the generator's knowledge or on a combination of waste knowledge and sampling and laboratory analysis that the POHCs selected represent the most difficult to destroy organic compounds in the waste. Accordingly, we are amending § 63.1207(f)(1)(ii) to allow regulatory officials to waive the comprehensive analysis of organic compounds if a source documents that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams.

C. We Intended To Require Analysis of Organic HAPs in Hazardous Waste Feedstreams Only

Section 63.1207(f)(1)(ii) implies that sources must analyze all feedstreams for organic HAPs. The rule should have required analysis for hazardous waste feedstreams only. Regulatory officials will use the analysis to ensure that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams. We are amending § 63.1207(f)(1)(ii) accordingly.

¹⁹ In cases where an organic HAP is fed at particularly high concentrations, or where an organic HAP in the feedstream is particularly toxic, it is prudent to select such compounds as POHCs rather than relying only on surrogates that are considered to be equally or more difficult to destroy.

²⁰ That is, all organic HAPs except those that would not reasonably be expected to be found in the feedstream. Further, sources must identify any constituents excluded from the analysis and explain the basis for excluding them.

IX. Revisions to the Metals Feedrate Extrapolation Procedures

For sources using the metal extrapolation procedures, the final rule requires documentation that the levels of metal spiking (adding metals to the waste feed) be sufficient to demonstrate that the extrapolation procedures are as accurate and precise as if full spiking (no extrapolation) were used. See § 63.1207(f)(1)(x)(C). Today we are amending this provision to require documentation that spiking levels result in an extrapolation procedure that adequately assures compliance with the emission standard.

We included this requirement in the final rule to address the uncertainties that may be associated with extrapolating low metal feedrates, as demonstrated during testing, to higher metal feedrate limits. This documentation ensures that the uncertainties associated with the procedure are adequately addressed and that the extrapolated metal feedrate limits ensure compliance with the emission standard(s).

After discussions with stakeholders, we determined that the final rule regulatory language is too prescriptive and does not directly address our goal of assuring compliance with the emission standard. Stakeholders believe that it may not be possible to spike metals to levels such that the extrapolation procedures are as accurate and precise as if full spiking were used. They also question the accuracy and precision of the "fully spiked" feedstream and emissions analyses.

To address these concerns, we are requiring that sources document a level of spiking that ensures the extrapolation methodology is adequate to demonstrate compliance with the emission standard. The content and scope of this documentation should be determined on a site-specific basis, and should consider the uncertainties involved with extrapolating the tested low metal feedrates to higher metal feedrate limits. Examples of types of information that can document that the extrapolation methodology adequately assures compliance with the emission standards may include: (1) A description of the uncertainties associated with the extrapolation procedure, such as a description of the linearity of metal feedrates as compared to metal emission rates; (2) a description of the uncertainties associated with the data to be used in the extrapolation procedure;²¹ and (3) the extent that

²¹ For example, a description of the accuracy of the feedstream metal analysis considering the

Continued

these uncertainties are multiplied by the extrapolation procedure.

X. Feedrate Limits for Undetectable Constituents

The final rule requires sources to establish separate feedrate limits during the comprehensive performance test for semivolatile metals, low volatile metals, mercury, total chlorine, and/or ash for each feedstream that does not contain detectable levels of these constituents. See § 63.1207(n). The rule specifies that these separate feedrate limits must be established as "non-detect" feedrate limits. Under this approach, during normal operations, the feed locations that have "non-detect" limits cannot be fed detectable levels of the constituents unless certain criteria are met. Today, we are deleting this provision and, instead, are requiring sources to document, on a site-specific basis, the method they will use to account for non-detects when establishing feedrate limits.

We included this "non-detect feedrate limit" provision in the rule so sources would use a consistent methodology when establishing feedrate limits that best assures compliance with the emission standards. After discussions with stakeholders, we conclude that our approach to addressing detection limits when establishing feedrate limits is too prescriptive and that there are possibly alternative approaches that adequately assure compliance with the emission standards. Therefore, we are eliminating the requirements of § 63.1207(n) that require use of a specific method to address non-detects when establishing feedrate limits. As a replacement, we are requiring sources, on a site-specific basis, to specify in the comprehensive performance test workplan the method they will use to account for non-detects when establishing their feedrate limits. This will allow the method to be reviewed and approved by the regulatory official on a site-specific basis.

We continue to believe that the approach outlined in the final rule can be used to account for non-detects during the performance test. However, as previously mentioned, there may be alternative approaches that can be used that adequately assure compliance with the standards.²²

representativeness (whether the feedstream is homogenous) of the feedstream samples if actual, unspiked feedstream metal levels are used to calculate metal feedrates.

²² For example, separate limits for each location may not be needed to assure compliance with the standards if the detection limits are low. In this situation, a source could assume the constituent is not present in the non-detect feedstreams, or

We believe today's amendments to address non-detects on a site-specific basis will simplify the operating requirements for many combustors. We anticipate that regulatory officials will evaluate these site-specific approaches in part by considering: (1) Proximity of test results to the regulatory emission standard(s); (2) site-specific detection limit levels; and (3) the method or approach to address feedstream non-detects on a daily basis to demonstrate feedrate compliance. Accordingly, we are removing the requirements of § 63.1207(n) and adding § 63.1207(f)(xxvi).

XI. Revisions To Assist Early Compliance

In the final rule, we did not fully consider situations where sources would conduct performance testing prior to the compliance date. This "early compliance" prior to the September 30, 2002 deadline, is likely to occur to coordinate CAA and RCRA testing or to ensure the deadline for conducting the initial comprehensive performance test (i.e. 180 days after the compliance date) is met. We are particularly concerned that the regulation may inadvertently impede sources that would like to come into early compliance. Therefore, we are eliminating two impediments identified by stakeholders: (1) The requirement to stop burning hazardous waste if a source fails the comprehensive performance test; and (2) the requirement for the Documentation of Compliance.

A. When Is the Compliance Date for Sources that Comply Early?

Sources that choose to comply early are establishing a compliance date for themselves prior to the regulatory compliance date of September 30, 2002. On their compliance date, the source becomes subject to the substantive requirements of Subpart EEE. For example, on the compliance date, an exceedance of an emission standard (e.g., carbon monoxide) is a violation of the standard, and an exceedance of an operating parameter limit is evidence of failure to ensure compliance with an emission standard.

After considering the implications of early compliance, we are identifying the point at which the early complying source becomes subject to the substantive requirements of Subpart

perhaps assume it is present at one-half the detection limit, and establish one total system feedrate limit instead of separate limits. This would be accomplished by adding these assumed non-detect feedrate values to the other known feedrates from the other feed locations.

EEE as the postmark date for the Notification of Compliance (NOC). This is an appropriate point because the NOC is a legally enforceable document that contains all of the standards and operating parameters for a source complying with Subpart EEE.²³ See new § 63.1206(a)(4).

B. Sources That Fail a Comprehensive Performance Test Prior to the Compliance Date Are Not Required To Stop Burning Hazardous Waste

Section 63.1207(l) requires sources that fail a performance test for a mode of operation to stop burning hazardous waste immediately under that mode of operation. In retrospect, we conclude that this requirement is not appropriate for sources that conduct the performance test prior to the compliance date, including early complying sources, because compliance with the substantive requirements Subpart EEE is not yet triggered. Therefore, we are revising the rule accordingly. See revised § 63.1207(l)(1).

C. Early Complying Sources Would Be Exempt From the Documentation of Compliance Requirements

Section 63.1211(d) requires sources to place their Documentation of Compliance (DOC) in the operating record by the regulatory compliance date. The DOC identifies the applicable emission standards under Subpart EEE and the limits on the operating parameters under § 63.1209 that ensure compliance with those emission standards. In addition, the DOC identifies enforceable operating requirements from the compliance date until postmark of the Notification of Compliance. Given that the compliance date for early complying sources is the date the NOC is postmarked, the DOC would serve no purpose. Therefore, we are exempting early complying sources from the DOC requirement. See revised § 63.1211(d).

D. Notification of Testing for Sources That Choose To Comply Early

As with all Subpart EEE sources, those that comply early must notify permit officials of the scheduled performance test date and submit for review and approval the emissions test plan and continuous monitoring system evaluation test plan. See § 63.1207(e). Review and approval of test plans is appropriate for sources that comply early for the same reasons it is

²³ Sources will want to delete RCRA permit requirements that have been superseded by the Subpart EEE standards. See 64 FR at 52988. Modifying the RCRA permit precludes concerns about dual enforcement of emission standards.

appropriate for other sources—to ensure that the source's performance test plans will effectively determine whether the source is in compliance with the requirements of Subpart EEE. We encourage permit officials to review performance test plans expeditiously for sources that elect to comply early.

XII. Accuracy Requirements for Weight Measurement Devices

Section 63.1209(b)(2)(ii) specifies that the accuracy of weight measurement devices used to monitor flowrate of a feedstream must be ± 1 percent of the weight being measured. In addition, sources are required to verify the calibration of the device at least once every three months.

Stakeholders express concerns about these requirements. We concur with many of stakeholders' concerns about the accuracy requirement for weight measurement devices and are revising the rule to specify an accuracy requirement only for activated carbon feedrate measurement devices.

Stakeholders state that the ± 1 percent accuracy requirement is not appropriate for all weight measurement devices. This accuracy requirement is the same as we used in another rulemaking where it is applied only to the device used to measure carbon feedrate in an activated carbon injection system. Stakeholders state that the ± 1 percent accuracy is not achievable by many weight measurement devices, such as devices that measure the weight of raw materials.²⁴ Stakeholders also note that the implementation document for the boiler and industrial furnace standards under Part 266, Subpart H, lists acceptable measurement devices than cannot achieve this level of accuracy.

We agree with the stakeholders' concerns and are revising § 63.1209(b)(2)(ii) so that the accuracy requirement applies only to a carbon injection weight measurement device. Nonetheless, sources must include in the continuous monitoring system evaluation test plan the accuracy and calibration procedures for each monitor required under § 63.1209. This evaluation test plan must be submitted along with the comprehensive performance test plan for review and approval. See § 63.1207(e).

²⁴ For example, a clamshell bucket cannot achieve this level of accuracy for the feedstock because of the large weight of the clamshell relative to the feedstock and because some of the feedstream will stick to the bucket.

XIII. Deletion of Requirement for Establishing a Scrubber Liquid Minimum pH Operating Parameter Limit for Mercury Control for Wet Scrubbers

The final rule states that mercury emissions from hazardous waste combustors are controlled by: (1) Controlling the feedrate of mercury; (2) wet scrubbing to remove soluble mercury (e.g., mercuric chloride); and (3) carbon adsorption. There are specific operating parameter limits (OPL) that apply to each control technology.

For hazardous waste combustors using wet scrubbers to control mercury the OPLs are identical to those that are required to assure compliance with the hydrochloric acid/chlorine gas emission standard. See §§ 63.1209(l)(2) and (o)(3). We inadvertently established an inappropriate OPL requirement for mercury in developing the final rule. While a minimum pH of the scrubber water is an important parameter for chlorine control as required by § 63.1209(o)(3)(iv), it is not an appropriate OPL for mercury control. The Agency is amending the final rule by deleting the requirement for establishing a scrubber liquid minimum pH as an OPL for mercury control. Today's action does not change the requirements for hydrochloric acid and chlorine, however.

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is a "significant regulatory action" because it may be considered significant under point four above: "Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The aggregate annualized compliance costs for this rule are estimated to be less than \$100 million. Furthermore, this rule is not expected to 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. The benefits to human health and the environment resulting from today's final action have not been monetized but are deemed to be less than \$100 million per year.

We have prepared two economic support documents for this action. These are: Assessment of Potential Costs, Benefits and Other Impacts NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments (Assessment), and, Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments. The Assessment addresses economic impacts of the thirteen direct final amendments to the September 30, 1999 final rule. The Assessment also briefly examines equity considerations and other impacts. The Regulatory Flexibility Screening Analysis (RFSA) briefly examines small entity impacts potentially resulting from this action. This Part presents a summary of findings from the Assessment and the RFSA documents. The complete Assessment and RFSA documents are available in the RCRA docket established for this action. Interested readers are encouraged to read these documents.

A. Why Is This Direct Final Rule Necessary?

The environmental regulations promulgated by EPA seek to correct market failures through the internalization of negative environmental externalities. That is not the case with today's rule. This action is necessary in order to clarify and improve compliance, testing and monitoring requirements, and general

implementation efficiency associated with the final rule NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52828, September 30, 1999).

B. Were Non-Regulatory Alternatives First Considered?

Section 1(b)(3) of Executive Order 12866 instructs Executive Branch Agencies to consider and assess available alternatives to direct regulation prior to making a determination for regulation. This regulatory determination assessment should be considered, "to the extent permitted by law, and where applicable." The ultimate purpose of the regulatory determination assessment is to ensure that the most efficient tool, regulation, or other type of action is applied in meeting the targeted statutory objective(s).

We have already employed education and outreach programs designed to help accomplish the objectives of the amendments in this rule. We believe that, at this point, a regulatory approach will ensure appropriate technical clarification and the necessary implementation efficiency designed to fully accomplish our objectives.

C. What Regulatory Options Were Considered?

This is a direct final action that does not facilitate the assessment of alternative regulatory options.

D. What Are the Potential Costs or Cost Savings of This Direct Final Rule?

The thirteen direct final amendments presented in today's action vary considerably in scope and substance. Many of the amendments are anticipated to result in minor to negligible incremental cost impacts (savings or increases) to both the regulated community and the Agency. Three of the amendments are expected to result in more substantive cost impacts to the regulated community. These findings are briefly summarized below. The Assessment document presents a detailed review of our methodology, data, findings, and analytical limitations.

1. Deletion of One-Time Notification of Compliance with Alternative Clean Air Act Standards (Amendment II)

In the final rule, a source that is not feeding hazardous waste when the hazardous waste residence time expires may elect to comply temporarily with alternative standards promulgated under the authority of sections 112 and 129 of the Clean Air Act. If a source chooses this option,

§ 63.1206(b)(1)(ii)(A) requires the source to submit to the Administrator a written, one-time notification documenting compliance with those requirements and standards. Since this stipulation duplicates requirements under title V of the CAA, such a requirement is redundant.

A deletion of this requirement reduces the administrative costs associated with compliance notification. Estimates of labor costs and administrative time spent on such a task suggest that about three hours per respondent would be saved. Out of this, two hours are estimated to be technical time (costed at a rate of \$55 per hour), and one hour is likely to be management time (costed at \$71 per hour). All facilities are likely to benefit from this exemption, thus leading to aggregate industry-wide cost savings of approximately \$31,000 per year.

2. Alternative to the PM Standard for Incinerators Feeding Low Levels of Metals (Amendment VI)

The final rule established a particulate matter emission standard of 0.015 gr/dscf for new and existing sources as a surrogate for control of non-mercury CAA metal hazardous air pollutants (HAPs). The rule also offered an alternative particulate matter emission standard of 0.03 gr/dscf for sources that demonstrate the use of superior federate control of metals in their hazardous waste. Today, we are eliminating the alternative particulate matter emission standard and replacing it with metal emissions control requirements. As a result of this amendment, no particulate matter emissions standard would apply to the incinerator under Subpart EEE. However, the incinerator would remain subject to the RCRA particulate matter standard of 0.08 gr/dscf pursuant to § 264.343(c). In addition to the 0.08 gr/dscf standard, the alternative standard requires sources to comply with the following four requirements: (1) A metal emissions limitation for semivolatile and low volatile metals that applies to all CAA HAP metals, excluding mercury; (2) A requirement for the incinerator to demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., a defined metal feedrate that is better than the MACT defining metal feedrate floor control level; (3) A requirement for the incinerator to demonstrate that its air pollution control system achieves, at a minimum, a 90 percent system removal efficiency for semivolatile metals; and (4) A set of operating requirements pursuant to § 63.1209(n).

These four components collectively provide for MACT control of non-mercury CAA metal HAPs in the absence of a MACT particulate matter standard. Hence, we believe that while this amendment would provide some reduced regulatory requirements to industry, there would be no adverse impact on the environment or any associated social costs.

The cost savings resulting from this amendment will have two components: Savings in up-front capital costs and operation and maintenance cost savings. The capital cost savings would be a result of not needing a control device that meets MACT PM control standards (i.e., a control device that achieves 0.015 gr/dscf). The unit capital cost savings for the five sources that are expected to avail themselves of this standard in a given year are estimated to be \$150,000. Annualizing this amount over ten years, using a discount rate of 7 percent, gives an annual savings of approximately \$21,500 for capital costs per facility.

Operation and maintenance costs for a less complex system would amount to approximately \$120,000 per year per facility. These savings arise from reductions in energy usage (pressure drop devices can be very energy intensive); lower solid waste handling costs, and reduced baghouse maintenance costs. Assuming that five facilities are able to take advantage of this alternative, the total cost savings per year associated with this amendment would be approximately \$707,500. It is important to note that the exact number of facilities that will take advantage of this standard is difficult to determine and is likely to change over time.

3. Feedstream Analysis Requirements for Organic HAPs (Amendment VIII)

Section 63.1207(f)(1)(ii) requires sources to include in their site-specific plan for a comprehensive performance test an analysis of all Clean Air Act hazardous air pollutants that could reasonably be present in "the feedstream." Regulators would use these analyses to ensure compliance with the destruction and removal efficiency standards of §§ 63.1203 through 63.1205.

However, upon further review, we believe that the comprehensive analyses required by § 63.1206(f)(1)(ii)(A) are not necessary in all cases to ensure compliance with the DRE standard. For example, if the source can demonstrate compliance with the DRE standard using POHCs that represent the most persistent organic compounds, a less rigorous analysis may be appropriate to address other concerns, such as whether

feedstream has changed to include additional organic HAPs that are fed at high concentrations or that are particularly toxic.

We are, therefore, amending § 63.1207(f)(1)(ii) to allow regulatory officials to waive the comprehensive analysis of organic compounds if sources can document that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams. This amendment will result in cost savings in operation and maintenance expenses, estimated at \$4,000 per facility per year. With 45 facilities expected to be affected by this amendment per year, the total annual cost savings from this effort amount to approximately \$180,000.

In addition to the cost savings of \$918,500 identified above we estimate that two of the thirteen amendments would result in quantifiable cost burdens to industry and the regulatory agency and/or states. These amendments are projected to result in aggregate cost increases of approximately \$8,700 per year. The net aggregate cost impact associated with the thirteen amendments is estimated to be \$909,800 per year. This cost impact estimate will marginally decrease the total annual social cost projection of \$50 to \$63 million²⁵ estimated for compliance with the final rule. All cost impacts are dependant upon the regional enforcement regime.

II. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, a small entity is defined as: (1) A small business that has fewer than 750, or 500 employees per firm depending upon the SIC code the firm is primarily classified in; (2) a small governmental jurisdiction that is a government of a city, county, town,

school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that only amendment II is likely to impact one or more of the six small hazardous waste combustors. Under our assumed worst-case scenario where the maximum cost impacts of this amendment (\$31,000 savings) are attributed to only these six small sources, we find that no source would experience impacts beyond 0.14 percent of annual gross revenues.²⁶ This does not represent a significant economic impact.

Although this rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of this rule on small entities. Although not specifically directed toward small business outreach, we have met with industry representatives during the developmental phase and requested comment and suggestions on all aspects of this rulemaking. No small business concerns were brought up by these industry representatives.

We have completed the analysis: *Regulatory Flexibility Screening Analysis (RFSA) For NESHA: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments*, in support of the direct final rule. This RFSA document is available for review in the docket established for today's action.

III. Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks"

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Furthermore, we do not have reason to believe that environmental health or safety risks addressed by this action present a disproportionate risk to children.

In addition, these amendments, as part of the HWC MACT standards, are exempt from the requirements of Executive Order 13045 because the final rule is a technology-based regulation rather than a risk-based one. Nevertheless, the amendments would not result in any incremental environmental harm that would affect children's health.

IV. Environmental Justice Executive Order 12898

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3-17).

We have no data indicating that today's rule would result in disproportionately negative impacts on minority or low income communities.

V. Unfunded Mandates Reform Act

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, local, and tribal governments and the private sector. Under section 202 of the UMRA,

²⁵ U.S. Environmental Protection Agency, Office of Solid Waste, "Addendum to the Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule," July 23, 1999.

²⁶ Based on the July 1999 Assessment, we found that the smallest annual firm revenue associated with the six small facilities was \$3.6 million. Dividing \$31,000 by the six facilities results in approximately \$5,200 maximum impact per small facility. (\$5,200/\$3.6 million = 0.14 percent).

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 single year. Before promulgating an EPA rule for which a written statement is needed, 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, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have 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 to the private sector in any single year. It is estimated that the direct final amendments will result in increased costs to all states (or the Agency) of approximately \$2,100 per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VI. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule is projected to result in economic impacts to privately owned hazardous waste combustion facilities. Marginal administrative burden impacts may occur to selected States and/or EPA Regional Offices if these entities experience increased administrative needs, enforcement requirements, or information requests. However, this rule will not have substantial direct effects on the States, intergovernmental relationships, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

VII. Consultation With Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action will not significantly or uniquely affect the communities of Indian tribal governments, nor will it impose substantial direct compliance costs on them. Tribal communities are not known to own or operate any hazardous waste combustion facilities, nor are these communities disproportionately located adjacent to or near such facilities. Finally, tribal governments will not be required to assume any administrative or permitting

responsibilities associated with this rule.

VIII. Paperwork Reduction Act

We have prepared an Information Collection Request (ICR) document (ICR No. 1773.03) listing the information collection requirements of this direct final rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has assigned a control number 2050-0171 for this ICR. A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environment Protection Agency (2137), 1200 Pennsylvania Avenue NW., Washington DC 20460, or by calling (202) 260-2740.

Some of the amendments finalized today pertain to RCRA provisions of the rule (i.e., to 40 CFR parts 260 thru 271), and were covered under an earlier ICR No. 1361.08. Today's amendments to these RCRA provisions are all de-regulatory, and do not impose any burden on the regulated community. They only reduce the existing burden shown in that ICR. The ICR No. 1361.08 will be revised to show the reduced burden when the direct final rule is promulgated. The public burden associated with other provisions of this direct final rule (which are under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 1.7 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average \$118 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes 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 be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

IX. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

X. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This direct final rule will be effective on October 16, 2001 unless EPA receives adverse comment by August 17, 2001.

Part Four: State Authority

States can implement and enforce the new MACT standards through their delegated 112(l) CAA program and/or by having title V authority. A State's title V authority is independent of whether it has been delegated section 112(l) of the CAA. Additional information on state authority under the CAA may be found in the HWC MACT rule (64 FR at 52991).

List of Subjects

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste,

Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

Dated: June 18, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS 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. Section 63.1201 is amended by revising the definition of "Hazardous waste residence time" and adding the definition of "Preheater tower combustion gas monitoring location" to paragraph (a) in alphabetical order to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Hazardous waste residence time means the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste (excluding residues that may adhere to combustion chamber surfaces and excluding waste-derived recycled materials such as cement kiln dust and internally recycled metals) exit the combustion chamber. For combustors with multiple firing systems whereby the residence time may vary for the firing systems, the hazardous waste residence time for purposes of complying with this subpart means the longest residence time for any firing system in use at the time of the waste cutoff.

* * * * *

Preheater tower combustion gas monitoring location means a location within the preheater tower of a dry process cement kiln downstream (in terms of gas flow) of all hazardous waste firing locations and where a representative sample of combustion gas to measure combustion efficiency can be monitored.

* * * * *

3. Section 63.1206 is amended by:

a. Adding paragraph (a)(4).

b. Revising paragraphs (b)(1)(ii), (b)(6)(i), (b)(7)(i)(B), (b)(7)(ii)(B), (b)(8)(v), (b)(13)(i), and (b)(14).

c. Revising paragraph (c)(7)(ii).
The revisions and additions read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(4) *Early compliance.* If you choose to comply with the emission standards of this subpart prior to September 30, 2002, your compliance date is the date you postmark the Notification of Compliance under § 63.1207(j)(1).

(b) * * *

(1) * * *

(ii) When hazardous waste is not in the combustion chamber (i.e., the hazardous waste feed to the combustor has been cut off for a period of time not less than the hazardous waste residence time) and you have documented in the operating record that you are complying with all otherwise applicable requirements and standards promulgated under authority of sections 112 (e.g., subpart LLL of this part for cement kilns) or 129 of the Clean Air Act in lieu of the emission standards of §§ 63.1203 through 63.1205; the monitoring and compliance standards of this section and §§ 63.1207 through 63.1209, except the modes of operation requirements of § 63.1209(q); and the notification, reporting, and recordkeeping requirements of §§ 63.1210 through 63.1212.

* * * * *

(6) * * *

(i) If a DRE test performed prior to the compliance date is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during the DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is any test for which the data and results are determined to meet quality assurance objectives (on a site-specific basis) such that the results adequately demonstrate compliance with the DRE standard.

* * * * *

(7) * * *

(i) * * *

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(1) You have not modified the design or operation of your source in a manner that could effect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(2) The DRE test data meet quality assurance objectives determined on a site-specific basis.

(ii) * * *

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(1) You have not modified the design or operation of your source in a manner that could affect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(2) The DRE test data meet the quality assurance objectives determined on a site-specific basis.

* * * * *

(8) * * *

(v) The particulate matter and opacity standards and associated operating limits and conditions will not be waived for more than 96 hours, in the aggregate, for a correlation test, including all runs of all test conditions, unless more time is approved by the Administrator.

* * * * *

(13) * * *

(i) Cement kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the carbon monoxide and hydrocarbon standards of § 63.1204 as follows:

(A) For existing sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(1) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(2) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(3) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per

million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1207(b)(7).

(B) For new sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(1) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(2)(i) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and

(ii) Hydrocarbons in the main stack, if construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(3)(i) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in

excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1207(b)(7).

(ii) If construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, hydrocarbons are limited to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

* * * * *

(14) *Alternative to the particulate matter standard for incinerators.* (i) *General.* In lieu of complying with the applicable particulate matter standard of § 63.1203(a)(7) or (b)(7), existing and new incinerators may elect to instead comply with the alternative metal emission control requirements described in paragraph (b)(14)(ii) or (b)(14)(iii) of this section, respectively.

(ii) *Alternative metal emission control requirements for existing incinerators.*

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead, cadmium, and selenium in excess of 240 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the

atmosphere that contain arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(C) You must comply with the provisions specified in paragraph (b)(14)(iv) of this section.

(iii) *Alternative metal emission control requirements for new incinerators.* (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead, cadmium, and selenium in excess of 24 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(C) You must comply with the provisions specified in paragraph (b)(14)(iv) of this section.

(iv) *Other requirements.* Existing and new incinerators must document in the operating record that they meet the requirements of paragraph (b)(14)(iv)(A) through (C) of this section.

(A) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed:

(1) For existing incinerators, 1,325 µg/dscm.

(2) For new incinerators, 875 µg/dscm.

(B) The twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed:

(1) For existing incinerators, 6,000 µg/dscm.

(2) For new incinerators, 3250 µg/dscm.

(C) You must document that your air pollution control system achieves at least a 90 percent system removal efficiency for semivolatile metals. In making this demonstration, you may spike semivolatile metals above the applicable levels of paragraph (b)(14)(iv)(A) or (B) of this section provided that the applicable alternative emission limitation of paragraph (b)(14)(ii)(A) or (iii)(A) of this section is attained during the test. This test may be performed independently of the comprehensive performance test and must be used to establish applicable operating parameter limits as described

in § 63.1209(n), not including § 63.1209(n)(2), to ensure that a 90 percent semivolatile metal system removal efficiency is achieved during normal operations.

(v) *Operating limits.* (A) Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (b)(14)(ii) and (iii) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits would apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits would apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(B) Twelve-hour rolling average hazardous waste metal feedrate limits required pursuant to paragraphs (b)(14)(iv)(A) and (B) of this section are based on the combined hazardous waste feedstreams to the incinerator and may be expressed either as an maximum theoretical emission concentration limit or as a restriction on maximum hazardous waste metals mass feedrate and minimum gas flow rate.

(C) For purposes of complying with the twelve-hour rolling average hazardous waste metal feedrate limits of paragraphs (b)(14)(iv)(A) and (B) of this section, non-detectable metal constituents in each hazardous waste feed must be assumed to be present at one-half the detection limit.

(c) * * *

(7) * * *

(ii) *Bag leak detection system requirements for baghouses at lightweight aggregate kilns and incinerators.* If you own or operate a hazardous waste incinerator or hazardous waste burning lightweight aggregate kiln equipped with a baghouse (fabric filter), you must continuously operate a bag leak detection system that meets the specifications and requirements of paragraph (c)(7)(ii)(A) of this section and you must comply with the corrective measures requirements of paragraph (c)(7)(ii)(B) of this section:

(A) *Bag leak detection system specification and requirements.* (1) The bag leak detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter or less;

(2) The bag leak detection system shall provide output of relative particulate matter loadings;

(3) The bag leak detection system shall be equipped with an alarm system that will sound an audible alarm when

an increase in relative particulate loadings is detected over a preset level;

(4) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(5) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(6) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the operation and maintenance plan required under paragraph (c)(7)(i) of this section. You must not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(7) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector shall be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

(8) Where multiple detectors are required, the system's instrumentation and alarm system may be shared among the detectors.

(B) *Bag leak detection system corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7)(i) of this section must include a corrective measures plan that specifies the procedures you will follow in the case of a bag leak detection system alarm. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective measures taken to correct the control device malfunction or minimize emissions as specified in this paragraph. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(1) You must initiate the procedures used to determine the cause of the alarm within 30 minutes of the time the alarm first sounds; and

(2) You must alleviate the cause of the alarm by taking the necessary corrective

measure(s) which may include, but are not to be limited to, the following measures:

- (i) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;
 - (ii) Sealing off defective bags or filter media;
 - (iii) Replacing defective bags or filter media, or otherwise repairing the control device;
 - (iv) Sealing off a defective baghouse compartment;
 - (v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or
 - (vi) Shutting down the combustor.
4. Section 63.1207 is amended by:
- a. Revising paragraph (c)(2)(i).
 - b. Revising paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), (f)(1)(ii)(C), and (f)(1)(x)(C).
 - c. Revising paragraph (l)(1) introductory text.
 - d. Redesignating paragraph (f)(1)(xxvi) as (f)(1)(xxvii).
 - e. Adding paragraph (f)(1)(ii)(D).
 - f. Adding new paragraph (f)(1)(xxvi).
 - g. Removing paragraph (n).
- The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * *

(i) You may request that previous emissions test data serve as documentation of conformance with the emission standards of this subpart provided that the previous testing:

(A) Results in data that meet quality assurance objectives (determined on a site-specific basis) such that the results adequately demonstrate compliance with the applicable standards;

(B) Was in conformance with the requirements of paragraph (g)(1) of this section; and,

(C) Was sufficient to establish the applicable operating parameter limits under § 63.1209.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) Except as provided by paragraph (f)(1)(ii)(D) of this section, an identification of such organic hazardous air pollutants that are present in each hazardous waste feedstream. You need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8);

(B) An approximate quantification of such identified organic hazardous air pollutants in the hazardous waste feedstreams, within the precision produced by analytical procedures of § 63.1208(b)(8); and

(C) A description of blending procedures, if applicable, prior to firing the hazardous waste feedstream, including a detailed analysis of the materials prior to blending, and blending ratios.

(D) The Administrator may approve on a case-by-case basis a hazardous waste feedstream analysis for organic hazardous air pollutants in lieu of the analysis required under paragraph (f)(1)(ii)(A) of this section if the reduced analysis is sufficient to ensure that the POHCs used to demonstrate compliance with the applicable DRE standard of § 63.1203, § 63.1204, or § 63.1205, continue to be representative of the organic hazardous air pollutants in your hazardous waste feedstreams;

(x) * * *

(C) Documentation that the level of spiking recommended during the performance test will mask sampling and analysis imprecision and inaccuracy to the extent that the extrapolated feedrate limits adequately assure compliance with the emission standards;

* * * * *

(xxvi) For purposes of calculating semivolatile metal, low volatile metal, mercury, and total chlorine (organic and inorganic), and ash feedrate limits, a description of how you will handle performance test feedstream analytical results that determines these constituents are not present at detectable levels.

* * * * *

(l) * * *

(1) *Comprehensive performance test.* The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to September 30, 2002 (or a later compliance date approved under § 63.6(i).

* * * * *

5. Section 63.1209 is amended by:

a. Revising paragraph (b)(2)(ii).

b. Revising paragraph (l)(2).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

* * * * *

(b) * * *

(2) * * *

(ii) *Accuracy and calibration of weight measurement devices for activated carbon injection systems.* If

you operate a carbon injection system the accuracy of the weight measurement device must be ± 1 percent of the weight being measured. The calibration of the device must be verified at least once every three months.

* * * * *

(1) * * *

(2) *Wet scrubber.* If your combustor is equipped with a wet scrubber, you must establish operating parameter limits prescribed by paragraph (o)(3) of this section, except for paragraph (o)(3)(iv).

* * * * *

6. Section 63.1211 is amended by revising paragraph (c)(1) to read as follows:

§ 63.1211 What are the record keeping and reporting requirements?

* * * * *

(c) * * *

(1) By the compliance date, you must develop and include in the operating record a Documentation of Compliance. You are not subject to this requirement, however, if you submit a Notification of Compliance under § 63.1207(j) prior to the compliance date.

* * * * *

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

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

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

8. Section 264.340 is amended by revising the first sentence of paragraph (b)(1) and adding paragraph (b)(3) to read as follows:

§ 264.340 Applicability.

* * * * *

(b) * * *

(1) Except as provided by paragraphs (b)(2) and (b)(3) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE of this chapter.

(3) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with

the alternative to the particulate matter standard of § 63.1206(b)(14) of this chapter.

* * * * *

[FR Doc. 01-16425 Filed 7-2-01; 8:45 am]

BILLING CODE 6560-S0-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80-286; FCC 01-162]

Jurisdictional Separations Reform and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules for implementing a five-year interim "Freeze" of the jurisdictional separations process in order to simplify and stabilize the separations process pending more comprehensive separations reform. We believe these modifications will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes, until the comprehensive reform is completed. The Report and Order in CC Docket No. 80-286 was published in the *Federal Register* on June 21, 2001. One of the rules contained information collection requirements.

DATES: Section 36.3(b), published at 66 FR 33202, June 21, 2001, was approved by the Office of Management and Budget (OMB) on June 22, 2001 and became effective on June 22, 2001.

FOR FURTHER INFORMATION CONTACT: Eric Einhorn or Andrew Firth, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400, TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: On May 21, 2001, the Commission released a Report and Order in CC Docket No. 80-286 (Order), 66 FR 33202, June 21, 2001, that took action in response to the Federal-State Joint Board on Jurisdictional Separations' recommended reforms to the jurisdictional separations process codified at part 36 of the Commission's rules, 47 CFR 36 *et seq.*, as a means to simplify and stabilize the separations process pending more comprehensive reform. Specifically, pending further reform, the Commission adopts a five-year freeze of all part 36 category

relationships and jurisdictional allocation factors for price cap incumbent local exchange carriers, and a freeze of all allocation factors for rate-of-return incumbent local exchange carriers. The Commission believes these modifications will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes, until comprehensive reform is completed. A summary of the Order was published in the *Federal Register*. See 66 FR 33202, June 21, 2001. One of the rules contained information collection requirements that required OMB approval. On June 22, 2001, OMB approved the information collections. See OMB No. 3060-0988. The rule amendments adopted by the Commission in the Order took effect on June 22, 2001. This publication satisfies the statement in the Order that the Commission would publish a document in the *Federal Register* announcing the effective date of that rule.

List of Subjects in 47 CFR Part 36

Jurisdictional separations, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01-16651 Filed 7-2-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[DA 01-1239; MM Docket No. 01-37, RM-10065]

Radio Broadcasting Services; Houston and Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the *Federal Register* of June 6, 2001, a document concerning the allotment of channels in the State of Alaska. In that Report and Order, the Commission inadvertently modified the license of Ubik Corporation, licensee of Station KNIK-FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of Channel 287C1. This document corrects that action to modify Station KNIK-FM to Channel 289C1, the correct channel.

EFFECTIVE DATES: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418-2180.

SUPPLEMENTARY INFORMATION: In FR Doc. 01-14017 published in the *Federal Register* of June 6, 2001, (66 FR 30335) Commission inadvertently modified the license of Ubik Corporation, licensee of Station KNIK-FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of Channel 287C1, rather than Channel 289C1, the correct channel.

In rule FR Doc. 01-14017, published on June 6, 2001 (66 FR 30335), make the following correction. On page 30335, in the preamble, in the first column, and in the amendment to § 73.202 in the second column, remove channel "286C1" and add "289C1" in its place.

Federal Communications Commission.

John A. Karousos,

Chief, Allocation Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01-16649 Filed 7-2-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 97-81; FCC 01-171]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; clarification.

SUMMARY: The document addresses four petitions for reconsideration and/or clarification of the *MAS Report and Order*. Specifically, the Commission responds to requests for reconsideration and/or clarification of issues relating to the types of services classified as private internal, shared use and private carrier service in the private internal bands, grandfathering provisions as they relate to transfers and assignments, service area coverage of the Gulf of Mexico, operational flexibility, and other minor points that help clarify its intentions for the MAS service. In addition, the Commission makes minor changes to certain technical requirements in part 101, as well as, the current application freeze in the 928/959 megahertz (MHz) MAS bands. In this document, the Commission grants two petitions and grants a third petition, in part. The fourth petition is dismissed as moot.

DATES: Effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Shellie Blakeney at (202) 418-0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION:

ORIGINAL

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 in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 7012 MacCorkle Avenue, S.E., Charleston, West Virginia, commencing at 6:02 p.m., on the 12th day of July, 2001, pursuant to notice.



P R O C E E D I N G S

MS. CHANDLER: The purpose of this public hearing is to accept comments on 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities".

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 current 45CSR25, incorporates by reference certain provisions of the federal counterpart regulations effective through July 10, 2000. The proposed revisions to this rule will update the rule by incorporating the counterpart federal regulations effective through May 14, 2001, which includes a federal regulation vacating the Notice of Intent to Comply provision for hazardous waste combustors.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

1 The floor is now open for public comment.
2 Please identify yourself and affiliation, prior to making
3 comments.

4 There being nothing further, this public hearing
5 for 45CSR25 is concluded.

6 (WHEREUPON, the public hearing
7 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
18th day of July, 2001.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.



45 CSR1, 45CSR2, 45CSR9, 45CSR15,
45 CSR16, 45CSR18, 45CSR25, 45CSR26,
45 CSR33, 45CSR34
DAQ, 7012 MacCorkle Ave. SE, Charleston
July 12, 2001 6:00 PM

Sign-In

NAME	ADDRESS	ORGANIZATION	PHONE/FAX	E-MAIL	Comment	
					YES	NO
Tim Malen	301 Virginia St Charlottesville WV	AEP	304-948-4723 264-348-4715	crommon@ aep.com		✓
Kim Brown Poland	P.O. Box 1791 Charleston WV	WVMA	304/347-8348	KBP@ramblw.com		✓
David M Flannery	PO Box 553 Charleston WV	WV Chamber	304/340-1017 304-340-1136	dflannery@jacksonkelly.com		✓
Karen Watson	DAQ	DAQ	926-3743			
Jimm Massey	2012 MacLure Ln	DAQ	926 3731			✓
Russ Lorince	7 Greenbrier St.	Allegheny Energy	345-4694	florinc@alleghenyenergy.com		✓



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

July 11, 2001

Ms. Lucy Pontiveros
Hazardous and Solid Waste
Division of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304

Dear Ms. Pontiveros:

Per our conversation of July 10, 2001, EPA agrees that the references to 40 CFR 261 and 65 Federal Register 42292 (July 10, 2000) should remain in Section 1.5.c, Incorporation by Reference, 45 CSR 25. These references were inadvertently lined out during the typing process. EPA has no other comments on your proposed rule change.

Sincerely,

Lillie R. Ellerbe
Environmental Protection Specialist
State Programs Branch (3WC21)
Waste & Chemicals Management Division





WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311

Telephone: (304) 342-2123

FAX: (304) 342-4552

wvma@wvma.com

July 12, 2001

John A. Benedict, Deputy Director
Division of Air Quality, DEP
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

Re: Proposed Amendments to 45 CSR 8, 9, 15, 16, 25, 33 and
34 and Proposed Regulation 45 CSR 18.

Dear Deputy Director Benedict:

Please accept these comments by the WVMA on behalf of its several member companies which are directly affected by the above-referenced air regulations being amended or proposed. The WVMA offers these comments with the intention of ensuring that the subject air regulations are as clear as possible and, where such regulations incorporate provisions of federal regulations, that the most recent versions of such provisions are incorporated. Each regulation will be addressed in turn. Comments on proposed 45 CSR 1 amendments are being submitted separately.

The WVMA fully supports the update of Regulation 8, 45 CSR 8 "**Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter**," and other above-referenced regulations to reflect the agency's new departmental designation. The WVMA also endorses the DAQ's decision not to adopt any changes to the PM10 standards at this time. The U.S. EPA is in the process of reconsidering its 1997 revisions to the PM standards following the recent American Trucking Association decision by the U.S. Supreme Court. The lower court has vacated the new particulate standards pending EPA's reconsideration of them, consistent with the Court's opinion, and we agree that West Virginia should not make any changes to the older PM10 standard at this time.

Regulation 9, 45 CSR 9 "**Ambient Air Quality Standards for Carbon Monoxide and Ozone**," is proposed for amendment to readopt the "old" one-hour ozone standard that EPA has

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Toyota
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Union Carbide Corporation
W.M. Cramer Lumber Co.
Weirton Steel Corporation

"reinstated" following Court action which remanded the "new" 8-hour ozone standard to EPA for reconsideration. Although the U.S. Supreme Court upheld EPA's rulemaking powers as to this standard, the court challenge remains as to the reasonableness of the selected standard, and the Supreme Court rejected and remanded to EPA its implementation approach to the new standard. Accordingly, we agree with DAQ's approach in reinstituting the prior 1-hour ozone standard until the issues are resolved on the Federal level.

Regulation 15, 45 CSR 15 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61," specifically incorporates "reference methods, performance specifications and other test methods" of 40 CFR Part 61 in section 4.1, but fails to specifically incorporate the accompanying federal definitions. The most obvious lacking definition is that for sources subject to the rule. The general requirement of 45 CSR 15, contained in Section 2.1, is a prohibition against constructing, modifying or operating any "National Emission Standards for Hazardous Air Pollutants (NESHAP) source" which results in a violation of the rule. There is no definition either in the state rule or Code of Federal Regulations for "National Emission Standards for Hazardous Air Pollutants (NESHAP) source." This phrase is apparently meant to include sources which are subject to NESHAPs, but as written, includes sources of the standards, rather than the emissions. We therefore recommend that "National Emission Standards for Hazardous Air Pollutants (NESHAP) source" be replaced with "hazardous air pollutant source" since "hazardous air pollutant" is defined in section 1.1. We also recommend that the lack of definitions be addressed on a broader scale by adding a provision similar to that of 45 CSR 18 Section 2.1 to read:

Definitions of all terms used, but not defined in this subsection shall have the meaning given to them in 40 CFR Part 61.02. Terms not defined therein shall have the meaning given to them in the federal Clean Air Act.

This provision would provide definitions of terms included in the incorporated reference methods, performance specifications and other test methods.

Section 2 of 45 CSR 16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR 60" like its counterpart provision in Regulation 15, identifies sources subject to the rule as "New Source Performance Standard source" without defining such sources. Likewise, Section 4.1 specifically includes reference methods, performance specifications and other test methods of the incorporated Federal regulations, but fails to specifically incorporate accompanying definitions. We therefore recommend that a provision similar to that of 45 CSR 18 Section 2.1 be added, to read:

Definitions of all terms used, but not defined in this subsection shall have the meaning given to them in 40 CFR Part 60. Terms not defined therein shall have the meaning given to them in the federal Clean Air Act.

This provision would provide definitions of terms included in the incorporated reference methods, performance specifications and other test methods.

Further, the date up to which federal regulations are incorporated should be extended to account for changes to the incorporated federal regulations which have occurred since June 1, 2001. Proposed Sections 1.5 and 4.1 of Regulation 16 incorporate that version of 40 CFR Part 60 which was effective July 1, 2000 and as amended by the Federal Register through June 1, 2001. On June 11, 2001, certain provisions of 40 CFR Part 60, dealing with the revised definition of "boiler operating day" and a requirement for substitution of missing data, were withdrawn. See 66 Fed. Reg. 31177 (June 11, 2001). We recommend that this Federal Register notice be included in the incorporated rule by changing Sections 1.5 and 4.4 to read:

... this rule incorporates by reference 40 CFR Parts 60 and 65 to the extent referenced in 40 CFR Part 60, effective July 1, 2000, as amended by the Federal Register through June 11, 2001.

(Emphasis added).

With respect to the newly proposed 45 CSR 18 "To Prevent and Control Emissions from Commercial and Industrial Solid Waste Incineration units," the definition for that waste subject to the rule, "commercial and industrial waste" should be clarified. Whether material qualifies as "commercial and industrial waste" depends upon (1) whether it is "solid waste" and (2) the manner in which it is incinerated (i.e., in an enclosed device using a controlled flame that is a distinct operating unit of the facility). Although the definition of "solid waste" contained in 40 CFR 60.2265 is incorporated by Section 2.1 of Regulation 18, for the sake of clarity, we recommend that the federal definition be restated in Section 2, for ease of reference by regulated sources.

WVMA would also like to suggest two administrative changes to Regulation 18. First, Section 2.1 contains some circular and superfluous language which should be eliminated. This Section provides that terms not defined in Regulation 18 shall have the meaning given to them in certain sections of the CFR, and where not defined in the CFR, shall have the meaning given to them by the Clean Air Act, certain other sections of the CFR or "this rule." The phrase "or this rule" should be deleted since one only looks to these other sources if "this rule" does not define the term. Second, a typographical error in Section 6.2 wherein the word "shall" appears twice should be eliminated.

The cut-off date for incorporation of Federal Registers should also be extended in **45 CSR 25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."** Section 1.5.a. of Regulation 25 incorporates those versions of Code of Federal Regulations provisions, including 40 CFR 264, contained in Table 25-A which were in effect as of July 1, 2000. On July 3, 2001, EPA took a direct final action which amended the applicability of Part 264. *See* 66 Fed. Reg. 35087 (July 3, 2001). We therefore recommend that Section 1.5.a. be amended to read "...that version which was in effect as of July 1, 2000, as amended by the Federal Register through July 3, 2001."

Two proposed rules which will amend 40 CFR Parts 264 and 40 CFR Parts 264, 265, 266, and 270, respectively were also published in the Federal Register on July 3, 2001. *See* 66 Fed. Reg. 35124 and 35126 (July 3, 2001).

Likewise, the cut-off date for incorporation of Federal Registers should be extended in **45 CSR 33 "Acid Rain Provisions and Permits."** Sections 1.5 and 4.1 of Regulation 33 incorporate those versions of certain provisions of the Code of Federal Regulations, including 40 CFR Part 75, which were effective July 1, 2000 and as amended by the Federal Register through June 1, 2001. On June 13, 2001, the EPA issued a Federal Register notice correcting the minimum recording and reporting requirements and the determination of monitor data availability for standard missing data procedures. *See* 66 Fed. Reg. 31842 (June 13, 2001). We recommend that this Federal Register notice be included in the incorporated rule by changing Sections 1.5 and 4.4 to read:

... this rule incorporates by reference... effective July 1, 2000, as amended by the Federal Register through **June 13, 2001**.

(Emphasis added).

Finally, **45 CSR 34 "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"** should be amended to incorporate three Federal Register changes made to 40 CFR Part 62 since June 1, 2001. Sections 1.5 and 4.1 of Regulation 34 incorporate those versions of 40 CFR Part 63 and Part 65, to the extent referenced in Part 63, which were effective on July 1, 2000 as amended by the Federal Register through June 1, 2001. Since then, Part 63 has undergone several regulatory changes:

- On May 14, the Notice of Intent to Comply provisions of 40 CFR Part 63 which had been vacated by the District of Columbia Circuit Court of Appeals in Chemical Manufacturers Ass'n v. EPA, 217 F.2d 861 (D.C.Cir. 2000) were officially removed from the CFR. *See* 66 Fed. Reg. 24270).

- On June 29, 2001, the EPA issued technical corrections to the NESHAP for Oil and Natural Gas Production Facilities and the NESHAP for Natural Gas Transmission and Storage Facilities which remove certain inconsistencies within the rule. *See* 66 Fed. Reg. 34548 (June 29, 2001).
- In addition, on July 3, 2001, the EPA issued a direct final rule amending certain subsections of Part 63 to improve implementation of emissions standards. *See* 66 Fed. Reg. 35087 (July 3, 2001).

These changes should be included in Regulation 34. We therefore recommend that this Federal Register notice be included in the incorporated rule by changing Sections 1.5 and 4.1 to read:

... this rule incorporates by reference 40 CFR Parts 63 and 65, to the extent referenced in 40 CFR Part 63, effective July 1, 2000, as amended by the Federal Register through July 3, 2001.

(Emphasis added). Two proposed rules which will amend 40 CFR Part 63 were also published in the Federal Register on July 3, 2001. *See* 66 Fed. Reg. 35124 and 35126 (July 3, 2001).

WVMA offers the same comment with respect to Regulation 34 as it offered above in its discussion of Regulations 15 and 16: that the universe of sources subject to the rule should be clarified and basic federal definitions accompanying incorporated federal provisions should specifically be included in order for the scope of the rules to be apparent on their face.

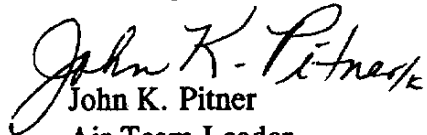
Finally, WVMA would like to offer the following suggestion with respect to the last "Inconsistency" section appearing in several of the above-referenced rules. This section provides that the Secretary is to make a determination as to which rule governs in the case of inconsistency of the subject rule with another rule of the Department of Environmental Protection, but that such determination should be based upon the application of the more stringent provision, term, condition, method or rule. We believe the better approach would be to reword this subsection to state that where an inconsistency exists, the more stringent provision, term, condition, method, or rule applies, except where the Secretary may determine otherwise on a case-by-case basis appropriate to the type and size of the regulated unit and its location. Such a change would give the Secretary discretion to apply the more appropriate standard, which is not necessarily the more stringent standard, in cases where an inconsistency arises, but good reasons exist not to apply the most stringent term.

The WVMA commends the Division of Air Quality on its annual efforts to update the subject regulations to reflect changes in counterpart federal regulations and to immediately

John A. Benedict, Deputy Director
July 12, 2001
Page 6

reflect recent organizational changes within the Department of Environmental Protection. We appreciate the opportunity to comment on these rules and trust that our suggestions will be helpful in the process of finalizing these rules.

Sincerely,

A handwritten signature in cursive script that reads "John K. Pitner". The signature is written in dark ink and is positioned above the printed name.

John K. Pitner
Air Team Leader
Environmental, Safety & Health Committee

cc: Karen S. Price, President, WVMA
Air Team Members
Kim Brown Poland, Esquire, Robinson & McElwee PLLC
Elizabeth K. Appel, Esquire, Robinson & McElwee PLLC

JACKSON & KELLY PLLC

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July 12, 2001

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258 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
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MEMBER OF LEX MUNDI,
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OF INDEPENDENT LAW FIRMS

Mr. John Benedict
Deputy Director
Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle Avenue S.E.
Charleston, West Virginia 25304

Re: Proposed Regulatory Revisions.

Dear Mr. Benedict:

The following comments are offered on behalf of the West Virginia Chamber of Commerce in response to the proposed changes to the air quality regulatory program. These comments address the modifications to 45 CSR 1, 8, 9, 15, 16, 18, 25, 33, and 34. Separate, more detailed comments are being filed concerning 45 CSR 26.

1. 45 CSR 1 - "NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides." DAQ has proposed modification to the final compliance date from May 1, 2004 to May 31, 2004. This rule modification is dictated by the order of the United States Court of Appeals for the District of Columbia Circuit. This deadline creates an immediate question of how and when the NOx SIP call ozone season budget allowances for West Virginia should be implemented since the NOx SIP call seeks to have West Virginia demonstrate how it will meet an allocation that is applicable to a time period beginning on May 1 and ending September 30 of each year. The Chamber, however, supports the May 31, 2004 deadline as consistent with the Court ruling. This would result in a correct application of the Court opinion and this date is appropriate to allow sufficient time to install the control equipment that is necessary to comply with the significant emission reduction requirements of the regulation.

2. 45 CSR 8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter." The modifications to this rule are designed to correct the reference to the PM 10 reference method. Since the new federal standard for PM 2.5 was remanded and the standard for PM 10 was vacated by the U.S. Court of Appeals for the District of Columbia Circuit, the West Virginia rule has been modified accordingly. The Chamber supports these modifications.

3. 45 CSR 9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone." The modifications to this rule are designed to make the proposed revisions to the state rule for ozone consistent with the U.S. Court of Appeals for the District of Columbia Circuit ruling that remanded the 8-hour ozone standard. The Secretary proposes to adopt the 1-hour ozone standard and will defer adoption of the more stringent 8-hour ozone standard until implementation issues have been resolved by U.S. EPA and finally adjudicated. The Chamber supports these modifications.

4. 45 CSR 15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61." This proposed rule codifies procedures and emission standards for certain stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in section 61.01(a) of 40 CFR Part 61 (asbestos, benzene, beryllium, coke oven emissions, inorganic arsenic, mercury, radionuclides, and vinyl chloride). This revised rule incorporates by reference additional provisions relating to the Consolidated Federal Air Rule; Synthetic Organic Chemical Manufacturing Industry, and Amendments for Testing and Monitoring Provisions. The Chamber supports these modifications.

5. 45 CSR 16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60." This proposed rule adopts by reference the recently updated standards of performance for new stationary sources promulgated by U.S. EPA. The Chamber supports these modifications.

6. 45 CSR 18 - "To Prevent and Control Emissions From Commercial and Industrial Solid Waste Incineration Units." This new proposed rule and series incorporates the federal counterparts (40 CFR Part 60 Subparts CCCC and specified portions of DDDD) which established standards of performance for new stationary sources and guidelines for existing sources for commercial and industrial solid waste incineration units. The Chamber notes that the incorporation by reference is combined with additional regulatory provisions. The Chamber is only supportive of those air regulatory programs that are no more stringent than the federal program.

7. 45 CSR 25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities." The proposed revisions to this rule will update it by incorporating the federal counterpart regulation effective through May 14, 2001, which includes a federal regulation vacating the Notice of Intent to Comply provision for hazardous waste combustors. In addition, the proposed rule changes are required to maintain consistency with the current 45 CSR 20. The Chamber supports these modifications.

8. 45 CSR 33 - "Acid Rain Provisions and Permits." The proposed revisions to this rule are intended to update it by incorporating all pertinent revisions and additions promulgated by U.S. EPA under 40 CFR Part 72 and related parts. The Chamber supports these modifications.

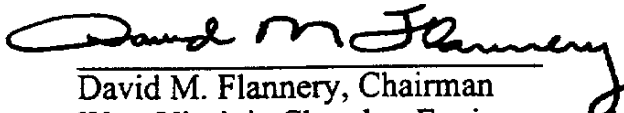
Mr. John Benedict

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9. 45 CSR 34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63." The proposed revisions to this rule are intended to codify general procedures and emission standards for certain stationary sources that emit (or have the potential to emit) one or more of the substances listed as hazardous air pollutants in section 112(b) of the CAA. This rule incorporates by reference 40 CFR Part 63, EPA hazardous air pollutant standards. The Chamber supports these modifications.

Very truly yours.

A handwritten signature in cursive script, reading "David M. Flannery".

David M. Flannery, Chairman
West Virginia Chamber Environmental Committee

cc: Stephen G. Roberts

From: "David White" <dwhitenj@hotmail.com>
To: <jbenedict@mail.dep.state.wv.us>
Date: Thu, Jul 12, 2001 4:07 PM
Subject: Proposed Rulemaking

Hi Guys. Just me again sending another copy of the comments on the proposed rules. I wasn't sure if the other message had gone through. Reply or call at (609) 239-4343 if you have trouble opening the attachment. Thanks. Dave White

Get your FREE download of MSN Explorer at <http://explorer.msn.com>

CC: <jchandler@mail.dep.state.wv.us>

David W. White
129 West Federal Street
Burlington, New Jersey 08016

July 12, 2001

Mr. John Benedict
Deputy Director
West Virginia Division of Air Quality
7012 MacCorkle Avenue, South East
Charleston, West Virginia 25304-3727

Re: Proposed Legislative Rules 45 CSR 1,8,9,15,16,18,25,26,33 and 34

Dear Mr. Benedict:

Please find below comments submitted in regard to the proposed rulemaking for the above referenced legislative rules.

In regard to modifications to 45 CSR 1, NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides, I would suggest as a minor note that Department and Secretary be capitalized throughout for consistency. The strikeout version posted at the DAQ website does not capitalize these at various sections, 1.1.a, 2.4, 2.21, 2.47, 2.78, 2.81, 2.92, etc.

In regard to 45 CSR 8, Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter, and 45 CSR 9, Ambient Air Quality Standards for Carbon Monoxide and Ozone, I would refer initially to the Air Pollution Control Act which provides that, "It shall be unlawful to cause a statutory air pollution, ..." §22-5-3 WV Code. Statutory air pollution is defined as "... the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property." §22-5-1(6) WV Code.

This standard provided for in the Air Pollution Control Act can and will often be more strict than the level of protection intended by the United States Environmental Protection Agency in its promulgation of National Ambient Air Quality Standards. For instance, ozone levels well below ambient standards have long been recognized to cause adverse health consequences to sensitive populations. Persons with chronic lung illnesses, the elderly and the very young can experience adverse health effects at levels below the National Ambient Air Quality Standard.

Allowing or permitting the emission of volatile organic chemicals and nitrogen oxides in a locality, manner and amount that would result in ozone concentrations causing adverse health effects to any member of the community would run afoul of the statutory provisions cited above, while still potentially meeting the standards referenced in 45 CSR 9. In light of this statutory obligation I would encourage the DAQ to not only adopt lower ambient standards, but also to enforce the statutory requirements and not simply defer to the USEPA promulgated standard.

The unique nature of West Virginia's topography, its populated river valleys and steep hillsides combined with the extensive and varied amounts of toxic emissions to which West Virginians are exposed requires specific measures to ensure adequate protection of human health. The national standards are not designed to meet all of these conditions.

In regard to 45 CSR 15 Emission Standards for Hazardous Air Pollutants I would again refer to the DAQ's specific responsibility under the WV Code. The variety of chemical exposures and their long term and synergistic effects on West Virginians have yet to be determined in any meaningful way specific to uniquely West Virginian features. Yet despite the broad statutory protections afforded in the WV Code, the DAQ continues to permit and allow increases in emissions of hazardous air pollutants, even when existing statutory standards are not being met.

The foul odors regularly experienced in many parts of the Kanawha Valley clearly violate the statutory prohibition on the interference with the enjoyment of life or property. And as a past Director of the Air Pollution Control Commission would point out, its not what you can smell that's going to get you. Yet permits are still being issued to allow increased toxic emissions to the air which may pose specific health hazards to various populations.

Quoting from a May 4, 2001 letter from Mr. Ed Andrews, Permit Engineer in the DAQ, in reference to a proposed permit increasing allowable acrylonitrile emissions at a facility in South Charleston, "Without some type of enforceable significant impact standard or acceptable ambient air quality concentration levels to use as a baseline, it is very difficult to determine if the toxic air emissions from a source pose a [sic] unacceptable risk to the public." This remarkable statement merely confirms that the DAQ in many instances is not able to assess whether a proposed permit will pose an unreasonable human health risk, or violate the Code, but will issue such permit anyway.

Adoption of federal standards provides some means of evaluation but should in no way replace or eliminate the independent statutory requirements imposed upon the DAQ. Unfortunately, that abrogation of a statutory duty occurs each time the DAQ permits an increase of emissions in a locality and manner as to exacerbate an existing statutory air pollution.

In regard to 45 CSR 16, Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60, the adoption of these standards should not limit the DAQ and prevent

its enforcement of statutory requirements. It is after all the Code which provides the authority for adoption, implementation and enforcement of these regulations.

In regard to 45 CSR 18, To Prevent and Control Emissions from Commercial and Industrial Solid Waste Incineration Units, I would recommend that the potential health impacts from this proposed regulation be evaluated. Without any toxicological or health professionals on staff reviewing the effects and implications of the proposed emission standards in light of the unique features encountered in West Virginia, these emission standards in the proposed regulation may in fact be met while causing or contributing to a statutory air pollution. Simple deference to federal standards does not ensure West Virginians the protection they are afforded under state law.

In regard to 45 CSR 25, To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities, the appropriateness of analysis of uniquely West Virginia factors is acknowledged. Specifically, §4.13 allows for a case-by-case analysis of emissions to determine risk to human health and the environment by considering such factors as topography, population distributions, population activities and modes and intensities and duration of exposure. Yet without any toxicological or human health resources available, the engineering staff will generally rely on federal data which may or may not be specific to West Virginia or meet the West Virginia Code's specific standards.

In regard to 45 CSR 26, NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electrical Generating Units, several comments upon this rather lengthy proposed regulation. First, the extended phase in period for implementation of this regulation appears unnecessarily long. Extensive research by personnel of the DAQ Planning Section has demonstrated that NOx impacts on ground level pollutant concentrations will be primarily limited to areas within 250 miles of a source and have little impacts outside that distance. As such the NOx emissions from West Virginia power plants will have the most adverse effects on West Virginians, despite the height of their stacks. To protect West Virginians from continued adverse effects from pollutants even below the national thresholds, implementation of NOx reductions should be phased in much sooner.

Also in terms of enforcement of violations, §54.4.c.1 provides that, "For purposes of determining the number of days of violation, if a NOx Budget unit has excess emissions for an ozone season, each day in the ozone season (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered;" Does this provision mean that exceeding a NOx Budget would constitute 153 separate violations, each punishable by up to \$25,000 in fines? Would each of these 153 violations have to be resolved in accordance with USEPA Timely and Appropriate Enforcement Guidelines, or whatever requirements would be applicable at the time? Would failure to satisfy an EPA penalty matrix for all 153 violations make West Virginia liable to EPA under existing or future grant commitments? And what information is relevant in demonstrating that a lesser number of days should be considered?

In regard to 45 CSR 33, Acid Rain Provisions and Permits, no comments.

In regard to 45 CSR 34 Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63, please refer to my previous discussion of the uniquely West Virginian concerns and statutory obligations imposed upon the DAQ by the West Virginia Code.

While I do recognize that the USEPA will be an invaluable resource in developing air quality data and information, it remains the statutory obligation of the DAQ to achieve and maintain such levels of air quality that will protect the health and welfare West Virginians. As political climates in Washington wax and wane with each new administration, the people of West Virginia should be assured that the DAQ will provide protections required under law, specifically the law of West Virginia.

Thank you very much for the opportunity to provide these comments.

Sincerely,

David White

45CSR25

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

RESPONSE TO COMMENTS

On June 8, 2001 the Division of Air Quality (DAQ) commenced the public comment period and subsequently held a public hearing on July 12, 2001 to accept oral comments on the proposed rule, 45CSR25. Written comments were accepted through 6:00 PM on Thursday, July 12, 2001. No person verbally commented at the public hearing concerning proposed rule 45CSR25. Four commenters submitted written comments which the DAQ addresses below.

I. COMMENTER: U. S. Environmental Protection Agency

COMMENT: References to federal regulations in 65 Federal Register 42292 (July 10, 2000) should remain in Section 1.5.c. - Incorporation by Reference.

RESPONSE: The proposed rule will be revised to retain the provisions of 40 CFR Parts 261 and 265 as adopted in 65 Register 42292 (July 10, 2000) under Section 1.5.c. The proposed rule inadvertently deleted such reference.

II. COMMENTER: West Virginia Manufacturers Association

COMMENT: The commenter stated Section 1.5.a. of 45 CSR 25 incorporates by reference the Code of Federal Regulations provisions which were in effect as of July 1, 2000. On July 3, 2001, EPA took a direct final action which amended the applicability of Part 264. It is recommended that Section 1.5.a. be amended to read " . . . that version which was in effect as July 1, 2000, as amended by the Federal Register through July 3, 2001." Two proposed rules which will amend 40 CFR Parts 264 and 40 CFR 264, 265, 266 and 270, respectively were also published in 66 Federal Register 35124 and 35126 on July 3, 2001."

RESPONSE: DAQ will modify the proposed rule to include the July 3, 2001 final regulation (66 Federal Register 35087). Please note that the agency does not adopt proposed federal regulations by reference, and therefore will not include the two proposed rules cited by the commenter.

III. COMMENTER: West Virginia Chamber of Commerce

COMMENT: The proposed revisions to this rule will update it by incorporating the federal counterpart regulation effective through May 14, 2001, which includes a federal regulation vacating

the Notice of Intent to Comply provision for hazardous waste combustors. In addition, the proposed rule changes are required to maintain consistency with the current 33CSR20. The Chamber supports these modifications.

RESPONSE: No response is required since the commenter stated it was supportive of the modifications to the proposed rule. However, DAQ wishes to point out the incorrect characterization of the proposed rule. The proposed rule in section 1.5.a incorporates by reference the Code of Federal Regulations which was in effect as of July 1, 2000, and not through May 14, 2001. Section 1.5.c of the rule incorporates by reference only certain more recent federal regulations which the agency deems appropriate on a case-by-case basis. DAQ coordinates with the Division of Waste Management and its rule, 33CSR20, in the determination as to which federal regulations to include.

IV. COMMENTER: David White

COMMENT: *The commenter noted that section 4.13 of the rule addresses human health and risk assessment but expressed concern about the toxicological or human health resources available to the State. The commenter stated that the agency will generally rely on federal data which may or may not be specific to West Virginia or meet the West Virginia Code's specific standards.*

RESPONSE: As noted by the commenter, this rule does address human health and risk assessment, both in section 4.13 and in the incorporation by reference of the federal RCRA regulations, which include an "omnibus provision" authorizing conditions that are not specifically addressed by the RCRA regulations to protect human health and the environment. Pursuant to this authority, comprehensive site-specific risk assessments must be completed, prior to permit issuance or reissuance, to ensure that a facility's permit meets the RCRA requirements. EPA provides training and guidance documents to the states, including technical support through EPA's contractors, to assist states in their evaluations of the comprehensive risk assessments required under this rule.