WEST VIRGINIA
SECRETARY OF STATE
Betty Ireland
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WVDEP - ~~Division of Water and~~ Waste Mangement TITLE NUMBER: 33

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §22-18-6

AMENDMENT TO AN EXISTING RULE: YES [X] NO [ ]

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20

TITLE OF RULE BEING AMENDED: "Hazardous Waste Management System"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 11, 2007 TIME: 6:00 P.M.

LOCATION OF PUBLIC HEARING: WVDEP's Charleston Headquarters - (Coopers Rock Training Room)
601 57th Street, SE
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL [ ] WRITTEN [ ] BOTH [X]

DATE WRITTEN COMMENT PERIOD ENDS: July 11, 2007 TIME: 6:30 P.M.

WRITTEN COMMENTS MAY BE MAILED TO:
Public Information Office
601 57th Street, SE
Charleston, WV 25304
comments @wvdep.org

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

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Authorized Signature

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: "Hazardous Waste Management System" 33CSR20

A. AUTHORITY: WV Code §22-18-6

B. SUMMARY OF RULE: This rule regulates the generation, treatment, storage and disposal of hazardous waste. The rule proposed for 2008 adopts and incorporates by reference the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of June 1, 2007.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE: This rule is proposed to adopt two years of changes to federal regulations 40 CFR Parts 260 through 279 into the State Hazardous Waste Management System, enabling the State hazardous waste program to maintain consistency with the federal program. The changes to 40 CFR regulations are technical corrections, allowance for more flexibility in SW-846 testing and analysis, addition of mercury containing equipment to management as Universal Waste, creation of a standardized permit, revision of the Headworks exemption, reference to Hazardous Waste Combustor Standards in accordance with the Clean Air Act, a Burden Reduction Initiative that allows a series of paperwork burden reductions for hazardous waste facilities, numerous error corrections in federal hazardous waste and used oil regulations, and certain waste exclusions for cathode ray tubes to allow for recycling.

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

The rule revisions are no more or less stringent than the federal counterpart regulations.

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 meetings on May 21, 2007, and May 30, 2007, the Environmental Protection Advisory Council discussed this rule. (See attached minutes for Council's discussion.)

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Monday – May 21, 2007
1:00 p.m. – 3:00 p.m.
601 57th Street, SE, Charleston, WV
West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

Rick Roberts
Karen Price
Bill Raney
Lisa Dooley
Larry Harris
Jackie Hallinan

DEP:

Randy Huffman, Deputy Cabinet Secretary/Director –Division of Mining & Reclamation
Karen G. Watson, Assistant General Counsel
Ken Ellison, Director - Division of Land Restoration
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Lewis Halstead, DMR
Ken Politan, DMR
Charlie Sturey, DMR
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
James Martin, Chief, Office of Oil & Gas
Carroll Cather, DWWM
Pam Nixon, Advocate
David L. Vande Linde, Blasting
Jim Mason, DAQ
Mike Zeto, DWWM – EE
Matt Sweeney, DWWM

VISITORS:

Ann Bradley, Spilman Thomas & Battle
Charlie Burd, IOGA
Don Garvin, WVEC
Dave Yaussy, Robinson & McElwee

Randy Huffman, Deputy Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m.

Karen Price stated that the Council did not have enough time to review the rules, therefore was requesting to have another meeting to discuss further and the remaining of the Council agreed. The Council will meet May 30, 2007 at 10:00 a.m. – WVDEP – 601 57th Street, SE – Charleston, WV 25304 – West Virginia Room (3001).

Deputy Cabinet Secretary Huffman apologized for the short time period regarding the rules getting out to Council. Randy Huffman then introduced Karen Watson, Assistant General Counsel to discuss with the Council the DEP bills that had passed in the 2007 Regular Legislative Session:

- SB 337 – Establishing New Greenhouse Gas Inventory Program
  Approved by Governor – April 4, 2007

- SB 425 – Relating to Water Pollution Control Revolving Fund
  Approved by Governor – April 4, 2007

- SB 465 – Establishing Dam Safety Rehabilitation Revolving Fund
  Approved by Governor – March 27, 2007

- SB 490 – Relating to Underground Storage Tank Insurance Fund
  Approved by Governor – April 3, 2007

- SB 524 – Requiring Proof of Lawful Disposal of Solid Waste
  Approved by Governor – March 28, 2007

- SB 588 – Removing Tax Expiration Date on Manufacturing or Production of Synthetic Fuel From Coal
  Approved by Governor – April 4, 2007

Karen Watson then gave a brief summary of each proposed rule for the 2008 legislative session:

Air Quality

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

Proposed Rule 6 is now a basic open burning/ incinerator rule. Revised scope includes 'statutory air pollution,' addition of new language for posted operating instructions and open burning or incineration of animal or poultry carcasses during a declared state of emergency. Except for temporary Air Curtain Incinerators for land clearing debris (DOH jobs) and incineration of animal or poultry remains, most Air Curtain Incinerators will now be exempted under Rule 6 and placed under Rule 18.

COMMENT

Mr. Harris: Why does it allow low-level radioactive waste?

DEP Response: To allow crematories to dispose of bodies with chemo drugs. Does not allow high-level radioactive compounds related to research.

Council wanted to know if the agency would accept comments in writing after the meeting (e-mail in comments)

DEP Response: Yes

45CSR8 – Ambient Air Quality Standards

SUMMARY

NAAQS rules 45CSR8, 45CSR9 & 45CSR12 have been combined for the 2008 legislative session. Rule 8 is now the complete NAAQS incorporation by reference rule, and 45CSR9 & 45CSR12 will be repealed and replaced. Revisions to SO_2 & PM NAAQS include correction of SO_2 annual primary standard from 0.003 to 0.030 ppm, addition of annual and 24-hour $PM_{2.5}$ standards, and addition of measurement methods for $PM_{2.5}$. Revisions to CO & Ozone NAAQS include revocation of one-hour ozone standard except for Berkeley & Jefferson counties, identification of one-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to NO_2 and Lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Revisions also include general language updates, improved citing and consistency.

COMMENT

Mr. Harris: Are we sure we are protecting the public's health? We should not be lowering standards so that our energy being transmitted to other states doesn't pollute our air. Are we aware of EPA's Science Advisory Panel?

DEP Response: CAIR aims to lower emissions at power plants. Utility controls are helping us meet targets earlier. EPA's regional approach has generally been successful and we are seeing tremendous benefits. The agency is aware of the EPA's panel, and EPA is considering more stringent regulations but has not done so yet.

45CSR16 – Standards of Performance for New Stationary Sources

SUMMARY

Revisions to rule incorporate annual incorporation by reference updates and exclusions.

COMMENT

No questions.

45CSR18 – Control of Air Pollution from Combustion of Solid Waste

SUMMARY

CISWI Rule 18 combines and incorporates by reference all current federal Section 111/129 combustion regulation into one rule. Old Rule 24 will be repealed and replaced. New exemption section is consistent with revised Rules 6, 25 and 34. Revisions also include revised scope, extensive federal counterpart language updates, improved citing and consistency.

COMMENT

No questions.

45CSR25 – Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities

SUMMARY

Revisions to the proposed rule include general annual incorporation by reference and revisions required to maintain consistency with the DWWM's rule 33CSR20 and federal counterpart regulation. Addition of direct incorporation by reference of new provisions published in the Federal Register. Language for pathological waste incinerators is revised for clarity.

COMMENT

No questions.

45CSR34 – Emission Standards for Hazardous Air Pollutants

SUMMARY

Rule 34 now combines all NESHAP regulations previously adopted under both Rules 15 & 34. Old Rule 15 will be repealed and replaced. Revisions to Rule 34 incorporate annual NESHAP updates under Parts 61 & 63. Some Part 63 standards affecting non-major sources of hazardous air pollutants are being excluded from incorporation by reference: Oil and Natural Gas; Polyvinyl Chloride and Copolymers; Primary Copper Smelting; Secondary Copper Smelting; and Primary Nonferrous Metals.

COMMENT

No questions.

45CSR39 – Control of Annual Nitrogen Oxides Emissions

SUMMARY

Annual CAIR NOx Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

No questions.

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

SUMMARY

Ozone Season CAIR NOx Rule - Incorporates revisions 40 CFR to Part 96.

COMMENT

No questions.

45CSR41 – Control of Annual Sulfur Dioxide Emissions

SUMMARY

Annual CAIR SO_2 Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

No questions.

45CSR42 – Greenhouse Gas Emissions Inventory Program

SUMMARY

The Greenhouse Gas Inventory Program Rule is authorized by SB337 passed in the 2007 legislative session. The rule establishes a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount; inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions, capture and sequestration; provides for: a periodic compilation of a greenhouse gas inventory; a determination whether WV is a net sink or emitter; development of a registry for voluntary reductions; and a determination whether greenhouse gas can be developed as an asset for economic development.

COMMENT

Mr. Raney: Is the exclusion still there for coal preparation activities?

DEP Response: Yes, section 3.2. (45CSR42)

Mr. Raney: How do we quantify sequestration?

DEP Response: Don't think we will get down to stationary source level. Agency will look at area

sources and biogenic activities. Once we get information, we will compile in an inventory.

Division of Water and Waste Management

33CSR9 – Standards for Beneficial use of Filtrate from Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENT

Lisa Dooley: Public notice of permits – who bears the cost – there has to be a more efficient way of getting notices out than Class I legal ads. This is a suggestion for the future.

DEP Response: Applicant bears cost – DEP is trying other methods of getting the information out – but not everyone has access to e-mail.

400 people on DEP's mailing list to receive permits by e-mail and we have between 30-40 who receive permits by US mail.

33CSR20 – Hazardous Waste Management System

SUMMARY

This amendment will adopt by reference approximately two years of changes to federal regulations by adopting the federal regulations in effect as of June 1, 2007 consisting of changes that correct errors in previously enacted Dye and Pigment rule and Manifest rule, allow more hazardous waste, allow greater flexibility in SW-846 testing and monitoring, allow more mercury containing devices to be managed as universal waste, streamline permitting process through a standardized permit, allow additional headworks and de minimus waste exemptions, reference Clean Air Act standards for hazardous waste combustors, allow a series of paperwork burden reductions for hazardous waste management facilities, corrects errors in 40 CFR (federal regulations) and excludes cathode ray tubes from the definition of solid waste under certain conditions. Language corrections, updated references and a change as the result of an EPA comment regarding annual groundwater monitoring at corrective action sites are also included in the amended rule. The rule amendment is not projected to require additional operating expenses above current levels as the amendments are generally de-regulatory in nature.

COMMENT

No questions.

33CSR30 – Underground Storage Tanks

SUMMARY

There are several new provisions to reflect the 2005 Federal Energy Act, including: secondary containment requirements for new or replaced thanks or piping; secondary containment requirements for new or replaced fuel dispenser systems; tank eligibility for delivery, deposit or acceptance – enables agency to prevent deposit or delivery to a tank that is not in compliance; and training requirements for individuals who operate, maintain or are responsible to address emergencies from spills or releases from underground storage tank systems.

COMMENT

No questions.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

The proposed revisions reflect updates identified during the federally-mandated triennial review of the Water Quality Standards rule. These include proposed additions to the trout water list, new criteria for nutrients, revisions to criteria in Appendix E and a use redesignation in the Guyandotte River Basin.

COMMENT

Mr. Raney: Would like to have the trout water list stay within the agency and be able to discuss the science on a case-by-base basis before the EQB, not the Legislature.

DEP Response: The DEP believes the scientific basis for the proposed trout streams is clear and does not need to be litigated before the EQB.

Mr. Harris: Commented on the changes in Appendix E and asked whether the formula change for copper and cadmium resulted in a more or less stringent standard.

DEP Response: The changes in Appendix E are recommended by EPA, updating MCL's, etc. The revised hardness formulas represent EPA's latest science.

47CSR10 – National Pollutant Discharge Elimination System (NPDES)

SUMMARY

The proposed revisions to the National Pollutant Discharge Elimination System Rule reflect updates/additions made to the various federal regulations that govern the NPDES program. The proposed changes also include specific language in section 14 of the rule relating to the Pretreatment Program to ensure that the rule is consistent with the most recent federal pretreatment regulations in 40 CFR Part 403.

COMMENT

No questions.

47CSR34 – Dam Safety

SUMMARY

The proposed revisions establish requirements governing the disbursement and use of moneys in the Dam Safety Rehabilitation Revolving Fund, authorized by SB 465 in the 2007 legislative session.

COMMENT

Ms. Hallinan: Any progress being made in reducing the number of deficient dams?

DEP Response: Not very much. The fund initiative is badly needed.

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection for state waters, Tiers 1, 2, 2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process. The proposed revisions to the rule carry forward the agency's antidegradation implementation efforts, and move the Tier 2.5 streams that had been on the "presumptive" list in Appendix C to a final proposed list in Appendix A. The agency is proposing a total of 156 streams be included on the list. The list of 156 waters is comprised of the 37 waters that did not receive objections in the formal objection period, those waters that contain reproducing trout and are 100% on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

COMMENT

Mr. Harris: Suggested we file with 309 streams instead of 156 streams because Legislature will further reduce.

Mr. Raney: Suggested we start with 39.

Mr. Harris: Asked about section 2.11 in the definitions regarding "trading" and if it includes cross-pollutant trading.

DEP Response: The definitions were unchanged from the ones the EQB first adopted in 2001. The agency does not think it allows cross-pollutant trading.

Division of Mining and Reclamation

38CSR2 – Surface Mining Reclamation Rule

SUMMARY

§38-2-3.2.g. Notice of Technical Completeness is new language and is to provide the public an opportunity to review the application once technical review is completed. §38-2-5.4.e.1 is removing language that is contrary to returning the natural drainway to its original pattern, profile, and dimensions once drainage control structure is removed. The changes in §38-2-5.6 clarify what operations may be exempt from conducting a "Surface Water Runoff Analysis", monitoring requirements and removes phase-in compliance schedule that expired on June 19, 2006. Changes to §38-2-6 removes duplication of rules for Blasting and after this change, all the requirements for blasting will be contained in Surface Mining Blasting Rule, Title 199 Series 1. New §38-2-11.8 titled "Bond Credit for Reclamation of Bond Forfeiture Site under a No Cost Reclamation Contract" encourages qualified operators to undertake reclamation of bond forfeiture sites for the purpose of eliminating hazards to human health and safety, abating pollution of surface and ground waters and the contribution of sediment to adjacent areas, and restoring land to beneficial uses. Changes in §38-2-14.15.c.2 and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in 14.15.e remove a phase-in compliance schedule that expired in 2004. The changes in §38-2-23 are being made to make the mining rule consistent with the proposed changes in the State's NPDES Mining Rules.

COMMENT

No questions.

47CSR5A – Individual State Certification of Activities Requiring a Federal Permit

SUMMARY

The proposed amendments to this rule are being made to adopt into rule requirements that have been applied through past practices for coal related activities requiring mitigation and issuance of a 401 State Certification of a 404 Permit. Ratios for monetary compensation for temporary impacts are detailed. Monetary compensation for permanent impacts to wetlands from coal related activities are made the same as non-coal related. Additional economic and stream measurement information is being requested to be added to the 401 application.

COMMENT

Mr. Harris: How do we determine the "ordinary high water mark" under section 4.2.f.4 and how is it determined on a small stream?

DEP Response: The US Army Corps of Engineers is responsible for determining "waters of the U.S." under the rule.

Mr. Harris: What are the differences between coal and non-coal impacts and how are they determined?

DEP Response: Rule has to be consistent with statute.

47CSR30 – WV/NPDES Rules for Coal Mining Facilities

SUMMARY

The proposed amendments to this rule are being made to allow general clean-up of sections referencing outdated names of agencies and references to the EQB governing rule making. This rule addresses the Secretary as being the person as head of all actions. References to the "Director" are changed to "Secretary" to eliminate the need to distinguish between the Director of Mining and Reclamation and the Director of Water and Waste Management when issuing a coal related WV/NPDES permit. This rule adds provision for storm-water coverage for certain minimal activities without the requirement for modification through application to the permit. This rule also provides for an advanced approval of transfer of a WV/NPDES Permit to coincide with the advanced approval of the corresponding Article 3 Permit. This rule clarifies provisions related to coal remining operations and provides a remining water quality standard variance for any parameter of concern.

COMMENT

No questions.

199CSR1 - Surface Mining Blasting Rule

SUMMARY

The proposed amendments change the following sections: 2.27. Adds the definition of "other structure" (structures built by the permittee); 2.38 Clarifies definition of "surface mine operation"; 3.2.C. Plan for blasting should include seismic monitoring when within 1000 ft of a structure, and performance specifications for blasting seismographs; 3.4. Areas of blasting that will be regulated for shaft and slope development; 3.6.c.3. Requiring field practice guidelines for blasting seismographs; 3.7a Request for alternate limits must have written consent of the owner; 3.9. Minimum qualifications and continuing education requirements for surveyor; 4.1.b. Allows the agency to consider blasting experience of applicants that was gained prior to the last three years; 4.5.d. Requires applicants who have been suspended or revoked in other states to show cause as to why should be issued a certification; 4.9.a.2 process for issuing a temporary suspension to a blaster and appeal rights; 4.13 Clarifies blasters responsibility of training the blasting crew; 5.2.a.3&4 Clarifies

the investigations process on a claim of blasting damage; 6.1 Requiring that any arbitrators that are removed from the list must be done with cause; and 7.3 Detonators and initiation systems are not considered for calculation of fees.

COMMENT

No questions.

Office of Oil and Gas

35CSR3 – Coalbed Methane Wells Rule

SUMMARY

The WVDEP, Office of Oil and Gas is proposing to revise existing rule 35CSR3. Series 3 is a legislative rule in place to enforce the provisions in WV Code §22-21-1 et seq., Coalbed Methane Wells and Units, commonly referred to at the Coalbed Methane Act. The revisions will: Address the establishment of special field rules to promote the orderly development of coalbed methane fields; Protect the correlative rights of all owners located within the geographic area for which special field rules are established; Provide a process by which the Review Board may hold a hearing on an application for special field rules and issue such rules; Insert language (Section 17) which was inadvertently deleted from the rule during the 2006 legislative session. This language existed in the rule prior to the revisions in 2006.

COMMENT

Is this the same rule that went through last year?

DEP Response: Yes, except for two sections that had changes:

16.2.e – advertisement "15 days"

16.1.6.1 – "FOIA" issue that came out of the LRMRC.

Mr. Raney: Is this the product of the stakeholders group?

DEP Response: Yes.

Ms. Hallinan: What is a field rule?

DEP Response: Special spacing procedure for coalbed methane wells. It deals with pooling and royalty issues.

Division of Land Restoration

33CSR10 – Recycling Assistance Grant Program

SUMMARY

This rule sets out guidelines and procedures for providing assistance grants to local governments and other interested parties for the purpose of planning, initiating, expanding, or upgrading recycling programs, provide related public education programs, and assist in recycling market procurement efforts.

COMMENT

No questions.

60CSR3 – Voluntary Remediation and Redevelopment Rule

SUMMARY

This legislative rule establishes the eligibility, procedures, standards and legal documents required for voluntary and brownfield cleanups and updates risk protocol standards, including updates to the deminimis table. It also includes changes to the land use covenant section to incorporate the components of the Uniform Covenant Act.

COMMENT

Ms. Dooley: Are there grant dollars for brownfields?

DEP Response: Yes

The next scheduled Advisory Council Meeting will be on May 30, 2007 at 10:00 a.m. Mr. Huffman asked the Council members to notify the DEP of which rules they want to discuss so the right agency person can be at the meeting. He also asked them to submit comments prior to the meeting if possible.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES
Wednesday – May 30, 2007
10:00 a.m. – 12:00 p.m.
601 57th Street, SE, Charleston, WV
West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

Rick Roberts
Karen Price
Bill Raney
Larry Harris - Teleconference
Jackie Hallinan

DEP:

Randy Huffman, Deputy Cabinet Secretary/Director –Division of Mining & Reclamation
Karen G. Watson, Assistant General Counsel
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
Pam Nixon, Advocate
Jim Mason, DAQ
Mike Zeto, DWWM – EE
John Morgan, DWWM
Scott Mandirola, DWWM
Greg Adolfson, PIO

VISITORS:

Dave Yaussy
Brittany Carns
Joe Gollehon
Gregory Hoyer
Jeff Mauzy
Amy Christy

Randy Huffman, Deputy Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 10:00 a.m. Advisory Council Member Larry Harris joined the meeting via teleconference. Deputy Cabinet Secretary Huffman then turned the meeting over to Karen Watson, Assistant General Counsel for the West Virginia Department of Environmental Protection. Karen informed the Council that the agency had received comments from several Council members and those comments would be appended to the minutes. (see attached) She explained the agency

had representatives from each of the programs to answer questions for the rules identified in those comments. She also explained the agency had made several changes in the rules as a result of those comments.

Air Quality

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

Proposed Rule 6 is now a basic open burning/ incinerator rule. Revised scope includes 'statutory air pollution,' addition of new language for posted operating instructions and open burning or incineration of animal or poultry carcasses during a declared state of emergency. Except for temporary Air Curtain Incinerators for land clearing debris (DOH jobs) and incineration of animal or poultry remains, most Air Curtain Incinerators will now be exempted under Rule 6 and placed under Rule 18.

COMMENT

Larry Harris: Had raised the issue of "low-level radioactive waste" in the last meeting.

DEP Response: DEP has removed the chemotherapeutic waste and low-level radioactive waste provisions from the proposed rule. The proposed rule does not in any way affect current medical waste incineration rules now on the books.

45CSR8 – Ambient Air Quality Standards

SUMMARY

NAAQS rules 45CSR8, 45CSR9 & 45CSR12 have been combined for the 2008 legislative session. Rule 8 is now the complete NAAQS incorporation by reference rule, and 45CSR9 & 45CSR12 will be repealed and replaced. Revisions to SO_2 & PM NAAQS include correction of SO_2 annual primary standard from 0.003 to 0.030 ppm, addition of annual and 24-hour $PM_{2.5}$ standards, and addition of measurement methods for $PM_{2.5}$. Revisions to CO & Ozone NAAQS include revocation of one-hour ozone standard except for Berkeley & Jefferson counties, identification of one-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to NO_2 and Lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Revisions also include general language updates, improved citing and consistency.

COMMENT

Karen Price: Section 4.2.c – $PM_{2.5}$ Maximum 24-Hour Average Concentration. The level for the 24-hour primary and secondary standard states 35 ug/m^3. This should be 65 ug/m^3, pursuant to 40 CFR 50.7.

DEP Response: On October 17, 2006, the federal NAAQS regulation changed from 65 to 35.

Larry Harris: Restated his concern that the standards may not be stringent enough to protect public health. He also restated his question about the antidegradation language struck from the rule.

DEP Response: DEP cannot lower the NAAQS standards below that of federal levels unless the provisions for the stringency test in §22-1-3a are fully met. 45CSR14, in its entirety, has wholly replaced the intent of the relic anti-degradation language struck in proposed Rule 8.

45CSR39 – Control of Annual Nitrogen Oxides Emissions

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

Ozone Season CAIR NOx Rule - Incorporates revisions 40 CFR to Part 96.

Annual CAIR NOx Rule - Incorporates revisions to 40 CFR Part 96.

45CSR41 – Control of Annual Sulfur Dioxide Emissions

Annual CAIR SO_2 Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

Karen Price: Asked why the opt-in language was deleted from each of these rules.

DEP Response: has removed the opt-in provisions in the three CAIR rules so that West Virginia can say that CAIR equals NOx RACT for EGUs under the PM2.5 implementation rule.

45CSR42 – Greenhouse Gas Emissions Inventory Program

SUMMARY

The Greenhouse Gas Inventory Program Rule is authorized by SB337 passed in the 2007 legislative session. The rule establishes a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount; inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions, capture and sequestration; provides for: a periodic compilation of a greenhouse gas inventory; a determination whether WV is a net sink or emitter; development of a registry for voluntary reductions; and a determination whether greenhouse gas can be developed as an asset for economic development.

COMMENT

Karen Price and Larry Harris: Both asked about the definitions of "anthropogenic" and "biogenic" in the rule and asked for examples of each.

DEP Response: An example of an anthropogenic source is the coal extraction process and an example of a biogenic source is the erosion of soil exposing a coal seam. The agency does not plan

to ask sources to report biogenic activities. In order to receive credit a source must report all of its emissions.

Karen Price: Can the reporting requirement in section 4.1 be made consistent with the emissions inventory requirements.

DEP Response: The date in the rule is March 31st and is the same as the emissions inventory date.

Karen Price: Does not believe fees should be required for greenhouse gas reporting.

DEP Response: The agency will consider the issue.

Karen Price: The last sentence in section 5.3 allowing the Secretary to request information is not authorized by statute.

DEP Response: It is authorized by the statute.

Karen Price: There should be a reasonable protocol for reporting emissions.

DEP Response: D AQ purposely wrote the rule in a manner flexible to the Secretary, as greenhouse gas reduction quantification protocols are still being developed at this time.

Karen Price: Is WV going to sign on to the climate registry or are we going to have our own?

DEP Response: In order to trade, we have to be consistent with other programs, but we do not want to be more specific in the rule.

Bill Raney: The exemption in section 3.2 includes language referring to sources covered by chapter 22-3 as well as sources required to report emissions. We are concerned this may take the exemption in the statute away.

DEP Response: While the agency did not want to require mining extraction to report emissions, thermal dryers associated with coal prep plants often have huge emissions of greenhouse gases. That is the reason the statute and rule only exempt sources permitted under chapter 22-3.

Division of Water and Waste Management

33CSR9 – Standards for Beneficial use of Filtrate from Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-

15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENT

Larry Harris: DEP made changes to this rule during the Interims process last year, and the rule now requires a permit for both short-term and long-term applications. This is a good change. However, we feel that most of the information required in Section 7.3. Permit Application Requirements for long-term permits should also be required for short-term permits.

DEP Response: The requirements of section 7.3 were intended to be directed toward facilities that proposed to land apply filtrate as the beneficial use. It was intended to be applicable to both, if land application was the proposed method of reuse. Section 7.3 will be revised to more clearly reflect the applicability of the requirement for both long-term and short-term, if land application is the proposed beneficial reuse.

Rick Roberts and Larry Harris: Regarding the environmental effects of disposal of sludge are the values in Table 1 of the rule sufficient?

DEP Response: The Table 1 values are the same as the sewage sludge levels in DEP's other rules, and the agency believes they are supported by sound science.

Rick Roberts and Larry Harris: Mr. Harris expressed concern with the distinction between "beneficial reuse" and "disposal." Mr. Roberts believes that his concern is satisfied by the language in section 3.1.b.1.

Rick Roberts: The rule should include general permits as proposed.

Larry Harris: Only individual permits should be allowed under the rule.

DEP Response: There will be public notice in the general permit process.

33CSR30 – Underground Storage Tanks

SUMMARY

There are several new provisions to reflect the 2005 Federal Energy Act, including: secondary containment requirements for new or replaced thanks or piping; secondary containment requirements for new or replaced fuel dispenser systems; tank eligibility for delivery, deposit or acceptance – enables agency to prevent deposit or delivery to a tank that is not in compliance; and training requirements for individuals who operate, maintain or are responsible to address emergencies from spills or releases from underground storage tank systems.

COMMENT

Karen Price: Section 6.1. states "....including any person who accepts a delivery order, accepts payment, delivers or deposits product into an underground storage tank.....". The portion that states "...accepts payment..." should be removed from this section because those individuals within a company who accept payment or make payments most often do not know anything about the underground storage tank (UST), the operation of the UST, or the current regulatory status of the UST.

DEP Response: This language will give the agency a better handle on transporters and middle-men involved in the process.

Karen Price: Section 7.3.a.1. states "....the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods.....".

1. The portion that states "..the date, time and location of the course,...." should be deleted. For large companies with many UST installations and locations there can be numerous individuals that need to be trained. Training will most likely occur on multiple dates, times, and locations that may not always be known until just prior to the training event. When new employees are hired training might occur on short notice and for one individual. The burden of having to report the dates, time and locations would hinder and slow down the training process and restrict a company's ability to comply.

2. The portion that states "...the credentials of the instructors..." should be removed. Credentials will vary from instructor to instructor new instructors might be utilized, and a company might not know which instructors will be used at the various training sessions until just prior to the training session. In addition, the course content is the main issue of concern and should be the main focus in obtaining State approval of a training program.

DEP Response: Regarding dates, times and location of the training the agency will not require the information prior to the training. As far as the credentials of the instructor the agency needs this information as part of its curriculum review, in this case before the training.

Karen Price: Section 7.3.a.2 - This section states that a nonrefundable application fee of $280 must be submitted with the application. Larger companies may have one training program, but administer the training on multiple dates, times and locations. Having to submit an application for approval of the training program each time the program is administered would be cost prohibitive, burdensome, and would hinder the training process.

DEP Response: The agency agrees and believes the rule only requires a one-time fee.

Rick Roberts: Regarding the $5.00 per ton fee, how does a source measure the tonnage? Perhaps the agency should consider using a cubic-yard approach.

DEP Response: The agency will consider.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

The proposed revisions reflect updates identified during the federally-mandated triennial review of the Water Quality Standards rule. These include proposed additions to the trout water list, new criteria for nutrients, revisions to criteria in Appendix E and a use redesignation in the Guyandotte River Basin.

COMMENT

Larry Harris: Does the use removal in section 7.2.d follow the federal Clean Water Act requirements?

DEP Response: Yes, the agency followed all the requirements, federal and state, and required extensive information from the company. The agency also conducted two public meetings.
Bill Raney: Mr. Raney repeated his concern with the listing of trout waters in the rule and the fact that the list has to be approved by the Legislature. Karen Price agreed with this comment. Jackie Hallinan and Larry Harris did not agree with this comment.

Karen Price: Questioned the need for Appendix D, because the Category C use applies to all state waters.

DEP Response: Agency will consider.

Karen Price: Will the agency consider not making use removals go through the legislative process.

DEP Response: The agency decided not to include any language pertaining to this issue at this point in time, but will be subjecting this issue to the public participation process in the coming months.

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection for state waters, Tiers 1, 2, 2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process. The proposed revisions to the rule carry forward the agency's antidegradation implementation efforts, and move the Tier 2.5 streams that had been on the "presumptive" list in Appendix C to a final proposed list in Appendix A. The agency is proposing a total of 156 streams be included on the list. The list of 156 waters is comprised of the 37 waters that did not receive objections in the formal objection period, those waters that contain reproducing trout and are 100% on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

COMMENT

Larry Harris: Scientific criteria should be used to add or delete streams from the Tier 2.5 list.

Rick Roberts: Can the SRF program give priority to facilities impacted by the Tier 2.5 list?

DEP Response: Agency will take this under advisement.

Larry Harris: Is the nomination process adequate?

DEP Response: The agency believes the process is generally adequate and workable. If, however a large number of streams are nominated at one time, the individual notification requirements may be difficult and costly.

At this point in the meeting, Bill Raney submitted written comments regarding several mining rules. (see attached)

60CSR8 - Environmental Excellence Program

Greg Adolfson summarized the rule revisions. He said the changes would provide more flexibility for the agency to approve or disapprove of incentives in the program, as well as other flexibilities.

SUMMARY

Changes are being proposed to the Environmental Excellence Program Rule (60CSR8) to better align with and follow the momentum of the United States Environmental Protection Agency's National Environmental Performance Track Program. Additionally, the primary purpose for the changes is to give more flexibility to the Department of Environmental Protection Cabinet Secretary in areas such as: Eligibility Criteria for Participation (section 4); Environmental Performance Record (section 5); Environmental Management System (section 6); Public Participation (section 8); Incentives (section 9); Procedures for Application (section 10); and Annual Performance Report (section 14). Language, such as "may include, but will not be limited to, the following," has been added to allow for this flexibility.

COMMENT

Rick Roberts: Why is section 6.2 completely deleted?

DEP Response: The section is not completed deleted, just the 1996 standards. This will allow the agency to use the most current standards.

Bill Raney: How many companies are participating in the program?

DEP Response: There are two in the National Program, Toyota and Dow.

Jackie Hallinan: The program is a good idea.

Meeting was adjourned by Deputy Cabinet Secretary Randy Huffman.

Council Meeting – 5/30/07
Comments
Submitted
by Bill Raney

Bill...

Here are some preliminary comments provided by the Environmental-Technical Committee on the rules that will be reviewed by the Advisory Council:

Water Quality Standards Rule (47CSR2)

Only concern relates to the Trout Stream List:

Inclusion of a stream in the codified list contained in the rule forever locks in unrealistic WQS on that stream regardless of existing and/or future water quality. The lower standards are very problematic for the coal industry by targeting iron and aluminum.

WVCA believes the list is immaterial to protection of the existing use if it is indeed a trout stream.

WV DEP, in the NPDES permitting process, will apply appropriate trout stream effluent limitations if the agency believes a stream to have a trout population regardless of whether or not it in on the codified list contained in the water quality standards rule or not. The only difference is that in the permitting process, the applicant has the opportunity to present data and sampling to refute the agency's assertion that a stream is a trout stream, and has a right of appeal if they continue to disagree with agency's assignment of trout stream limits. The ability to dispute the trout stream designation is very important, especially since some of the data supporting the current initiative to expand the codified list is decades old.

If a trout stream is included on the codified list approved by the legislature, the only option for removing that designation is to once again pursue a legislative fix. Under those circumstances, it is easier to just challenge the entire expansion of the trout stream list.

The massive expansion of the trout stream list as currently proposed is much more restrictive than the standards found in surrounding states, where the regulatory agencies have developed different levels and categories of trout streams. West Virginia continues to treat all trout streams the same as though they were native, naturally-reproducing, cold water streams that deserve the highest levels of protection. This is simply not true, as many streams in West Virginia are stocked trout streams where the existing, in-stream water quality is lower than the established effluent guidelines for native trout streams.

Mining & Reclamation Rule (38 CSR 2)

Main concern relates to 14.15.c.2, regarding contemporaneous reclamation and valley fills:

This revision will penalize operators that are constructing "bottom-up" valley fills, the agency's preferred method of fill construction by unnecessarily restricting when such fill can be counted as "reclaimed" under the state's contemporaneous reclamation rules. These rules already vastly exceed the federal requirements and those of any other surrounding state, and this change will only make them worse.

Additionally, this proposed revision was deleted during the Legislative session in 2007.

401 Water Quality Certification Rule (47 CSR 5A)

The changes to this rule are totally un-necessary, and add further detail and complication to a state mitigation rule when the Legislature has specifically instructed the agency to better align its mitigation program with that of the Corps of Engineers. Several years ago, the Legislature passed a bill directing WV DEP to provide state mitigation credit for Corps mitigation. While this has occurred, we feel the revisions to this rule will drive the two programs further apart. Additionally, we know of no state statutory revision that necessitates these changes...the state mitigation program has functioned for years without this level of detail, and we question why it's needed now.

Further, we are concerned that the rule seeks to change definitions that should only be revised in the statute with Legislative approval. For example, the revisions jettison the long-used references to stream types and insert reference to ordinary high water mark. This appears to be an effort to expand the definition of "waters of the state" to all cover every erosional feature, regardless of whether or not it actually functions as a stream.

West Virginia Coal Association

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July 18, 2006

Mr. Charles Sturey
West Virginia Department of Environmental Protection
Division of Mining & Reclamation
601 57th Street SE
Charleston, WV 25304

Re: Comments on Proposed Revisions to 47 CSR 5A

Dear Mr. Sturey:

Pursuant to the notice filed with the Secretary of State on June 15, 2006, the West Virginia Coal Association (WVCA) offers the following comments and observations regarding the agency's proposed revisions to 47 CSR 5A, "Rules for Individual State Certification of Activities Requiring a Federal Permit".

WVCA is a non-profit state trade association representing the interests of the West Virginia coal industry on policy and regulatory issues before various state and federal agencies that regulate coal extraction, processing, transportation and consumption. WVCA's primary goal is to enhance the viability of West Virginia's coal industry by supporting efficient and environmentally responsible coal extraction and processing through reasonable, equitable and achievable state and federal policy and regulation. WVCA appreciates the opportunity to provide comments regarding the West Virginia Department of Environmental Protection's (WVDEP") proposed revisions to the state's Clean Water Act ("CWA") Section 401 certification rule.

General Comments

WVCA is very concerned about the WVDEP's proposal to add detail to its § 401 mitigation program, particularly at this time. The WVDEP has not articulated any problems with implementation of its existing mitigation program pursuant to this rule, and the WVCA sees no benefit to adding further detail and complexity now. Even more importantly, the WVCA understands the history of the WVDEP's § 401 mitigation program, and believes that the very basis for its development years ago no longer exists. The WVDEP's program has been fully replaced by the federal mitigation program which has developed into a comprehensive program and is the subject of new joint United States Army Corps of Engineers ("Corps") and the United States Environmental Protection Agency ("EPA") rules to update and conform their collective mitigation goals and requirements. The state's mitigation requirements, at least as they relate to mitigation for activities permitted by a CWA § 404 permit, have become obsolete and duplicative.

History of State § 401 Mitigation Requirements.

The state's mitigation program as maintained by the WVDEP and implemented through the § 401 rules is not a required component of the federal § 404 permitting program. The § 401 certification program is intended to insure that

issuance of a federal permit does not result in a violation of state water quality standards:

> CWA section 401 provides that states certify that federal activities or activities requiring federal approvals relative to CWA section 404 would not violate applicable effluent limitations, or other limitations, or other water quality requirements.[1]

Instead, the state has independently required mitigation as a condition of § 401 certification. Implementation of the state's mitigation program and requirements dates from a time when the Corps imposed no federal mitigation requirement on mining operations authorized by the § 404 General Permit for coal mining operations, Nationwide Permit 21("NWP 21"):

> [NWP] 21. Activities associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining (OSM) or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. **The notification must include an OSM or state-approved mitigation plan** (emphasis added).[2]

Based on the requirements of the NWP 21, a state mitigation plan was required for a mining-related § 404 permit (usually a NWP 21) to be issued by the Corps:

> Prior to reissuance of NWP 21 in January 2002, the COE [Corps] considered mitigation adequate with the inclusion of an OSM or state-approved SMCRA onsite mitigation plan in the permit application.[3]

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[1] Programmatic Environmental Impact Statement. Corps, EPA et al. 2005. page II.C-42.
[2] Final Notice of Issuance, Reissuance, and Modification of Nationwide Permits. U.S. Army Corps of Engineers, Dec. 13, 1996. 61 Fed. Reg. 241.
[3] Programmatic Environmental Impact Statement. Corps, EPA et al. 2005. Page II.C-52

West Virginia implemented this program through the § 401 certification program which imposed monetary or in-lieu fee requirements on coal mining related § 404 permits.

In 2002, the Corps revised and reissued NWP 21 adding a condition that the Corps' District Engineer require federal mitigation, reviewed and approved by the Corps in accordance with its joint mitigation rules and regulations maintained with the EPA.[4] The revised and reissued NWP 21 allowed the Corps to consider state mitigation when determining federal mitigation, but removed the automatic acceptance of state-required mitigation as sufficient for § 404 authorization. From this point on, the state mitigation requirements as maintained in the § 401 certification process became duplicative because the Corps was requiring federal mitigation plans as part of the § 404 permitting process.

Federal Mitigation Requirements are Comprehensive.

Coal mining-related § 404 permitting and mitigation has evolved since the Corps's reissuance of NWP 21 in 2002. Most mining projects are now permitted using the Corps' Individual Permit process and mitigation plans are now developed based on the Corps's and EPA's combined preference for on-site, in-kind mitigation to restore the impacted aquatic resource.

As you know, coal mining operations are typically subject to the federal CWA § 404 program and the state § 401 certification program because of

[4] Final Notice of Issuance, Reissuance and Modification of Nationwide Permits. U.S. Army Corps of Engineers, Jan. 15, 2002. 67 Fed Reg. 10

activities undertaken in jurisdictional waters. The steeply-sloped terrain of West Virginia is permeated by small ephemeral and intermittent streams that serve to drain natural runoff into larger perennial stream systems. Any development in these areas--coal mining or otherwise--will result in some form of impact to small streams. Unlike many other activities subject to § 404 permitting and § 401 certification, mining activities are mostly temporary in nature, with the reclamation process providing a unique opportunity for reconstruction of impacted stream segments.[5] The Corps has recognized this opportunity for on-site, in-kind replacement/restoration of impacted aquatic resources and issued guidance encouraging this type of mitigation:

> This guidance acknowledges the uniqueness of regional and site-specific conditions, recognizes that features constructed in accordance with the Surface Mining Control and Reclamation Act may contribute to overall mitigation plans, and identifies several appropriate ways to accomplish appropriate mitigation projects.
>
> Surface mining operations can result in the creation of intermittent and and/or perennial streams depending on the on-site hydrologic conditions and the chosen method of dealing with groundwater and/or runoff. Applicants are encouraged to optimize these opportunities for on-site mitigation.
>
> ...Corps staff, Office of Surface Mining staff, and the mining operator should coordinate to explore options for incorporating...features required by SMCRA into compensatory mitigation plans. If successfully implemented, channels and other features will help maintain and potentially improve the physical, chemical and biological integrity of waters of the United States.[6]

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[5] See pages ____ of attachment "A", comments filed by WVCA concerning the draft federal mitigation rule.

[6] "Mitigation for Impacts to Aquatic Resources from Surface Coal Mining." U.S. Army Corps of Engineers. May 7, 2004

In addition to the Corps's above-cited guidance for mining, on-site, in-kind mitigation remains the preferred means of performing mitigation for other authorized impacts to aquatic resources:

> In the interest of achieving functional replacement, in-kind compensation of aquatic resources will often be appropriate. [7]
>
> Mitigation should be required, when practicable, in areas adjacent or contiguous to the discharge site. On-site mitigation generally compensates for locally important functions, e.g., local flood control functions or unusual wildlife habitat.[8]
>
> Compensatory mitigation should generally be "in-kind" and occur as close to the site of the adverse impact as practicable in order to minimize losses to the local aquatic ecosystem.[9]

To satisfy the Corps's preference (enunciated in previously-cited Regulatory Guidance Letters issued by the Corps) for in-kind mitigation, or a functional replacement of the impacted resources, a Functional Assessment Protocol, referred to as the "Central Appalachian Protocol", has been used for several years now by the Huntington District to assist in assessing and assigning mitigation requirements for mining-related projects.[10]

Unfortunately, the WVDEP has to date largely ignored the mitigation guidance and requirements developed and imposed by the Corps, as well as the functional assessment protocol. The WVDEP has continued to implement its duplicative § 401 mitigation requirements, and typically requires mitigation above

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[7] Regulatory Guidance Letter No 01-1. U.S. Army Corps of Engineers, October 31, 2001.
[8] Regulatory Guidance Letter No 02-2. U.S. Army Corps of Engineers, December 24, 2002.
[9] Compensatory Mitigation Guidelines- Huntington District U.S. Army Corps of Engineers, Huntington, WV District. January 30, 2004.
[10] See attached power point presentation---Central Appalachian Protocol.

and beyond that which is required by the Corps despite the mandate of W. Va. Code § 22-11-7a(a)(2)(C):

> The Director shall provide credit for any mitigation that is a required component of the permit issued by the United States Army Corps of Engineers pursuant to 33 U.S.C. § 1344 to the extent that it satisfies required mitigation pursuant to this section.

Because a comprehensive federal mitigation program is being implemented, the WVDEP's failure to provide credit for such mitigation ***as mandated*** is a serious concern to the WVCA. To the extent a state program is relevant at all, perhaps to address the limited circumstances where the state's definition of "waters of the state" is broader than the CWA definition of "waters of the United States," it should be narrowly tailored to address that need. The WVCA cannot support proposed revisions that are not so narrowly tailored.

WVCA urges WVDEP to postpone pursuit of these proposed revisions at this time and to more fully consider the need for its separate mitigation program in light of (1) the federal mitigation now required as part of a § 404 permit, (2) the possibility of creating inconsistencies with the draft federal Corps and EPA rule for mitigation, (3) the deletion of NWP 21 conditions relating to state mitigation, and (4) the mandate of W. Va. Code § 22-11-7a(a)(2)(C) to rely on and give credit for federally mandated mitigation to satisfy any state mitigation needs.

Specific Comments

Page 4 4.2.f.2.A. Economic Info[illegible]tion about the coal mi[illegible]g operations, including, without limitation, the estimated nu[illegible]r of jobs created, the e[illegible]ated proportion of employees who will be residents of Wes[illegible]rginia, the estimated a[illegible]al payroll, the

estimated annual coal production (if applicable), the estimated life of the operation, the estimated severance tax for the operation, the estimated annual property tax, and such other economic information as may be requested by the agency.

WVCA questions why this level of information is needed for the § 401 certification process. Similar information is provided to the Corps under the § 404 permitting program and to the state through the Community Impact Statement. The justification for requiring duplicative information as part of the § 401 certification process is lacking. Further, we are puzzled as to why this information is required only for mining operations. Sections 404 and 401 of the CWA apply to all manner of filling activities, not just coal mining operations. If this information is needed by the WVDEP to properly implement the § 401 certification process, then it should be required for all dredge and fill activities. If it is not, then it should be removed from the proposed revisions. Without further explanation and justification, the WVCA does not support this proposed revision.

4.2.f.4. A Delineation of the Stream to be Impacted. The length, width and depth of the stream segment impacted shall be measured. Width and depth measurements shall be made at one hundred (100)foot intervals. The stream delineation shall indicate the ephemeral and intermittent/perennial segments to be impacted. The stream shall be measured from the farthest downstream disturbance, excluding stream crossings associated with haul roads for surface mining operations, upstream to the beginning of ~~an intermittent stream, as defined in 46 CSR 1-2.9 and/or 38 CSR 2-2.71.~~ the ordinary high water mark. The applicant shall provide a table listing the station number with the corresponding acreage, including the drainage area from the toe of the pond and the toe of the fill.

As proposed, this revision appears to extend the reach of the state's jurisdiction and expand the WVDEP's mitigation requirements under the § 401 certification program. While this change may be motivated by a desire to more closely align the state's mitigation requirements with those of the Corps, the

WVDEP's first and most needed step in that direction is compliance with W. Va. Code § 22-11-7a(a)(2)(C). Until the WVDEP revises its mitigation rules and policies to accept Corps-required mitigation, this proposed change will serve only to increase the amount of in-lieu fee mitigation provided to the state, with no resulting environmental benefit. Further, the proposed change appears to be counter to the authorizing statute which bears no mention of the "ordinary high water mark." The WVCA does not support this proposed revision.

6.2.b.1. Compensatory mitigation shall be required for all permanent and temporary stream impacts resulting from coal related activities in watersheds greater than or equal to two hundred and fifty (250) acres and/or when the activity results in a stream loss or impact exceeding one half (1/2) acre of stream. The drainage area and ½ acre assessments shall be measured starting from the toe of the most downstream permanent or temporary impact (excluding stream crossings) in which the activity occurs.

WVCA believes that this proposed revision extends the authority of the state beyond the authorizing, underlying statute:

> 1) If the applicant's surface coal mining operation will not impact waters of the state designated as national resource waters and streams where trout naturally reproduce and will not impact wetlands of the state in a manner inconsistent with all applicable state or federal standards as the case may be, as required by the federal Clean Water Act, and if the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States Army Corps of Engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 is less than two hundred fifty acres, then the director may issue a water quality certification pursuant to the requirements of this section. If the watershed above the toe of the farthest downstream permanent structure impacted is equal to or greater than two hundred fifty acres, the director shall require that mitigation be undertaken. Additionally, the director may require mitigation for temporary impacts to waters of the state as specified in subdivision (2) of this subsection.

(2) If the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States Army Corps of Engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 is greater than or equal to two hundred fifty acres and all other necessary requirements are met consistent with this section, the director shall further condition a water quality certification on a requirement that the applicant mitigate the expected water quality impacts under the following conditions…

The above-cited statute contains no reference to "1/2 acre" of stream. Apparently, the agency is attempting to further extend its jurisdiction or merely implementing past policies that existed with respect to coal and non-coal mitigation. Since the statute contains no reference to ½ acre of stream, **WVCA suggests the agency delete this proposed revision. If the agency truly believes that this change is necessary, it should seek a legislative revision to 22-11-7(a) and only then seek to modify the rule.**

6.2.d.1. ~~Permanent impacts for coal related monetary mitigation will be assessed at $200,000 per acre of impacts in watersheds greater than or equal to two hundred and fifty (250) acres from the toe of the farthest downstream permanent structure, and/or exceeds a ½ acre of loss or impact of stream.~~ Monetary compensation for stream impacts resulting from coal related activities shall be assessed as follows:

6.2.d.1.APermanent impacts for coal related monetary mitigation will be assessed at $200,000 per acre of impacts

6.2.d.1.B Temporary coal related stream impacts resulting from structures (excluding stream crossings) that will be removed prior to final bond release will be assessed at $20,000 per acre of stream impact per each five-year period of impact and/or prorated for each year the impact occurs.

6.2.d.1.CTemporary coal related stream impacts resulting from stream crossings (i.e. culverting) and stream relocations where the stream impact is greater than or equal to two hundred one (201) lineal feet, but less than or equal to four hundred (400) lineal feet and is in place for five years or more, shall be assessed at $20,000 per acre for the first five (5) year period and prorated for each additional year the impact shall occur. A temporary stream impact resulting in more than four hundred (400) linear feet shall be monetary compensated at a rate of $20,000 per acre per each five (5) year term and/or prorated for

each year the impact occurs.

As noted in our general comments, the state § 401 certification program has functioned for several years without the level of minutia and detail presented here, and there appears to be no justification for adding these new provisions to the rule at this time. In addition, because § 404 permit mitigation plans cover both permanent and temporary impacts, there is no need for the duplicative state provision for monetary mitigation. As explained in our general comments, the Corps and EPA have continuously stressed a desire for on-site, in-kind mitigation. Using the "Central Appalachian Protocol", coal mining operations have been providing on-site, in-kind mitigation through the reclamation and stream reconstruction process. These projects have been embraced by the Corps and EPA through mining-specific regulatory guidance.

WVCA questions the need for these revisions, and urges WVDEP to re-evaluate the need for this provisions in light of the federal mitigation now required as part of a § 404 permit and the mandate of W. Va. Code § 22-11-7a(a)(2)(C) to rely on and give credit for federally mandated mitigation to satisfy any state mitigation needs.

6.2.d.1.D Permanent wetland impacts for coal related monetary mitigation will be assessed at the rate $30,000 per acre of wetland replaced based on the ratios in section 6.2.c.

Again, as noted in our general comments, the state § 401 certification program has functioned for several years without the level of minutia and detail presented here, and there appears to be no justification for adding these new provisions to the rule at this time. In addition, § 404 permit mitigation plans cover

both permanent and temporary impacts to all impacted aquatic resources, including wetlands, and there is no need for the duplicative state provision for monetary mitigation for wetland impacts.

To the extent WVDEP nevertheless chooses to pursue this proposed revision, it has no justification for the $30,000 replacement value proposed. In addition, by proposing this specific amount, the WVDEP has excluded any opportunity to determine a monetary mitigation amount for wetlands on a case-by-case basis, which could be either higher or lower than $30,000 per acre.

In-lieu fee payment for wetlands impacts is a desirable option to have, but we question whether the agency will ultimately determine that wetland replacement as already specified in the rule is sufficient. The WVCA cannot support this proposed revision without additional justification and explanation, and again urges the WVDEP to re-evaluate the need for this provisions in light of the federal mitigation now required as part of a § 404 permit and the mandate of W. Va. Code § 22-11-7a(a)(2)(C) to rely on and give credit for federally mandated mitigation to satisfy any state mitigation needs.

Sincerely,

Jason Bostic, Vice President
Regulatory & Technical Affairs

West Virginia Coal Association

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Ms. Gloria Shaffer
West Virginia Department of Environmental Protection
Division of Water and Waste Management
Water Quality Standards Program
601 57th Street SE
Charleston, WV 25304

Via Electronic Mail: Gjshaffer@wvdep.org

Re: Comments on 2007 Triennial Review of Water Quality Standards

Dear Ms. Shaffer:

Pursuant to the September 22, 2005 announcement by the West Virginia Department of Environmental Protection (WV DEP), the West Virginia Coal Association (WVCA) offers the following comments and observations regarding the agency's first triennial review of water quality standards.

WVCA is a non-profit state coal trade association representing the interests of the West Virginia coal industry on policy and regulation issues before various state and federal agencies that regulate coal extraction, processing, transportation and consumption. WVCA's producing members account for 80 percent of the Mountain State's underground and surface coal production. WVCA also represents associate members that supply an array of services to the mining industry in West Virginia. WVCA's primary goal is to enhance the viability of the West Virginia coal industry by supporting efficient and environmentally

criteria. EPA is currently in the process of revising the nationally-recommended selenium criteria.[6] Because of the flawed nature of the current selenium criteria and its inappropriate application to flowing waters in West Virginia, WVCA is supportive of this federal initiative. However, we caution WV DEP to fully analyze the appropriateness of applying any federally-revised standard in West Virginia. Available information seems to indicate that a state-specific selenium standard for West Virginia may be warranted, as fish populations appear to be healthy and diverse in streams with identified selenium concentrations.[7] The pressing nature of selenium also warrants that WV DEP investigate a state-specific criteria for West Virginia since the federal revisions remains pending. The agency has recently completed draft TMDL documents that impose selenium allocations based on the existing water quality criteria, and will continue to develop and implement selenium TMDLs, adding urgency to this important issue.

Trout Streams

In the EQB's last triennial review, it proposed adding some 400 streams to the list of Trout Waters contained in the water quality standards rule. The EQB allowed only a 30-day comment period on this major expansion of the Trout Waters list. The EQB proposal was based only on the recommendations of the

[6] See Attachment "F", October 29, 1999 Federal Register Notice published by EPA regarding revision of the selenium criteria and Attachment "G", December 17, 2004 Federal Register Notice announcing draft criteria and requesting public comments.

[7] See Attachment "H", relevant pages from comments filed by the National Mining Association and WVCA regarding the programmatic Mountaintop Mining/ Valley Fill Environmental Impact Statement and *Fish Communities and Their Responses to Environmental Factors in the Kanawha River Basin, West Virginia, Virginia, and North Carolina*. U.S. Geological Survey, 2001.

West Virginia Division of Natural Resources, with no accompanying data or information on whether or not the streams actually meet the requirements to be classified as trout waters. Based on the lack of information regarding the current status of the proposed trout waters and the limited opportunity for comment provided, the West Virginia Legislature rejected the revision.

The permitting ramifications of classifying streams as trout waters can be significant, as different water quality standards (uniformly more stringent) apply to trout streams. Incorrectly classifying a water as a trout stream can have serious economic impacts for property owners and NPDES dischargers along that streams and should not be taken lightly be WV DEP. Before the agency undertakes any effort as part of its 2007 triennial review to list any additional streams as trout waters, WV DEP should conduct scientific investigations of water quality and fish populations in order to ascertain if a water body meets the criteria required of a trout stream. The agency should also hold hearings in the communities where such streams are located to take comment from the persons most familiar with the conditions of these streams.

We appreciate the agency's consideration of these comments.

Respectfully Submitted,

Jason D. Bostic
West Virginia Coal Association

West Virginia Coal Association

PO Box 3923, Charleston, WV 25339 ■ (304) 342-4153 ■ Fax 342-7651 ■ www.wvcoal.com

July 17, 2006

Mr. Charles Sturey
West Virginia Department of Environmental Protection
Division of Mining & Reclamation
601 57th Street SE
Charleston, WV 25304

Re: Comments on Proposed Revisions to 38 CSR 2

Dear Mr. Sturey:

Pursuant to the notice filed with the Secretary of State on June 15, 2006, the West Virginia Coal Association (WVCA) offers the following comments and observations regarding the agency's proposed revisions to 38 CSR 2, the state's Mining and Reclamation rules.

WVCA is a non-profit state coal trade association representing the interests of the West Virginia coal industry on policy and regulation issues before various state and federal agencies that regulate coal extraction, processing, transportation and consumption. WVCA's membership accounts for over 80 percent of the Mountain State's underground and surface coal production. WVCA's primary goal is to enhance the viability of the West Virginia coal industry by supporting efficient and environmentally responsible coal extraction and processing through reasonable, equitable and achievable state and federal policy and regulation. WVCA appreciates the opportunity to provide comments to the West Virginia

Department of Environmental Protection (WV DEP) regarding the proposed revisions to the state's mining and reclamation rule.

Specific Comments

3.2.g. Notice of Technical Completeness. After the Secretary deems a Surface Mine Application technically complete, the Secretary shall cause the applicant to advertise stating such. The notice shall state that the application has been deemed technically complete by the Secretary and include a fifteen (15) day public review period. Provided, however, Notice of Technical Completeness may not be necessary if the application was technically complete prior to the end of the comment period of the original advertisement and a decision is made within ninety (90) day of the end of the comment period or informal conference.

WVCA believes this revision is unnecessary. Existing state rules provide the agency with authority to require re-advertisement:

> 3.2.e. Re-advertisement. After a Surface Mine Application (SMA) has been advertised once a week for four successive weeks, and is determined by the Secretary to have had a limited number of minor changes that do not significantly affect the health, safety or welfare of the public and which do not significantly affect the method of operation, the reclamation plan, and/or the original advertisement, he may require one (1) additional advertisement to be published with a ten (10) day public comment period.

As the above-cited provision reveals, the agency has the authority to require the additional advertisement that appears to be the goal of the proposed revision. The language of 38 CSR 2.3.e restricts the applicability of the provision to "a limited number of minor changes that do not significantly affect the health, safety or welfare of the public and which do not significantly affect the method of operation, the reclamation plan, and/or the original advertisement...." for changes that are substantive WV DEP has always required re-advertisement. Additionally,

the proposed revisions exceed the corresponding federal requirements maintained by the Office of Surface Mining (OSM) at 30 CFR 773.6. Because the agency has already has the authority to require re-advertisement, WVCA suggests that WV DEP delete the proposed revision.

14.15.c.2. Areas within the confines of excess spoil disposal fills which are under construction provided the fill is being constructed in the "conventional" method, i.e., completed from the toe up, or those fills which are being constructed progressively in lifts from the toe up or are being progressively completed from the toe up by constructing benches and appropriate drainage control structures (ditches, flumes, channels, etc.) from the toe up as soon as the ~~area is available to do so;~~ first two lifts are in and are seeded and certified;

WVCA is extremely concerned about this proposed revision and believes that it will unnecessarily restrict operating flexibility and thereby discourage the construction of "bottom-up" valley fills. WVCA strongly suggests the agency delete this proposed revision. This entire section of rules already exceeds the corresponding federal requirements of OSM, but members of WVCA negotiated the rules in good faith to remedy an agency-perceived problem with valley fill construction. These rules have been scrutinized and approved by the West Virginia Legislature and OSM. WVCA is concerned as to why the agency believes this change is necessary, and would be willing to discuss other possible remedies to the situation.

Respectfully Submitted,

Jason D. Bostic, Vice-President
Regulatory & Technical Affairs

Surface Mining 38 CSR 2 (agreement)
401 Certification 47 CSR 5A
TROUT LISTING

45CSR42

2.5 "Biogenic Sources" include COAL

TITLE 45

LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

SERIES 42
GREENHOUSE GAS EMISSIONS INVENTORY PROGRAM

3.2 turned on exemption into inclusion
5.3 "shall provide information"

§45-42-1. General.

1.1. Scope. -- This rule establishes a greenhouse gas emissions inventory program in West Virginia which:

1.1.a. Requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount of greenhouse gases on an annual basis;

1.1.b Inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions and sequestration of greenhouse gas emissions;

1.1.c. Provides for a periodic compilation of a greenhouse gas emissions inventory and a determination whether West Virginia is a net sink or emitter of greenhouse gases;

1.1.d Provides for development of a registry to record voluntary reductions of greenhouse gas emissions; and

1.1.e. Provides for a determination whether the reduction and sequestration of greenhouse gas emissions can be developed as an asset for economic development.

1.2. Authority -- W.Va. Code §22-5-19

1.3. Filing Date --

1.4. Effective Date. -- June 1, 2008.

§45-42-2. 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" or "statutory air pollution" means and is limited to the discharge into the air by the act of man 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.

2.3. "Anthropogenic" means a direct result of human activities or the result of natural processes that have been influenced by human activities.

2.4. "Area source" means, for purposes of this rule, a collection of similar sources of air pollutants within a geographic area. Area sources collectively represent individual sources that are small and numerous, and that typically have not been inventoried as a stationary or mobile source.

2.5. "Biogenic" means a naturally occurring biological source or process that is not significantly affected by human actions or activity.

Biogenic Sources include COAL

2.6. "Capture" means the collection of greenhouse gas emissions from a stationary source.

2.7. "*De minimis*" means emissions from a stationary source that are equal to or less than ten thousand tons per year for carbon dioxide, four hundred seventy-six tons per year for methane, thirty-two and six tenths tons per year for nitrous oxide, eight hundred fifty-five thousandths tons per year for hydrofluorocarbons, one and nine hundredths tons per year for perfluorocarbons and forty-two hundredths tons per year for sulfur hexafluoride.

2.8. "Emission" means the release, escape or discharge of regulated air pollutants or greenhouse gases into the air.

2.9 "Greenhouse gas" means the gaseous compounds: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (SF_6).

2.10. "Mobile source" means a variety of onroad and nonroad vehicles, engines, locomotives, marine vessels, airplanes and other equipment that generate air pollutants and greenhouse gas emissions, and that move or can be moved from place to place.

2.11. "Regulated air pollutant" means, for purposes of this rule, any air pollutant regulated under rules promulgated by the Secretary pursuant to W.Va. Code §22-5-4.

2.12. "Reservoir" means a geological site where a greenhouse gas is securely stored.

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

2.14. "Sequestration" means the physical process by which emissions of a greenhouse gas are directly captured for storage in a reservoir, or the biologic process by which a greenhouse gas is indirectly removed from the atmosphere for storage in a sink.

2.15 "Sink" means any process, activity or mechanism which removes a greenhouse gas from the atmosphere. Forests are considered sinks because they remove carbon dioxide through photosynthesis.

2.16. "Source" means, for purposes of this rule, any process or activity which releases a greenhouse gas into the air.

2.17. "Stationary source" means any building, structure, facility, installation, stationary process or process equipment which emits or may emit any regulated air pollutant or greenhouse gas.

2.18 "Ton" means a short ton, or 2000 pounds.

2.19. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W.Va. Code §22-5-1 et seq.

§45-42-3. Applicability.

3.1 Any stationary source that emits one or more greenhouse gases on an annual basis greater than the *de minimis* amounts listed in the table below, and reports emissions of regulated air pollutants pursuant to the emissions inventory requirements of the Secretary under rule or W.Va. Code §22-5-4(a)(14), shall be an affected source required to report emissions of all greenhouse gases to the Secretary under section 4:

Greenhouse Gas Compound	tons/year
carbon dioxide	10,000
methane	476
nitrous oxide	32.6

Any facility, etc.

hydrofluorocarbons	0.855
perfluorocarbons	1.09
sulfur hexafluoride	0.42

power plants under title IV

3.2. Stationary sources which are regulated by the Secretary under W.Va. Code §22-3-1 et seq. and do not report emissions of regulated air pollutants pursuant to the emissions inventory requirements under W Va. Code §22-5-4(a)(14) are not required to, but may voluntarily report their greenhouse gas emissions under section 4.

only stationary sources

§45-42-4.Reporting Requirements.

4.1. By March 31, 2009, and March 31 of each year thereafter, affected sources shall report to the Secretary the quantity of all greenhouse gases emitted in the previous calendar year.

4.2. Affected sources shall only be required to report annual quantities of anthropogenic non-mobile source greenhouse gas emissions at the source, and shall not be required to report biogenic emissions of greenhouse gases.

4.3. The Secretary shall determine the form and format of the information reported by affected sources under subsection 4.1 to ensure that the information is consistent as possible with developing regional, national, or international greenhouse gas emissions programs.

4.4 Notwithstanding the provisions of subsection 4.3, to satisfy the greenhouse gas emission reporting requirements under this section, affected sources may submit greenhouse gas emissions inventory information from documented greenhouse gas inventories such as those provided to the Environmental Protection Agency's Climate Leaders Program, Chicago Climate Exchange Registry, the International Organization for Standardization and the SF_6 Emissions Reduction Partnership for Electric Power Systems. Greenhouse gas emissions inventory information from other widely recognized and verified greenhouse gas emissions inventory programs may be submitted by affected sources under this subsection, but shall be subject to approval by the Secretary on a case-by-case basis.

4.5. Reports of greenhouse gas emissions submitted to the Secretary under this section shall be signed by a responsible official and shall include the following certification statement: "I, the undersigned, hereby certify that the data transmitted to the West Virginia Department of Environmental Protection is true, accurate, and complete, based upon information and belief formed after reasonable inquiry."

§45-42-5.Greenhouse Gas Emissions Inventory.

5.1. The Secretary shall periodically compile an inventory of greenhouse gas emissions to:

5.1.a. Characterize the relative contributions of greenhouse gas emissions from stationary, area, mobile and biogenic sources in West Virginia; and

5.1.b. Determine the extent to which greenhouse gas emissions are offset by the rate of sequestration, and whether West Virginia is a net sink or emitter of greenhouse gases

5.2 The greenhouse gas emissions inventory shall include the emissions from stationary sources reported under section 4, and other relevant information regarding significant emissions, reductions, and sequestration of greenhouse gases from stationary, area, mobile

entire surface Area / underground Area is a AREA Source

and biogenic sources requested by the Secretary under subsections 5.3 and 5.4.

5.3. To inventory greenhouse gas emissions reductions, the Secretary shall consult with the citizenry and other entities such as industry trade groups that have information relating to greenhouse gas emissions reductions, and sequestration. Upon request of the Secretary, such entities shall provide relevant information relating to greenhouse gas emissions reductions; capture and sequestration.

5.4. The Department of Agriculture, the Division of Forestry, Marshall University, West Virginia University, West Virginia Geological and Economic Survey, and the Department of Transportation shall enter into interagency agreements with the Secretary and at the Secretary's request provide:

5.4.a Relevant information relating to greenhouse gas emissions from area, mobile and biogenic sources;

5.4.b. Relevant information relating to greenhouse gas emissions reductions and sequestration; and

5.4.c Any assistance the Secretary may request during the development of the greenhouse gas emissions inventory.

5.5 The Secretary shall determine the form and format of the information submitted by the entities under subsections 5.3 and 5.4 to ensure that the information is consistent as possible with developing regional, national, or international greenhouse gas emissions programs.

§45-42-6.Greenhouse Gas Emissions Registry Program.

6.1 The Secretary shall develop a registry for the recordation of voluntary reductions of greenhouse gas emissions.

6.2. The greenhouse gas emissions registry program shall be as consistent as possible with developing regional, national, or international programs designed to monitor, quantify and register reductions in greenhouse gas emissions with respect to:

6.2.a. Development of criteria, based on a set of standardized emissions accounting, reporting and verification protocols, to determine baseline emissions and quantification of voluntary reductions in emissions of greenhouse gases;

6.2.b. Public recognition of such voluntary emissions reductions;

6.2.c. Consideration of voluntary greenhouse gas emission reductions when determining baselines and reduction requirements under future federal greenhouse gas emission reduction programs; and

6.2.d The ability of sources to participate in future greenhouse gas emission trading programs.

§45-42-7.Economic Development Potential.

7.1. Using information obtained, gathered or developed under this rule, the Secretary will determine whether the reduction and sequestration of greenhouse gas emissions can be developed as an asset for economic development in West Virginia.

§45-42-8.Inconsistency Between Rules.

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

13 results for: *Biogenic*

Displaying 1 best match. Browse all 13 results below

View results from: Dictionary | Thesaurus | Encyclopedia | All Reference | the Web

Biogenic substance

Wikipedia, the free encyclopedia - *Cite This Source*

A **biogenic substance** is a substance produced by life processes. It may be either constituents, or secretions, of plants or animals.
Examples

Coal and oil are examples of constituents which have undergone changes over geologic time periods.

Chalk, and limestone are examples of secretions (marine animal shells) which are of geologic age.

Cotton and wood is are biogenic constituents of contemporary origin.

Pearls, silk and ambergris are examples of secretions of contemporary origin.

13 More from Wikipedia »

All 13 results for: *Biogenic*

13 from Wikipedia

From: "Charles Harris" <clharris@hsc.wvu edu>
To: <jhallinan@hallinanlaw.com>, <rick@lcpsd.com>, <braney@wvcoal com>, <PWHITE@wvdep.org>, <karen@wvma com>, <wvml@wvml org>
Date: 5/24/2007 7:54:40 PM
Subject: Re: May 30, 2007 Meeting

Trish: I received some last minute comments on 33CSR8 that I would like to submit:

§33-9-2. Definitions – Section 2 5 defines "Beneficial Use" as "the use of a non-hazardous material for a specific beneficial purpose where it is done in a manner that protects groundwater and surface water quality, soil quality, air quality, human health, and the environment." We are concerned that it has not been adequately demonstrated that this filtrate is non-hazardous, and point to the current "inter-sex" fish issue in the Potomac River drainage which illustrates that there are unanswered questions concerning unmonitored pollutants in sludge from both water and waste treatment facilities

§33-9-2. Definitions - Section 2.5 defines beneficial uses as including "use as a fertilizer substitute, soil amendment, cover material, fill material, mulch or horticultural product, or other purpose approved by the Secretary" However, Section 33-9-3, in sub-Section 3.1 b.1 requires that "The use proposed is a reuse, and not a disposal" We suggest that the use of this filtrate as fill material is actually simply a disposal and not a "reuse." We believe this material should not be used as fill material. This would also require a change to Section 33-9-5, sub-Section 5.2.

§33-9-5. Standards for Beneficial Use of Filtrate - sub-Section 5.3 states, "The Secretary may approve the use of filtrate as fill material within fifty (50) feet of surface water upon submission of information sufficient to show that the fill material will have no significant impact on the quality of runoff reaching the surface water" Even the U.S. Forest Service has adopted stronger stream buffers for sediment runoff DEP should develop stronger stream buffers for this rule, and there should be no discretion.

§33-9-7. -- DEP made changes to this rule during the Interims process last year, and the rule now requires a permit for both short-term and long-term applications. This is a good change. However, we feel that most of the information required in Section 7.3. Permit Application Requirements for long-term permits should also be required for short-term permits

§33-9-8. Draft Permits and Public Comment. Section 8.2 a. provides for a 30-day public comment period for long-term permits, but only a 15-day public comment period for short-term permits. We oppose the shortened public notice provisions for short-term permits. The 30-day comment period should apply in both instances.

§ 33-9-11. General permits. We oppose the development of a General Permit to cover the provisions of this rule. Specific individual permits are necessary to inform potentially affected parties of the application of this material.

Appendix A -- Frequency of Monitoring. The Legislative Rule-Making Review Committee last session accepted an amendment proposed by industry that reduced monitoring tests to once a year. While we would prefer even more frequent monitoring than proposed in this rule, we hope DEP will strongly oppose any attempts to reduce the monitoring provisions provided in this rule.

Charles L. Harris
Professor of Biochemistry
West Virginia University
School of Medicine
304-293-7749
>>> "Patricia White" <PWHITE@wvdep.org> 05/21/07 4:21 PM >>>
Please be advised of the following meeting:

Comments on DEP Rules for 2007

Communicated by Larry Harris, Public Advisory Council Member

I would like to commend the staff of the DEP for the hard work and expertise used in preparing and reviewing the rules with Council. As promised, I include below some of the technical and other issues raised during the May 21 meeting of the Council, omitting some questions that were answered at the meeting. Members of the environmental community who reviewed the rules raised some of the questions.

Some of the issues mentioned below are related to the act of valley fills and determining compensation for this process. I have pointed out my view to Council previously that the permitting of valley fills is essentially allowing the destruction of upper tributaries of watersheds. As such the process should be outlawed, in my view.

47CSR2 Water Quality

We learned that the B2 list is essentially the same as submitted previously and includes the definition of trout waters cited on page 2 of the rule.

Page 11: Why is the temperature regulation on Stony River being removed?

47CSR2 (7.2.d.9) — The removal of variances, etc. on the Blackwater seems to be a strength, but why do these rivers remain "reserved" on the list? Why not just remove them?

47CSR2 (7.2.d.34.1): Adds language for site-specific applicability of water use categories and water quality criteria: "Pats Branch from its confluence with the Guyandotte River to a point 1000 feet upstream shall not have Water Use Category A and Category D1 designation."

* Is this a use removal? Yes was the answer.
* If so, did this go through the appropriate public process and use attainability analysis to justify a use removal. Did the use and attainability

analysis follow the federal Clean Water Act provision. (i.e. how was this decision justified)? Not sure this was fully answered.

47CSR2 (Appendix E):

Are the changes in concentrations for cadmium, copper, and others in Appendix E consistent with EPA changes/ recommendations? Some of the changes in hardness calculations are in response to comments from our groups last year asking DEP to be consistent—so this is good.

47CSR5A

47 CSR 5A (State Certification)

***47CSR5A (4.2.f.4): seems to be weakening the system for determining stream miles (delineation). DEP inserts the language: "The stream shall be measured from the farthest downstream disturbance, excluding stream crossings associated with haul roads for surface mining operations, upstream to the beginning of the ordinary high water mark."

This will result in fewer stream miles being "delineated" as actual stream miles, it seems. Why would you move upstream (where there are fewer inputs) to find a high water mark? Thus, it also seems fewer miles of headwaters will be mitigated for impacts.

47CSR5A (6.2.b): Typo—"loses" should be "losses"

47CSR5A (6.2.d.1): Is there a discrepancy between how monetary compensation for coal versus non-coal impacts is assessed? It may be worth determining that coal is not getting a break, in comparison to non-coal.

For example—why is it lineal miles for coal and acreage for non-coal? If they are going to assess from the high water mark—as discussed above—will this not result in fewer stream miles and thus fewer miles to mitigate/compensate? Also, there is no assessment for non-coal related temporary impacts—why?

60 CSR5 Antidegradation

I made the suggestion that the list of Tier 2.5 streams (156 in the current rule) should be returned to the same number as began the legislative session, which is 309 streams. A scientific process that included expertise

from the WVDNR, which manages trout waters, arrived at the list of 309 streams. The list now submitted with the bill was reduced by the political process. Politics should not determine which streams merit protection from pollution; science should.

Other issues:

2.11 Explanation of the addition of this trading section is needed. Is this similar to EPA rules and consistent with the Clean Water Act?

3.9 Which advisory committee is this phrase referring to:

5.5b is removed. Why?

Is the procedure for nomination and addition of streams to the tier 2.5 list adequate?

Comments from Adam Webster (WVRC)

60CSR5 (2.11): It's good that DEP provides "upstream controls" and mentions "for the same parameter" in the first sentence of the "trading" definition. Overall, the definition is good, but it is important to remember that the intent of the definition is not to allow cross-pollutant trading. With this in mind, the second sentence—"More than one parameter of concern may be traded on a given stream"—needs to be worded more restrictively (i.e. despite what the first sentence says, the second sentence could be interpreted as if cross-pollutant trading is allowed).

*** 60CSR5 (5.2): Removes (strikes) the language: "Water segments that support the minimum fishable/swimmable uses and have assimilative capacity remaining for some parameters shall generally be afforded Tier 2 protection".

Does this suggest the default is Tier 1 (if data does not suggest otherwise)? If so,why?

60CSR5 (5.6.c): The deletion is a response to lawsuit. However, the new 5.6.c suggests they cannot assess assimilative capacity when dealing with pH,

DO, temperature, and fecal coliform. We feel that they can assess these parameters and should not treat them separately.

45CSR42 Greenhouse Gases

The fact that the DEP is beginning to deal with the process of greenhouse gases that lead to global warming is commendable. Some questions on the rule were raised by Dr. Kotcon:

The greenhouse gases emissions inventory rule (45-42-1) needs to be
>strengthened considerably. The sections on emissions inventory
>(section 5, pages 3-4) is so vague as to be meaningless, especially
>as it deals with sequestration for area sources and sinks. I do not
>see how any meaningful data can be generated with this language.
How would the carbon sequestration be estimated? Has there been studies estimating the biogenic incorporation of CO2 per acre of woodland, for example? The rule appears to be a vague in how it would be implemented.

Air Quality and Emission Rules (see below)

45CSR8 Ambient Air Quality Standards

Don Garvin pointed out that the the antidegradation language was removed from this rule, and it was explained that the agency feels these provisions are now covered in 45-CSR-14("Prevention of Significant Deterioration.") However, the language that was stricken does not appear in 45-CSR-14, and the stricken language is the ONLY statement in the rules of West Virginia's antidegradation policy for air quality. The environmental community still believes the stricken language should be restored.

Here is what should be reinstated:

§45-8-2. Anti-Degradation Policy.

2.1. Pursuant to the best interests of the State of West Virginia, it is the objective of the Secretary to obtain and maintain the cleanest air possible, consistent with the best available technology.

2.2. Where the present ambient air is of better quality than the established standards, the Secretary will develop long-range plans to protect the difference between the present quality and the established standards. The plans will be based upon the best available forecasts of probable land and air uses in these areas of high air quality.

2.3. The air quality of these areas will not be lowered unless it has been clearly demonstrated to the Secretary that such a change is justifiable as a result of necessary economic or social development and will not result in statutory air pollution. This will require that any industrial, public, or private project or development which could constitute a new source of air pollutants, within an area of such high air quality, provide the best practicable control available under existing technology as part of the initial project or development.

45CSR41 Control of Annual SO2 emissions

45CSR6 Control of Air Pollution from Refuse Combustion

45CSR39 Nitrogen Oxides

I raised the general concern whether the standards for air quality were consistent with the EPA guidelines or not. Further, were any recognized health authorities consulted when these levels were determined? I also raised the issue that West Virginia is increasing supplying electricity to the population east of our mountains. New transmission lines are proposed that are to be connected with coal burning power plants. Billy Jack Gregg, Consumer Advocate for the WV PSC has pointed out that the states receiving our generated power will not permit generation plants in their region. They are concerned about air pollution and its various effects. But they need power, so they turn to West Virginia. This helps the coal industry and generation plants, but puts the health of West Virginians in jeopardy. I feel that our air quality and emission limits should be even more stringent than the EPA calls for in order to protect our citizens. This should be particularly true for power plants that export electricity.

Dr. Kotcon has raised the following issues:

45-CSR-8 Ambient Air Quality Standards

The standards for PM2.5 and Ozone are not adequately protective. I recommend that the standards be lowered from 15 $\mu g/m^3$ to 13 $\mu g/m^3$ in section 4.2.b., and from 0.08 ppm to 0.07 ppm in section 4.4.b.

The air standards (45-8-1) retains the standards for PM2.5 and ozone
>that the EPA Clean Air Scientific Advisory Council has already
>determined to be inadequate. Keeping these old standards will kill
>dozens or hundreds of West Virginians each year.

>The rule on refuse combustion (45-6-1) attempts to revise the
>definition of low-level radioactive waste and revives the
>Below-Regulatory_Concern (BRC) issue from some years ago. It also
>creates a large number of exemptions for "temporary" pollution
>sources. I am not yet sure if this re-opens old battles over
>medical waste incineration, but this was a really hot issue a few
>years back.

Comment submitted by Karen Price at Council meeting 5/30/07

Questions/Comments on DEP's 2007 Proposed Rules

- **45 CSR 8 Ambient Air Quality Standards**

Section 4.2.c – $PM_{2.5}$ Maximum 24-Hour Average Concentration. The level for the 24-hour primary and secondary standard states 35 ug/m^3. This should be 65 ug/m^3, pursuant to 40 CFR 50.7.

- **45 CSR 39, 45 CSR 40, 45 CSR 41**

The opt-in unit language is deleted from each of these rules. What is the purpose for the deletion of these provisions?

- **33 CSR 30, Underground Storage Tank Rules**

Section 6.1. states "....including any person who accepts a delivery order, accepts payment, delivers or deposits product into an underground storage tank....". The portion that states "....accepts payment...." should be removed from this section because those individuals within a company who accept payment or make payments most often do not know anything about the underground storage tank (UST), the operation of the UST, or the current regulatory status of the UST

Section 7.3.a.1. states " ...the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods....."

1. The portion that states "..the date, time and location of the course,...." should be deleted. For large companies with many UST installations and locations there can be numerous individuals that need to be trained. Training will most likely occur on multiple dates, times, and locations that may not always be known until just prior to the training event. When new employees are hired training might

occur on short notice and for one individual. The burden of having to repor the dates, time and locations would hinder and slow down the training process and restrict a company's ability to comply.

2. The portion that states "...the credentials of the instructors..." should be removed. Credentials will vary from instructor to instructor new instructors might be utilized, and a company might not know which instructors will be used at the various training sessions until just prior to the training session. In addition, the course content is the main issue of concern and should be the main focus in obtaining State approval of a training program.

Section 7.3.a.2 - This section states that a nonrefundable application fee of $280 must be submitted with the application. Larger companies may have one training program, but administer the training on multiple dates, times and locations. Having to submit an application for approval of the training program each time the program is administered would be cost prohibitive, burdensome, and would hinder the training process. The State should clarify or make provision for a company to submit one application for the training program that will be administered to all company UST facilities. This will make the $280 application fee reasonable and the application process less burdensome.

INDUSTRY'S REVISIONS

45CSR42

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

SERIES 42
GREENHOUSE GAS EMISSIONS INVENTORY PROGRAM

§45-42-1.General.

1.1 Scope -- This rule establishes a greenhouse gas emissions inventory program in West Virginia which:

1.1.a. Requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount of greenhouse gases on an annual basis;

1.1.b Inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions and sequestration of greenhouse gas emissions;

1.1.c. Provides for a periodic compilation of a greenhouse gas emissions inventory and a determination whether West Virginia is a net sink or emitter of greenhouse gases;

1.1.d. Provides for development of a registry to record voluntary reductions of greenhouse gas emissions; and

1.1.e Provides for a determination whether the reduction and sequestration of greenhouse gas emissions can be developed as an asset for economic development.

1.2 Authority -- W Va Code §22-5-19.

1.3. Filing Date --

1.4. Effective Date -- June 1, 2008.

§45-42-2. 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" or "statutory air pollution" means and is limited to the discharge into the air by the act of man 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.

2.3. "Anthropogenic" means a direct result of human activities or the result of natural processes that have been influenced significantly by human activities.

2.4. "Area source" means, for purposes of this rule, a collection of similar sources of air pollutants within a geographic area. Area sources collectively represent individual sources that are small and numerous, and that typically have not been inventoried as a stationary or mobile source.

2.5. "Biogenic" means a naturally occurring biological source or process that is not significantly affected by human actions or activity.

2.6. "Capture" means the collection of greenhouse gas emissions from a stationary source

2.7. "*De minimis*" means emissions from a stationary source that are equal to or less than ten thousand tons per year for carbon dioxide, four hundred seventy-six tons per year for methane, thirty-two and six tenths tons per year for nitrous oxide, eight hundred fifty-five thousandths tons per year for hydrofluorocarbons, one and nine hundredths tons per year for perfluorocarbons and forty-two hundredths tons per year for sulfur hexafluoride.

2.8. "Emission" means the release, escape or discharge of regulated air pollutants or greenhouse gases into the air.

2.9. "Greenhouse gas" means the gaseous compounds: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (SF_6)

2.10. "Mobile source" means a variety of onroad and nonroad vehicles, engines, locomotives, marine vessels, airplanes and other equipment that generate air pollutants and greenhouse gas emissions, and that move or can be moved from place to place.

2.11. "Regulated air pollutant" means, for purposes of this rule, any air pollutant regulated under rules promulgated by the Secretary pursuant to W.Va. Code §22-5-4

2.12. "Reservoir" means a geological site where a greenhouse gas is securely stored.

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

2.14. "Sequestration" means the physical process by which emissions of a greenhouse gas are directly captured for storage in a reservoir, or the biologic process by which a greenhouse gas is indirectly removed from the atmosphere for storage in a sink

2.15. "Sink" means any process, activity or mechanism which removes a greenhouse gas from the atmosphere Forests are considered sinks because they remove carbon dioxide through photosynthesis.

2.16 "Source" means, for purposes of this rule, any process or activity which releases a greenhouse gas into the air.

2.17 "Stationary source" means any building, structure, facility, installation, stationary process or process equipment which emits or may emit any regulated air pollutant or greenhouse gas.

2.18 "Ton" means a short ton, or 2000 pounds.

2.19. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W.Va. Code §22-5-1 et seq

§45-42-3.Applicability.

3.1. Any stationary source that emits one or more greenhouse gases on an annual basis greater than the *de minimis* amounts listed in the table below, excluding biogenic emissions, and reports emissions of regulated air pollutants pursuant to the emissions inventory requirements of the Secretary under rule or W.Va. Code §22-5-4(a)(14), shall be an affected source required to report emissions of all greenhouse gases emitted above *de minimis* amounts to the Secretary under section 4:

Greenhouse Gas Compound	tons/year
carbon dioxide	10,000
methane	476

nitrous oxide	32.6
perfluorocarbons	1.09
sulfur hexafluoride	0.42
hydrofluorocarbons	0.855

3.2. Stationary sources which are regulated by the Secretary under W Va. Code §22-3-1 et seq. and do not report emissions of regulated air pollutants pursuant to the emissions inventory requirements under W.Va. Code §22-5-4(a)(14) are not required to, but may voluntarily report their greenhouse gas emissions under section 4.

§45-42-4.Reporting Requirements.

4.1. ~~By March 31, 2009, and March 31 of each year thereafter, affected~~ Affected sources shall report to the Secretary the quantity of all greenhouse gases emitted above *de minimis* amounts in the previous calendar year at the same time such sources are to report emissions of regulated air pollutants pursuant to the emissions inventory requirements of the Secretary under rule or W.Va. Code §22-5-4(a)(14).

4.2. Affected sources shall only be required to report annual quantities of anthropogenic non-mobile source greenhouse gas emissions directly at the source, and shall not be required to report biogenic or mobile emissions of greenhouse gases, or indirect emissions of greenhouse gases, such as emissions occurring offsite from energy consumption.

4.3. The Secretary shall determine the form and format of the information reported by affected sources under subsection 4.1 to ensure that the information is consistent as possible with developing regional, national, or international greenhouse gas emissions programs

4.4. Notwithstanding the provisions of subsection 4.3, to satisfy the greenhouse gas emission reporting requirements under this section, affected sources may submit greenhouse gas emissions inventory information from documented greenhouse gas inventories such as those provided to the Environmental Protection Agency's Climate Leaders Program, Chicago Climate Exchange Registry, the International Organization for Standardization and the SF_6 Emissions Reduction Partnership for Electric Power Systems. Greenhouse gas emissions inventory information from other widely recognized and verified greenhouse gas emissions inventory programs may be submitted by affected sources under this subsection, but shall be subject to approval by the Secretary on a case-by-case basis

4.5. Reports of greenhouse gas emissions submitted to the Secretary under this section shall be signed by a responsible official and shall include the following certification statement: "I, the undersigned, hereby certify that the data transmitted to the West Virginia Department of Environmental Protection is true, accurate, and complete, based upon information and belief formed after reasonable inquiry."

4.6. Greenhouse gases reported under this section are not subject to fees under 45 CSR 30, unless the greenhouse gases are otherwise regulated by the Secretary.

§45-42-5.Greenhouse Gas Emissions Inventory.

5.1. The Secretary shall periodically compile an inventory of greenhouse gas emissions to:

5.1.a. Characterize the relative contributions of greenhouse gas emissions from stationary, area, mobile and biogenic sources in West Virginia; and

5.1.b. Determine the extent to which greenhouse gas emissions are offset by the rate of sequestration, and whether West Virginia is a net sink or emitter of greenhouse gases.

5.2. The greenhouse gas emissions inventory shall include the emissions from stationary sources reported under section 4, and other relevant information regarding significant emissions, reductions, and sequestration of greenhouse gases from stationary, area, mobile and biogenic sources requested by the Secretary under subsections 5.3 and 5.4.

5.3. To inventory greenhouse gas emissions reductions, the Secretary shall consult with the citizenry and other entities such as industry trade groups that have information relating to greenhouse gas emissions reductions, and sequestration ~~Upon request of the Secretary, such entities shall provide relevant information relating to greenhouse gas emissions reductions, capture and sequestration~~.

5.4. The Department of Agriculture, the Division of Forestry, Marshall University, West Virginia University, West Virginia Geological and Economic Survey, and the Department of Transportation shall enter into interagency agreements with the Secretary and at the Secretary's request provide:

5.4.a. Relevant information relating to greenhouse gas emissions from area, mobile and biogenic sources;

5.4.b. Relevant information relating to greenhouse gas emissions reductions and sequestration; and

5.4.c. Any assistance the Secretary may request during the development of the greenhouse gas emissions inventory.

5.5. The Secretary shall determine the form and format of the information submitted by the entities under subsections 5.3 and 5.4 to ensure that the information is consistent as possible with developing regional, national, or international greenhouse gas emissions programs.

§45-42-6.Greenhouse Gas Emissions Registry Program.

6.1. The Secretary shall develop a registry for the recordation of voluntary reductions of greenhouse gas emissions.

6.2. The greenhouse gas emissions registry program shall be as consistent as possible with developing regional, national, or international programs designed to monitor, quantify and register reductions in greenhouse gas emissions with respect to:

6.2.a. Development of criteria, based on a set of standardized emissions accounting, reporting and verification protocols, to determine baseline emissions and quantification of voluntary reductions in emissions of greenhouse gases;

6.2.b. Public recognition of such voluntary emissions reductions;

6.2.c. Consideration of voluntary greenhouse gas emission reductions when determining baselines and reduction requirements under future federal greenhouse gas emission reduction programs; and

6.2.d. The ability of sources to participate in future greenhouse gas emission trading programs.

§45-42-7.Economic Development Potential.

7.1. Using information obtained, gathered or developed under this rule, the Secretary will determine whether the reduction and sequestration of greenhouse gas emissions can be developed as an asset for net economic development or will result in a deterrent to net economic development in West Virginia.

§45-42-8.Inconsistency Between Rules.

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

Summary of Industry's Suggested Changes and Comments on 45 CSR 42, Greenhouse Gas Emissions Inventory Program

- Section 2.3. The definition of "anthropogenic" should be revised to state that it is the "result of natural processes that have been influenced significantly by human activities". Adding the term "significantly" makes the definition consistent with the definition of "biogenic" which means a "naturally occurring biological source or process that is not significantly affected by human actions or activity."

- Section 3.1. Applicability. This section should be revised to clarify that only individual greenhouse gases emitted above the *de minimis* amounts are required to be reported. Otherwise, affected sources that trigger any of the *de minimis* amounts could be required to report emissions of all of the greenhouse gases even if they are below the *de minimis* amounts. We do not believe that this is DEP's intent. Also, this section should be revised to clarify that the *de minimis* amounts do not include biogenic emissions.

- Section 4.1. Reporting Requirements. This section should be revised to require reporting of greenhouse gases at the same time the air emissions inventory reporting is required. Sources should not be required to report their emissions at two different times. This section should also be clarified so that only greenhouse gases emitted above the *de minimis* amounts are required to be reported.

- Section 4.2 should be revised so that "mobile" emissions of greenhouse gases are not required to be reported. This section should also be revised to clarify that only direct emissions and not indirect greenhouse gas emissions (e.g., emissions occurring offsite from electricity consumption) are required to be reported. The references in section 4.3 to programs like Climate Leaders could lead sources to include indirect and direct emissions in their reporting. This would lead to double counting of electric generation greenhouse gas emissions and to higher source emissions compared to the *de minimis* amounts.

- Section 4.6 should be added so that sources will not be subject to fees for reporting greenhouse gas emissions, as the purpose of such reporting is to create an inventory, not to generate fees.

- Section 5.3. This section should be revised to delete the requirement that certain entities, including trade associations, must provide relevant information on greenhouse gas emissions, reductions, capture and sequestration to the Secretary upon request. This requirement is not found in the statute and could be interpreted to require such entities to report reductions, which is also not required under the statute.

- Section 7.1 Economic Development Potential This section should be revised to require the DEP to also determine whether reduction and sequestration will result in a detriment to net economic development – not just whether it will be an asset.

- Additional questions/issues:

    - A reasonable protocol for reporting greenhouse gas emissions from stationary sources should be developed. Affected sources should not be required to report emissions from individual units within a stationary source if such emissions are insignificant. Affected stationary sources should have the option to report all of its greenhouse gas emissions in the aggregate.

    - Over 30 states have signed on to "The Climate Registry". Does West Virginia intend on signing on? The rule indicates that West Virginia will have its own registry independent of "The Climate Registry". Does DEP intend to rely upon any greenhouse gas registry programs, such as the Chicago Climate Exchange Registry, in developing the registry program?

MEMORANDUM

TO: Karen Price

FROM: David L Yaussy

DATE: May 29, 2007

SUBJECT: DEP Advisory Council Rules

A. Rules for Individual State Certification of Activities Requiring a Federal Permit.
Title 47, Series 5A.

No comment.

B. National Pollutant Discharge Elimination System (NPDES) Program.
Title 47, Series 10.

We would urge the DEP to update the rule. It still contains references to the Chief, rather than the Director (See, for example, Sections 5.13.d.1, 6.2 and 9.1.a.)

Has the DEP updated this rule to reflect changes in the Code of Federal Regulations that were made since it was last comprehensively updated?

C. Antidegradation Implementation Procedures.
Title 60, Series 5.

We agree that the State should do away with Section 6.2. There is no need for an initial presumptive listing procedure at this point. As for the 156 (I counted 157, but I may have miscounted) streams in Appendix A, we will disagree with all those listed except the 39 to which no objections were ever lodged.

D. Requirements Governing Water Quality Standards.

Title 57, Series 2.

There are a couple of minor errors – Section 2.2 has a "then" that should be "than" and Section 6.1 is missing text

We remain disappointed that the State continues to interpret its water quality standards to apply all uses in all streams at all times. Section 6.1 clearly provides that B and C are the only default, or universal, uses

Appendix D should be eliminated. Category C, Water Contact Recreation, is a default use, and listing all streams with that use assigned to them suggests that there are streams that do not have that designation.

Appendix A. The DEP is listing a huge number of trout streams with no justification for their listing. If streams meet the requirements of trout waters, they qualify as such; if they do not, there is no reason to list them. Unless the DEP can document that each stream has year round, multi-age populations, they should not be listed.

DLY:shb

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 33CSR20 - "Hazardous Waste Management System"

Type of Rule: ___X__ Legislative _____Interpretive _____Procedural

Agency: Division of Water and Waste Management

Address: 601 57th Street SE

Charleston, WV 25304

Phone Number: 926-0499 Ext. 1317 Email: ccather@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed revisions to this rule should cause no additional impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2008 Increase/Decreasc (use "-")	2009 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	$ 0	$ 0	$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 33CSR20 - "Hazardous Waste Management System"

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The proposed revisions to this rule will have a minimal effect on the costs to the Division of Water and Waste Management because they impose no additional requirements beyond current federal requirements. Costs are covered under previous cost estimates.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 4, 2007

Signature of Agency Head or Authorized Representative

Lisa A. McClung, Director

TITLE 33
LEGISLATIVE ~~RULES~~ RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
~~OFFICE OF WASTE MANAGEMENT~~

SERIES 20
HAZARDOUS WASTE MANAGEMENT ~~RULE~~ SYSTEM

§33-20-1. ~~Scope and Authority~~ General.

1.1. Scope ~~and Purpose.~~ -- ~~The purpose of this rule is to provide for the~~ This rule establishes and adopts a program of regulation ~~of~~ for the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment.

1.2. Authority. -- This rule is promulgated pursuant to the West Virginia Hazardous Waste Management Act, W. Va. Code, §22-18-6.

1.3. Filing Date. -- ~~May 1, 2006.~~

1.4. Effective Date. -- ~~June 1, 2006.~~

1.5. Incorporation by Reference. -- Whenever either federal statutes or regulations or state statutes or rules are incorporated by reference into this rule, the reference is to that statute or regulation in effect on ~~July~~ June 1, ~~2005~~ ~~2006~~, 2007 unless otherwise noted in the text of this rule. This incorporation by reference is not intended to replace or abrogate federal authorities granted the Resource Conservation and Recovery Act of 1976.

1.5.a. In applying the federal requirements incorporated by reference throughout this rule, the following exceptions or substitutions apply, unless the context clearly requires otherwise or the referenced rule cannot be delegated to the state:

1.5.a.1. "~~Office of Waste Management~~, West Virginia Department of Environmental Protection" will be substituted for "Environmental Protection Agency."

1.5.a.2. "~~Director~~ Secretary of the ~~Office of Waste Management,~~ West Virginia Department of Environmental Protection" will be substituted for "Administrator," "Regional Administrator," and "Director." In those sections that are not adopted by reference or that are not delegable to the state, "Administrator", "Regional Administrator", and "Director" will have the meaning defined in 40 CFR § 260.10.

1.5.a.3. Whenever the regulations require publication in the "Federal Register" compliance will be accomplished by publication in the "West Virginia Register," a part of the "State Register" created pursuant to the provisions of W. Va. Code, §29A-2-2 for those areas applicable and delegable to the state.

1.5.a.4. Whenever in the federal regulation reference is made to the Resource Conservation and Recovery Act of 1976 §3010, as amended (42 U.S.C. § 6930), the reference is to section 4. The notification requirements of the Resource Conservation and Recovery Act of 1976 §§ 3010 remain in effect and will be satisfied by compliance with section 4.

1.6. Cross Reference. -- Whenever a reference is cited in a provision incorporated by reference which cross reference was not incorporated by reference, the provisions of the applicable state law and rules, if any, control to the extent of any conflict or inconsistency. Where state rules are present and there is a question, the state rules govern. Where there are no state rules present, federal regulations govern. For example, cross reference to 40 CFR part 264 subpart O -- Incinerators, which was not incorporated by reference, would need to be referenced to the applicable West Virginia Department of Environmental Protection, Office of Air Quality rule, 45 CSR 25, "~~To Prevent and~~ Control of Air Pollution from Hazardous Waste Treatment,

Storage~~, or~~ and Disposal Facilities."

1.7. Inconsistencies with the West Virginia Code. – In the event a provision of the Code of Federal Regulations incorporated by reference herein includes a section which is inconsistent with the West Virginia Code, the West Virginia Code controls to the extent federal law does not preempt the state law. In the event a provision of the Code of Federal Regulations incorporated by reference herein is beyond the scope of authority granted the Department of Environmental Protection pursuant to statute, or is in excess of the statutory authority, the provision will be and remain effective only to the extent authorized by the West Virginia Code.

1.8. Provisions Applied Prospectively. – The provisions of this rule are to be applied prospectively. All orders, determinations, demonstrations, rules, permits, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted, approved or allowed to become effective by the ~~Director~~ Secretary, and which are in effect on the date this rule becomes effective, will continue in effect according to their terms unless modified, suspended or revoked in accordance with the law.

1.9. This rule references the provisions of the West Virginia Department of Environmental Protection, Office of Air Quality rule, 45 CSR 25, "~~To Prevent and~~ Control of Air Pollution from Hazardous Waste Treatment, Storage~~, or~~ and Disposal Facilities" that is in effect on the date that this rule becomes effective.

§33-20-2. Hazardous Waste Management System: General.

2.1. 40 CFR Part 260. – The provisions of 40 CFR part 260 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

2.1.a. The definitions of terms used in this rule will have the meaning ascribed to them in 40 CFR parts 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 273 and 279 with the exceptions, modifications and additions set forth in this section.

2.1.a.1. "Full regulation" means those rules applicable to generators of greater than one thousand (1000) kilograms of non-acutely hazardous waste in a calendar month and/or who treat, store or dispose of hazardous waste at their facility.

2.2. 40 CFR § 260.2. B – The provisions of 40 CFR § 260.2 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W. Va. Code, §22-18-12.

2.3. 40 CFR § 260.21(d). B – The provisions of 40 CFR § 260.21(d) are excepted from incorporation by reference.

2.4. Petitions for Waste Exclusions.

2.4.a. Any person seeking to exclude a waste at a particular generating facility from 40 CFR § 261.3 or 40 CFR part 261, subpart D, as incorporated by this rule, may petition the ~~Director~~ Secretary for an exclusion following the procedures established in 40 CFR § 260.20 and 40 CFR § 260.22. The Department of Environmental Protection will utilize EPA guidance in evaluating delisting petitions.

2.4.b. An initial non-refundable fee of $1,000.00 ~~must~~ shall accompany all petitions submitted under this rule. The petitioner ~~must~~ shall execute an agreement with the ~~Director~~ Secretary providing for the recovery of all reasonable costs incurred by the Department of Environmental Protection attributable to the review and investigation of the petition in excess of the initial fee submitted with the petition.

2.4.b.1. Recoverable costs will be determined by the number of hours worked under the agreement by the primary Department of Environmental Protection employee multiplied by 2.5 times the hourly rate of that employee and then

adding direct expenses incurred by that employee. Costs related to independent contractors retained by the Department of Environmental Protection to assist in the review and investigation of petitions will be included as direct expenses.

2.4.b.2. Within thirty (30) calendar days of receiving a petition under this section, the Department of Environmental Protection ~~will~~ shall send the petitioner an itemized list of estimated costs it expects to incur as a result of reviewing and investigating the petition. The list will include anticipated outside contractor costs.

2.4.b.3. If, upon review of the itemized list of estimated costs submitted by the Department of Environmental Protection, the petitioner determines not to continue the petition process, the petitioner, if he wishes to withdraw the petition, ~~must~~ shall submit a certified letter to the ~~Director~~ Secretary withdrawing the petition. If the letter is submitted within ten (10) days of the date of receipt of the Department of Environmental Protection's list of estimated costs, the petitioner will not be liable for any costs incurred in excess of the initial application fee.

2.4.c. Where the Administrator of the EPA has granted a petition to exclude hazardous waste from 40 CFR § 261.3 or 40 CFR part 261, subpart D, pursuant to 40 CFR § 260.22, the ~~Director~~ Secretary ~~will~~ shall accept the determination and amend this rule accordingly, provided:

2.4.c.1. Petitioner submits a copy of the petition submitted to the Administrator, including all demonstrative information and a copy of the Administrator's approval granting the exclusion pursuant to 40 CFR § 260.20(e); and

2.4.c.2. No scientifically supportable reasons for denying the petition are advanced which had not been presented to the Administrator.

2.5. Petitions to amend the regulations to include additional wastes as universal wastes.

2.5.a. Persons desiring to include a waste as a universal waste ~~must~~ shall petition the ~~Director~~ Secretary for an inclusion after having received approval from the Administrator of the Environmental Protection Agency. The petition will include:

2.5.a.1. A copy of the petition submitted to the Administrator of the Environmental Protection Agency pursuant to 40 CFR §260.23, including all demonstration information;

2.5.a.2. A copy of the Administrator's approval granting the petition under 40 CFR § 260.23 and 40 CFR § 260.20 and 40 CFR part 273; and

2.5.a.3. Any additional information which may be required for the ~~Director~~ Secretary to evaluate the petition.

2.5.b. Within one hundred and twenty (120) days of the filing of the petition the ~~Director~~ Secretary ~~will~~ shall decide whether to approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the ~~Director~~ Secretary ~~will~~ shall notify the petitioner of the action in writing, setting forth the reasons therefor.

2.5.c. The ~~Director~~ Secretary ~~will~~ shall not deny a petition to include a waste as a universal waste that has been approved by the Administrator unless scientifically supportable reasons for the denial are advanced which had not been presented to the Administrator.

2.5.d. Any person may petition the ~~Director~~ Secretary to include a waste as a universal waste as follows:

2.5.d.1. Submit a petition to the ~~Director~~ Secretary demonstrating that regulation under the universal waste regulations of 40 CFR part 273 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the Hazardous Waste Program. The petition ~~must~~ shall also include information required by 40 CFR § 260.20(b), and include as many of the factors listed in 40 CFR § 273.81 as are

appropriate for the waste or category of waste addressed in the petition.

2.5.d.2. The ~~Director~~ Secretary ~~will~~ shall grant or deny a petition using the factors listed in 40 CFR § 273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the Hazardous Waste Program.

2.5.d.3. The decision of the ~~Director~~ Secretary will be in writing and state the reasons to either grant or deny the petition. Any petitioner aggrieved by the decision of the ~~Director~~ Secretary may appeal the decision to the Environmental Quality Board in accordance with the provisions of W.Va. Code § 22-18-20.

§33-20-3. Identification and Listing of Hazardous Waste.

3.1. 40 CFR Part 261. -- The provisions of 40 CFR part 261 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

3.1.a. In order for a mixture of a waste and one or more hazardous wastes identified in 40 CFR § 261.3(a)(2)(iv) to be exempt from the definition of hazardous waste, the owner or operator ~~must~~ shall comply with the following:

3.1.a.1. Provide a certification in writing to the ~~Director~~ Secretary that groundwater monitoring complying with either 40 CFR part 265, subpart F or which is approved by the ~~Director~~ Secretary, is or will be in place at the wastewater treatment facility identified in 40 CFR § 261.3(a)(2)(iv). A time schedule for the installation of groundwater monitoring ~~must~~ shall be included. This requirement does not apply to wastewater treatment units or containers.

3.1.a.2. Before claiming an exemption, the owner or operator of each wastewater treatment facility receiving mixtures of wastes under 40 CFR § 261.3(a)(2)(iv) ~~must~~ shall notify the ~~Director~~ Secretary of the receipt of the wastes on a form prescribed by the ~~Director~~ Secretary.

3.1.a.3. Annually submit to the ~~Director~~ Secretary a list of hazardous wastes that are expected to be present in the mixture to be exempted.

3.2. The provisions of 40 CFR § 261.5 (f)(3)(iv) and (v) and 40 CFR § 261.5(g)(3)(iv) and (v) are excepted from incorporation by reference. Conditionally exempt small quantity generators ~~must~~ shall notify the ~~Director~~ Secretary of their hazardous waste activity in accordance with section 4.

§33-20-4. Notification of Hazardous Waste Activity Regulations.

4.1. Applicability. Any person that engages in a hazardous waste activity in the State of West Virginia ~~must~~ shall notify the ~~Director~~ Secretary of these activities when that activity begins, unless those activities are exempted from the requirements of this rule.

4.1.a. Any person as described in subsection 4.1 that has notified the EPA or is subject to the requirements to notify EPA as specified in volume 45, number 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provision of section 4.

4.1.b. The purpose of section 4 is to provide a means for the State of West Virginia to utilize the information provided by all who complied with the notification requirements of

EPA as described in subdivision 4.1.a or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in subdivision 4.1.a to notify the ~~Director~~ Secretary of their hazardous waste activities.

4.2. Notification. Any person that notified EPA of hazardous waste activities as referenced above in subsection 4.1. ~~must~~ shall provide a copy of that notification to the ~~Director~~ Secretary.

4.2.a. Any person involved in hazardous waste activities that did not comply with the notification requirements of EPA, as referenced above in subsection 4.1, but is subject to those requirements ~~must~~ shall notify the ~~Director~~ Secretary in writing of his hazardous waste activities within thirty (30) days of the effective date of this rule. Notification may be accomplished by the use of EPA Form 8700-12, RCRA Subtitle C Site Identification Form, or the provision of the same information in any other manner selected by the notifier.

4.2.b. Any person exempted from the federal notification requirements as specified in 40 CFR §§ 261.6(b) and 261.5, but subject to West Virginia notification requirements, ~~must~~ shall notify the ~~Director~~ Secretary in writing of his hazardous waste activities on the date of initiation of these activities. Notification may be accomplished by use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

4.2.c. One notification form is required for each generator.

4.2.d. A notification form is required for each storage, treatment, disposal, or other facility. However, if one facility site includes more than one storage, treatment, or disposal activity, only one notification form for the entire facility site is required.

4.2.e. Generators that store, treat, or dispose of hazardous waste on-site ~~must~~ shall file a notification form for generation activities as well as storage, treatment, and disposal activities, unless those activities are exempted from the requirements of this rule.

4.2.f. New generators and those initiating activities subsequent to the EPA notification period referenced in subdivision 4.1.a ~~must~~ shall comply with the EPA identification number requirements and ~~must~~ shall provide a copy of their application for an EPA identification number to the Administrator.

§33-20-5. Standards Applicable to Generators of Hazardous Waste.

5.1. 40 CFR Part 262. -- The provisions of 40 CFR part 262 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

5.2. 40 CFR § 262.10(g). -- The provisions of 40 CFR § 262.10(g) will be excepted from incorporation.

5.2.a. A person who generates a hazardous waste as defined by 40 CFR part 261 is subject to the compliance requirements and penalties prescribed in W. Va. Code, §22-18-1 et seq. if he or she does not comply with the requirements of this rule. This rule in no way abrogates the enforcement authority of the Resource Conservation and Recovery Act of 1976 § 3008.

5.2.b. All references to 40 CFR § 262.10(g) will be deemed references to subsection 5.2 and the subdivisions herein, as appropriate.

5.3. 40 CFR § 262.10(j). -- The provisions of 40 CFR § 262.10(j) (1) and (2) including Table 1 will be excepted from incorporation.

5.4. 40 CFR Part 262, Subpart E. -- The provisions of 40 CFR part 262, subpart E -- Exports of Hazardous Waste are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.5.a. does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of subpart E ~~must~~ shall file with the ~~Director~~ Secretary copies of all documentation, manifests, exception reports, annual reports or records, submitted to EPA, the Administrator or the Regional Administrator as required by and within the time frames set forth in

subpart E.

5.5. 40 CFR Part 262, Subpart H. – The provisions of 40 CFR part 262, subpart H – Transfrontier Shipments of Hazardous Waste for Recovery within the OECD are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.6.a. does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of subpart H ~~must~~ shall file with the ~~Director~~ Secretary copies of all documentation, manifests, exception reports, annual reports or records, submitted to EPA, the Administrator or the Regional Administrator as required by and within the time frames set forth in subpart H.

5.6. 40 CFR Part 262, Subpart I. – The provisions of 40 CFR part 262, subpart I – New York State Public Utilities will be excepted from incorporation.

5.7. 40 CFR Part 262, Subpart J. – The provisions of 40 CFR part 262, subpart J – University Laboratories XL Project – Laboratory Environmental Management Standard will be excepted from incorporation.

§33-20-6. Standards Applicable to Transporters of Hazardous Waste.

6.1. 40 CFR Part 263. – The provisions of 40 CFR part 263 are hereby adopted and incorporated by reference insofar as those regulations relate to the transportation of hazardous waste by air and water.

6.2. The use of railroads for the transportation of hazardous waste is regulated by the West Virginia Public Service Commission rules, "Rules and Regulations Governing the Transportation of Hazardous Waste by Rail", 150 CSR 11. The use of the state highways for the transportation of hazardous waste is regulated under the West Virginia Division of Highways, "Transportation of Hazardous Wastes Upon the Roads and Highways", 157 CSR 7.

§33-20-7. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

7.1. 45 CSR 25, Office of Air Quality, – The standards in section 7 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste except as otherwise provided by law. In addition to the standards in section 7 of this rule, 45 CSR 25, "~~To Prevent and~~ Control of Air Pollution from Hazardous Waste Treatment, Storage~~, or~~ and Disposal Facilities", applies to management facilities which may emit hazardous waste or the constituents thereof to the atmosphere including incineration facilities except as otherwise provided by law. For purposes of section 7, the following persons are considered to be incinerating hazardous waste:

7.1.a. Owners or operators of hazardous waste incinerators; and

7.1.b. Owners or operators of boilers or industrial furnaces used to destroy wastes.

7.2. 40 CFR Part 264. – The provisions of 40 CFR part 264 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

7.3. Required Receipt of Identical Notification. – The provisions of 40 CFR §§ 264.12(a)(1) and (2) are retained by the Environmental Protection Agency; however, the ~~Director~~ Secretary ~~of the Office of Waste Management must~~ shall receive identical notification.

7.4. Releases from Solid Waste Management Unit. – The provisions of 40 CFR part 264, subpart F – Releases from solid waste management units are incorporated by reference with the following modifications, exceptions and additions.

7.4.a. For purposes of 40 CFR § 264.92, reference to the "Regional Administrator" will be to the "Environmental Quality Board." The Environmental Quality Board establishes groundwater protection standards pursuant to the authority granted the board in W. Va. Code, §22-12-4.

7.4.b. For purposes of 40 CFR § 264.94 and subparagraphs thereof, the Environmental Quality Board rule on groundwater protection standards, 46 CSR 12 will apply as required pursuant to the authority granted the Environmental Quality Board in W. Va. Code, §22-12-4.

7.4.c. The provisions of 40 CFR § 264.99(g) are incorporated by reference with the following modifications:

7.4.c.1. The ~~Director~~ Secretary ~~will~~ shall specify in the facility permit the frequencies for collecting samples required under 40 CFR § 264.99(g). This frequency ~~will~~ shall not be less than once annually ~~every five years~~.

7.5. Financial Requirement. -- The provisions of 40 CFR part 264, subpart H -- Financial Requirements are adopted and incorporated by reference with the following modifications:

7.5.a. The provisions of 40 CFR §§ 264.149 and 264.150 are excepted from incorporation by reference.

7.6. Provisions Relating to Incinerators. -- The provisions of 40 CFR §§ 264.341, 264.342, 264.343, 264.344, 264.345 and 264.347(a) relating to incinerators are excepted from incorporation by reference. Consult the rules of the Office of Air Quality regarding emissions from incinerators. The Office of Air Quality retains its authority to enforce the air monitoring items listed in 40 CFR §264.347(a) related to incinerating hazardous waste. The ~~Office of Waste Management~~ Secretary retains ~~its~~ authority to enforce 40 CFR §§ 264.347(b)(c)(d).

7.6.a. Consult the Office of Air Quality, 45 CSR 25, "~~To Prevent and~~ Control of Air Pollution from Hazardous Waste Treatment, Storage~~, or~~ and Disposal Facilities."

7.7. 40 CFR Part 264, Subparts AA, BB, CC and 40 CFR § 264.1080(f); and 40 CFR § 264.1080(g). -- The provisions of 40 CFR § 264.1080(f); and 40 CFR § 264.1080(g) are hereby adopted and incorporated by reference and the remaining provisions of 40 CFR part 264, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Office of Air Quality regarding air emissions from process vents, equipment leaks, tanks, surface impoundments and containers.

§33-20-8. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

8.1. 40 CFR Part 265. -- The provisions of 40 CFR part 265 are adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

8.2. 40 CFR §§ 265.12(a), 265.149 and 265.150. -- The provisions of 40 CFR §§ 265.12(a)(1) and (2), 265.149, and 265.150 are excepted from incorporation by reference. The ~~Director~~ Secretary ~~of the Office of Waste Management must~~ shall receive identical notification.

8.3. 40 CFR §§265.341, 265.345, 265.347 (a), 265.352. -- The provisions of 40 CFR §§ 265.341, 265.345, 265.347(a) and 265.352 relating to incinerators are excepted from incorporation by reference. Consult the rules of the Office of Air Quality regarding emissions from incinerators. The Office of Air Quality retains its authority to enforce the air monitoring items listed in 40 CFR §265.347(a) related to incinerating hazardous waste. The ~~Office of Waste Management~~ Secretary retains ~~its~~ authority to enforce 40 CFR §§ 265.347(b)(c)(d).

8.4. Thermal Treatment. -- The provisions of 40 CFR Part 265, Subpart P -- Thermal Treatment are incorporated by reference except for the provisions of 40 CFR § 265.375 and 40 CFR § 265.383 which are excepted from incorporation by reference. Consult the rules of the Office of Air Quality regarding emissions from thermal treatment units.

8.5. 40 CFR Part 265 Subparts AA, BB, CC and 40 CFR § 265.1080(f); and 40 CFR § 265.1080(g). -- The provisions of 40 CFR § 265.1080(f); and 40 CFR § 265.1080(g) are hereby adopted and incorporated by reference and

the remaining provisions of 40 CFR part 265, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Office of Air Quality regarding air emission standards for process vents and air emmission standards for equipment leaks, and air emission standards for tanks, surface impoundments and containers.

§33-20-9. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

40 CFR Part 266. – The provisions of 40 CFR part 266 are hereby adopted and incorporated by reference. Consult the rules of the Office of Air Quality regarding Subpart H of this part.

§33-20-10. Land Disposal Restrictions.

10.1. 40 CFR Part 268. – The provisions of 40 CFR part 268 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

10.2. 40 CFR §§ 268.5, 268.6, 268.10 - .13, 268.42(b) and 268.44. – The provisions of 40 CFR §§ 268.5, 268.6, 268.10, 268.11, 268.12, 268.13, 268.42(b) and 268.44 are excepted from incorporation by reference.

10.3. Definition of Administrator in 40 CFR § 268.40(b). The term "Administrator" in 40 CFR § 268.40(b) will retain its meaning as defined in 40 CFR § 260.10.

§33-20-11. The Hazardous Waste Permit Program and Standardized Permit.

11.1. 40 CFR Part 270. – The provisions of the 40 CFR part 270 and 40 CFR part 267 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

11.2. 40 CFR § 270.2 Definitions.

11.2.a. Definition of "RCRA permit". – For purposes of this section, the term "RCRA permit" means "West Virginia Hazardous Waste Management Permit". The following additional requirements will apply to obtain a Hazardous Waste Management Permit in West Virginia. All references in 40 CFR part 270 and 40 CFR part 267 to 40 CFR part 124 will be deemed to be references to the applicable provisions of subsections 11.4 through 11.17. To the extent of any inconsistency with 40 CFR part 270 and 40 CFR part 267 , the specific provisions contained herein will control.

11.3. Application Fees.

11.3.a. Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, ~~must~~ shall submit as part of the application a money order or cashier's check payable to "The Hazardous Waste Management Fund" of the state treasury. Persons required to obtain a permit-by-rule pursuant to this rule are not required to pay a permit application fee.

11.3.b. The fee will be determined by the schedule set forth in table 1. If the cumulative total of application fees imposed under this section equals or exceeds fifty thousand dollars ($50,000) then the person required to pay the fees may, at the person's

option, elect to submit the fee payments in installments over a three year period. The installments submitted to the Department of Environmental Protection may not be less frequent than annually and the amount submitted annually may not be less than one-third of the total amount due.

11.3.c. The fee for permit renewal is the same as for an initial permit.

11.4. Pre-application Public Meeting and Notice

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

11.4.b. Prior to the submission of a West Virginia Hazardous Waste Management Part B permit application for a facility, the applicant ~~must~~ shall 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 ~~must~~ shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

11.4.c. The applicant ~~must~~ shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 11.4.b, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the Part B application, in accordance with 40 CFR § 270.14(b).

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

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

11.4.d.1.A. A newspaper advertisement. The applicant ~~must~~ shall publish a notice, fulfilling the requirements in paragraph 11.4.d.2, 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 ~~will~~ 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 publication is necessary to inform the affected public. The notice ~~must~~ shall be published as a display advertisement.

11.4.d.1.B. A visible and accessible sign. The applicant ~~must~~ shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph 11.5.d.2. If the applicant places the sign on the facility property, then the sign ~~must~~ shall be large enough to be readable from the nearest point where the public would pass by the site.

11.4.d.1.C. A broadcast media announcement. The applicant ~~must~~ shall broadcast a notice, fulfilling the requirements in paragraph 11.4.d.2, 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.

11.4.d.1.D. A notice to the permitting agency. The applicant ~~must~~ shall send a copy of the newspaper notice to the permitting agency and the ~~Director~~ Secretary

~~will~~ shall forward copies to the appropriate units of State and local government having jurisdiction over the area where the facility is, or is proposed to be, located; and to each state agency having any authority under state law with respect to the construction or operation of the facility.

11.4.d.2. The notices required under paragraph 11.4.d.1. ~~must~~ shall include:

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

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

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

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

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

11.5. Public Notice Requirements at the Application Stage.

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

11.5.b. Notification. The ~~Director~~ Secretary ~~will~~ shall provide public notice as required in subsection 11.5 when a Part B permit application has been submitted. The ~~Director~~ Secretary ~~will~~ shall provide public notice to:

11.5.b.1. The applicant;

11.5.b.2. All persons on a mailing list developed under subparagraph 11.11.d.1.D; and

11.5.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.

11.5.b.4. Any person otherwise entitled to receive notice under subdivision 11.5.b may waive the right to receive notice for any classes and categories of permits.

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

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

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

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

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

11.5.c.5. A brief description of the

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

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

11.5.d. Concurrent with the notice required under subdivision 11.5.b, the ~~Director~~ Secretary ~~must~~ shall place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

11.6. Information Repository.

11.6.a. Applicability. The requirements of this section apply to all applicants seeking West Virginia Hazardous Waste Management Permits for hazardous waste management units.

11.6.b. The ~~Director~~ Secretary ~~will~~ shall assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the ~~Director~~ Secretary ~~will~~ 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 ~~will~~ shall notify the facility that it must establish and maintain an information repository.

11.6.c. The information repository ~~must~~ 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 ~~will~~ shall have the discretion to limit the contents of the repository.

11.6.d. The information repository ~~will~~ 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 ~~will~~ shall specify a more appropriate site.

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

11.6.f. The facility owner/operator ~~must~~ shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the ~~Director~~ Secretary. The ~~Director~~ Secretary ~~will~~ shall close the repository at his or her discretion, based on the factors in subdivision 11.6.b.

11.7. Application for a Permit.

11.7.a. Any person who requires a permit under this rule ~~must~~ 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 ~~will~~ shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Permit applications ~~must~~ shall comply with the signature and certification requirements of 40 CFR § 270.11.

11.7.b. The ~~Director~~ Secretary ~~will~~ shall review for completeness every application. Each application submitted by a new hazardous waste management facility, ~~will~~ shall 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), ~~will~~ shall be reviewed for completeness within 60 days of receipt. Upon completing the review, the ~~Director~~ Secretary ~~will~~ shall notify the applicant in writing whether the application is complete. If the application is incomplete, the

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

11.7.c. If the applicant fails or refuses to correct deficiencies in the application, the permit ~~will~~ shall be denied and appropriate enforcement actions will be taken under the applicable statutory provisions of WV Code §22-18-1 et seq.

11.7.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 ~~will~~ shall notify the applicant and a date will be scheduled.

11.7.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 subdivision 11.7.b.

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

11.7.f.1. Prepare a draft permit;

11.7.f.2. Give public notice;

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

11.7.f.4. Issue a final permit.

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

11.8.a. Permits ~~will~~ shall 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 ~~will~~ shall only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR §§ 270.41 or 270.43. All requests ~~must~~ shall be in writing and ~~must~~ shall contain facts or reasons supporting the request.

11.8.b. If the ~~Director~~ Secretary decides the request is not justified, he or she ~~will~~ 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 Environmental Quality Board in accordance with section 15.

11.8.b.1. If the ~~Director~~ Secretary initially decides to modify or revoke and reissue a permit under 40 CFR §§ 270.41 or 270.42 (c), he or she ~~will~~ shall prepare a draft permit under section 11.9 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 ~~will~~ shall require the submission of a new application.

11.8.b.2. In a permit modification under this section, only those conditions to be modified will be reopened when a new draft permit is prepared. When a permit is revoked and reissued under this section, the entire permit is reopened During any revocation and reissuance proceeding the permittee ~~must~~ shall comply with all conditions of the existing permit until a new final permit is reissued.

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

11.8.c. If the ~~Director~~ Secretary

decides to terminate a permit under 40 CFR § 270.43, he or she ~~will~~ 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 subsection 11.9

11.9. Draft Permits.

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

11.9.b. If the ~~Director~~ Secretary decides to deny the permit application, he or she ~~will~~ 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 initial decision to deny the permit application was incorrect, he or she ~~will~~ shall withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

11.9.c. If the ~~Director~~ Secretary decides to issue a draft permit, he or she ~~will~~ shall prepare a draft permit that contains the following information:

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

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

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

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

11.9.d. All draft permits prepared by the ~~Director~~ Secretary under this section ~~will~~ shall be accompanied by a fact sheet and ~~will~~ shall be based on the administrative record, publicly noticed and made available for public comment.

11.10. Fact Sheet

11.10.a. A fact sheet ~~will~~ shall be prepared for every draft permit for a hazardous waste management facility, which the ~~Director~~ Secretary finds is the subject of wide-spread public interest or raises major issues. The fact sheet will 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 ~~will~~ shall send the fact sheet to the applicant and to anyone who requests it.

11.10.b. The fact sheet ~~will~~ shall include when applicable:

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

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

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

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

11.10.b.5. A description of the process for reaching a final decision on a draft permit including:

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

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

11.10.b.5.C. Any other procedures by which the public participates in the final decision.

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

11.11. Public Notice of Permit Actions and Public Comment Period.

11.11.a. Scope. The ~~Director~~ Secretary ~~will~~ shall give public notice if the following actions have occurred:

11.11.a.1. A draft permit has been prepared; and

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

11.11.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under subsection 11.8. Written notice of that denial ~~will~~ shall be given to the requester and to the permittee.

11.11.c. Timing. Public notice of the preparation of a draft permit (including a Notice of Intent to Deny a Permit Application) required under subdivision 11.11.a will allow at least forty-five (45) days for public comment. Public notice of a public hearing ~~will~~ shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

11.11.d. Public notice of activities described in subdivision 11.11.a ~~will~~ shall be given by the following methods:

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

11.11.d.1.A. The applicant;

11.11.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;

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

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

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

11.11.d.1.D.2. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

11.11.d.1.D.3. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in the publications as regional and state funded newsletters, environmental bulletins, or state law journals. The ~~Director~~ Secretary ~~will~~ shall update the mailing lists from time to time by requesting written indications of continued interest from those listed. The ~~Director~~ Secretary ~~will~~ shall delete from the lists the name of any person who fails to respond to the request.

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

11.11.d.1.F. To each state agency having any authority under state law with respect to the construction or operation of the facility.

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

11.11.d.3. In a manner constituting legal notice to the public under

state laws; and

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

11.11.e. All public notices issued under this section will contain the following minimum information:

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

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

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

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

11.11.e.5. A brief description of the comment procedures required by subsections 11.12 and 11.13 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final decision.

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

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

11.11.f. Public notices for hearings. In addition to the general public notice described in subdivision 11.11.e, the public notice of a hearing will contain the following information:

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

11.11.f.2. Date, time, and place of the hearing; and

11.11.f.3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

11.11.g. In addition to the general public notice described in subdivision 11.11.e, all persons identified in subparagraphs 11.11.d.1.A, 11.11.d.1.B, and 11.11.d.1.C ~~will~~ shall be mailed a copy of the fact sheet, the permit application and the draft permit, as applicable.

11.12. Public Comments and Requests for Public Hearings.

During the public comment period provided under subsection 11.11., any interested person may submit written comments on the draft permit and may request a public hearing, if a hearing has not already been scheduled. A request for a public hearing ~~must~~ shall be in writing and ~~must~~ shall state the nature of the issues proposed to be raised in the hearing. All comments ~~will~~ shall be considered in making the final decision and ~~will~~ shall be answered as provided in subsection 11.16.

11.13. Public Hearings.

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

11.13.b. The ~~Director~~ Secretary ~~will~~ shall also hold a public hearing at his or her discretion, whenever, for instance, a hearing might clarify one or more issues involved in the permit decision.

11.13.c. The ~~Director~~ Secretary ~~will~~ 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 subdivision 11.11.c; whenever possible the ~~Director~~ Secretary ~~will~~ shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

11.13.d. Public notice of the hearing will be given as specified in subsection 11.11

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

11.13.f. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits ~~will~~ shall be set upon the time allowed for oral statements, and the submission of statements in writing will be required. The public comment period under subsection 11.11 ~~will~~ shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

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

11.14. Reopening of the Public Comment Period.

11.14.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 ~~will~~ shall take one or more of the following actions:

11.14.a.1. Prepare a new draft permit, appropriately modified, under subsection 11.9.

11.14.a.2. Prepare a revised fact sheet under subsection 11.10. and reopen the comment period.

11.14.a.3. Reopen or extend the comment period under subsection 11.11 to give interested persons an opportunity to comment on the information or arguments submitted.

11.14.b. Comments filed during the reopened comment period ~~must~~ shall be limited to the substantial new questions that caused its reopening. The public notice under subsection 11.11 ~~will~~ shall define the scope of the reopening.

11.14.c. Public notice of any of the above actions will be issued under subsection 11.11.

11.15. Issuance and Effective Date of Permit.

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

11.15.b. A final permit decision will become effective thirty (30) days after the service of Notice of Decision unless:

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

11.15.b.2. Review is requested or evidentiary hearing is requested; or

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

11.16. Response to Comments.

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

11.16.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

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

11.16.b. The response to comments ~~will~~ shall be available to the public.

11.17. Administrative Record.

11.17.a. The provisions of a draft permit prepared under subsection 11.9 ~~will~~ shall be based on the administrative records consisting of:

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

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

11.17.a.3. The fact sheet;

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

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

11.17.b. The ~~Director~~ Secretary ~~will~~ shall base final permit decisions on the administrative record consisting of:

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

11.17.b.2. All comments received during the public comment period provided under subsection 11.11(including any extension or reopening under subsection 11.14);

11.17.b.3. The tape or transcript of any hearing(s) held under subsection 11.13;

11.17.b.4. Any written material submitted at the hearing;

11.17.b.5. The response to comments required by subsection 11.16 which identified and supports any change made in the draft permit and any new material placed in the record under that subsection;

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

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

11.17.b.8. The final permit.

11.17.c. The administrative record ~~will~~ shall be complete on the date the final permit is issued.

11.17.d. Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 11.17.a and 11.17.b, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

11.18. Public Access to Information.

11.18.a. Any records, reports, or information and any permit, permit applications, and related documentation within the ~~Director~~ Secretary's possession ~~will~~ shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the ~~Director~~ Secretary that those 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 ~~will~~ shall consider, treat, and protect those records as confidential.

11.18.b. It ~~will~~ shall be the responsibility of the person claiming any information as confidential under the provisions of this subsection to clearly mark each page containing that information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that the

person believes that the information is entitled to protection.

11.18.c. Any document submitted to the ~~Director~~ Secretary which contains information for which claim of confidentiality is made must be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the ~~Director~~ Secretary. The document ~~must~~ shall be submitted in two (2) separate parts. The first part ~~must~~ shall contain all information which is not deemed by the person preparing the report as confidential and ~~must~~ shall include appropriate cross-references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

11.18.d. No information ~~will~~ shall be protected as confidential information by the ~~Director~~ Secretary unless it is submitted in accordance with the provisions of subdivision 11.18.c and no information which is submitted in accordance with the provision of subdivision 11.18.c ~~will~~ shall be afforded protection as confidential information unless the ~~Director~~ Secretary finds that the protection is necessary to protect trade secrets. The person who submits information claimed to be confidential ~~will~~ shall receive written notice from the ~~Director~~ Secretary as to whether the information has been accepted as confidential or not.

11.18.e. All information which meets the tests of subdivision 11.18.d ~~will~~ shall be marked with the term "ACCEPTED" and ~~will~~ shall be protected as confidential information. If the person fails to satisfactorily demonstrate to the ~~Director~~ Secretary that information in the form presented meets the criteria of subdivision 11.18.d, the ~~Director~~ Secretary ~~will~~ shall mark the information "REJECTED" and promptly return it to the person who submitted the information. The ~~Director~~ Secretary ~~will~~ shall retain a copy of the information for reference.

11.18.f. Nothing contained herein ~~will~~ shall be construed to restrict the release of relevant confidential information during situations declared to be emergencies by the ~~Director~~ Secretary ~~or his designee~~.

11.18.g. Nothing in subsection 11.18 ~~will~~ shall be construed as limiting the disclosure of information by the department to any officer, employee, or authorized representative of the state or federal government concerned with effecting the purposes of this subsection.

11.18.h. Persons interested in obtaining information pursuant to this subsection ~~must~~ shall submit a request in accordance with the Environmental Quality Board rule 46 CSR 8.

11.19. 40 CFR §270.12. The provisions of 40 CFR §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provision of W. Va. Code, §22-18-12 and subsection 11.18.

11.20. 40 CFR § 270.24. The provisions of 40 CFR § 270.24 are excepted from incorporation by reference. Consult the rules of the Office of Air Quality regarding emissions from process vents.

11.21. 40 CFR §§ 270.60(b) and 270.64. The provisions of 40 CFR §§ 270.60(b) and 270.64 are hereby adopted and incorporated by reference. Consult the rules of the Office of Water Resources and the Environmental Quality Board regarding additional requirements for underground injection wells.

11.22. 40 CFR §270.155. The provisions of 40 CFR §270.155 relating to the administrative appeal of a decision to approve or deny a Remedial Action Plan (RAP) application are hereby modified for the purposes of this rule as follows: Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the ~~Director~~ Secretary's decision to approve or deny the RAP application to the Environmental Quality Board under subsections 11.4 through 11.17. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the

changes from the draft to the final RAP decision. Appeals of a RAP may be made to the same extent as for final permit decisions under §11. The ~~Director~~ Secretary ~~will~~ shall give public notice of any grant of review of a RAP by the Environmental Quality Board through the same means used to provide notice under subsections 11.4 through 11.17.

§33-20-12. Deed and Lease Disclosure; Notice in Deed to Property.

12.1. Recording Requirement. -- The owner of the property on which a hazardous waste management facility is located ~~must~~ shall record, in accordance with state law, a notation on the deed or lease to the facility property -- or on some other instrument that is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:

12.1.a. The land has been used to manage hazardous wastes; and

12.1.b. Its use is restricted under 40 CFR § 264.117(c).

12.2. Upon actual transfer of property which contains hazardous wastes that have been stored, treated, or disposed of, the previous owner ~~must~~ shall notify the ~~Director~~ Secretary in writing of the transfer.

12.3. Other Requirements. -- Nothing contained in this section will relieve any person from complying with the requirements on deed and lease disclosures set forth in W.Va. Code, § 22-18-21.

§33-20-13. Universal Waste Rule.

13.1. 40 CFR Part 273. -- The provisions of 40 CFR part 273 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

13.2. 40 CFR §§ 273.20, 273.40, 273.56 -- The provisions of 40 CFR §§ 273.20, 273.40, and 273.56 relating to exports are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.6.a does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of 40 CFR part 273 ~~must~~ shall file with the ~~Director~~ Secretary copies of all documentation, manifests, exception reports, annual reports or records, submitted to EPA, the Administrator or the regional Administrator as required by 40 CFR part 273.

13.3. 40 CFR § 273.70 -- The provisions of 40 CFR § 273.70 Imports are hereby adopted and incorporated by reference. Persons managing universal waste that is imported to West Virginia are subject to the requirements of this rule.

13.4. 40 CFR §§ 273.80 and 273.81 -- The provisions of 40 CFR §§ 273.80 and 273.81 are excepted from incorporation by reference. Consult the provisions of subdivision 2.5.d to petition to include a waste as a universal waste.

§33-20-14. Standards for the Management of Used Oil.

14.1. 40 CFR Part 279. -- The provisions of 40 CFR part 279 are hereby adopted and incorporated by reference with the exception contained in this section. Consult the rules of the Office of Air Quality regarding the burning of used oil.

14.2. 40 CFR § 279.82(b). -- The term EPA at 40 CFR § 279.82(b) will have the meaning of United States Environmental Protection Agency.

§33-20-15. Appeal Rights.

Any person aggrieved or adversely affected by the failure or refusal of the ~~Director~~ Secretary to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the ~~Director~~ Secretary under the provisions of this rule, may appeal to the Environmental Quality Board in accordance with the provisions of W. Va. Code §22B-1-1 et seq.

TABLE 1
PERMIT APPLICATION FEE SCHEDULE

STORAGE

EPA CODE ACTIVITY	FEE	FEE
S01 Container	<100 tons capacity $2,500.00	>100 tons capacity $3,750.00
S02 Tank	<100 tons capacity $2,500.00	>100 tons capacity $3,750.00
S04 Surface Impoundment	<1,000 tons capacity $10,000.00	>1,000 tons capacity $12,500.00
S05 Drip Pad	$2,500.00	
S03 Waste Pile	<100 tons capacity $5,000.00	>100 tons capacity $7,500.00
S06 Waste Pile (Containment Bldg.)	<100 tons capacity $5,000.00	>100 tons capacity $7,500.00

DISPOSAL

EPA CODE ACTIVITY	FEE	FEE
D80 Landfill	<1,000 tons/year $15,000.00	>1,000 tons/year $25,000.00
D81 Land Application	<1,000 tons/year $15,000.00	>1,000 tons/year $25,000.00
D83 Surface Impoundment	<1,000 tons/year $15,000.00	>1,000 tons/year $25,000.00

TABLE 1
PERMIT APPLICATION FEE SCHEDULE
(CONTINUED)

TREATMENT

EPA CODE ACTIVITY	FEE	FEE
T01 Tank	<100 tons capacity $2,500.00	>100 tons capacity $3,750.00
T02 Surface Impoundment	<1,000 tons/year $10,000.00	>1,000 tons/year $12,500.00
T03 Incinerator	<1,000 tons/year $5,000.00	>1,000 tons/year $7,500.00
T80 thru T93 Boiler/Industrial Furnace	<1,000 tons/year $5,000.00	>1,000 tons/year $7,500.00
T04 Other	$5,000.00	$7,500.00
T-94 Containment Bldg. Treatment	$5,000.00	$7,500.00

EMERGENCY PERMITS

EPA CODE ACTIVITY	FEE
State and Federal	Nil
Others	$500.00

TABLE 1
PERMIT APPLICATION FEE SCHEDULE
(CONTINUED)

MISCELLANEOUS

EPA CODE ACTIVITY	FEE
Permit Modification under 40 CFR, 270.42 (Class I)	$ 500.00
Permit Modification under 40 CFR, 270.42 (Class II and III) HWIR Staging Pile	$ 1,250.00
Modification under 40 CFR, 270.41	$ 2,500.00
Post-Closure Care Permit	$15,000.00
Closure Plans	$ 1,500.00

Federal Register

Friday,
July 14, 2006

Part III

Environmental Protection Agency

40 CFR Parts 260, 261 et al.
Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 266, 267, 268, 270, 271, 273 and 279

[FRL–8188–2]

Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors in the hazardous waste and used oil regulations, as a result of printing omissions, typographical errors, misspellings, citations to paragraphs and other references that have been deleted or moved to new locations without correcting the citations, and similar mistakes appearing in numerous final rules published in the **Federal Register**. This final rule does not create new regulatory requirements.

DATES: *Effective Date:* This final rule is effective on July 14, 2006.

FOR FURTHER INFORMATION CONTACT: Kathleen Rafferty, USEPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mailcode 5303P, Washington, DC 20460; phone number: (703) 308–0589; e-mail: *rafferty.kathy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does This Rule Create New Federal Requirements?

This rule does not create new regulatory requirements; rather, the rule corrects typographical errors, misspellings, punctuation mistakes, missing words, nomenclature errors, incorrect citations, and similar technical mistakes made in numerous final rules published in the **Federal Register**, and corrects printing omissions and other printing errors in the **Federal Register** and Code of Federal Regulations, in order to improve the clarity of the regulations. The application, implementation, and enforcement of the regulations addressed in this rule are not changed in any way.

II. Why Is This Correction Issued as a Final Rule?

Section 553 of the Administrative Procedures Act (APA), 5 U.S.C. 553(b), requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. However, an agency may issue a rule without providing notice and an opportunity for public comment if it finds that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest (*see* 5 U.S.C. 553(b)(3)(B)). EPA has determined that there is good cause for making this action final without prior proposal and opportunity for public comment because these corrections to the Code of Federal Regulations do not change the regulatory requirements for the hazardous waste management program, and therefore comment is unnecessary. This action corrects typographical and printing errors, incorrect citations resulting primarily from a failure to identify and make conforming changes to internal references when obsolete requirements are removed and subsequent paragraphs are redesignated, and similar mistakes. For these reasons, EPA believes that there is good cause under 5 U.S.C. 553(b)(3) for issuing these corrections as a final rule, and that it is in the public interest to make the corrections to the CFR immediately effective, without going through notice and comment procedures.

III. What Does This Rule Do and Why Are the Corrections Necessary?

This rule corrects approximately 500 errors in the 40 CFR hazardous waste and used oil regulations. As discussed in Section I. above, these errors resulted from such mistakes as typographical and printing errors, and incorrect citations often resulting from EPA's failure to make conforming changes to internal references when, for example, removing obsolete requirements and making associated redesignations of paragraphs; this action also replaces references to DOT regulations that have been superceded (and are thus no longer in the CFR) with the verbatim language of the superceded DOT regulations without changing the implementation and enforcement of the regulations in any way. EPA believes that the errors cause confusion and that the corrections will facilitate understanding of the hazardous waste and used oil regulations.

In developing this rule, EPA accumulated a lengthy list of suggested "technical" corrections, including a number from EPA regions and the States who implement these regulations. Today's action represents approximately 85 percent of the suggested technical corrections received. EPA will continue to examine the remaining 15 percent for a subsequent technical corrections rule.

The 40 CFR sections where corrections are being made are listed below, organized by part. For a number of these, where the correction is not so obvious (e.g., is not a simple misspelling), a description of the change and an explanation are provided. As can be seen by these descriptions, none of the corrections in today's notice changes the original substance or meaning of these sections.

A. Corrections to 40 CFR Part 260 (Hazardous Waste Management System: General)

1. EPA is amending the following sections in 40 CFR part 260 in order to correct typographical errors and incorrect citations: Section 260.10 definitions of "Designated facility," "Incompatible waste," "Personnel or facility personnel," "Universal waste," and "Used oil;" and §§ 260.22, 260.40, and 260.41.

2. *40 CFR 260.40 and 260.41:* EPA is making a conforming change to § 260.40(a) and to the introductory language in § 260.41 by revising the reference "§ 261.6(a)(2)(iv)" to read "§ 261.6(a)(2)(iii)." When §§ 260.40 and 260.41 were first added (50 FR 662 and 663, January 4, 1985), § 260.6 was revised (50 FR 665, January 4, 1985) such that paragraph (a)(2)(iii) was reserved for used oil, paragraph (a)(2)(iv) referred to precious metals, and paragraph (a)(2)(v) referred to spent lead-acid batteries. Subsequently, in the used oil regulations (57 FR 41612, September 10, 1992), § 261.6(a)(2) paragraph (iii) was deleted, and paragraphs (iv) and (v) were redesignated as paragraphs (iii) and (iv), but the conforming changes were not made to §§ 260.40 and 260.41, by redesignating § 261.6(a)(2)(iv) to § 261.6(a)(2)(iii), to keep the reference to precious metals. Today's rule makes this conforming correction. EPA also notes that the reference in § 260.41 to subpart F of part 266 correctly addresses precious metals recovery (it is subpart G of part 266 that addresses spent lead-acid batteries reclamation).

B. Corrections to Part 261 (Identification and Listing of Hazardous Waste)

1. EPA is amending the following sections of 40 CFR part 261 in order to correct typographical and spelling errors, incorrect citations, and printing errors: Sections 261.2, 261.3, 261.4, 261.6, 261.21, 261.24, 261.31, 261.32, 261.33, 261.38, Appendix VII (F002, F038, F039, K001, and K073 entries), and Appendix VIII.

2. *40 CFR 261.21(a)(3) and 261.21(a)(4):* When EPA first promulgated the ignitability characteristic for hazardous waste identification, the Agency incorporated, by reference, U.S. Department of Transportation (DOT) regulations (contained in Title 49 of the CFR) that defined an ignitable compressed gas and

an oxidizer. In 1990, DOT revised and recodified its regulations governing transportation of hazardous materials, including the sections of 49 CFR referenced by 40 CFR 261.21.[1] The referenced DOT regulations were both revised and moved within 49 CFR; as a result, the hazardous characteristic definitions at 40 CFR 261.21(a)(3) and 261.21(a)(4) now refer to nonexistent or irrelevant sections of the DOT regulations.

Since these original DOT regulations are still required under RCRA, EPA is replacing the obsolete references to the DOT regulations contained in the definitions for an ignitable compressed gas and an oxidizer, 40 CFR 261.21(a)(3) and 261.21(a)(4), respectively, with the actual language from the referenced sections of the DOT regulations that was published in Title 49 of the CFR at the time of the finalization of the RCRA regulations (1980). Because it can be difficult to obtain copies of the CFR from 1980, this revision will make it easier for the regulated community to find and apply the definitions of ignitable compressed gas and oxidizer for the purposes of 261.21. The implementation and enforcement of the ignitability characteristic will not change in any way. The Agency is simply publishing the original definitions to ease the burden on the regulated community.

3. *40 CFR 261.31(a):* This section was amended June 29, 1995 (60 CFR 33913), by removing footnote 1 from the table (referring to a temporary stay of the effective date of regulations listing certain wood preserving wastes as hazardous wastes). The Office of **Federal Register**, by mistake, also removed the footnote designated by an asterisk (*) which said "*(I,T) should be used to specify mixtures containing ignitable and toxic constituents." Today's notice restores and clarifies the footnote to read "*(I,T) should be used to specify mixtures that are ignitable and contain toxic constituents."

4. *40 CFR 261.33(e) and 261.33(f):* The Tables in §§ 261.33(e) and 261.33(f) describe P-listed waste and U-listed waste, respectively. The wastes listed in these Tables are currently organized alphabetically, by substance. In order to simplify the use of the Tables in §§ 231.33(e) and 261.33(f), this rule adds a list of the same wastes organized numerically, by Hazardous Waste Number, to the end of each Table. The Table in § 261.33(e) will now have an alphabetical list of P-listed wastes followed by a numerical list of P-listed wastes, and the Table in § 261.33(f) will now have an alphabetical list of U-listed wastes followed by a numerical list of U-listed wastes. The wastes listed in these Tables are not being changed, except to correct typographical errors. This revision is included to make the Tables in §§ 261.33(e) and 261.33 (f) easier to use and does not substantively change the regulations governing P-listed or U-listed wastes.

C. Corrections to Part 262 (Standards Applicable to Generators of Hazardous Waste)

1. EPA is amending the following sections in 40 CFR part 262 in order to correct typographical errors and incorrect citations, and to update EPA addresses and the list of OECD countries: Sections 262.34, 262.53, 262.56, 262.58, 262.70, 262.81, 262.82, 262.83, 262.84, 262.87, 262.90, and the introductory paragraph to the part 262 Appendix.

2. *40 CFR 262.53(b), 262.56(b), 262.83(b)(1)(i), 262.83(b)(2)(i), 262.84(e), and 262.87(a):* These sections are all being amended by updating the mailing and hand delivery addresses for delivery of the various export notifications, reports and tracking documents to EPA.

3. *40 CFR 262.58(a)(1):* This section is being amended to update the list of designated OECD Member countries by adding the Czech Republic, Hungary, Poland, the Slovak Republic, and South Korea to accurately reflect the current membership.

4. *40 CFR 262.81(k):* This section is being amended by updating the address for the EPA RCRA Docket.

D. Corrections to Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

1. EPA is amending the following sections of 40 CFR part 264 in order to correct typographical and spelling errors, incorrect citations, and printing errors: Sections 264.1, 264.4, 264.13, 264.17, 264.18, 264.97, 264.98, 264.99, 264.101, 264.111, 264.112, 264.115, 264.116, 264.118, 264.119, 264.140, 264.142, 264.143, 264.145, 264.147, 264.151, 264.175, 264.193, 264.221, 264.223, 264.226, 264.251, 264.252, 264.259, 264.280, 264.283, 264.301, 264.302, 264.304, 264.314, 264.317, 264.344, 264.552, 264.553, 264.554, 264.555, 264.573, 264.600, 264.601, 264.1030, 264.1033, 264.1034, 264.1035, 264.1050, 264.1058, 264.1064, 264.1080, 264.1090, 264.1101, 264.1102, and Tables 1 and 2 of Appendix I.

2. *40 CFR 264.112(b)(8) and 264.140(d)(1):* On October 22, 1998 (63 FR 56710), EPA issued a final rule establishing new requirements related to closure and post-closure care at land disposal facilities. Today's rule corrects two typographical errors that appeared in the October 22, 1998 final rule. Sections 264.112(b)(8) and 264.140(d)(1)of that rule referred to § 264.110(d), when they should have referred to § 264.110(c). This error is evidenced by the fact that § 264.110(d) does not exist. In addition, the preamble of the final rule correctly refers to § 264.110(c) in the text under Table 1 (63 FR 56714). Finally, the corresponding provision in §§ 265.112(b)(8) and 265.140(d)(1) correctly refers to § 265.110(d), which is analogous to § 264.110(c). Thus, this final rule corrects the typographical errors in §§ 264.112(b)(8) and 264.140(d)(1) by changing the incorrect reference "§ 264.110(d)" to read "§ 264.110(c)."

3. *40 CFR 264.221(e)(2)(i)(B), 264.301(e)(2)(i)(B), 264.314(f)(2), 265.221(d)(2)(i)(B), 265.301(d)(2)(i)(B), and 265.314(g)(2):* These sections in 40 CFR parts 264 and 265 all refer to "underground source of drinking water (as that term is defined in § 144.3 of this chapter)." Today's correction replaces the citation "§ 144.3 of this chapter" in each of these sections with "40 CFR 270.2" since both citations contain identical definitions for "underground source of drinking water," but the former is in the Underground Injection Control Program rules and the latter is in the Hazardous Waste Permit Program rules which the user is more likely to have readily available since parts 264 and 265 are the associated Hazardous Waste Facility rules. Today's correction also adds quotes around "underground source of drinking water" to make it clear that this is the term that is defined.

4. *40 CFR 264.573 and 265.443:* Sections 264.572 and 265.442 each provide two options for drip pads: Synthetic liners, in paragraph (a) of both sections; and other low permeability material, in paragraph (b) of both sections. But the design and operating requirements for synthetic liners in paragraphs 264.573(b) and 265.443(b), incorrectly refer to paragraphs 264.572(b) and 265.442(b), respectively; and the design and operating requirements for other low permeability material in paragraphs 264.573(a)(4)(i) and 265.443(a)(4)(i) incorrectly refer to §§ 264.572(a) and 265.442(a), respectively. This mistake was in the original **Federal Register** notice (57 FR 61503, December 24, 1992). Today's action corrects these four references by changing (a) to (b) and (b) to (a) as indicated.

[1] 55 FR 52402.

5. *40 CFR 264.1090(c):* EPA is amending this paragraph to correct a typographical error and to remove a duplicate sentence; no other changes are being made.

6. *40 CFR 264.1101(b)(3)(iii) and 265.1101(b)(3)(iii):* These paragraphs refer to §§ 264.193(d)(1) and 265.193(d)(1), respectively, for the requirements for external liner systems for tanks, but these referenced paragraphs merely provide that a liner external to a tank is an option for meeting secondary containment. The actual requirements for external liner systems for tanks are found in §§ 264.193(e)(1) and 265.193(e)(1), respectively. This mistake was in the original **Federal Register** notice (57 FR 37266, August 18, 1992). Today's action provides the correct paragraphs for the requirements.

7. *Table 1 of Appendix I to 40 CFR Part 264:* EPA is amending Table 1 in order to add the unit of measure codes for "Pounds," "Short tons," "Kilograms," and "Tons."

E. Corrections to Part 265 (Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

1. EPA is amending the following sections of 40 CFR part 265 in order to correct typographical and spelling errors, incorrect citations, and printing errors: Sections 265.1, 265.12, 265.14, 265.16, 265.19, 265.56, 265.90, 265.110, 265.111, 265.112, 265.113, 265.117, 265.119, 265.140, 265.142, 265.145, 265.147, 265.174, 265.193, 265.194, 265.197, 265.201, 265.221, 265.223, 265.224, 265.228, 265.229, 265.255, 265.259, 265.280, 265.281, 265.301, 265.302, 265.303, 265.312, 265.314, 265.316, 265.405, 265.441, 265.443, 265.445, 265.1033, 265.1035, 265.1063, 265.1080, 265.1085, 265.1087, 265.1090, 265.1100, 265.1101, Tables 1 and 2 of Appendix I, Appendix V, and Appendix VI.

2. *40 CFR 265.147(b)(1)(i) and (ii):* Because of a printing error, 40 CFR 265.147(a)(1)(i) and (ii), and 265.147(b)(1)(i) and (ii) were omitted from the July 1, 1989, 1990 and 1991 CFRs, although they were included in earlier editions of the **Federal Register** and CFRs. A September 23, 1991 (56 FR 47912) correction to the CFR published in the **Federal Register** corrected the omission of § 265.147(a)(1)(i) and (ii) from those CFRs, but did not mention the omission of § 265.147(b)(1)(i) and (ii) from the CFR. This correction is being made to be sure the subparagraphs in 265.147(b)(1) are in the next edition of the CFR.

3. *40 CFR 265.174:* The Burden Reduction Rule (71 FR 16910, April 4, 2006) inadvertently lifted the phrase "and the containment system" from § 264.174 and inserted it into § 265.174. The intent of the Burden Reduction Rule in revising §§ 264.174 and 265.174 was to provide a procedure for Performance Track member facilities to revise their required inspection frequency for container/container areas. At the same time, the Burden Reduction Rule sought to make conforming changes to these sections. Before the Burden Reduction Rule, these two sections, except for the phrase "and the containment system," were identical in meaning (although they used different language).

Section 264.175 contains requirements and specifications for a containment system for the Part 264 container storage areas. There are no requirements for a containment system for Part 265 container storage areas (§ 265.175 does not exist; it is reserved). To simplify, clarify, and avoid confusion, the Burden Reduction Rule attempted to conform these two sections by using the same language in new § 265.174 as in new § 264.174 for the comparable parts; but in the process, the erroneous reference "and the containment system" was retained. Today's notice corrects this error.

4. *40 CFR 265.221:* The April 4, 2006 final rule (71 FR 16911) amended 40 CFR 265.221 (a). In the process, the words "above and" were inadvertently added, such that the paragraph was amended to read, "The owner or operator of each new surface impoundment unit* * * *must install two or more liners, and a leachate collection and removal system above and between the liners* * * *." Table 8 in the preamble (71 FR 16876, April 4, 2006) incorrectly indicated that the existing language in § 265.22 (a) included the words "above and," and the Table indicated that no change was being made here. In actuality, the words "above and" were not in the existing language and EPA indeed had no intent to change this part of the paragraph. As a practical matter, it is impossible to have a "leachate" collection and removal system above a liner in a surface impoundment since the liquid waste itself is there, not leachate.

5. *40 CFR 265.229:* The January 29, 1992 final rule (57 FR 3462) amended 40 CFR 265.228 by redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) respectively, and by adding a new paragraph (b)(2). However, instructions for amending § 265.228 were erroneously also applied to § 265.229 (which was not amended by the January 29, 1992 rule), thus resulting in the redesignation of § 265.229(b)(2) and (b)(3) as § 265.229(b)(3) and (b)(4) and the addition of a new § 265.229(b)(2), repeating the paragraph added at § 265.228(b)(2). This error is being corrected by removing 40 CFR 265.229(b)(2), redesignating 40 CFR 265.229(b)(3) and (b)(4) as 40 CFR 265.229(b)(2) and (b)(3), and removing the reference to "57 FR 3493, Jan. 29, 1992" from the **Federal Register** listing at the end of 40 CFR 265.229.

6. *40 CFR 265.1100(d):* Section 265.1100 lists a number of criteria that enable a containment building to not be classified as land disposal under RCRA 3004(k), i.e., that prevent or control releases to the environment. The operable verbs used in this list are: "to prevent" (paragraph (a)), "to withstand" (paragraph (b)), "to prevent" (paragraph (c)(1)), "to minimize" (paragraph (c)(2)), "to prevent" (paragraph (c)(3)), and "to ensure containment and prevent" (paragraph (e)). Yet in paragraph (d), EPA, by mistake, used the word "permit" instead of "prevent," in saying: "Has controls as needed to permit fugitive dust emissions." As further evidence EPA meant "prevent," the comparable paragraph in § 264.1100(d) says: "Has controls sufficient to prevent fugitive dust emissions* * * *." Further, the accompanying design and operating standards in § 265.1101(a)(2)(i) and (c)(1)(iv) require that all containment buildings "provide an effective barrier against fugitive dust emissions," and "control fugitive dust emissions" with "no visible emissions." This mistake was in the original **Federal Register** notice (57 FR 37268, August 18, 1992). Today's action corrects this mistake by changing "permit" to "prevent" in § 265.1100, paragraph (d).

7. *Table 1 of Appendix I to 40 CFR Part 265:* EPA is amending Table 1 in order to add the unit of measure codes for "Pounds," "Short tons," "Kilograms," and "Tons."

F. Corrections to Part 266 (Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities)

1. EPA is amending the following sections of 40 CFR part 266 in order to correct typographical and spelling errors, incorrect citations, and printing errors: Sections 266.70, 266.80, 266.100, 266.102, 266.103, 266.106, 266.109, Title of Subpart N, and Appendices III, IV, V, VI, VIII, IX and XIII.

2. *40 CFR 266.103(c)(1)(i) and (ix):* These provisions were initially

introduced into the Code of Federal Regulations by a final rule published on February 21, 1991 (56 FR 7134), with an amendment to § 266.103(c)(1)(ix) published on July 17, 1991 (56 FR 32688). An August 27, 1991 final rule (56 FR 42504) amended paragraphs (c)(1) and (c)(3)(i), but a printing error by the Office of the Federal Register resulted in the removal of 40 CFR 266.103(c)(1)(i) through (xiii) and 40 CFR 266.103(c)(3)(ii) and (iii) from the 1992 edition of 40 CFR. A September 30, 1992 final rule (57 FR 44999) reinstated these paragraphs and clarified that they were regarded by EPA to have been in effect continuously in the form published in the 1991 CFR and as subsequently amended by an August 25, 1992 final rule (57 FR 38558). However, in reinstating these paragraphs, errors were introduced in the text at § 266.103(c)(1)(i) and (ix). Today's notice is correcting the errors by reinstating the language at § 266.103(c)(1)(i), as introduced by the February 21, 1991 (56 FR 7134) final rule, and the language at § 266.103(c)(1)(ix), as introduced by the February 21, 1991 final rule (56 FR 7134) and amended by the July 17, 1991 final rule (56 FR 32688).

3. *40 CFR 266.106(d)(1):* The August 25, 1992 final rule (57 *FR* 38558), which amended 40 CFR 266.106(d)(1), introduced an error into the Federal code by including the duplicate phrase "dispersion modeling to predict the maximum annual average off-site ground level concentration for each." Today's action corrects the error by removing the duplicate phrase.

G. Corrections to Part 267 (Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit)

1. EPA is amending 40 CFR part 267 in order to correct the nomenclature in § 267.147.

H. Corrections to Part 268 (Land Disposal Restrictions)

1. EPA is amending the following sections of 40 CFR part 268 in order to correct typographical and spelling errors, incorrect citations, and printing errors: Sections 268.2, 268.4, 268.6, 268.7, 268.14, 268.40, 268.42, 268.44, 268.45, 268.48 Table, 268.49, 268.50, and Appendix VIII.

2. *40 CFR 268.7(b)(4)(ii), (d), (d)(2), and (d)(3):* All these paragraphs incorrectly cite § 261.3(e), which is now "reserved," for debris excluded from the definition of hazardous waste. The exclusion for debris is located in § 261.3(f). This error can be traced to a January 9, 1992 **Federal Register** (57 FR 1013) where it was proposed to place this requirement in § 261.3(e), but in the August 18, 1992 **Federal Register** (57 FR 37264) it was placed in § 261.3(f). It was also the August 18, 1992 final rule that erroneously added six references to § 261.3(e) instead of § 261.3(f). Today's action corrects these citations.

3. *40 CFR 268.7(d)(1) and (d)(1)(i) through (iii):* The August 18, 1992 final rule (57 FR 37194) added 40 CFR 268.7(d)(1) and (d)(1)(i) through (iii) to the Federal code. On January 3, 1995 (60 *FR* 244–245), EPA amended § 268.7(d), introductory text, and (d)(1), but in doing so, erroneously added the duplicate phrase "or State authorized to implement part 268 requirements" in paragraph (d)(1). In addition, the Office of the Federal Register, by mistake, removed paragraphs (d)(1)(i) through (iii). This notice corrects these errors by removing the duplicate phrase at 40 CFR 268.7(d)(1) and reinstating paragraphs (d)(1)(i) through (iii) of 40 CFR 268.7.

I. Corrections to Part 270 (EPA Administered Permit Programs: The Hazardous Waste Permit Program)

EPA is amending the following sections of 40 CFR part 270 in order to correct typographical and spelling errors, and incorrect citations: Sections 270.1, 270.2, 270.10, 270.11, 270.13, 270.14, 270.17, 270.18, 270.20, 270.25, 270.26, 270.33, 270.41, 270.42, 270.42 Appendix I, 270.51, 270.70 and 270.72.

J. Corrections to Part 271 (Requirements for Authorization of State Hazardous Waste Program)

1. EPA is correcting typographical and spelling errors in the following sections of 40 CFR part 271: Sections 271.1, 271.21, and 271.23.

2. *40 CFR 271.21(g)(1)(i):* Today's action restores language that the CFR mistakenly changed between the 1996 and 1997 CFRs, by revising "The State has received an extension of the program modification deadline * * * and has made dils to revise its program * * *" to read "The State has received an extension of the program modification deadline * * * and has made diligent efforts to revise its program * * *."

K. Corrections to Part 273 (Standards for Universal Waste Management)

EPA is amending the following sections of 40 CFR part 273 in order to correct typographical and spelling errors: Sections 273.9, 273.13, 273.14, 273.34 and 273.61.

L. Corrections to Part 279 (Standards for the Management of Used Oil)

EPA is amending the following sections of 40 CFR part 279 in order to correct typographical and spelling errors, and incorrect citations: §§ 279.1, 279.10, 279.11, 279.43, 279.44, 279.45, 279.52, 279.55, 279.56, 279.57, 279.59, 279.63, 279.64, and 279.70.

IV. Statutory and Executive Order Reviews

This final rule corrects errors introduced into the CFR by numerous previous rules and does not create any new regulatory requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. *Executive Order 12866: Regulatory Planning Review*—Because this rule corrects errors in the CFR and does not create any new regulatory requirements, EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review by the Office of Management and Budget (OMB).

2. *Paperwork Reduction Act*—This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. *Regulatory Flexibility Act*—This rule corrects errors in the CFR and does not impose new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

4. *Unfunded Mandates Reform Act*—Because this rule only corrects errors in the CFR, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

5. *Executive Order 13132: Federalism*—Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (i.e., substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government).

6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 (65 FR 67249, November 6, 2000) does not apply to this rule because it will not have tribal

implications (i.e., substantial direct effects on one or more Indian tribes, or 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).

7. *Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*—This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it is not based on environmental health or safety risks.

8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

9. *National Technology Transfer Advancement Act*—The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this rule only corrects errors in the CFR and does not involve technical standards.

10. *Executive Order 12988*—As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), EPA has taken the necessary steps in this action to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. *Congressional Review Act*—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*, as amended) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication 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 action is effective July 14, 2006.

List of Subjects

40 CFR Part 260

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

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 266

Hazardous waste, Recyclable materials, Boilers and industrial furnaces, Low-level mixed waste.

40 CFR Part 267

Standardized permits, Financial test.

40 CFR Part 268

Environmental protection, Hazardous materials, 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.

40 CFR Part 271

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

40 CFR Part 273

Environmental protection, Hazardous materials transportation, Hazardous waste.

40 CFR Part 279

Environmental protection, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: June 16, 2006.

Susan Parker Bodine,

Assistant Administrator for Office of Solid Waste and Emergency Response.

■ For the reasons set out in the preamble, 40 CFR Parts 260, 261, 262, 264, 265, 266, 267 268, 270, 271, 273, and 279 are amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

§ 260.10 [Amended]

■ 2. Amend § 260.10 as follows:
■ a. In the definition of "*Incompatible waste,*" revise the parenthetical phrase "(See part 265, appendix V, of this chapter for examples.)" to read "(See appendix V of parts 264 and 265 of this chapter for examples.)";
■ b. In the definition of "*Personnel or facility personnel,*" remove the comma after the word "work";
■ c. In the definition of "*Universal waste,*" remove the section symbol "§ " in front of "273";
■ d. In the definition of "*Used oil,*" revise "in contaminated" to read "is contaminated".

§ 260.22 [Amended]

■ 3. Amend § 260.22 as follows:
■ a. In paragraph (a)(1), revise "actutely" to read "acutely";
■ b. In paragraph (d)(1)(ii), revise "hazrdous" to read "hazardous".

§ 260.40 [Amended]

■ 4. In § 260.40, amend paragraph (a) by revising the citation "§ 261.6(a)(2)(iv)" to read "§ 261.6(a)(2)(iii)".

§ 260.41 [Amended]

■ 5. Amend the § 260.41 introductory text by revising the citation "§ 261.6(a)(2)(iv)" to read "§ 261.6(a)(2)(iii)".

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 6. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

§ 261.2 [Amended]

■ 7. Amend § 261.2 (c)(1)(i) by revising the reference to "Table I" to read "Table 1"(*i.e.*, revise the letter "I" to be the number "1").

§ 261.3 [Amended]

■ 8. Amend § 261.3(a)(2)(i) by revising the reference to "table I" to read "Table 1" (*i.e.*, revise the letter "I" to be the number "1").

§ 261.4 [Amended]

■ 9. Amend § 261.4 as follows: a. In paragraph (a)(20)(v), revise "inparagraph" by inserting a space to read "in paragraph";
■ b. In paragraph (b)(6)(i)(B), revise "exlcusively" to read "exclusively";
■ c. In paragraph (b)(6)(ii) introductory text, revise "Specific waste" to read "Specific wastes";

■ d. In paragraph (b)(6)(ii)(D), revise "crome" to read "chrome";
■ e. In paragraph (b)(6)(ii)(F), revise "sludes" to read "sludges", and revise the word "chrometan" to read "chrome tan";
■ f. In paragraph (b)(9), revise "and wood product" to read "and wood products";
■ g. In paragraph (e)(2)(vi), revise the citation "(e)(v)(C)" to read "(e)(2)(v)(C)";
■ h. In paragraph (e)(3)(i) first sentence, revise "treatabilty" to read "treatability".

§ 261.6 [Amended]

■ 10. Amend § 261.6 as follows:
■ a. In paragraph (a)(2)(i), remove the parenthetical phrase "(subpart C)" and add "(40 CFR part 266, subpart C)" in its place;
■ b. In paragraph (a)(2)(ii), remove the parenthetical phrase "(subpart H)" and add "(40 CFR part 266, subpart H)" in its place;
■ c. In paragraph (a)(2)(iii), remove the parenthetical phrase "(subpart F)" and add "(40 CFR part 266, subpart F)" in its place;
■ d. In paragraph (a)(2)(iv), remove the parenthetical phrase "(subpart G)" and add "(40 CFR part 266, subpart G)" in its palce;
■ e. In paragraph (a)(2)(v), remove the parenthetical phrase "(subpart O)" and add "(40 CFR part 266, subpart O)" in its place;
■ f. In paragraph (c)(2), revise the word "rcycled" to read "recycled".

§ 261.21 [Amended]

■ 11. In § 261.21, revise paragraphs (a)(3) and (a)(4) and add notes 1 through 4 to the end of the section to read as follows:

§ 261.21 Characteristic of ignitability.

(a) * * *

(3) It is an ignitable compressed gas.

(i) The term "compressed gas" shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70 °F or, regardless of the pressure at 70 °F, having an absolute pressure exceeding 104 p.s.i. at 130 °F; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100 °F as determined by ASTM Test D–323.

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation (see Note 2).

(B) Using the Bureau of Explosives' Flame Projection Apparatus (see Note 1), the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives' Open Drum Apparatus (see Note 1), there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives' Closed Drum Apparatus (see Note 1), there is any explosion of the vapor-air mixture in the drum.

(4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in § 261.23(a)(8), in which case it must be classed as an explosive,

(B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21,

(C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide, or

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

* * * * *

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in § 173.151 of 49 CFR, and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

§ 261.24 [Amended]

■ 12. In § 261.24, amend paragraph (b) by revising the reference to "Table I" to read "Table 1" (i.e., replace the letter "I" with the number "1").

§ 261.31 [Amended]

■ 13. In § 261.31(a), amend the Table by adding a footnote at the bottom to read as follows: "*(I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.".

§ 261.32 [Amended]

■ 14. In § 261.32, amend the Table entries for "K107" and "K069" as follows:
■ a. In the second column of the row beginning "K107", amend "1,1,-dimethyl-hydrazine" by deleting the hyphen to read "1,1-dimethylhydrazine";
■ b. In the second column of the row beginning "K069", add a closing parenthesis after the word "Register".

§ 261.33 [Amended]

■ 15. Amend § 261.33 as follows:
■ a. In paragraph (e), revise the phrase "are subject to be the" to read "are subject to the";
■ b. In paragraph (e), amend the bracketed Comment by adding a sentence at the end, within the brackets, to read as set forth below;
■ c. In the Table in paragraph (e), in the third column of the row beginning "P045", in the substance "2-Butanone, 3,3-dimethyl-l-(methylthio)-,O-[methylamino)carbonyl]oxime", add an opening parenthesis to revise "[methylamino)" to read "[(methylamino)";
■ d. In the Table in paragraph (e), in the third column of the row beginning "P194", in the substance "Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester,"

revise "Ethanimidothioc" to read "Ethanimidothioic";

■ e. In the Table in paragraph (e), in the third column of the second row beginning "P074", revise "Nickel cynaide" to read "Nickel cyanide".

■ f. Add entries to the end of the Table in paragraph (e) to read as set forth below:

■ g. Amend paragraph (f) by revising "manfacturing" to read "manufacturing".

■ h. In paragraph (f), amend the bracketed Comment by adding a sentence to the end, within the brackets, to read as set forth below.

■ i. In the table to paragraph (f), in the entry with "Paraldehyde" in the third column, revise the first column "2" to read "U182";

■ j. In the table of paragrah (f), in the third column of the second row beginning "U216", revise "Thallium chloride Tlcl" to read "thallium chloride TlCl";

■ k. In the table of paragraph (f), add an entry just above the entry for "U227" (in column 1), "79–00–5" (in column 2), and "1,1,2-Trichloroethane" (in column 3) to read as set forth below.

■ l. Add entries to the end of the Table in paragraph (f) as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

■ (e) * * *

[*Comment:* * * * Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number.]

* * * * *

NUMERICAL LIST

Hazardous waste No.	Chemical abstracts No.	Substance
P001	[1] 81–81–2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%
P001	[1] 81–81–2	Warfarin, & salts, when present at concentrations greater than 0.3%
P002	591–08–2	Acetamide, -(aminothioxomethyl)-
P002	591–08–2	1-Acetyl-2-thiourea
P003	107–02–8	Acrolein
P003	107–02–8	2-Propenal
P004	309–00–2	Aldrin
P004	309–00–2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-
P005	107–18–6	Allyl alcohol
P005	107–18–6	2-Propen-1-ol
P006	20859–73–8	Aluminum phosphide (R,T)
P007	2763–96–4	5-(Aminomethyl)-3-isoxazolol
P007	2763–96–4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P008	504–24–5	4-Aminopyridine
P008	504–24–5	4-Pyridinamine
P009	131–74–8	Ammonium picrate (R)
P009	131–74–8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P010	7778–39–4	Arsenic acid H_3 AsO_4
P011	1303–28–2	Arsenic oxide As_2 O_5
P011	1303–28–2	Arsenic pentoxide
P012	1327–53–3	Arsenic oxide As_2 O_3
P012	1327–53–3	Arsenic trioxide
P013	542–62–1	Barium cyanide
P014	108–98–5	Benzenethiol
P014	108–98–5	Thiophenol
P015	7440–41–7	Beryllium powder
P016	542–88–1	Dichloromethyl ether
P016	542–88–1	Methane, oxybis[chloro-
P017	598–31–2	Bromoacetone
P017	598–31–2	2-Propanone, 1-bromo-
P018	357–57–3	Brucine
P018	357–57–3	Strychnidin-10-one, 2,3-dimethoxy-
P020	88–85–7	Dinoseb
P020	88–85–7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P021	592–01–8	Calcium cyanide
P021	592–01–8	Calcium cyanide $Ca(CN)_2$
P022	75–15–0	Carbon disulfide
P023	107–20–0	Acetaldehyde, chloro-
P023	107–20–0	Chloroacetaldehyde
P024	106–47–8	Benzenamine, 4-chloro-
P024	106–47–8	p-Chloroaniline
P026	5344–82–1	1-(o-Chlorophenyl)thiourea
P026	5344–82–1	Thiourea, (2-chlorophenyl)-
P027	542–76–7	3-Chloropropionitrile
P027	542–76–7	Propanenitrile, 3-chloro-
P028	100–44–7	Benzene, (chloromethyl)-
P028	100–44–7	Benzyl chloride
P029	544–92–3	Copper cyanide
P029	544–92–3	Copper cyanide Cu(CN)
P030	.....	Cyanides (soluble cyanide salts), not otherwise specified
P031	460–19–5	Cyanogen

NUMERICAL LIST—Continued

Hazardous waste No.	Chemical abstracts No.	Substance
P031	460–19–5	Ethanedinitrile
P033	506–77–4	Cyanogen chloride
P033	506–77–4	Cyanogen chloride (CN)Cl
P034	131–89–5	2-Cyclohexyl-4,6-dinitrophenol
P034	131–89–5	Phenol, 2-cyclohexyl-4,6-dinitro-
P036	696–28–6	Arsonous dichloride, phenyl-
P036	696–28–6	Dichlorophenylarsine
P037	60–57–1	Dieldrin
P037	60–57–1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta, 7aalpha)-
P038	692–42–2	Arsine, diethyl-
P038	692–42–2	Diethylarsine
P039	298–04–4	Disulfoton
P039	298–04–4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester
P040	297–97–2	O,O-Diethyl O-pyrazinyl phosphorothioate
P040	297–97–2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P041	311–45–5	Diethyl-p-nitrophenyl phosphate
P041	311–45–5	Phosphoric acid, diethyl 4-nitrophenyl ester
P042	51–43–4	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-
P042	51–43–4	Epinephrine
P043	55–91–4	Diisopropylfluorophosphate (DFP)
P043	55–91–4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P044	60–51–5	Dimethoate
P044	60–51–5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methyl amino)-2-oxoethyl] ester
P045	39196–18–4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl] oxime
P045	39196–18–4	Thiofanox
P046	122–09–8	Benzeneethanamine, alpha,alpha-dimethyl-
P046	122–09–8	alpha,alpha-Dimethylphenethylamine
P047	[1] 534–52–1	4,6-Dinitro-o-cresol, & salts
P047	[1] 534–52–1	Phenol, 2-methyl-4,6-dinitro-, & salts
P048	51–28–5	2,4-Dinitrophenol
P048	51–28–5	Phenol, 2,4-dinitro-
P049	541–53–7	Dithiobiuret
P049	541–53–7	Thioimidodicarbonic diamide $[(H_2 N)C(S)]_2 NH$
P050	115–29–7	Endosulfan
P050	115–29–7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P051	[1] 72–20–8	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta, 7aalpha)-, & metabolites
P051	72–20–8	Endrin
P051	72–20–8	Endrin, & metabolites
P054	151–56–4	Aziridine
P054	151–56–4	Ethyleneimine
P056	7782–41–4	Fluorine
P057	640–19–7	Acetamide, 2-fluoro-
P057	640–19–7	Fluoroacetamide
P058	62–74–8	Acetic acid, fluoro-, sodium salt
P058	62–74–8	Fluoroacetic acid, sodium salt
P059	76–44–8	Heptachlor
P059	76–44–8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P060	465–73–6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-
P060	465–73–6	Isodrin
P062	757–58–4	Hexaethyl tetraphosphate
P062	757–58–4	Tetraphosphoric acid, hexaethyl ester
P063	74–90–8	Hydrocyanic acid
P063	74–90–8	Hydrogen cyanide
P064	624–83–9	Methane, isocyanato-
P064	624–83–9	Methyl isocyanate
P065	628–86–4	Fulminic acid, mercury(2+) salt (R,T)
P065	628–86–4	Mercury fulminate (R,T)
P066	16752–77–5	Ethanimidothioic acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester
P066	16752–77–5	Methomyl
P067	75–55–8	Aziridine, 2-methyl-
P067	75–55–8	1,2-Propylenimine
P068	60–34–4	Hydrazine, methyl-
P068	60–34–4	Methyl hydrazine
P069	75–86–5	2-Methyllactonitrile
P069	75–86–5	Propanenitrile, 2-hydroxy-2-methyl-
P070	116–06–3	Aldicarb
P070	116–06–3	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime
P071	298–00–0	Methyl parathion

NUMERICAL LIST—Continued

Hazardous waste No.	Chemical abstracts No.	Substance
P071	298–00–0	Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl) ester
P072	86–88–4	alpha-Naphthylthiourea
P072	86–88–4	Thiourea, 1-naphthalenyl-
P073	13463–39–3	Nickel carbonyl
P073	13463–39–3	Nickel carbonyl $Ni(CO)_4$, (T-4)-
P074	557–19–7	Nickel cyanide
P074	557–19–7	Nickel cyanide $Ni(CN)_2$
P075	[1] 54–11–5	Nicotine, & salts
P075	[1] 54–11–5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts
P076	10102–43–9	Nitric oxide
P076	10102–43–9	Nitrogen oxide NO
P077	100–01–6	Benzenamine, 4-nitro-
P077	100–01–6	p-Nitroaniline
P078	10102–44–0	Nitrogen dioxide
P078	10102–44–0	Nitrogen oxide NO_2
P081	55–63–0	Nitroglycerine (R)
P081	55–63–0	1,2,3-Propanetriol, trinitrate (R)
P082	62–75–9	Methanamine, -methyl-N-nitroso-
P082	62–75–9	N-Nitrosodimethylamine
P084	4549–40–0	N-Nitrosomethylvinylamine
P084	4549–40–0	Vinylamine, -methyl-N-nitroso-
P085	152–16–9	Diphosphoramide, octamethyl-
P085	152–16–9	Octamethylpyrophosphoramide
P087	20816–12–0	Osmium oxide OsO_4, (T-4)-
P087	20816–12–0	Osmium tetroxide
P088	145–73–3	Endothall
P088	145–73–3	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
P089	56–38–2	Parathion
P089	56–38–2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P092	62–38–4	Mercury, (acetato-O)phenyl-
P092	62–38–4	Phenylmercury acetate
P093	103–85–5	Phenylthiourea
P093	103–85–5	Thiourea, phenyl-
P094	298–02–2	Phorate
P094	298–02–2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester
P095	75–44–5	Carbonic dichloride
P095	75–44–5	Phosgene
P096	7803–51–2	Hydrogen phosphide
P096	7803–51–2	Phosphine
P097	52–85–7	Famphur
P097	52–85–7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester
P098	151–50–8	Potassium cyanide
P098	151–50–8	Potassium cyanide K(CN)
P099	506–61–6	Argentate(1-), bis(cyano-C)-, potassium
P099	506–61–6	Potassium silver cyanide
P101	107–12–0	Ethyl cyanide
P101	107–12–0	Propanenitrile
P102	107–19–7	Propargyl alcohol
P102	107–19–7	2-Propyn-1-ol
P103	630–10–4	Selenourea
P104	506–64–9	Silver cyanide
P104	506–64–9	Silver cyanide Ag(CN)
P105	26628–22–8	Sodium azide
P106	143–33–9	Sodium cyanide
P106	143–33–9	Sodium cyanide Na(CN)
P108	[1] 157–24–9	Strychnidin-10-one, & salts
P108	[1] 157–24–9	Strychnine, & salts
P109	3689–24–5	Tetraethyldithiopyrophosphate
P109	3689–24–5	Thiodiphosphoric acid, tetraethyl ester
P110	78–00–2	Plumbane, tetraethyl-
P110	78–00–2	Tetraethyl lead
P111	107–49–3	Diphosphoric acid, tetraethyl ester
P111	107–49–3	Tetraethyl pyrophosphate
P112	509–14–8	Methane, tetranitro-(R)
P112	509–14–8	Tetranitromethane (R)
P113	1314–32–5	Thallic oxide
P113	1314–32–5	Thallium oxide Tl_2O_3
P114	12039–52–0	Selenious acid, dithallium(1+) salt
P114	12039–52–0	Tetraethyldithiopyrophosphate
P115	7446–18–6	Thiodiphosphoric acid, tetraethyl ester
P115	7446–18–6	Plumbane, tetraethyl-

NUMERICAL LIST—Continued

Hazardous waste No.	Chemical abstracts No.	Substance
P116	79–19–6	Tetraethyl lead
P116	79–19–6	Thiosemicarbazide
P118	75–70–7	Methanethiol, trichloro-
P118	75–70–7	Trichloromethanethiol
P119	7803–55–6	Ammonium vanadate
P119	7803–55–6	Vanadic acid, ammonium salt
P120	1314–62–1	Vanadium oxide V_2O_5
P120	1314–62–1	Vanadium pentoxide
P121	557–21–1	Zinc cyanide
P121	557–21–1	Zinc cyanide $Zn(CN)_2$
P122	1314–84–7	Zinc phosphide $Zn_3 P_2$, when present at concentrations greater than 10% (R,T)
P123	8001–35–2	Toxaphene
P127	1563–66–2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate.
P127	1563–66–2	Carbofuran
P128	315–8–4	Mexacarbate
P128	315–18–4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)
P185	26419–73–8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime.
P185	26419–73–8	Tirpate
P188	57–64–7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)
P188	57–64–7	Physostigmine salicylate
P189	55285–14–8	Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester
P189	55285–14–8	Carbosulfan
P190	1129–41–5	Carbamic acid, methyl-, 3-methylphenyl ester
P190	1129–41–5	Metolcarb
P191	644–64–4	Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester
P191	644–64–4	Dimetilan
P192	119–38–0	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester
P192	119–38–0	Isolan
P194	23135–22–0	Ethanimidthioic acid, 2-(dimethylamino)-N-[[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester
P194	23135–22–0	Oxamyl
P196	15339–36–3	Manganese, bis(dimethylcarbamodithioato-S,S')-,
P196	15339–36–3	Manganese dimethyldithiocarbamate
P197	17702–57–7	Formparanate
P197	17702–57–7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-
P198	23422–53–9	Formetanate hydrochloride
P198	23422–53–9	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)-carbonyl]oxy]phenyl]-monohydrochloride
P199	2032–65–7	Methiocarb
P199	2032–65–7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
P201	2631–37–0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate
P201	2631–37–0	Promecarb
P202	64–00–6	m-Cumenyl methylcarbamate
P202	64–00–6	3-Isopropylphenyl N-methylcarbamate
P202	64–00–6	Phenol, 3-(1-methylethyl)-, methyl carbamate
P203	1646–88–4	Aldicarb sulfone
P203	1646–88–4	Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl] oxime
P204	57–47–6	Physostigmine
P204	57–47–6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-
P205	137–30–4	Zinc, bis(dimethylcarbamodithioato-S,S')-,
P205	137–30–4	Ziram

[1] CAS Number given for parent compound only.

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(f) * * *

[*Comment:* * * * Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number.]

NUMERICAL LIST

Hazardous Waste No.	Chemical abstracts No.	Substance
*	*	* * * * * *
U226	71–55–6	1,1,1-Trichloroethane
*	*	* * * * * *
U001	75–07–0	Acetaldehyde (I)
U001	75–07–0	Ethanal (I)
U002	67–64–1	Acetone (I)
U002	67–64–1	2-Propanone (I)

NUMERICAL LIST—Continued

Hazardous Waste No.	Chemical abstracts No.	Substance
U003	75–05–8	Acetonitrile (I,T)
U004	98–86–2	Acetophenone
U004	98–86–2	Ethanone, 1-phenyl-
U005	53–96–3	Acetamide, -9H-fluoren-2-yl-
U005	53–96–3	2-Acetylaminofluorene
U006	75–36–5	Acetyl chloride (C,R,T)
U007	79–06–1	Acrylamide
U007	79–06–1	2-Propenamide
U008	79–10–7	Acrylic acid (I)
U008	79–10–7	2-Propenoic acid (I)
U009	107–13–1	Acrylonitrile
U009	107–13–1	2-Propenenitrile
U010	50–07–7	Azirino[2′,3′:3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta,8aalpha,8balpha)]-
U010	50–07–7	Mitomycin C
U011	61–82–5	Amitrole
U011	61–82–5	1H-1,2,4-Triazol-3-amine
U012	62–53–3	Aniline (I,T)
U012	62–53–3	Benzenamine (I,T)
U014	492–80–8	Auramine
U014	492–80–8	Benzenamine, 4,4′-carbonimidoylbis[N,N-dimethyl-
U015	115–02–6	Azaserine
U015	115–02–6	L-Serine, diazoacetate (ester)
U016	225–51–4	Benz[c]acridine
U017	98–87–3	Benzal chloride
U017	98–87–3	Benzene, (dichloromethyl)-
U018	56–55–3	Benz[a]anthracene
U019	71–43–2	Benzene (I,T)
U020	98–09–9	Benzenesulfonic acid chloride (C,R)
U020	98–09–9	Benzenesulfonyl chloride (C,R)
U021	92–87–5	Benzidine
U021	92–87–5	[1,1′-Biphenyl]-4,4′-diamine
U022	50–32–8	Benzo[a]pyrene
U023	98–07–7	Benzene, (trichloromethyl)-
U023	98–07–7	Benzotrichloride (C,R,T)
U024	111–91–1	Dichloromethoxy ethane
U024	111–91–1	Ethane, 1,1′-[methylenebis(oxy)]bis[2-chloro-
U025	111–44–4	Dichloroethyl ether
U025	111–44–4	Ethane, 1,1′-oxybis[2-chloro-
U026	494–03–1	Chlornaphazin
U026	494–03–1	Naphthalenamine, N,N′-bis(2-chloroethyl)-
U027	108–60–1	Dichloroisopropyl ether
U027	108–60–1	Propane, 2,2′-oxybis[2-chloro-
U028	117–81–7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
U028	117–81–7	Diethylhexyl phthalate
U029	74–83–9	Methane, bromo-
U029	74–83–9	Methyl bromide
U030	101–55–3	Benzene, 1-bromo-4-phenoxy-
U030	101–55–3	4-Bromophenyl phenyl ether
U031	71–36–3	1-Butanol (I)
U031	71–36–3	n-Butyl alcohol (I)
U032	13765–19–0	Calcium chromate
U032	13765–19–0	Chromic acid H_2CrO_4, calcium salt
U033	353–50–4	Carbonic difluoride
U033	353–50–4	Carbon oxyfluoride (R,T)
U034	75–87–6	Acetaldehyde, trichloro-
U034	75–87–6	Chloral
U035	305–03–3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
U035	305–03–3	Chlorambucil
U036	57–74–9	Chlordane, alpha & gamma isomers
U036	57–74–9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U037	108–90–7	Benzene, chloro-
U037	108–90–7	Chlorobenzene
U038	510–15–6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U038	510–15–6	Chlorobenzilate
U039	59–50–7	p-Chloro-m-cresol
U039	59–50–7	Phenol, 4-chloro-3-methyl-
U041	106–89–8	Epichlorohydrin
U041	106–89–8	Oxirane, (chloromethyl)-
U042	110–75–8	2-Chloroethyl vinyl ether
U042	110–75–8	Ethene, (2-chloroethoxy)-

NUMERICAL LIST—Continued

Hazardous Waste No.	Chemical abstracts No.	Substance
U043	75–01–4	Ethene, chloro-
U043	75–01–4	Vinyl chloride
U044	67–66–3	Chloroform
U044	67–66–3	Methane, trichloro-
U045	74–87–3	Methane, chloro- (I,T)
U045	74–87–3	Methyl chloride (I,T)
U046	107–30–2	Chloromethyl methyl ether
U046	107–30–2	Methane, chloromethoxy-
U047	91–58–7	beta-Chloronaphthalene
U047	91–58–7	Naphthalene, 2-chloro-
U048	95–57–8	o-Chlorophenol
U048	95–57–8	Phenol, 2-chloro-
U049	3165–93–3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U049	3165–93–3	4-Chloro-o-toluidine, hydrochloride
U050	218–01–9	Chrysene
U051		Creosote
U052	1319–77–3	Cresol (Cresylic acid)
U052	1319–77–3	Phenol, methyl-
U053	4170–30–3	2-Butenal
U053	4170–30–3	Crotonaldehyde
U055	98–82–8	Benzene, (1-methylethyl)-(I)
U055	98–82–8	Cumene (I)
U056	110–82–7	Benzene, hexahydro-(I)
U056	110–82–7	Cyclohexane (I)
U057	108–94–1	Cyclohexanone (I)
U058	50–18–0	Cyclophosphamide
U058	50–18–0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U059	20830–81–3	Daunomycin
U059	20830–81–3	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U060	72–54–8	Benzene, 1,1′-(2,2-dichloroethylidene)bis[4-chloro-
U060	72–54–8	DDD
U061	50–29–3	Benzene, 1,1′-(2,2,2-trichloroethylidene)bis[4-chloro-
U061	50–29–3	DDT
U062	2303–16–4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-di chloro-2-propenyl) ester
U062	2303–16–4	Diallate
U063	53–70–3	Dibenz[a,h]anthracene
U064	189–55–9	Benzo[rst]pentaphene
U064	189–55–9	Dibenzo[a,i]pyrene
U066	96–12–8	1,2-Dibromo-3-chloropropane
U066	96–12–8	Propane, 1,2-dibromo-3-chloro-
U067	106–93–4	Ethane, 1,2-dibromo-
U067	106–93–4	Ethylene dibromide
U068	74–95–3	Methane, dibromo-
U068	74–95–3	Methylene bromide
U069	84–74–2	1,2-Benzenedicarboxylic acid, dibutyl ester
U069	84–74–2	Dibutyl phthalate
U070	95–50–1	Benzene, 1,2-dichloro-
U070	95–50–1	o-Dichlorobenzene
U071	541–73–1	Benzene, 1,3-dichloro-
U071	541–73–1	m-Dichlorobenzene
U072	106–46–7	Benzene, 1,4-dichloro-
U072	106–46–7	p-Dichlorobenzene
U073	91–94–1	[1,1′-Biphenyl]-4,4′-diamine, 3,3′-dichloro-
U073	91–94–1	3,3′-Dichlorobenzidine
U074	764–41–0	2-Butene, 1,4-dichloro-(I,T)
U074	764–41–0	1,4-Dichloro-2-butene (I,T)
U075	75–71–8	Dichlorodifluoromethane
U075	75–71–8	Methane, dichlorodifluoro-
U076	75–34–3	Ethane, 1,1-dichloro-
U076	75–34–3	Ethylidene dichloride
U077	107–06–2	Ethane, 1,2-dichloro-
U077	107–06–2	Ethylene dichloride
U078	75–35–4	1,1-Dichloroethylene
U078	75–35–4	Ethene, 1,1-dichloro-
U079	156–60–5	1,2-Dichloroethylene
U079	156–60–5	Ethene, 1,2-dichloro-, (E)-
U080	75–09–2	Methane, dichloro-
U080	75–09–2	Methylene chloride
U081	120–83–2	2,4-Dichlorophenol

NUMERICAL LIST—Continued

Hazardous Waste No.	Chemical abstracts No.	Substance
U081	120–83–2	Phenol, 2,4-dichloro-
U082	87–65–0	2,6-Dichlorophenol
U082	87–65–0	Phenol, 2,6-dichloro-
U083	78–87–5	Propane, 1,2-dichloro-
U083	78–87–5	Propylene dichloride
U084	542–75–6	1,3-Dichloropropene
U084	542–75–6	1-Propene, 1,3-dichloro-
U085	1464–53–5	2,2′-Bioxirane
U085	1464–53–5	1,2:3,4-Diepoxybutane (I,T)
U086	1615–80–1	N,N′-Diethylhydrazine
U086	1615–80–1	Hydrazine, 1,2-diethyl-
U087	3288–58–2	O,O-Diethyl S-methyl dithiophosphate
U087	3288–58–2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U088	84–66–2	1,2-Benzenedicarboxylic acid, diethyl ester
U088	84–66–2	Diethyl phthalate
U089	56–53–1	Diethylstilbesterol
U089	56–53–1	Phenol, 4,4′-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U090	94–58–6	1,3-Benzodioxole, 5-propyl-
U090	94–58–6	Dihydrosafrole
U091	119–90–4	[1,1′-Biphenyl]-4,4′-diamine, 3,3′-dimethoxy-
U091	119–90–4	3,3′-Dimethoxybenzidine
U092	124–40–3	Dimethylamine (I)
U092	124–40–3	Methanamine, -methyl-(I)
U093	60–11–7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
U093	60–11–7	p-Dimethylaminoazobenzene
U094	57–97–6	Benz[a]anthracene, 7,12-dimethyl-
U094	57–97–6	7,12-Dimethylbenz[a]anthracene
U095	119–93–7	[1,1′-Biphenyl]-4,4′-diamine, 3,3′-dimethyl-
U095	119–93–7	3,3′-Dimethylbenzidine
U096	80–15–9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U096	80–15–9	Hydroperoxide, 1-methyl-1-phenylethyl-(R)
U097	79–44–7	Carbamic chloride, dimethyl-
U097	79–44–7	Dimethylcarbamoyl chloride
U098	57–14–7	1,1-Dimethylhydrazine
U098	57–14–7	Hydrazine, 1,1-dimethyl-
U099	540–73–8	1,2-Dimethylhydrazine
U099	540–73–8	Hydrazine, 1,2-dimethyl-
U101	105–67–9	2,4-Dimethylphenol
U101	105–67–9	Phenol, 2,4-dimethyl-
U102	131–11–3	1,2-Benzenedicarboxylic acid, dimethyl ester
U102	131–11–3	Dimethyl phthalate
U103	77–78–1	Dimethyl sulfate
U103	77–78–1	Sulfuric acid, dimethyl ester
U105	121–14–2	Benzene, 1-methyl-2,4-dinitro-
U105	121–14–2	2,4-Dinitrotoluene
U106	606–20–2	Benzene, 2-methyl-1,3-dinitro-
U106	606–20–2	2,6-Dinitrotoluene
U107	117–84–0	1,2-Benzenedicarboxylic acid, dioctyl ester
U107	117–84–0	Di-n-octyl phthalate
U108	123–91–1	1,4-Diethyleneoxide
U108	123–91–1	1,4-Dioxane
U109	122–66–7	1,2-Diphenylhydrazine
U109	122–66–7	Hydrazine, 1,2-diphenyl-
U110	142–84–7	Dipropylamine (I)
U110	142–84–7	1-Propanamine, N-propyl-(I)
U111	621–64–7	Di-n-propylnitrosamine
U111	621–64–7	1-Propanamine, N-nitroso-N-propyl-
U112	141–78–6	Acetic acid ethyl ester (I)
U112	141–78–6	Ethyl acetate (I)
U113	140–88–5	Ethyl acrylate (I)
U113	140–88–5	2-Propenoic acid, ethyl ester (I)
U114	[1]111–54–6	Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters
U114	[1]111–54–6	Ethylenebisdithiocarbamic acid, salts & esters
U115	75–21–8	Ethylene oxide (I,T)
U115	75–21–8	Oxirane (I,T)
U116	96–45–7	Ethylenethiourea
U116	96–45–7	2-Imidazolidinethione
U117	60–29–7	Ethane, 1,1′-oxybis-(I)
U117	60–29–7	Ethyl ether (I)
U118	97–63–2	Ethyl methacrylate
U118	97–63–2	2-Propenoic acid, 2-methyl-, ethyl ester

NUMERICAL LIST—Continued

Hazardous Waste No.	Chemical abstracts No.	Substance
U119	62–50–0	Ethyl methanesulfonate
U119	62–50–0	Methanesulfonic acid, ethyl ester
U120	206–44–0	Fluoranthene
U121	75–69–4	Methane, trichlorofluoro-
U121	75–69–4	Trichloromonofluoromethane
U122	50–00–0	Formaldehyde
U123	64–18–6	Formic acid (C,T)
U124	110–00–9	Furan (I)
U124	110–00–9	Furfuran (I)
U125	98–01–1	2-Furancarboxaldehyde (I)
U125	98–01–1	Furfural (I)
U126	765–34–4	Glycidylaldehyde
U126	765–34–4	Oxiranecarboxyaldehyde
U127	118–74–1	Benzene, hexachloro-
U127	118–74–1	Hexachlorobenzene
U128	87–68–3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U128	87–68–3	Hexachlorobutadiene
U129	58–89–9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-
U129	58–89–9	Lindane
U130	77–47–4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U130	77–47–4	Hexachlorocyclopentadiene
U131	67–72–1	Ethane, hexachloro-
U131	67–72–1	Hexachloroethane
U132	70–30–4	Hexachlorophene
U132	70–30–4	Phenol, 2,2′-methylenebis[3,4,6-trichloro-
U133	302–01–2	Hydrazine (R,T)
U134	7664–39–3	Hydrofluoric acid (C,T)
U134	7664–39–3	Hydrogen fluoride (C,T)
U135	7783–06–4	Hydrogen sulfide
U135	7783–06–4	Hydrogen sulfide H_2S
U136	75–60–5	Arsinic acid, dimethyl-
U136	75–60–5	Cacodylic acid
U137	193–39–5	Indeno[1,2,3-cd]pyrene
U138	74–88–4	Methane, iodo-
U138	74–88–4	Methyl iodide
U140	78–83–1	Isobutyl alcohol (I,T)
U140	78–83–1	1-Propanol, 2-methyl- (I,T)
U141	120–58–1	1,3-Benzodioxole, 5-(1-propenyl)-
U141	120–58–1	Isosafrole
U142	143–50–0	Kepone
U142	143–50–0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U143	303–34–4	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-
U143	303–34–4	Lasiocarpine
U144	301–04–2	Acetic acid, lead(2+) salt
U144	301–04–2	Lead acetate
U145	7446–27–7	Lead phosphate
U145	7446–27–7	Phosphoric acid, lead(2+) salt (2:3)
U146	1335–32–6	Lead, bis(acetato-O)tetrahydroxytri-
U146	1335–32–6	Lead subacetate
U147	108–31–6	2,5-Furandione
U147	108–31–6	Maleic anhydride
U148	123–33–1	Maleic hydrazide
U148	123–33–1	3,6-Pyridazinedione, 1,2-dihydro-
U149	109–77–3	Malononitrile
U149	109–77–3	Propanedinitrile
U150	148–82–3	Melphalan
U150	148–82–3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
U151	7439–97–6	Mercury
U152	126–98–7	Methacrylonitrile (I,T)
U152	126–98–7	2-Propenenitrile, 2-methyl- (I,T)
U153	74–93–1	Methanethiol (I,T)
U153	74–93–1	Thiomethanol (I,T)
U154	67–56–1	Methanol (I)
U154	67–56–1	Methyl alcohol (I)
U155	91–80–5	1,2-Ethanediamine, N,N-dimethyl-N′-2-pyridinyl-N′-(2-thienylmethyl)-
U155	91–80–5	Methapyrilene
U156	79–22–1	Carbonochloridic acid, methyl ester (I,T)
U156	79–22–1	Methyl chlorocarbonate (I,T)
U157	56–49–5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
U157	56–49–5	3-Methylcholanthrene

NUMERICAL LIST—Continued

Hazardous Waste No.	Chemical abstracts No.	Substance
U158	101–14–4	Benzenamine, 4,4′-methylenebis[2-chloro-
U158	101–14–4	4,4′-Methylenebis(2-chloroaniline)
U159	78–93–3	2-Butanone (I,T)
U159	78–93–3	Methyl ethyl ketone (MEK) (I,T)
U160	1338–23–4	2-Butanone, peroxide (R,T)
U160	1338–23–4	Methyl ethyl ketone peroxide (R,T)
U161	108–10–1	Methyl isobutyl ketone (I)
U161	108–10–1	4-Methyl-2-pentanone (I)
U161	108–10–1	Pentanol, 4-methyl-
U162	80–62–6	Methyl methacrylate (I,T)
U162	80–62–6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U163	70–25–7	Guanidine, -methyl-N′-nitro-N-nitroso-
U163	70–25–7	MNNG
U164	56–04–2	Methylthiouracil
U164	56–04–2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U165	91–20–3	Naphthalene
U166	130–15–4	1,4-Naphthalenedione
U166	130–15–4	1,4-Naphthoquinone
U167	134–32–7	1-Naphthalenamine
U167	134–32–7	alpha-Naphthylamine
U168	91–59–8	2-Naphthalenamine
U168	91–59–8	beta-Naphthylamine
U169	98–95–3	Benzene, nitro-
U169	98–95–3	Nitrobenzene (I,T)
U170	100–02–7	p-Nitrophenol
U170	100–02–7	Phenol, 4-nitro-
U171	79–46–9	2-Nitropropane (I,T)
U171	79–46–9	Propane, 2-nitro- (I,T)
U172	924–16–3	1-Butanamine, N-butyl-N-nitroso-
U172	924–16–3	N-Nitrosodi-n-butylamine
U173	1116–54–7	Ethanol, 2,2′-(nitrosoimino)bis-
U173	1116–54–7	N-Nitrosodiethanolamine
U174	55–18–5	Ethanamine, -ethyl-N-nitroso-
U174	55–18–5	N-Nitrosodiethylamine
U176	759–73–9	N-Nitroso-N-ethylurea
U176	759–73–9	Urea, N-ethyl-N-nitroso-
U177	684–93–5	N-Nitroso-N-methylurea
U177	684–93–5	Urea, N-methyl-N-nitroso-
U178	615–53–2	Carbamic acid, methylnitroso-, ethyl ester
U178	615–53–2	N-Nitroso-N-methylurethane
U179	100–75–4	N-Nitrosopiperidine
U179	100–75–4	Piperidine, 1-nitroso-
U180	930–55–2	N-Nitrosopyrrolidine
U180	930–55–2	Pyrrolidine, 1-nitroso-
U181	99–55–8	Benzenamine, 2-methyl-5-nitro-
U181	99–55–8	5-Nitro-o-toluidine
U182	123–63–7	1,3,5-Trioxane, 2,4,6-trimethyl-
U182	123–63–7	Paraldehyde
U183	608–93–5	Benzene, pentachloro-
U183	608–93–5	Pentachlorobenzene
U184	76–01–7	Ethane, pentachloro-
U184	76–01–7	Pentachloroethane
U185	82–68–8	Benzene, pentachloronitro-
U185	82–68–8	Pentachloronitrobenzene (PCNB)
U186	504–60–9	1-Methylbutadiene (I)
U186	504–60–9	1,3-Pentadiene (I)
U187	62–44–2	Acetamide, -(4-ethoxyphenyl)-
U187	62–44–2	Phenacetin
U188	108–95–2	Phenol
U189	1314–80–3	Phosphorus sulfide (R)
U189	1314–80–3	Sulfur phosphide (R)
U190	85–44–9	1,3-Isobenzofurandione
U190	85–44–9	Phthalic anhydride
U191	109–06–8	2-Picoline
U191	109–06–8	Pyridine, 2-methyl-
U192	23950–58–5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U192	23950–58–5	Pronamide
U193	1120–71–4	1,2-Oxathiolane, 2,2-dioxide
U193	1120–71–4	1,3-Propane sultone
U194	107–10–8	1-Propanamine (I,T)
U194	107–10–8	n-Propylamine (I,T)

NUMERICAL LIST—Continued

Hazardous Waste No.	Chemical abstracts No.	Substance
U196	110–86–1	Pyridine
U197	106–51–4	p-Benzoquinone
U197	106–51–4	2,5-Cyclohexadiene-1,4-dione
U200	50–55–5	Reserpine
U200	50–55–5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester,(3beta,16beta,17alpha,18beta,20alpha)-
U201	108–46–3	1,3-Benzenediol
U201	108–46–3	Resorcinol
U202	181–07–2	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts
U202	181–07–2	Saccharin, & salts
U203	94–59–7	1,3-Benzodioxole, 5-(2-propenyl)-
U203	94–59–7	Safrole
U204	7783–00–8	Selenious acid
U204	7783–00–8	Selenium dioxide
U205	7488–56–4	Selenium sulfide
U205	7488–56–4	Selenium sulfide SeS_2 (R,T)
U206	18883–66–4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U206	18883–66–4	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-
U206	18883–66–4	Streptozotocin
U207	95–94–3	Benzene, 1,2,4,5-tetrachloro-
U207	95–94–3	1,2,4,5-Tetrachlorobenzene
U208	630–20–6	Ethane, 1,1,1,2-tetrachloro-
U208	630–20–6	1,1,1,2-Tetrachloroethane
U209	79–34–5	Ethane, 1,1,2,2-tetrachloro-
U209	79–34–5	1,1,2,2-Tetrachloroethane
U210	127–18–4	Ethene, tetrachloro-
U210	127–18–4	Tetrachloroethylene
U211	56–23–5	Carbon tetrachloride
U211	56–23–5	Methane, tetrachloro-
U213	109–99–9	Furan, tetrahydro-(I)
U213	109–99–9	Tetrahydrofuran (I)
U214	563–68–8	Acetic acid, thallium(1+) salt
U214	563–68–8	Thallium(I) acetate
U215	6533–73–9	Carbonic acid, dithallium(1+) salt
U215	6533–73–9	Thallium(I) carbonate
U216	7791–12–0	Thallium(I) chloride
U216	7791–12–0	Thallium chloride TlCl
U217	10102–45–1	Nitric acid, thallium(1+) salt
U217	10102–45–1	Thallium(I) nitrate
U218	62–55–5	Ethanethioamide
U218	62–55–5	Thioacetamide
U219	62–56–6	Thiourea
U220	108–88–3	Benzene, methyl-
U220	108–88–3	Toluene
U221	25376–45–8	Benzenediamine, ar-methyl-
U221	25376–45–8	Toluenediamine
U222	636–21–5	Benzenamine, 2-methyl-, hydrochloride
U222	636–21–5	o-Toluidine hydrochloride
U223	26471–62–5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U223	26471–62–5	Toluene diisocyanate (R,T)
U225	75–25–2	Bromoform
U225	75–25–2	Methane, tribromo-
U226	71–55–6	Ethane, 1,1,1-trichloro-
U226	71–55–6	Methyl chloroform
U226	71–55–6	1,1,1-Trichloroethane
U227	79–00–5	Ethane, 1,1,2-trichloro-
U227	79–00–5	1,1,2-Trichloroethane
U228	79–01–6	Ethene, trichloro-
U228	79–01–6	Trichloroethylene
U234	99–35–4	Benzene, 1,3,5-trinitro-
U234	99–35–4	1,3,5-Trinitrobenzene (R,T)
U235	126–72–7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U235	126–72–7	Tris(2,3-dibromopropyl) phosphate
U236	72–57–1	2,7-Naphthalenedisulfonic acid, 3,3′-[(3,3′-dimethyl[1,1′-biphenyl]-4,4′-diyl)bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt
U236	72–57–1	Trypan blue
U237	66–75–1	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-
U237	66–75–1	Uracil mustard
U238	51–79–6	Carbamic acid, ethyl ester
U238	51–79–6	Ethyl carbamate (urethane)
U239	1330–20–7	Benzene, dimethyl- (I,T)

NUMERICAL LIST—Continued

Hazardous Waste No.	Chemical abstracts No.	Substance
U239	1330–20–7	Xylene (I)
U240	[1] 94–75–7	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
U240	[1] 94–75–7	2,4-D, salts & esters
U243	1888–71–7	Hexachloropropene
U243	1888–71–7	1-Propene, 1,1,2,3,3,3-hexachloro-
U244	137–26–8	Thioperoxydicarbonic diamide $[(H_2N)C(S)]_2 S_2$, tetramethyl-
U244	137–26–8	Thiram
U246	506–68–3	Cyanogen bromide (CN)Br
U247	72–43–5	Benzene, 1,1′-(2,2,2-trichloroethylidene)bis[4- methoxy-
U247	72–43–5	Methoxychlor
U248	[1] 81–81–2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations of 0.3% or less
U248	[1] 81–81–2	Warfarin, & salts, when present at concentrations of 0.3% or less
U249	1314–84–7	Zinc phosphide $Zn_3 P_2$, when present at concentrations of 10% or less
U271	17804–35–2	Benomyl
U271	17804–35–2	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester
U278	22781–23–3	Bendiocarb
U278	22781–23–3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate
U279	63–25–2	Carbaryl
U279	63–25–2	1-Naphthalenol, methylcarbamate
U280	101–27–9	Barban
U280	101–27–9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester
U328	95–53–4	Benzenamine, 2-methyl-
U328	95–53–4	o-Toluidine
U353	106–49–0	Benzenamine, 4-methyl-
U353	106–49–0	p-Toluidine
U359	110–80–5	Ethanol, 2-ethoxy-
U359	110–80–5	Ethylene glycol monoethyl ether
U364	22961–82–6	Bendiocarb phenol
U364	22961–82–6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,
U367	1563–38–8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U367	1563–38–8	Carbofuran phenol
U372	10605–21–7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester
U372	10605–21–7	Carbendazim
U373	122–42–9	Carbamic acid, phenyl-, 1-methylethyl ester
U373	122–42–9	Propham
U387	52888–80–9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U387	52888–80–9	Prosulfocarb
U389	2303–17–5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester
U389	2303–17–5	Triallate
U394	30558–43–1	A2213
U394	30558–43–1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester
U395	5952–26–1	Diethylene glycol, dicarbamate
U395	5952–26–1	Ethanol, 2,2′-oxybis-, dicarbamate
U404	121–44–8	Ethanamine, N,N-diethyl-
U404	121–44–8	Triethylamine
U409	23564–05–8	Carbamic acid, [1,2-phenylenebis (iminocarbonothioyl)]bis-, dimethyl ester
U409	23564–05–8	Thiophanate-methyl
U410	59669–26–0	Ethanimidothioic acid, N,N′-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester
U410	59669–26–0	Thiodicarb
U411	114–26–1	Phenol, 2-(1-methylethoxy)-, methylcarbamate
U411	114–26–1	Propoxur
See F027	93–76–5	Acetic acid, (2,4,5-trichlorophenoxy)-
See F027	87–86–5	Pentachlorophenol
See F027	87–86–5	Phenol, pentachloro-
See F027	58–90–2	Phenol, 2,3,4,6-tetrachloro-
See F027	95–95–4	Phenol, 2,4,5-trichloro-
See F027	88–06–2	Phenol, 2,4,6-trichloro-
See F027	93–72–1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
See F027	93–72–1	Silvex (2,4,5-TP)
See F027	93–76–5	2,4,5-T
See F027	58–90–2	2,3,4,6-Tetrachlorophenol
See F027	95–95–4	2,4,5-Trichlorophenol
See F027	88–06–2	2,4,6-Trichlorophenol

[1] CAS Number given for parent compound only.

§ 261.38 [Amended]

■ 16–21. Amend § 261.38 as follows:

■ a. In Table 1 to § 261.38, revise the column one subheading "Halogenated Organic:" to read "Halogenated Organics:"; and under "Halogenated

Organics:", insert a closing bracket "]" after the chemical name "Dichloromethoxy ethane [Bis(2-chloroethoxy)methane".

■ b. Amend the certification statement in paragraph (c)(1)(i)(C)(*4*) by revising the citation "40 CFR 261.28(c)(10)" to read "40 CFR 261.38(c)(10)".

Appendix VII to Part 261—[Amended]

■ 22–23. In Part 261 Appendix VII, amend the entries for "F002", "F038", "F039", "K001", and "K073" as follows:

■ a. In the second column of the "F002" row, revise "trichfluoroethane" to read "trifluoroethane";

■ b. In the second column of the "F038" row, add a comma between "benzo(a)pyrene" and "chrysene" to read "benzo(a)pyrene, chrysene";

■ c. In the second column of the "F039" row, revise the citation "40 CFR 268.43(a)" to read "40 CFR 268.43";

■ d. In the second column of the "K001" row, revise "cresosote" to read "creosote";

■ e. In the second column of the "K073" row, revise "hexacholroethane" to read "hexachloroethane".

Appendix VIII to Part 261—[Amended]

■ 24. Amend Part 261 Appendix VIII by amending the entries for "Allyl chloride", "Benzidine", § 1,2-Dichloroethylene", "Lasiocarpine", and "Nitrosamines, N.O.S." to read as follows:

■ a. In the third column of the "Allyl chloride" row, revise "107–18–6" to read "107–05–1";

■ b. In the second column of the "Benzidine" row, amend "-4,4[1]-" by changing the superscript "1" to the symbol "'" to read, "-4,4'-";

■ c. In the second column of the "1,2-Dichloroethylene" row, revise "-dichlrol-" to read "-dichloro-";

■ d. In the third and fourth columns of the "Lasiocarpine" row, revise "303–34–1" to read "303–34–4"; and revise "4143" to read "U143";

■ e. In the third column of the "Nitrosamines, N.O.S." row, revise "35576–91–1D" to read "35576–91–1".

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 25. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

§ 262.34 [Amended]

■ 26. Amend § 262.34(a)(1)(iv) by removing the beginning phrase "The waste is placed in containment buildings" and adding in its place the phrase "In containment buildings".

■ 27. Section 262.53 is amended by revising paragraph (b) to read as follows:

§ 262.53 Notification of Intent to Export.

* * * * *

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export.".

* * * * *

■ 28. Section 262.56 is amended by revising paragraph (b) to read as follows:

§ 262.56 Annual Reports.

* * * * *

(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004.

■ 29. Section 262.58 is amended by revising paragraph (a)(1) to read as follows:

§ 262.58 International Agreements.

(a) * * *

(1) For the purposes of subpart H, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

* * * * *

§ 262.70 [Amended]

■ 30. Amend § 262.70 by revising the word "consisent" to read "consistent".

§ 262.81 [Amended]

■ 31. In § 262.81, amend paragraph (k) by revising "RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203" to read "RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460".

§ 262.82 [Amended]

■ 32. In § 262.82, amend paragraph (a)(1)(ii) by revising the phrase "Green-list waste" to read "Green-list wastes".

■ 33. Amend § 262.83 as follows:

■ a. Amend paragraph (b)(1)(i) by revising "Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A)" to read "Office of Federal Activities, International Compliance Assurance Division (2254A)".

■ b. Revise paragraph (b)(2)(i) to read as follows:

§ 262.83 Notification and consent.

* * * * *

(b) * * *

(2) * * *

(i) The notifier must provide EPA the information identified in paragraph (e) of this section in English, at least 10 days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with the words "Attention: OECD Export Notification—Pre-approved Facility" prominently displayed on the envelope.

* * * * *

■ 34–35. Section 262.84 is amended by revising paragraph (e) to read as follows:

§ 262.84 Tracking document.

* * * * *

(e) Within three working days of the receipt of imports subject to this Subpart, the owner or operator of the U.S. recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

§ 262.87 [Amended]

■ 36. Amend § 262.87 as follows:
■ a. In paragraph (a) revise "Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A)", to read, "Office of Federal Activities, International Compliance Assurance Division (2254A)";
■ b. Amend paragraph (a)(5) introductory text by inserting a space in "100kg" and "1000kg" to read "100 kg" and "1000 kg".

§ 262.90 [Amended]

■ 37.–38. Amend § 262.90 in paragraph (c)(2)(vii) by revising "newpaper" to read "newspaper"; and in paragraph (d)(2) by revising "directed.This" by adding a space after the period to read "directed. This".

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

■ 39.–40. The authority citation for Part 264 continues to read as follows:

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

§ 264.1 [Amended]

■ 41. In § 264.1, amend paragraph (g)(2) by revising "subparts C, D, F, or G" to read "subparts C, F, G, or H".

§ 264.4 [Amended]

■ 42. Amend § 264.4 by revising "purusant" to read "pursuant".

§ 264.13 [Amended]

■ 43. In § 264.13, amend paragraph (b)(7)(iii)(B) by revising the semicolon at the end of the subsection into a colon.

§ 264.17 [Amended]

■ 44. In § 264.17, amend paragraph (b) introductory text by revising the word "reactons" to read "reactions".

§ 264.18 [Amended]

■ 45. In § 264.18, amend paragraph (a)(2)(iii) by revising "Quarternary" to read "Quaternary"; and amend paragraph (b)(2)(iii) by revising "exeeded" to read "exceeded".

§ 264.97 [Amended]

■ 46. Amend § 264.97 as follows:
■ a. In paragraph (a)(1) introductory text, revise "background water" to read "background ground water";
■ b. In paragraph (a)(1)(i), revise "background quality" to read "background ground-water quality";
■ c. In paragraph (i)(5), revise "tha can be" to read "that can be".

§ 264.98 [Amended]

■ 47. Amend § 264.98 as follows:
■ a. In paragraph (a)(2), revise "persistance" to read "persistence";
■ b. In paragraph (g)(4)(i), revise "concentration or any" to read "concentration of any".

§ 264.99 [Amended]

■ 48. In § 264.99, amend paragraph (h)(2) introductory text, by revising the citation "§ 264.98(h)(5)" to read "§ 264.98(g)(5)".

§ 264.101 [Amended]

■ 49. In § 264.101, amend paragraph (d) by revising the phrase "This does not apply" to read "This section does not apply".

§ 264.111 [Amended]

■ 50. In § 264.111, amend paragraph (c) by revising the word "subpart" to read "part".

§ 264.112 [Amended]

■ 51. In § 264.112, amend paragraph (b)(8) by revising the citation "264.110(d)" to read "264.110(c)".

§ 264.115 [Amended]

■ 52. Amend § 264.115 by eliminating the second period at the end of the first sentence.

§ 264.116 [Amended]

■ 53. Amend § 264.116 by revising "landfills cells" to read "landfill cells".

§ 264.118 [Amended]

■ 54. In § 264.118, amend paragraph (c) by revising the citation "§ 264.188(b)(3)" to read "§ 264.118(b)(3)".

§ 264.119 [Amended]

■ 55. In § 264.119, amend paragraph (b)(1)(ii) by revising the citation "40 CFR subpart G" to read "40 CFR part 264, subpart G".

§ 264.140 [Amended]

■ 56. In § 264.140, amend paragraph (d)(1) by revising the citation "§ 264.110(d)" to read "§ 264.110(c)".

§ 264.142 [Amended]

■ 57. In § 264.142, amend paragraph (b)(2) by revising "mutliplying" to read "multiplying".

§ 264.143 [Amended]

■ 58. Amend § 264.143 as follows:
■ a. In paragraph (b)(7), revise "then the penal sum" to read "than the penal sum";
■ b. In paragraph (b)(8), revise "as evidence by" to read "as evidenced by";
■ c. In paragraph (e)(5), revise "signficantly" to read "significantly".

§ 264.145 [Amended]

■ 59. Amend § 264.145 as follows:
■ a. In paragraph (a)(3)(i), revise "anniversay" to read "anniversary";
■ b. In paragraph (d)(6), revise "issued in a amount" to read "issued in an amount";
■ c. In paragraph (f)(11) introductory text, revise "for this section" to read "of this section"; and revise "the direct of higher-tier" to read "the direct or higher-tier".

§ 264.147 [Amended]

■ 60. In § 264.147, amend paragraph (h)(1) by revising "letter or credit" to read "letter of credit".

§ 264.151 [Amended]

■ 61. Amend § 264.151 as follows:
■ a. In paragraph (b), in the section "Corporate Surety(ies)," remove the bracket (]) after "State of incorporation";
■ b. In paragraph (f) introductory paragraph, revise the second occurrence of the citation "265.143(e)" to read "265.145(e)";
■ c. In paragraph (g), in the fifth paragraph of the LETTER FROM CHIEF FINANCIAL OFFICER, revise ""nonsudden" of" to read ""nonsudden" or";
■ d. In paragraph (g), in Item 3. of the LETTER FROM CHIEF FINANCIAL OFFICER, revise "subpart H or 40 CFR" to read "subpart H of 40 CFR";
■ e. In paragraph (g), in Part A, ALTERNATIVE I item *3., revise "Current $" to read "Current liabilities $";
■ f. In paragraph (g), in Part B, ALTERNATIVE I item 10., insert an asterisk (*) before "10.";
■ g. In paragraph (g), in Part B, ALTERNATIVE I item 15., remove the comma after the word "If";
■ h. In paragraph (g), in Part B, ALTERNATIVE II item *7., remove the underline before the "$";
■ i.–j. In paragraph (h)(2), under the section GUARANTEE FOR LIABILITY COVERAGE, in the second sentence, revise "or which guarantor" to read "of which guarantor"; and revise the phrase "[either 264.141(h)]" to read "[either 264.141(h) or 265.141(h)]";
■ k. In paragraph (h)(2), under the section RECITALS, item 13.(a), under the subsection CERTIFICATION OF VALID CLAIM, insert a closing bracket (]) after "[Principal's";

■ l. In paragraph (h)(2), under the section RECITALS, item 14, last line, revise "Signature of witness of notary" to read "Signature of witness or notary";
■ m. In paragraph (i), following item 2.(e), after "[Title]" revise "Authorized Representive" to read "Authorized Representative";
■ n. In paragraph (j), item 2.(d), revise "corportation" to read "corporation";
■ o. In paragraph (k), in the section IRREVOCABLE STANDBY LETTER OF CREDIT, delete the opening quotation mark before "(1)" before the subsection CERTIFICATE OF VALID CLAIM, and insert a closing bracket (]) at the end of the phrase after (2) to read "Grantor's facility or group of facilities.]";
■ p. In paragraph (k), in the section CERTIFICATE OF VALID CLAIM, in the paragraph following (2), revise "[date] at least one year later]" to read "[date at least one year later]";
■ q. In paragraph (l), revise the citations "§ 264.147(h) or § 265.147(h)" to read "§ 264.147(i) or § 265.147(i)";
■ r. In paragraph (l), in the subsection CERTIFICATION OF VALID CLAIM, in the introductory paragraph, revise "accidential" to read "accidental";
■ s. In paragraph (m)(1), in the CERTIFICATION OF VALID CLAIM Section 8.(c), revise both instances of "depositary" to read "depository";
■ t.–u. In paragraph (n)(1), under STANDBY TRUST AGREEMENT, in Section 3.(c)(1), revise "employee or" to read "employee of";
■ v. In paragraph (n)(1), Section 3.(e)(3), insert the word "by" after "Property loaned" to read "Property loaned by";
■ w. In paragraph (n)(1), Section 12., third sentence, replace the semicolon after "the appointment" with a comma;
■ x. In paragraph (n)(1), Section 16., second sentence, revise "reasonable" to read "reasonably".

§ 264.175 [Amended]

■ 62. In § 264.175, amend paragraph (b)(1) by revising "underly" to read "underlie".

§ 264.193 [Amended]

■ 63. Amend § 264.193 as follows:
■ a. In the third sentence of the NOTE following paragraph (c)(4), revise "subject" to read "subject";
■ b. In paragraph (d)(4), insert a period at the end of the sentence;
■ c. In paragraph (e)(2)(ii), replace the colon with a semicolon;
■ d. In paragraph (e)(2)(iii), replace the colon with a semicolon;
■ e. In paragraph (e)(2)(v)(A), revise the citation "§ 262.21" to read "§ 261.21";
■ f. In paragraph (e)(2)(v)(B), revise the citation "§ 262.21" to read "§ 261.23", and replace the period after the word "vapor" with a semicolon and add the word "and";
■ g. In paragraph (e)(3)(i), replace the period at the end with a semicolon;
■ h. In paragraph (e)(3)(ii), replace the colon with a semicolon;
■ i. In paragraph (g)(1)(iii), replace the comma after the word "water" with a semi-colon;
■ j. In paragraph (g)(1)(iv), insert a period at the end of the paragraph;
■ k. In paragraph (g)(2)(i)(A), replace the period with a comma.

§ 264.221 [Amended]

■ 64. Amend § 264.221 as follows:
■ a. In paragraph (c)(1)(i)(B), revise "1x10/$^{-7}$/ cm/sec" to read "1x10^{-7} cm/sec";
■ b. In paragraph (c)(2)(ii), revise "1x10/$^{-1}$/ cm/sec" to read "1x10^{-1} cm/sec" and revise "3x10/$^{-4}$/ m^{2}sec" to read "3x10^{-4} m^2/sec";
■ c. In paragraph (e)(1), revise "EP toxicity characteristics in" to read "toxicity characteristic in";
■ d. In paragraph (e)(2)(i)(B), revise the citation "§ 144.3 of this chapter" to read "40 CFR 270.2"; and add quotation marks around "underground source of drinking water".
■ e. In paragraph (e)(2)(i)(C), revise "requrements" to read "requirements".

§ 264.223 [Amended]

■ 65. In § 264.223, amend paragraph (b)(1) by revising "exceedence" to read "exceedance".

§ 264.226 [Amended]

■ 66. In § 264.226, amend paragraph (a)(2) by revising "inperfections" to read "imperfections".

§ 264.251 [Amended]

■ 67. In § 264.251, amend paragraph (a)(2)(i)(A) by revising "resistent" to read "resistant".

§ 264.252 [Amended]

■ 68. Amend § 264.252 as follows:
■ a. In paragraph (a), revise "surface impoundment units" to read "waste pile units";
■ b. In paragraph (b), remove the comma after the citation "§ 264.254(c)".

§ 264.259 [Amended]

■ 69. In § 264.259, amend paragraph (b) by removing the comma between the word "and" and "F027".

§ 264.280 [Amended]

■ 70. Amend § 264.280 as follows:
■ a. In paragraph (c)(7), revise "expect that" to read "except that";
■ b. In paragraph (d), introductory text, revise "closure of post-closure" to read "closure or post-closure".

§ 264.283 [Amended]

■ 71. In § 264.283, amend paragraph (a) by removing the comma between the word "and" and "F027".

§ 264.301 [Amended]

■ 72. Amend § 264.301 as follows:
■ a. In paragraph (c)(2), revise "paragraphs (3)(c)(iii) and (iv)" to read "paragraphs (c)(3)(iii) and (iv)";
■ b. In paragraph (e)(2)(i)(B), revise the citation "§ 144.3 of this chapter" to read "40 CFR 270.2"; and add quotation marks around "underground source of drinking water".

§ 264.302 [Amended]

■ 73. Amend § 264.302 as follows:
■ a. In paragraph (a), revise "surface impoundment units" to read "landfill units";
■ b. In paragraph (b), remove the comma after the citation "§ 264.303(c)".

§ 264.304 [Amended]

■ 74. In § 264.304, amend paragraph (b)(1) by revising "exceedence" to read "exceedance".

§ 264.314 [Amended]

■ 75. In § 264.314, amend paragraph (e)(2) by revising the citation "§ 144.3 of this chapter" to read "40 CFR 270.2"; and by adding quotation marks around "underground source of drinking water".

§ 264.317 [Amended]

■ 76. In § 264.317, amend paragraph (a) introductory text by revising "in a landfills" to read "in a landfill".

§ 264.344 [Amended]

■ 77. In § 264.344, amend paragraph (b) by revising "new wastes may be be based" to read "new wastes may be based".

§ 264.552 [Amended]

■ 78. Amend § 264.552 as follows:
■ a. In paragraph (e)(4)(iii), replace the colon at the end of the paragraph with a period;
■ b. In paragraph (e)(4)(iv)(F), revise the citation "40 CFR 260.11(11)" to read "40 CFR 260.11(a)(11)";
■ c. In paragraph (e)(6)(iii)(E), revise "Hydrological" to read "Hydrogeological".

§ 264.553 [Amended]

■ 79. In § 264.553, amend paragraph (e) introductory text by revising "the Administrator" to read "the Regional Administrator".

§ 264.554 [Amended]

■ 80. In § 264.554, amend paragraph (a) introductory text by revising "Director

in according" to read "Director according".

§ 264.555 [Amended]

■ 81. In § 264.555, amend paragraph (e)(6) by revising the word "miminal" to read "minimal".

§ 264.573 [Amended]

■ 82. Amend § 264.573 as follows:
■ a. In paragraph (a)(1), revise "non-earthern" to read "non-earthen"; and replace the colon at the end of the paragraph with a semicolon;
■ b. In paragraph (a)(4)(i), revise both occurrences of "$1x10^{-7}$" to read "$1x10^{-7}$"; and revise the citations "§ 264.572(a) instead of § 264.572(b)" to read "§ 264.572(b) instead of § 264.572(a)";
■ c. In paragraph (a)(5), revise "perations" to read "operations";
■ d. In paragraph (b) introductory text, revise the citations "§ 264.572(b) instead of § 264.572(a)" to read "§ 264.572(a) instead of § 264. 572(b)";
■ e. In paragraph (m)(2) and in paragraph (m)(3) twice, revise "clean up" to read "cleanup".

§ 264.600 [Amended]

■ 83. Amend § 264.600 by revising "miscellanenous" to read "miscellaneous"; and by revising "provide" to read "provides".

§ 264.601 [Amended]

■ 84. Amend § 264.601 as follows:
■ a. In paragraph (a) introductory text, revise "heath" to read "health";
■ b. In paragraph (b)(11), revise "constitutents" to read "constituents";
■ c. In paragraph (c)(4), revise "metorologic" to read "meteorologic".

§ 264.1030 [Amended]

■ 85. Amend § 264.1030(c) by revising "owner and operator receives" to read "owner and operator receive"; and revise "owner and operator is subject" to read "owner and operator are subject".

§ 264.1033 [Amended]

■ 86. In § 264.1033, amend paragraph (f)(2)(vii)(B) by replacing the period after the word "regular" with a comma.

§ 264.1034 [Amended]

■ 87. In § 264.1034, amend paragraph (b)(2) by removing the "(6)" in front of the phrase "The detection".

§ 264.1035 [Amended]

■ 88. Amend § 264.1035 as follows:
■ a. In paragraph (c)(4)(i), replace the period after the first instance of "760 °C" with a comma;
■ b. In paragraph (c)(4)(ii), insert a comma after the word "greater".

§ 264.1050 [Amended]

■ 89. In § 264.1050, amend paragraph (f) by revising the citation "§ 264,1064(g)(6)" to read "§ 264.1064(g)(6)".

§ 264.1058 [Amended]

■ 90. In § 264.1058, amend paragraph (c)(1) by replacing the period after the second occurrence of the word "detected" with a comma.

§ 264.1064 [Amended]

■ 91. In § 264.1064, amend paragraph (c)(3) by removing the second section symbol (§) in the citation "§§ 264.1057(c)".

§ 264.1080 [Amended]

■ 92. Amend § 264.1080 as follows:
■ a. In paragraph (a), revise "subparts I, J, or K" to read "subpart "I, J, or K";
■ b. In paragraph (c), last sentence, revise "owner and operator is subject" to read "owner and operator are subject".

§ 264.1090 [Amended]

■ 93. In § 264.1090, amend paragraph (c) by removing the third sentence.

§ 264.1101 [Amended]

■ 94. Amend § 264.1101 as follows:
■ a. In paragraph (b)(3)(iii), revise the citation "§ 264.193(d)(1)" to read "§ 264.193(e)(1)";
■ b. In paragraph (c)(3) introductory text, revise "hazardous waste, must repair" to read "hazardous waste, the owner or operator must repair";
■ c. In paragraph (c)(3)(i), revise "lead" to read "led";
■ d. In paragraph (d) introductory text, revise "For containment buildings that contain areas both" to read "For a containment building that contains both areas".

§ 264.1102 [Amended]

■ 95. In § 264.1102, amend paragraph (a) by removing the comma after "etc.".
■ 96. Amend Appendix I to Part 264 as follows:
■ a. In Table 1, add unit of measure codes for "Pounds", "Short tons", "Kilograms", and "Tons" at the end of the table to read as set forth below; and
■ b. In Table 2 at Section 2.(d), revise the line "T75 Tricking filter" to read "T75 Trickling filter".

Appendix I to Part 264—Recordkeeping Instructions.

TABLE 1

Unit of measure	Code [1]
* * * * *	
Pounds	P
Short tons	T
Kilograms	K
Tons	M

[1] Single digit symbols are used here for data processing purposes.

* * * * *

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

■ 97. The authority citation for part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

§ 265.1 [Amended]

■ 98. Amend § 265.1 as follows:
■ a. In paragraph (c)(4)(i) remove the phrase, "As stated in paragraph (c)(2) of this section,";
■ b. In paragraph (c)(6), revise "subparts C, D, F, or G" to read "subparts C, F, G, or H".

§ 265.12 [Amended]

■ 99. In § 265.12, amend paragraph (a)(1) by revising "of the date of the waste" to read "of the date the waste".

§ 265.14 [Amended]

■ 100. In § 265.14, amend paragraph (b)(1) by revising "guards of facility personnel" to read "guards or facility personnel".

§ 265.16 [Amended]

■ 101. In § 265.16, amend paragraph (b) by revising "successfuly" to read "successfully".

§ 265.19 [Amended]

■ 102. In § 265.19, amend paragraph (c)(2) last sentence, by revising "264.254(c)(1)" to read "264.251(c)(1)".

§ 265.56 [Amended]

■ 103. In § 265.56, amend paragraph (b) by revising "a real" to read "areal" (one word).

§ 265.90 [Amended]

■ 104. In § 265.90, amend paragraph (d) introductory text by removing the comma after the phrase "he may".

§ 265.110 [Amended]

■ 105. In § 265.110, amend paragraph (b)(4) by revising "building" to read "buildings".

§ 265.111 [Amended]

■ 106. In § 265.111, amend paragraph (c) by revising the citation "264.1102" to read "265.1102".

§ 265.112 [Amended]

■ 107. Amend § 265.112 as follows:
■ a. In paragraph (b)(5), revise "partial and final closure period" to read "partial and final closure periods";
■ b. In paragraph (d)(4), in the next to last sentence, revise the citation "§§ with 265.111" to read "§§ 265.111"; revise "part, §§ 265.197" to read "part, and §§ 265.197"; and revise the citation "264.1102" to read "265.1102".

§ 265.113 [Amended]

■ 108. Amend § 265.113 as follows:
■ a. In paragraph (b) introductory text, revise "extenstion" to read "extension";
■ b. In paragraph (e)(4), revise "oonstituents" to read "constituents".

§ 265.117 [Amended]

■ 109. In § 265.117, amend paragraph (b) introductory text by revising "Administator" to read "Administrator".

§ 265.119 [Amended]

■ 110. In § 265.119, amend paragraph (b)(1)(ii) by revising the citation "40 CFR subpart G" to read "40 CFR part 265, subpart G".

§ 265.140 [Amended]

■ 111. Amend § 265.140 as follows:
■ a. In paragraph (b) introductory text, revise the citation "265.146" to read "265.145";
■ b. In paragraph (b)(2), revise the citation "§ 264.197" to read "§ 265.197".

§ 265.142 [Amended]

■ 112. In § 265.142, amend paragraph (a) by removing "265.178" from the list of sections.

§ 265.145 [Amended]

■ 113. Amend § 265.145 as follows:
■ a. In paragraph (e)(11), first sentence, revise "for this section" to read "of this section";
■ b. In paragraph (e)(11), second sentence, revise "direct of higher-tier" to read "direct or higher-tier";
■ c. In paragraph (e)(11), third sentence, revise the citation "(f)(1) through (9)" to read "(e)(1) through (9)";
■ d. In paragraph (e)(11), fifth sentence, revise the citation "(f)(3)" to read "(e)(3)".

§ 265.147 [Amended]

■ 114. Amend § 265.147 as follows:
■ a. Amend paragraph (a)(1)(i) in the next to last sentence by revising "or Regional Administrator if facilities" to read "or Regional Administrators if the facilities".
■ b. Amend paragraph (b)(1) by adding paragraphs (i) and (ii) to read as follows:

§ 265.147 Liability requirements.

* * * * *

(b) * * *

(1) * * *

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Regional Administrator, or Regional Administrators if the facilities are located in more than one Region. If requested by a Regional Administrator, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

* * * * *

§ 265.174 [Amended]

■ 115.–116. Amend § 265.174, by deleting the phrase "and the containment system".

§ 265.193 [Amended]

■ 117. Amend § 265.193 as follows:
■ a. In paragraph (e)(2)(v)(A), revise the citation "§ 262.21" to read "§ 261.21";
■ b. In paragraph (e)(2)(v)(B), revise the citation "§ 262.21" to read "§ 261.23";
■ c. In paragraph (i)(2), in the last sentence, revise "tanks surfaces" to read "tank surfaces".

§ 265.194 [Amended]

■ 118. In § 265.194, amend paragraphs (b)(1) and (b)(2) by inserting a period after "e.g" in both paragraphs, and in paragraph (b)(1), by revising "discount" to read "disconnect".

§ 265.197 [Amended]

■ 119. In § 265.197, amend paragraph (b) by inserting a period after the closing parenthesis of the citation "(265.310)".

§ 265.201 [Amended]

■ 120. In § 265.201, amend paragraph (c) introductory text, by revising "hazardous in tanks" to read "hazardous waste in tanks".

§ 265.221 [Amended]

■ 121. Amend § 265.221 as follows:
■ a. In paragraph (a), revise "leachate collection and removal system above and between the liners" to read "leachate collection and removal system between the liners";
■ b. In paragraph (d)(2)(i)(A), revise "in leaking?" to read "is leaking"; revise "soil it is not" to read "soil is not"; and revise "the owner of operator" to read "the owner or operator";
■ c. In paragraph (d)(2)(i)(B), revise the citation "§ 144.3 of this chapter" to read "40 CFR 270.2"; and add quotation marks around "underground source of drinking water".

§ 265.224 [Amended]

■ 122–123. In § 265.224, amend paragraph (b)(1) by revising "exceedence" to read "exceedance".

§ 265.228 [Amended]

■ 124. Amend § 265.228 as follows:
■ a. In paragraph (a)(2)(iii)(D), revise "Accomodate" to read "Accommodate";
■ b. In paragraph (b)(2), revise the citation "§§ 265.221(c)(2)(iv)" to read "§§ 264.221(c)(2)(iv)".

§ 265.229 [Amended]

■ 125. Amend § 265.229 by removing paragraph (b)(2) and redesignate paragraphs (b)(3) and (b)(4) as paragraphs (b)(2) and (b)(3), respectively.

§ 265.255 [Amended]

■ 126. Amend § 265.255 in paragraph (b) by revising "surface impoundment units" to read "waste pile units".

§ 265.259 [Amended]

■ 127. In § 265.259, amend paragraph (b)(1) by revising "exceedence" to read "exceedance".

§ 265.280 [Amended]

■ 128. In § 265.280, amend paragraph (a)(4) by revising "gowth" to read "growth".

§ 265.281 [Amended]

■ 129. In § 265.281, amend paragraph (a)(1) by revising the citation "§ 265.21" to read "§ 261.21".

§ 265.301 [Amended]

■ 130. Amend § 265.301 as follows:
■ a. In paragraph (a), revise "in accordance with § 264.301(d), (e), or (f)

of this chapter" to read "in accordance with § 264.301(c), unless exempted under § 264.301(d), (e), or (f) of this chapter";

■ b. In paragraph (d)(1), revise "such waste does not" to read "such wastes do not"; revise the citation "§ 261.4" to read "§ 261.24"; and revise "Hazardous Waste Number" to read "Hazardous Waste Numbers";

■ c. In paragraph (d)(2)(i)(B), revise the citation "§ 144.3 of this chapter" to read "40 CFR 270.2"; and add quotation marks around "underground source of drinking water".

§ 265.302 [Amended]

■ 131. In § 265.302, amend paragraph (b) by revising "surface impoundment units" to read "landfill units".

§ 265.303 [Amended]

■ 132. In § 265.303, amend paragraph (b)(1) by revising "exceedence" to read "exceedance".

§ 265.312 [Amended]

■ 133. In § 265.312, amend paragraph (a)(1) by revising "dissolution or material" to read "dissolution of material".

§ 265.314 [Amended]

■ 134. Amend § 265.314 as follows:

■ a. In paragraph (e)(1)(ii), revise "polysobutylene" to read "polyisobutylene";

■ b. In paragraph (f)(2), revise the citation "§ 144.3 of this chapter" to read "40 CFR 270.2"; and add quotation marks around "underground source of drinking water".

§ 265.316 [Amended]

■ 135. Amend § 265.316 as follows:

■ a. In the introductory text, revise "landfull" to read "landfill";

■ b. In paragraph (c), revise "container's" to read "containers";

■ c. In paragraph (d), revise "§ 260.10(a)" to read "§ 260.10".

§ 265.405 [Amended]

■ 136. In § 265.405, amend paragraph (a)(1) by revising the citation "§ 261.21 or 261.23 or this chapter" to read "§§ 261.21 or 261.23 of this chapter".

§ 265.441 [Amended]

■ 137. In § 265.441, amend paragraph (c) by revising "state Director" to read "State Director".

§ 265.443 [Amended]

■ 138. Amend § 265.443 as follows:

■ a. In paragraph (a)(4)(i), revise the citation "§ 265.442(a) instead of § 265.442(b)" to read "§ 265.442(b) instead of § 265.442(a)";

■ b. In paragraph (b) introductory text, revise the citation "§ 265.442(b) instead of § 265.442(a)" to read "§ 265.442(a) instead of § 265. 442(b)".

§ 265.445 [Amended]

■ 139. In § 265.445, amend paragraph (b) by revising "post/closure care" to read "post-closure care".

§ 265.1033 [Amended]

■ 140. In § 265.1033, amend paragraph (f)(2)(ii) by replacing the period with a comma after "±0.5 °C".

§ 265.1035 [Amended]

■ 141. Amend § 265.1035 as follows:

■ a. In paragraph (b)(2) introductory text, replace the period with a comma after the citation "§ 265.1032";

■ b. In paragraph (b)(2)(i), revise "annual throughput end operating hours" to read "annual throughput and operating hours";

■ c. In paragraph (c)(4)(i), replace the period with a comma after the first occurrence of "760 °C".

§ 265.1063 [Amended]

■ 142. In § 265.1063, amend paragraph (b)(4)(ii) by replacing the period in "10.000" with a comma.

§ 265.1080 [Amended]

■ 143. In § 265.1080, amend paragraph (a) by revising the citation "subparts I, J, or K" to read "subpart I, J, or K".

§ 265.1085 [Amended]

■ 144. In § 265.1085, amend paragraph (h)(3) introductory text, by revising "under either or the following" to read "under either of the following".

§ 265.1087 [Amended]

■ 145. In § 265.1087, amend paragraph (b) by designating the text following the paragraph heading "General requirements" as paragraph (b)(1).

§ 265.1090 [Amended]

■ 146. In § 265.1090, amend paragraph (f)(1) by revising the citation "§ 265.1084(c)(2)(i)" to read "§ 265.1083(c)(2)(i)".

§ 265.1100 [Amended]

■ 147. In § 265.1100, amend paragraph (d) by revising "permit" to read "prevent".

"265.1101 [Amended]

■ 148. Amend § 265.1101 as follows:

■ a. In paragraph (b)(3)(i)(B), revise "trasmissivity" to read "transmissivity";

■ b. In paragraph (b)(3)(iii), revise the citation "§ 265.193(d)(1)" to read "§ 265.193(e)(1)";

■ c. In paragraph (c)(3) introductory text, revise "hazardous waste, must repair" to read "hazardous waste, the owner or operator must repair";

■ d. In paragraph (d) introductory text, revise "For containment" to read "For a containment".

■ 149. Amend Appendix I to part 265 as follows:

■ a. In Table 1, add unit of measure codes for "Pounds," "Short tons," "Kilograms," and "Tons" at the end of the table to read as set forth below;

■ b. In Table 2, Section 2.(d), revise "T75 Tricking filter" to read "T75 Trickling filter";

■ c. In Table 2, Section 4., revise the heading "Miscellaneous (Subpart X)" to read "Miscellaneous";

■ d. In Table, 2, Section 4., revise "X99 Other Subpart X (specify)" to read "X99 Other (specify)".

Appendix I to Part 265—Recordkeeping Instructions

* * * * *

TABLE 1

Unit of measure	Code[1]
* * * * *	
Pounds	P
Short tons	T
Kilograms	K
Tons	M

[1] Single digit symbols are used here for data processing purposes.

* * * * *

Appendix V to Part 265—[Amended]

■ 150. In the table in Appendix V to Part 265, under the Group 1–A column, revise the phrase "Akaline caustic liquids" to read "Alkaline caustic liquids"; and revise "Lime sludge and other corrosive alkalines" to read "Lime sludge and other corrosive alkalies".

Appendix VI to Part 265—[Amended]

■ 151. Amend Appendix VI to part 265 as follows:

■ a. In the entry "Dichlorvos (DDVP)", revise the CAS No. "62737" to read "62–73–7";

■ b. In the entry "Ethylene thiourea (2-imidazolidinethione)" revise the CAS No. "9–64–" to read "96–45–7";

■ c. In the entry "Neopentyl glycol (dimethylolpropane)" revise "dimethylolpropane" to read "dimethylpropane";

■ d. In the entry "1,3-Propane sulfone", revise "sulfone" to read "sultone".

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 152. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

§ 266.70 [Amended]

■ 153. In § 266.70, amend paragraph (a) by revising "paladium, irridium" to read "palladium, iridium".

§ 266.80 [Amended]

■ 154. In § 266.80, amend the Table in paragraph (a) by inserting, in the third column, a comma after "(except for § 262.11)" in all four instances.

§ 266.100 [Amended]

■ 155. Amend § 266.100 as follows:
■ a. In paragraph (b)(2)(iv), revise "§ 266.212" to read § 266.112";
■ b. In paragraph (d)(3)(i)(A), revise "appendix IX" to read "appendix XI";
■ c. In paragraph (g) introductory text, revise "paladium, irridium" to read "palladium, iridium".

§ 266.102 [Amended]

■ 156. Amend § 266.102 as follows:
■ a. In paragraph (a)(2)(vi), revise "(Corrective Action)" to read "(Releases from Solid Waste Management Units)";
■ b. In paragraph (e)(3)(i)(E), revise the citation "§ 266.111(b)" to read "§ 266. 105(a)";
■ c. In paragraph (e)(5)(i)(C), revise "chorline" to read "chlorine"; and revise "feestocks" to read "feedstocks";
■ d. In paragraph (e)(6)(ii)(B)(2), revise "of preceding" to read "of the preceding";
■ e. In paragraph (e)(8)(iii), revise "values" to read "valves".

■ 157. Amend § 266.103 as follows:
■ a. In paragraph (a)(4)(vii), revise the citation "265.147–265.151" to read "265.147–265.150";
■ b. In paragraph (b)(2)(v)(B)(2), revise "meterological" to read "meteorological";
■ c. In paragraph (b)(5)(ii)(A), revise "on a hourly" to read "on an hourly";
■ d. In paragraph (b)(6)(viii)(A), revise "Ageny" to read "Agency";
■ e. In paragraph (c)(1)(ii)(A)(2), revise "feedsteams" to read "feedstreams";
■ f. In paragraph (c)(1)(ix)(A), revise "ration" to read "ratio";
■ g. In paragraph (c)(4)(iv)(C)(1), revise "on a hourly" to read "on an hourly";
■ h. In paragraph (g)(1)(i), revise "on a hourly" to read "on an hourly".
■ i. Revise paragraphs (c)(1)(i) and (c)(1)(ix) introductory text to read as follows:

§ 266.103 Interim status standards for burners.

* * * * *

(c) * * *

(1) * * *

(i) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e)), pumpable hazardous waste;

* * * * *

(ix) For systems using wet scrubbers, including wet ionizing scrubbers (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b)(1) or (e)):

* * * * *

§ 266.106 [Amended]

■ 158–159. In § 266.106, amend paragraph (d)(1) by deleting the second appearance of the phrase "dispersion modeling to predict the maximum annual average off-site ground level concentration for each".

§ 266.109 [Amended]

■ 160. Amend § 266.109 as follows:
■ a. In paragraph (a)(2)(ii), revise "constitutent" to read "constituent" in both instances;
■ b. In paragraph (b) introductory text in the paragraph heading, revise "*particular*" to read "*particulate*".

Subpart N—Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal.

■ 161. Amend Part 266 by revising the subpart heading to read as set forth above.

Appendix III to Part 266—[Amended]

■ 162. Amend Part 266, Appendix III column headings by revising "$C1_2$" to read "Cl_2" three times, and by revising "HC1" to read "HCl" three times (i.e., revise the "1" (one) to be a lower-case letter L in all six cases).

Appendix IV to Part 266—[Amended]

■ 163. Amend Part 266, Appendix IV as follows:
■ a. Revise the entry "Maleic Anyhdride" to read "Maleic Anhydride";
■ b. Revise the entry "2.4.5-Trichlorophenol" to read "2,4,5-Trichlorophenol".

Appendix V to Part 266—[Amended]

■ 164. Amend Part 266, Appendix V as follows:
■ a. Revise the third column heading "Unit risk (m3/μg)" to read "Unit risk ($m^3/\mu g$)";
■ b. Revise the fourth column heading "RsD (μg/m3)" to read "RsD ($\mu g/m^3$)";
■ c. Revise the entry "Benxene" to read "Benzene";
■ d. Revise the entry "Hexachlorodibenxo-p-dioxin (1,2 Mixture)" to read "Hexachlorodibenzo-p-dioxin (1,2 Mixture)".

Appendix VI to Part 266—[Amended]

■ 165. Amend Part 266, Appendix VI by revising the first column heading "Flow rate (m3/s)" to read "Flow rate (m^3/s)".

Appendix VIII to Part 266—[Amended]

■ 166. Amend Part 266, Appendix VIII in the "Semivolatiles" column, by revising "Plychlorinated" to read "Polychlorinated".

Appendix IX to Part 266—[Amended]

■ 167. Amend Part 266, Appendix IX as follows:
■ a. In the Table of Contents at 4.0, revise "Estimating Toxicity Equipment or" to read "Estimating the Toxicity Equivalence of";
■ b. In the Table of Contents at 9.2, revise "Cl," to read "Cl_2";
■ c. In the Table of Contents at 10.4, revise "Overviev" to read "Overview";
■ d. In Section 2.1.2.9, revise "The PA test" to read "The RA test";
■ e. In Section 2.1.2.10, revise "determination of 0^2" to read "determination of O_2)";
■ f. In Table 2.1–1 footnote 1, revise "of twice the permit limit" to read "or twice the permit limit";
■ g. In Section 2.1.4.6, revise "the PA test" to read "the RA test";
■ h. In Section 2.2.10, first sentence, revise "used In conjunction" to read "used in conjunction";
■ i. In the section 4.0 title, revise "DIBENCO-" to read "DIBENZO-";
■ j. In Section 5.0 at Step 6, footnote 5 first sentence, remove the comma after the phrase "urban and rural areas";
■ k. In Section 5.0 at Table 5.0–5, for distance 10.00, revise the Generic source #1 value "9.4" in the second column to read "29.4";
■ l. In Section 5.0 at Step 7(B), second sentence, insert a closing parenthesis after "(identified in Step 7(A)" to read "(identified in Step 7(A))";
■ m. In Section 5.0 at the Table in Step 10(D)1., replace the comma in column heading ">0,5 – 2.5" with a period to read ">0.5–2.5";
■ n. In Section 5.0 at the Table below Table 5.0–6, revise the column heading

"$C^a(\mu g/m^3)$" to read "$C_a(\mu g/m^3)$"; and revise "$C_{A(>G/M3)}$" to read "$C_a(\mu g/m^3)$";
■ o. In Section 6.2, first paragraph second sentence, revise "Within These" to read "Within these";
■ p. In Section 7.1, second paragraph second sentence, revise "Mulitple" to read "Multiple";
■ q. In Section 7.2, at the last paragraph, revise "This, if" to read "Thus, if";
■ r. In Section 8.0, second paragraph, revise "chorine" to read "chlorine";
■ s. In Section 9.2, in the first sentence, revise the formula "Cl2" to read "Cl_2";
■ t. In Section 10.3, last sentence of next to last paragraph, replace the period in the phrase "To avoid this expense." with a comma;
■ u. In Section 10.5(2), fourth bullet, in the sentence starting "Three of the first five tests", replace the period in "hazardous wastes. and in" with a comma.

Appendix XIII to Part 266—[Amended]

■ 168. Amend Part 266, Appendix XIII at item number 14 by revising "levels or mercury" to read "levels of mercury".

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

■ 169. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

§ 267.147 [Amended]

■ 170. In § 267.147, amend paragraph (f)(2)(i)(A) by revising "test for facilities regulated under § 267 and also § 264 or § 265" to read "test for facilities regulated under part 267 and also part 264 or part 265".

PART 268—LAND DISPOSAL RESTRICTIONS

■ 171. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

§ 268.2 [Amended]

■ 172. In § 268.2, amend paragraph (g) by revising "A manufactured" to read "a manufactured"; "Any material" to read "any material"; "Process residuals" to read "process residuals"; and "and Intact" to read "and intact".

§ 268.4 [Amended]

■ 173. In § 268.4, amend paragraph (a)(3) introductory text by revising the citation "of part 264 or part 264" to read "of part 264 or part 265".

§ 268.6 [Amended]

■ 174. In § 268.6, amend paragraph (c)(5) introductory text by revising "section meet" to read "section meets".

■ 175. Amend § 268.7 as follows:
■ a. In paragraph (a)(1), insert a closing parenthesis at the end of the sentence that starts "(A)lternatively, the generator" and in the second to last sentence, revise "solids contaminated" to read "soils contaminated";
■ b. In paragraph (a)(3)(ii), second sentence, insert the word "column" after the phrase "information in", and insert a closing quotation mark after the citation "268.7(a)(3)";
■ c. In paragraph (a)(4), at entry 8 of the Table, amend "[is subject to/complies with" by inserting a closing bracket ("]") at the end of the phrase;
■ d. In paragraph (b)(3)(ii) at entry 5 of the Table, insert a closing quotation mark after the citation "268.49(c)";
■ e. In paragraph (b)(4)(ii), revise the citation "§ 261.3(e)" to read "§ 261.3(f)";
■ f. In paragraph (c)(2), remove the closing parenthesis from "Leaching Procedure)";
■ g. In paragraph (d) introductory text, revise the citation "§ 261.3(e)" to read "§ 261.3(f)";
■ h. Revise paragraph (d)(1) to read as set forth below;
■ i. In paragraph (d)(2), revise the citation "§ 261.2(e)(1)" to read "§ 261.3 (f)(1)";
■ j. In paragraph (d)(3), revise the citation "§ 261.3(e)(1)" to read "§ 261.3 (f)(1)".

§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

* * * * *

(d) * * *

(1) A one-time notification, including the following information, must be submitted to the EPA Regional hazardous waste management division director (or his designated representative) or State authorized to implement part 268 requirements:

(i) The name and address of the Subtitle D facility receiving the treated debris;

(ii) A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and

(iii) For debris excluded under § 261.3(f)(1) of this chapter, the technology from Table 1, § 268.45, used to treat the debris.

* * * * *

§ 268.14 [Amended]

■ 176. In § 268.14, amend paragraphs (b) and (c) by revising "not withstanding" to read "notwithstanding" in both instances.

§ 268.40 [Amended]

■ 177.–178. Amend § 268.40 as follows:
■ a. In paragraph (g), revise "as definded" to read "as defined".
■ b. Amend the table TREATMENT STANDARDS FOR HAZARDOUS WASTES as follows:
■ 1. At the column heading "Wastewaters", revise "Concentration in mg/L[3]" to read "Concentration[3] in mg/L";
■ 2. At the column heading "Nonwastewaters", revise "Concentration in mg/kg[5]" to read "Concentration[5] in mg/kg";
■ 3. At the entry "K047", in the waste description column, revise "water form TNT" to read "water from TNT";
■ 4. At the entries "K049" and "K051", revise the CAS number for "Chrysene" from "2218–01–9" to read "218–01–9";
■ 5. At the entry "K088", revise the common name "Bemz(a)anthracene" to read "Benz(a)anthracene"; and revise the common name "Indeno(1,2,3,-c,d)pyrene" to read "Indeno(1,2,3-cd)pyrene";
■ 6. At the entry "K111", revise the CAS number for "2,4-Dinitrotoluene" from "121–1–2" to read "121–14–2";
■ 7. At the entry "K114", in the waste description column, revise the common name "dinitrotolune" to read "dinitrotoluene";
■ 8. At the entry "K156", revise the CAS number for "Acetophenone" from "96–86–2" to read "98–86–2"; and revise the CAS number for "Triethylamine" from "101–44–8" to read "121–44–8";
■ 9. At the entry "U202" "Acetone" following "U001", revise "U202" to read "U002";
■ 10. At the entry "U134", revise the CAS number "16984–48–8" to read "7664–39–3";
■ 11. At the entry "U137", revise in the waste description and in the common name columns "Indeno(1,2,3-c,d)pyrene" to read "Indeno(1,2,3-cd)pyrene" in both instances.

§ 268.42 [Amended]

■ 179. In § 268.42, Table 1, amend the entry for Technology code "SSTRP" in the second column as follows:
■ a. In the first sentence, revise "as well as, temperature and pressure ranges have" to read "as well as temperature and pressure ranges, have";
■ b. In the second sentence, insert a comma after the phrase "parameters of the unit"; remove the comma in the phrase "such as, the number"; and replace the period at the end of "the internal column design." with a comma;
■ c. In the third sentence, revise "Thus, resulting" to read "thus resulting".

§ 268.44 [Amended]

■ 180. In § 268.44, amend paragraph (c), last sentence of the certification statement, by revising "I am aware that these are" to read "I am aware that there are".

§ 268.45 [Amended]

■ 181. Amend § 268.45, Table 1, as follows:
■ a. At item B.1., first column, revise "biodegration" to read "biodegradation";
■ b. At item B.2.a., first column, revise "electolytic" to read "electrolytic"; and under number (8), revise "permanganates" to read "permanganates".

§ 268.48 [Amended]

■ 182. Amend § 268.48 Table, UNIVERSAL TREATMENT STANDARDS, as follows:
■ a. At the column heading "Wastewater standard", revise "Concentration in mg/l[2]" to read "Concentration[2] in mg/l";
■ b. At the column heading "Nonwastewater standard", revise "Concentration in mg/kg[3]" to read "Concentration[3] in mg/kg".
■ c. At entry "1,2,3,4,6,7,8-Heptachlorodibenzofluran (1,2,3,4,6,7,8-HpCDF)" revise CAS number "67562-39-5" to read "67562-39-4";
■ d. Revise the next entry "1,2,3,4,6,7,8-Heptachlorodibenzofluran (1,2,3,4,7,8,9-HpCDF)" (CAS number 55673-89-7) to read "1,2,3,4,7,8,9-Heptachlorodibenzofluran (1,2,3,4,7,8,9-HpCDF)".

§ 268.49 [Amended]

■ 183. In § 268.49, amend paragraph (d) by revising "flouride" to read "fluoride".

§ 268.50 [Amended]

■ 184. Amend § 268.50 as follows:
■ a. In paragraph (c), revise "A owner/operator" to read "An owner/operator";
■ b. In paragraph (g), revise "requirements in this do not" to read "requirements in this section do not".

Appendix VIII to Part 268—[Amended]

■ 185. Amend Part 268, Appendix VIII, by removing the second instances of the entries for "K011" "Nonwastewater" and for "K011" "Wastewater".

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

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

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

§ 270.1 [Amended]

■ 187. Amend § 270.1 as follows:
■ a. In the table in paragraph (a)(2), after 3001 revise "Indentification" to read "Identification";
■ b. In paragraph (b) introductory text, revise "analagous" to read "analogous";
■ c. In paragraph (c)(1)(iii), revise "it they" to read "if they?";
■ d. In paragraph (c)(3)(i) introductory text, revise "obtain an RCRA" to read "obtain a RCRA".

§ 270.2 [Amended]

■ 188. Amend § 270.2 as follows:
■ a. In the definition of "*On-site*", revise "continguous" to read "contiguous";
■ b. In the definition of "*Publicly owned treatment works (POTW)*", revise "unsed" to read "used".

§ 270.10 [Amended]

■ 189. In § 270.10, amend paragraph (j) by revising "stores, treats, or dispose of" to read "stores, treats, or disposes".

§ 270.11 [Amended]

■ 190. Amend § 270.11 as follows:
■ a. In paragraph (d)(1), revise "paragraph (a) or (b) of this must" to read "paragraph (a) or (b) of this section must";
■ b. In paragraph (d)(2), certification statement, revise "upon information and belief" to read "to the best of my knowledge and belief".

§ 270.13 [Amended]

■ 191. In § 270.13, amend paragraph (k)(7) by revising "Sancturies" to read "Sanctuaries".

§ 270.14 [Amended]

■ 192. Amend § 270.14 as follows:
■ a. In paragraph (a), in next to the last sentence, revise "design drawings and specification" to read "design drawings and specifications";
■ b. In paragraph (b)(11)(ii)(B), revise "with 200 feet" to read "within 200 feet";
■ c. In paragraph (b)(19)(iii), revise "intermittant" to read "intermittent";
■ d. In paragraph (b)(21), revise "uner" to read "under".

§ 270.17 [Amended]

■ 193. In § 270.17, amend paragraph (f) by revising "detailed-plans" to read "detailed plans".

§ 270.18 [Amended]

■ 194. In § 270.18, amend paragraph (b) by revising the citation "§ 264.90(2)" to read "§ 264.90(b)(2)"; and amend paragraph (g) by revising "place" to read "placed".

§ 270.20 [Amended]

■ 195. In § 270.20, amend paragraph (i)(2) by revising "attentuative" to read "attenuative".

§ 270.26 [Amended]

■ 196.–197. In § 270.26, amend paragraph (c)(15) by revising "through(f) § 264.573" to read "through (f) of § 264.573".

§ 270.33 [Amended]

■ 198. In § 270.33, amend paragraph (b) introductory text by revising "An RCRA permit" to read "A RCRA permit".

§ 270.41 [Amended]

■ 199. In § 270.41, amend paragraph (c) by revising "environmental" to read "environment".

§ 270.42 [Amended]

■ 200. In § 270.42, amend paragraph (d)(2)(i) by revising "do no" to read "do not".

Appendix I to § 270.42—[Amended]

■ 201. Amend § 270.42 Appendix I as follows:
■ a. At item C.4, revise the modification class code (second column) "[1]2" to read "2";
■ b. At item C.6, revise the citation "264.98(j)" to read "264.98(h)";
■ c. At item C.7.a, revise the citation "264.98(h)(4)" to read "264.98(g)(4)";
■ d. At item C.7.b, revise the citation "264.99(k)" to read "264.99(j)";
■ e. At item C.8.a, revise the citation "264.99(i)(2)" to read "264.99(h)(2)";
■ f. At item F.2, amend by replacing the colon after "2" with a period;
■ g. At item F.4, revise "Storage of treatment" to read "Storage or treatment";
■ h. At item F.4.a., revise the modification class code "1" to read "[1]1";
■ i. At item G.1, amend by replacing the colon after "1" with a period;
■ j. At item H.6, revise the modification class code "*1" to read "[1]1";
■ k. At item J.7, revise the modification class code "*1" to read "[1]1";
■ l. At item L.9, revise "Changes Needed to meet Standards" to read "changes needed to meet standards".

§ 270.70 [Amended]

■ 202.–203. In § 270.70, amend paragraph (a) introductory text by revising "have an RCRA permit" to read "have a RCRA permit".

§ 270.72 [Amended]

■ 204. In § 270.72, amend paragraph (b)(2) by revising "inpoundments" to read "impoundments".

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 205. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

§ 271.1 [Amended]

■ 206. Amend § 271.1 as follows:
■ a. In Table 1, at promulgation date of April 8, 1996, second column, revise "Wastesaters," to read "Wastewaters,"; and at promulgation date of July 15, 2002, second column, revise "Fertlizers" to read "Fertilizers";
■ b. In Table 2, at the fourteenth item under effective date of Nov. 8, 1984, second column, revise "enviroment" to read "environment"; and at effective date of Sept. 1, 1985, second column, revise "mininization" to read "minimization".

§ 271.21 [Amended]

■ 207. Amend § 271.21 as follows:
■ a. In paragraph (f), remove the phrase "specifiines";
■ b. In paragraph (g)(1)(i), revise "dils" to read "diligent efforts".

§ 271.23 [Amended]

■ 208. Amend § 271.23 as follows:
■ a. In paragraph (a)(1), revise "relevent" to read "relevant";
■ b. In paragraph (b)(1), revise "with drawal" to read "withdrawal";
■ c. In paragraph (b)(5), revise "makng" to read "making".

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

■ 209. The authority citation for Part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

§ 273.9 [Amended]

■ 210. In § 273.9, amend the definition of "*Universal Waste*" as follows:
■ a. Revise "hazardous waste" to read "hazardous wastes";
■ b. In paragraph (1), insert a semicolon after the citation "§ 273.2";
■ c. In paragraph (2), insert a semicolon after the citation "§ 273.3";

§ 273.13 [Amended]

■ 211. In § 273.13, amend paragraph (b) introductory text by revising "prevent releases" to read "prevents releases".

§ 273.14 [Amended]

■ 212. Amend § 273.14, in paragraph (a), by adding closing quotation marks after the phrase "Universal Waste—Battery(ies),".

§ 273.34 [Amended]

■ 213. In § 273.34, amend paragraph (a) by revising "clearly with the any one" to read "clearly with any one".

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

■ 214–215. The authority citation for Part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

§ 279.1 [Amended]

■ 216. In § 279.1, amend the definition of "Petroleum refining facility" by revising "kerosine" to read "kerosene".

§ 279.10 [Amended]

■ 217. In § 279.10, amend paragraph (b)(2) introductory text by revising "solely exhibits" to read "solely exhibit"; and by revising "hazardous waste characteristic" to read "hazardous waste characteristics".

§ 279.11 [Amended]

■ 218. Amend § 279.11 as follows:
■ a. In the first sentence, delete "in the specification"; and in the second sentence, revise "not to exceed any specification" to read "not to exceed any allowable level";
■ b. In Table 1, revise the title of the table to read "TABLE 1—USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL SHOWN BELOW IS NOT SUBJECT TO THIS PART WHEN BURNED FOR ENERGY RECOVERY[1]", and in the first footnote, revise "The specification does not" to read "The allowable levels do not".

§ 279.43 [Amended]

■ 219. Amend § 279.43 as follows:
■ a. In paragraph (c)(3)(i), insert a comma after the citation "49 CFR 171.15";
■ b. In paragraph (c)(5), revise "used oil discharged" to read "used oil discharge".

§ 279.44 [Amended]

■ 220. Amend § 279.44 as follows:
■ a. In paragraph (a), revise "being transporter" to read "being transported";
■ b. In paragraph (c)(2), revise "if the CFC are" to read "if the CFCs are".

§ 279.45 [Amended]

■ 221. Amend § 279.45 in paragraph (a) by revising "subpart F of this chapter" to read "subpart F of this part".

§ 279.52 [Amended]

■ 222. Amend § 279.52 as follows:
■ a. In paragraphs (a) and (b), revise "processors and re-refiners" to read "processing and re-refining" in both instances;
■ b. In paragraph (b)(1)(ii), revise "release or used oil" to read "release of used oil";
■ c. In paragraph (b)(6)(ii), revise "a real extent" to read "areal extent"; revise "facility records of manifests" to read "facility records or manifests"; and revise "analysts" to read "analyses";
■ d. In paragraph (b)(6)(iii), revise "from water of chemical" to read "from water or chemical".

§ 279.55 [Amended]

■ 223. Amend § 279.55 as follows:
■ a. In paragraph (a) introductory text, revise "At at minimum" to read "At a minimum";
■ b. In paragraph (b)(2)(i)(B), revise the citation "§ 260.20 and 260.21" to read "§§ 260.20 and 260.21".

§ 279.56 [Amended]

■ 224. Amend § 279.56 in paragraph (a)(2), by revising "processor/re-refining" to read "processor/re-refiner".

§ 279.57 [Amended]

■ 225. In § 279.57, amend paragraph (a)(2)(ii) by revising "an specified" to read "as specified".

§ 279.59 [Amended]

■ 226. Amend § 279.59 by revising "or re-fining of" to read "or re-refining of".

§ 279.63 [Amended]

■ 227. In § 279.63, amend paragraph (b)(3) by revising "processor/refiner" to read "processor/re-refiner".

§ 279.64 [Amended]

■ 228. In § 279.64, amend paragraph (e) heading by revising the word "existing" to read "new".

§ 279.70 [Amended]

■ 229. In § 279.70, amend paragraph (b)(1) by revising the word "incidently" to read "incidentally".

[FR Doc. 06–5601 Filed 7–13–06; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Friday,
July 28, 2006

Part III

Environmental Protection Agency

40 CFR Parts 9, 260, 261, et al.
Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 260, 261, and 271

[RCRA–2004–0010; FRL–8203–1]

RIN 2050–AE52

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: A cathode ray tube (CRT) is the glass video display component of an electronic device (usually a computer or television monitor). In this rule, the Environmental Protection Agency (EPA) is amending its regulations under the Resource Conservation and Recovery Act (RCRA) to streamline management requirements for recycling of used CRTs and glass removed from CRTs. The amendments exclude these materials from the RCRA definition of solid waste if certain conditions are met. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass. EPA proposed this rule on June 12, 2002 (67 FR 40508).

DATES: This final rule is effective on January 29, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2004–0010. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, such as confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Goode, Office of Solid Waste, Mail Code 5304W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308–8800, electronic mail: *goode.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: The contents of this final rule are listed in the following outline:

Contents of the Final Rule

I. General Information

A. Does This Rule Apply to Me?

This rule potentially affects all persons who send used cathode ray tubes (CRTs) and CRT glass for recycling, as well as all persons who recycle these materials. The rule does not affect households or conditionally exempt small quantity generators (CESQGs). If you have any questions about the applicability of this rule, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Are the Statutory Authorities for This Final Rule?

Today's rule is promulgated under the authority of Sections 2002(a), 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 3007, 6912(a), 6921, 6922, 6924, 6926, 6927, and 6938.

C. Acronyms Used in the Rule

CES Computers and Electronics Subcommittee
CFR Code of Federal Regulations
CRT Cathode Ray Tube
CSI Common Sense Initiative
DOT Department of Transportation
FPD Flat Panel Display
HDTV High Definition Television
LCD Liquid Crystal Display
LDR Land Disposal Restrictions
OECD Organization for Economic Cooperation and Development
OSHA Occupational Safety and Health Administration
RCRA Resource Conservation and Recovery Act
TC Toxicity Characteristic
TCLP Toxicity Characteristic Leaching Procedure
TSDF Treatment, Storage, and Disposal Facility
TV Television
UWR Universal Waste Rule
WTE Waste-to-Energy

II. Summary of This Rule and Clarification of Existing Policies

On June 12, 2002, EPA published a **Federal Register** notice seeking comment on a proposed rule change that would streamline management requirements for used CRTs and processed CRT glass (see 67 FR 40508 and following pages). In the same notice, EPA proposed to add mercury-containing equipment to the Federal list of universal wastes. This part of the proposal was finalized on August 5, 2005 (70 FR 45507).

The proposed requirements for used CRTs and processed CRT glass would exclude these materials from the RCRA definition of solid waste if they were sent for recycling under certain conditions. The purpose of the proposed amendments was to encourage increased reuse, recycling, and better management of this growing wastestream, while maintaining necessary environmental protection. The conditions proposed were intended to ensure that the materials were handled as commodities rather than as wastes.

The Agency received many comments in response to its June 12, 2002 notice. Numerous commenters supported the proposed rule, while other commenters suggested changes to all or part of our proposal. After considering all comments, we are finalizing the

proposal substantially as proposed, with two significant modifications. The final rule, similarly to the proposed rule, contains an exclusion from the definition of solid waste for used CRTs and processed glass removed from CRTs (see 40 CFR 261.4(a)(23)). The conditions for meeting the exclusion are found in 40 CFR 261.39. The first change from the proposal concerns exported CRTs. The Agency is promulgating notice and consent requirements for all used CRTs (whether broken or intact) that are exported for recycling (see 40 CFR 261.40 and 261.39(a)(5)). We are also promulgating a one-time notification requirement for used CRTs exported for reuse (see 40 CFR 261.41). The second change from the proposal concerns speculative accumulation requirements, which the final rule imposes on used, intact CRTs (see 40 CFR 261.4(a)(23)(i)).

EPA believes that today's rule will encourage recycling, protect human health and the environment, and ensure that the subject materials are handled as commodities rather than as wastes. Today's rule does not limit or constrain the Agency in exercising its discretion to promulgate additional rulemaking relating to the definition of solid waste. Specifically, the Agency maintains the discretion to promulgate additional regulations that aim to encourage legitimate recycling of waste.

Following is a brief summary of today's rule, along with some clarifications of existing policies applicable to used CRTs.

A. CRTs From Households and Conditionally Exempt Small Quantity Generators (CESQGs)

Under previously existing regulations, CRTs from households are exempt from Federal hazardous waste management requirements, even when they are sent for recycling or disposal. Non-residential generators of less than 100 kilograms (about 220 lbs) of hazardous waste in a calendar month, including CRTs, are known as conditionally exempt small quantity generators (CESQGs) and are not subject to most RCRA Subtitle C management requirements. These provisions are not changed by today's rule. For a more detailed description of requirements applicable to these generators, see the discussion in the proposal at 67 FR 40511.

B. Reuse and Repair of Used CRTs

In today's rule, we are reaffirming our long-standing policy that any user sending a CRT to a collector or reseller for potential reuse is not a RCRA generator. Materials used and taken out of service by one person are not wastes if another person uses them in the same way. Many businesses take usable CRTs out of service only because they are upgrading their systems to take advantage of rapid advances in electronic technology. These organizations do not have the technical knowledge to decide whether a unit can be reused as a computer or television.

The Agency also confirms today that used CRTs undergoing repairs (such as rewiring or replacing defective parts) before resale or distribution are not being reclaimed, and are considered to be products in use rather than solid wastes. These repairs do not constitute waste management. For a fuller discussion of this issue, see the proposal at 67 FR 40511. However, under today's rule, CRTs exported abroad for reuse are subject to a one-time notification requirement, which is discussed later in this section.

C. CRTs and CRT Glass Sent for Recycling

Many CRTs that cannot be reused are sent for recycling, which consists of disassembly to recover valuable materials from the CRTs, such as lead or glass. For a complete discussion of the different types of recycling, see the proposal at 67 FR 40510. Following is a summary of how CRTs and CRT glass sent for recycling within the United States are regulated under today's rule.

Unused CRTs

Today's rule clarifies that persons who send unused CRTs for recycling are not subject to RCRA regulations. Sometimes manufacturers of off-specification CRTs send them to glass processors, glass-to-glass manufacturers, or smelters. Although these types of recycling may constitute reclamation, EPA does not regulate unused commercial chemical products that are reclaimed. For a more detailed discussion of this issue, see the proposal at 67 FR 40511.

Used, Intact CRTs

Today's rule provides that used, intact CRTs sent for recycling (e.g., glass processing, glass manufacturing, or smelting) that occurs within the United States are not solid wastes, unless they are speculatively accumulated by a CRT collector or glass processor (see 40 CFR 261.4(a)(23)(i)).

Used, Broken CRTs

Under today's rule, used, broken CRTs (those whose vacuum has been released) are not solid wastes when sent for recycling that occurs within the United States if they are packaged and labeled or if they are stored in a building (see §§ 261.4(a)(23)(iii) and 261.39(a)(1)–(3)). Like used, intact CRTs, they may not be speculatively accumulated (see § 261.39(a)(4)).

Requirements for CRT Processing

Today's rule provides that to qualify for the exclusion from the definition of solid waste, CRT glass processing as defined in 40 CFR 260.10 must take place in a building, and no activities may be performed that use temperatures high enough to volatilize lead (see 40 CFR 261.39(b)).

Processed CRT Glass

Under today's rule, processed CRT glass (glass removed from CRTs) that is sent to a CRT glass manufacturer or a lead smelter is not a solid waste, unless it is speculatively accumulated (see 40 CFR 261.39(c)). If it is sent to other types of recycling, it may be excluded from the definition of solid waste if it meets the criteria of 40 CFR 261.2(e)(ii). All processed CRT glass legitimately used in a manner constituting disposal must be packaged and labeled and must also comply with the applicable requirements of 40 CFR part 266, subpart C (see 40 CFR 261.39(a)(1)–(4) and (d)). Subpart C applies to recycled materials placed on the land.

D. Exports of Used CRTs

Under today's rule, used, intact CRTs exported for recycling are not solid wastes provided they are not speculatively accumulated and provided the exporter notifies EPA of the export and receives a subsequent written consent from the receiving country allowing the CRTs to be imported for recycling (see 40 CFR 261.40 and 261.39(a)(5)). Used, broken CRTs exported for recycling are not solid wastes provided the exporters comply with the same notification and consent requirements applicable to used, intact CRTs. They must also be packaged and labeled, and they may not be speculatively accumulated (see § 261.39(a)(5) and (a)(1)–(4)).

Today's rule also provides that used intact CRTs exported for reuse are not solid wastes if the exporter sends a one-time notification to the EPA Regional Administrator. The notification must contain a statement that the notifier plans to export used, intact CRTs for reuse, as well as contact information (see § 261.41).

E. Disposal of CRTs

Today's rule clarifies that if a person (other than a household) decides to send used or unused CRTs directly to a landfill or incinerator, that person

would be considered the generator of a solid waste. The person making the decision must determine if the CRTs exhibit a hazardous waste characteristic under 40 CFR part 261, subpart C, either testing the CRTs or using process knowledge to make this determination. If the used or unused CRTs are determined to be hazardous and if a decision is made to dispose of them, the non-residential user, reseller, or manufacturer must comply with all applicable hazardous waste generator requirements of 40 CFR part 262. If hazardous waste CRTs are shipped to a hazardous waste landfill, they must also comply with applicable land disposal restrictions (LDRs). LDRs do not apply to CRTs generated by households or CESQGs. For a more complete description of disposal requirements for CRTs, see the proposal at 47 FR 40512.

In addition, we note the possibility of conducting research and development on CRT-related disposal and recycling technologies pursuant to the treatability study exemption under 40 CFR 261.4(e) and (f). The exemption allows researchers to store and use up to 1000 kg. of non-acute hazardous waste without triggering most Subtitle C requirements. In treatability studies, a hazardous waste is subjected to a treatment process to determine whether the waste is amenable to a treatment process, what pretreatment (if any is required), optimal process conditions, treatment process efficiency, and characteristics and volumes of residues (see 40 CFR 260.10). Examples of treatability studies that could fall under this exemption include physical, chemical, biological, or thermal treatment, solidification, volume or toxicity reduction, and recycling feasibility (see 53 FR 27290, 27293, July 19, 1988).

F. Circuit Boards

In 1992, the Agency issued a memorandum to its EPA Regional Waste Management Directors stating that used whole circuit boards are considered to be scrap metal when sent for reclamation, and therefore exempt from regulation under RCRA. The Agency also addressed circuit boards in the Land Disposal Restrictions Phase IV rulemaking (see 62 FR 25998, May 12, 1997). In that rulemaking, the Agency provided an exclusion from the definition of solid waste at 40 CFR 261.4(a)(14) for shredded circuit boards being reclaimed, provided they are stored in containers sufficient to prevent a release to the environment prior to recovery and provided they are free of mercury switches, mercury relays, nickel-cadmium batteries and lithium batteries.

Subsequently, on May 26, 1998 (63 FR 28556), the Agency clarified that the scrap metal exemption applies to whole used circuit boards that contain minor battery or mercury switch components and that are sent for continued use, reuse, or recovery. In that notice, EPA stated that it was not the Agency's intent to regulate under RCRA circuit boards containing minimal quantities of mercury and batteries that are protectively packaged to minimize dispersion of metal constituents. However, once these materials are removed from the boards, they become a newly generated waste subject to a hazardous waste determination. If they meet the criteria to be classified as a hazardous waste, they must be handled as hazardous waste; otherwise they must be managed as a solid waste.

G. Other Electronic Material

With respect to non-CRT electronic materials, the Agency uses the same line of reasoning that is outlined above for CRTs to determine that the materials are not solid wastes if they are reused or only require repair and are not sent for processing or reclamation. That is, if an original user sends electronic materials to a reseller because he lacks the specialized knowledge needed to determine whether the units can be reused as products, the original user is not a RCRA generator. The materials are not considered solid wastes until a decision is made to recycle them in other ways or dispose of them.

III. Background

Under Subtitle C of RCRA, a solid waste is a hazardous waste if it exhibits one or more of the characteristics of ignitability, corrosivity, reactivity, or toxicity in 40 CFR part 261, subpart C, or if it is a listed hazardous waste in 40 CFR part 261, subpart D. The RCRA regulations set forth requirements for hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities (TSDFs). Generators are required to determine whether their waste is hazardous, either by testing the waste or applying their knowledge of the waste in light of the materials or processes used (see 40 CFR 262.11). EPA regulations also contain exclusions for certain materials from the definition of solid waste or hazardous waste (40 CFR 261.4(a) and (b)). In addition, the Agency has developed streamlined rules for particular wastes, including recyclable wastes (40 CFR part 266) and universal wastes such as batteries, pesticides, mercury-containing equipment, and lamps that are widely generated by different industries (40 CFR part 273).

CRTs are vacuum tubes, made primarily of glass, which constitute the video display components of televisions, computer monitors, and other electronic devices. Other types of CRTs include medical, automotive, oscilloscope, appliance, and military and control tower CRTs. A CRT is assembled into a monitor, which includes several other parts, such as a plastic cabinet, electromagnetic shields, circuit boards, connectors, and cabling. The preamble to the proposed rule provides more detailed information on the nature of the industry (see 67 FR 40509).

Manufacturers generally employ significant quantities of lead in the glass used to make color CRTs. Televisions and color computer monitors contain an average of four pounds of lead (the exact amount depends on the size and make). Lead is a toxic metal that can cause delayed neurological development in children and other adverse health effects in adults, including increased blood pressure, nephritis, and cerebro-vascular disease. It is reasonably anticipated to be a human carcinogen. See, e.g., Iris Database Toxicity Profile No. 0277: Lead and Compounds (Inorganic), EPA 2004 [1] and 53 FR 31522, August 18, 1988. The amount of lead used by some manufacturers appears to be decreasing. However, according to recent studies performed at the University of Florida, most color CRTs leach lead in the TCLP test at concentrations above the TC regulatory level of 5 milligrams per liter (mg/l). In one study, Musson *et al.* (2000) found that 21 of 30 color CRTs tested exceeded the TC value, with an average lead level of 22.2 mg/l in TCLP leachate.[2] In a 2004 study,[3] the average concentration of lead in leach tests of color computer

[1] *http://www.epa.gov/iris/subst/0277.htm.*

[2] Characterization of Lead Leachability from Cathode Ray Tubes Using the Toxicity Characteristic Leaching Procedure, Stephen Musson et al., Department of Environmental Engineering Sciences, University of Florida, Environmental Science and Technology, Vol. 34, no. 20, 2000. The investigators in this study also believed that variability in the subsampling technique used in the study (neck, funnel and face glass were all tested separately) led to an underestimate of lead leachability. Additional testing showed that the glass frit used to seal the face to the funnel, and which has a very high total lead concentration, was undersampled. The investigators concluded that CRT subsampling that included a representative amount of the frit would have resulted in all 30 of the color CRTs exceeding the TC regulatory value of 5 mg/l in the TCLP.

[3] *www.ees.ufl.edu/homepp/townsend/Research/ElectronicLeaching/default.asp.*

monitors [4] was 47.7 mg/l. These levels are considerably above the toxicity characteristic regulatory level of 5 mg/l that is used to classify lead-containing wastes as hazardous (40 CFR 261.24(b)). This result is not surprising because CRT glass generally accounts for over 60 percent of the weight of the monitor. The 2000 Musson *et al.* study also showed that for monochrome CRTs, the average lead leachate concentration was 0.03 mg/l. These data appear to indicate that black and white monitors do not generally fail the TC. Other hazardous constituents sometimes present in CRT glass are mercury, cadmium, and arsenic. However, these constituents are found in very low concentrations that are unlikely to exceed the TC concentration limits.

From 1994 through 1998, EPA's Common Sense Initiative (CSI) explored the environmental regulation of six industry sectors and looked for ways to make environmental regulation "cleaner, cheaper, and smarter". The CSI Computers and Electronics Subcommittee (CES) formed a workgroup to examine regulatory barriers to pollution prevention and electronic waste recycling. The workgroup explored the problems of managing mounting volumes of outdated computer and electronics equipment.

As a result of the finding of the CES Subcommittee, the CSI Council issued a document titled *Recommendation on Cathode Ray Tube (CRT) Glass-to-Glass Recycling.* In this document, the Council recommended streamlined regulatory requirements for CRTs to encourage recycling and better management. The recommendations included streamlined requirements for packaging, labeling, and transportation; general performance standards for glass processors; and export provisions. The CSI Council also recommended an exclusion from the definition of solid waste for processed glass that is used to make new CRT glass.

Since the recommendations of the CRT Council, the recycling of CRTs and CRT glass has evolved and various stakeholders have made occasional suggestions to the Agency about how to address changing practices.

IV. Rationale for This Rule and Response to Comments

A. Used, Intact CRTs Sent for Recycling

Used, intact CRTs are CRTs remaining within the monitor whose vacuum has not been released. In its June 12, 2002 notice, the Agency proposed to exclude these materials from the definition of solid waste, unless they were disposed. These materials, when sent for recycling, would not have been subject to regulation under RCRA Subtitle C, including the speculative accumulation limits of 40 CFR 261.1(c)(8) (see also 40 CFR 261.2(c)(4)). Under the proposal, used, intact CRTs could therefore have been held for long periods of time without being considered abandoned and thereby becoming solid wastes.

EPA determined that intact CRTs are highly unlikely to release lead to the environment because the lead is contained in the plastic housing and the glass matrix (see 67 FR 40513). Because of this low likelihood of release, EPA proposed reduced requirements for used, intact CRTs by excluding them from the definition of solid waste. Unused CRTs are already considered commercial chemical products which are excluded from the definition of solid waste when recycled, even if they are reclaimed or speculatively accumulated (see 50 FR 14219, April 11, 1985). Used and unused intact CRTs are identical in appearance. Consequently, it would be difficult to distinguish between used and unused intact CRTs destined for recycling, and there appeared to be no environmental basis for such a distinction.

The Agency continues to believe that lead contained in used, intact CRTs is generally unlikely to be released to the environment. However, views expressed by commenters have led the Agency to change the proposed speculative accumulation requirements for these materials. Today's rule provides that used, intact CRTs are subject to the speculative accumulation requirements of 40 CFR 261.1(c)(8) if they are accumulated by glass processors or collectors (see 40 CFR 261.4(a)(23)(i)). Today's rule also modifies requirements applicable to used, intact CRTs that are exported. The export requirements are discussed in a separate section below. Following are the significant comments received, and our responses.

Response to Comments

Commenters were divided about imposing speculative accumulation requirements on used, intact CRTs. Some commenters supported our proposal to impose no accumulation limits on intact CRTs. These commenters claimed that intact CRTs being recycled were more commodity-like than waste-like, and that there is virtually no possibility of environmental releases from intact CRTs. One commenter said that intact CRTs are likely to be stored in containers or buildings, at least while they have resale value.

Other commenters, particularly States, wanted to subject used, intact CRTs to the speculative accumulation provisions because they were concerned about the possibility of abandonment. However, one commenter stated that this problem might be better addressed under state solid waste authorities than under federal law.

The Agency agrees with those commenters who expressed concern about potential abandonment of used, intact CRTs, particularly by glass processors and by persons who collect CRTs for recycling. Although broken CRTs and processed CRT glass are likely to pose a greater immediate risk of environmental releases, we believe that this possibility also exists for intact CRTs that are stored for long periods of time, particularly if a collector of such materials abandons them instead of sending them for recycling. Such indefinite storage, in the Agency's view, indicates that the materials are waste-like rather than commodity-like in nature.

EPA has also reconsidered its earlier statement that it is very difficult to distinguish between unused and used intact CRTs. The two types of materials are not normally stored together. Unused intact CRTs are generally returned to the manufacturer by consumers or retailers, after which they are sent directly to recyclers. Prolonged storage of unused intact CRTs by consumers, retailers, or manufacturers is unlikely.

Nor do we agree with the commenter who stated that speculative accumulation is better addressed by state solid waste authorities, rather than

[4] The data in this study were generated using a modified version of EPA's TCLP. The authors used a modified TCLP because standard TCLP particle size reduction and waste subsampling for debris-like materials can pose difficulties. In the "Large Scale Leaching Procedure," the computer monitor or television was disassembled and all the parts placed in a large leaching vessel without particle size reduction. Other aspects of the standard TCLP test design (e.g., the 20:1 liquid-solid ratio) were maintained. Particle size reduction is intended to simulate the physical breakdown of wastes over time, and also facilitate achieving equilibrium in an 18-hour leaching period. Such reduction typically increases the leaching of metals in the TCLP, because it increases the surface area exposed to the leaching fluid. However, Townsend showed earlier in this same paper that when the waste contains a significant amount of iron, particle size reduction facilitates iron oxidation and the formation of binding sites on the iron. These oxidized iron binding sites adsorb metals from the leaching solution and can result in lower leaching of metals in the TCLP. However, the CRTs from computers and color televisions contained only small amounts of iron (3% and 6% of the total, respectively) and the authors concluded that the presence of the iron was not a significant factor in the overall results. The Agency agrees with these conclusions. We note that the regular, unmodified TCLP is still the legal standard for classifying materials as hazardous wastes.

federal law. Some state definitions of solid waste are based on the federal definition, and these States would find it more difficult to use their authorities to require removal of abandoned CRTs.

For these reasons, today's rule imposes the speculative accumulation requirements of 40 CFR 261.1(c)(8) on collectors of CRTs and glass processors (see 40 CFR 261.(a)(23)(i)). Speculative accumulation requirements also apply to used CRTs that are exported for recycling (see 40 CFR 261.4(a)(23)(ii) and 261.40)).

However, we are not imposing speculative accumulation requirements on persons who use computers or televisions and then send the intact CRTs to collectors and glass processors. Such persons are not likely to accumulate CRTs in circumstances that will lead to environmental releases, nor is there an economic incentive for them to store intact CRTs indefinitely. Because of the new speculative accumulation requirement, we have also added a definition of "CRT collector" to 40 CFR 260.10 ("a person who receives used, intact CRTs for recycling, repair, resale, or donation").

B. Used, Broken CRTs Sent for Recycling

Labeling and Storage

Some users and collectors of CRTs separate the CRT from its housing and release the vacuum. They then send the monitor with its broken glass to a recycler (often a glass processor). This practice saves shipping costs and enables the glass processor to pay more for the broken CRTs received. At other times, the CRTs are first broken by the processor or other recycler. CRTs whose glass has been broken by releasing the vacuum are non-reusable and non-repairable and therefore could potentially be solid wastes at the time such breakage occurs.

In the proposal, EPA proposed to add a new section (40 CFR 261.39(a)) which provided that used, broken CRTs sent for recycling would not be solid wastes if they were stored in a building with a roof, floor, and walls, or if they were stored in a container (*i.e.*, a package or a vehicle) which was constructed, filled, and closed to minimize identifiable releases of CRT glass (including fine solid materials) to the environment. The containers were to be labeled or marked clearly with one of the following phrases: "Waste cathode ray tube(s)—contains leaded glass," or "Used cathode ray tube(s)—contains leaded glass." The containers must also be labeled "do not mix with other glass materials." When transported, the broken CRTs would have had to be in a container meeting the conditions described above. Used, broken CRTs destined for recycling could not be speculatively accumulated as defined in 40 CFR 261.1(c)(8).

The Agency stated that, if these materials are properly containerized and labeled when stored or shipped prior to recycling, they resemble articles in commerce or commodities more than wastes. Breakage is a first step toward recycling the leaded glass components of the CRT. Also, materials held in conditions that safeguard against loss are more likely to be valuable commodities destined for legitimate recycling. In addition, the proposed packaging requirements would ensure that the possibility of releases to the environment from the broken CRTs is very low. For these reasons, an exclusion from the definition of solid waste was considered appropriate if the broken CRTs were handled under the conditions proposed.

The Agency has decided to promulgate the regulations applicable to storage and labeling of used, broken CRTs substantially as proposed. EPA has determined that used, broken CRTs are not solid wastes if they are sent for recycling within the United States under the conditions specified in 40 CFR 261.39(a)(1)–(4). However, the Agency has made certain modifications to the proposed conditions in response to comments received. These changes are described below. Today's rule also modifies the proposed requirements applicable to used, broken CRTs that are exported. The export requirements are discussed in a separate section below, along with requirements for imports.

Response to Comments

Several commenters suggested changes to our proposed labeling requirements for used, broken CRTs being transported or stored. Some commenters wanted requirements which they believed were more accurate or specific than the ones proposed. For example, under our proposal, processed glass going to certain types of recycling would have to be packaged and labeled identically to used, broken CRTs (see proposed 40 CFR 261.39(d), 47 FR 40525). One commenter pointed out that processed glass can no longer be considered a "cathode ray tube." This commenter therefore suggested that applicable labeling requirements for processed glass be changed to "processed cathode ray tube glass" or "glass removed from cathode ray tubes." Similarly, another commenter stated that used broken CRTs may be in such small pieces that the materials might not be recognizable as "cathode ray tubes." This commenter suggested that a useful alternative requirement (which could be used in addition to our proposed language) would be to label containers of broken CRTs with the phrase "leaded glass" and some indication of the source of the glass—e.g., "leaded glass from televisions." Another commenter pointed out that one of our proposed alternative labeling phrases ("waste cathode ray tubes—contains leaded glass") was not necessary, since the cathode ray tubes would not be wastes if they were packaged and labeled in accordance with the regulations.

The Agency agrees that these suggestions are more accurate than our proposed regulations, and has modified the final rule accordingly. Section 261.39(a)(2) of today's rule specifies that each container in which a used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: "used cathode ray tubes—contains leaded glass" or "leaded glass from televisions or computers."

One commenter urged complete flexibility in labeling requirements. Another suggested that the Agency not specify the exact wording of labels in the regulations, but instead should require that contents be "marked with words that identify the contents of the containers." This latter commenter believed that labelers would then have more discretion and would not be subject to enforcement actions for failing to use the precise words specified in the regulations.

The Agency does not agree with these comments. Requiring no specified words or phrases for labeling in the regulations does not provide sufficient legal notice to either regulators or the regulated community, and could, if anything, lead to more enforcement actions than a precisely worded requirement.

Other commenters believed that several of our proposed requirements were unnecessary. For example, some commenters objected to EPA's proposed requirement that broken CRTs be stored either in a container or a building. One commenter believed that these materials should not be classified as solid wastes if they were stored on a concrete pad or the equivalent, since this practice should be adequate for a coarse solid material which is insoluble in water. Other commenters suggested replacing our proposed requirements with a requirement that storage of CRT glass must take place in "environmentally contained areas (water and particle containment)" or must be "stored in a manner that meets other environmental

regulations that control or limit release to the environment."

EPA disagrees with these comments. In the first place, storing broken CRTs outdoors prior to processing is inconsistent with the premise that these materials are commodity-like, because they can easily be damaged if exposed to excessive wind or moisture, unless they are packaged. Language requiring storage in "environmentally contained areas" is too vague to provide guidance to the regulated community on the measures required to ensure appropriate handling of commodity-like materials. Similarly, a requirement that materials be "stored in a manner that meets other environmental regulations" would be redundant, since they are required to comply with all applicable environmental regulations in any event. Therefore, the final rule does not contain these suggested requirements.

One commenter pointed out that containers holding used, broken CRTs may also hold other portions of electronic equipment such as the plastic housing that contains the CRT. This commenter requested that the Agency clarify that these other associated materials need not be segregated from CRTs during storage. We agree with this commenter that such segregation was not our intent and the rule does not require such segregation.

Speculative Accumulation

In our June 12, 2002 notice, we proposed to require that used, broken CRTs and processed CRT glass be subject to the speculative accumulation provisions of 40 CFR 261.1(c)(8). These provisions generally specify that materials are speculatively accumulated, unless 75 percent of the materials (calculated by weight or by volume) are recycled within a calendar year. We inquired whether a longer accumulation period (such as two or more years) should be provided for CRTs to allow recycling markets to grow, especially since there appeared to be few environmental concerns with storage if these materials are properly packaged and labeled. After evaluating comments received on this issue, we have decided to finalize the speculative accumulation requirements as proposed for used, broken CRTs and processed CRT glass. The comments received, and our responses, are described below.

Response to Comments

Some commenters (principally states) supported the current speculative accumulation provisions for broken CRTs (or, in some cases, the one-year accumulation period of the universal waste rule). These commenters were concerned about the possible environmental effects of a longer accumulation time, and generally believed that the one-year time frame allowed in 40 CFR 261.1(c)(8) was enough to accumulate sufficient quantities for recovery and find outlets for recycling.

Other commenters (generally representing industry) supported extending speculative accumulation requirements for broken CRTs. Some supported extensions of two or more years, and a few wanted no limits at all. These commenters argued that longer time limits would allow persons handling used CRTs to accumulate the materials in larger numbers, which would make shipping less expensive. They also believed that extended speculative accumulation times would allow markets to develop more fully, thus encouraging recycling.

EPA agrees with those commenters who stated that markets are likely to increase for CRT glass. Although some commenters were concerned about lack of markets, these commenters did not submit quantitative data that would be sufficient, in the Agency's view, to justify treating these materials differently from other materials that are excluded from the definition of solid waste on condition that they not be speculatively accumulated. We note that markets for all of these materials frequently fluctuate. For these reasons, we believe that used broken CRTs and processed CRT glass should be subject to the usual requirements that they not be speculatively accumulated.

One commenter suggested extending the speculative accumulation period for processed glass, stating that processed glass must sometimes be stored at glass manufacturing facilities for long periods of time due to the lack of current need for glass with the particular lead content found in the stored glass. However, another commenter supported the use of variances under 40 CFR 260.30(a) to extend accumulation times when necessary for persons developing new glass technologies. We agree with this commenter. Such variances are available on a case-by-case basis if the applicant can demonstrate that sufficient amounts of the material in question can be recycled or transferred for recycling within the following year. The variances can be renewed annually by filing a new application. We note that these variances are available not only to glass processors and to persons developing new glass technologies, but also to any person storing used CRTs who needs additional storage time. Because they are site-specific and allow individual circumstances to be taken into account, the variances are more appropriate than an extension covering many different kinds of facilities.

One commenter stated that since most facilities will rarely encounter broken CRTs, it would be burdensome to try to distinguish them from intact CRTs; therefore, they should be subject to the same speculative accumulation requirements. EPA does not agree with this commenter. If CRTs are to be recycled, they must be broken at some point in order to be disassembled. Nor is it difficult to determine visually whether the vacuum tube on a CRT has been released. In any event, we note that the importance of distinguishing between broken and intact CRTs is not relevant for purposes of speculative accumulation, since under today's rule both are subject to the requirements of 40 CFR 261.1(c)(8).

Another commenter stated that the purpose of the original speculative accumulation provisions was to alleviate concerns about sham recycling and to provide a way to determine storage periods and turnover rates for materials that did not have well-defined markets. Since there are current markets for CRT glass, this commenter reasoned that the speculative accumulation provisions should not apply to these materials. We disagree with this commenter; the speculative accumulation provisions have never been limited to materials with particular types of markets. In any event, markets for most commodities usually change over time.

A few commenters suggested a period shorter than one year for accumulation of used CRTs. Two commenters said that 180 days should be sufficient to allow CRTs to be recycled, and that longer periods could encourage sham operations. These commenters who suggested shorter accumulation times, such as 180 days, did not submit data indicating that CRTs could be effectively recycled in such a short time period. Therefore, we are not adopting these suggestions.

EPA notes that a few commenters may have been confused about the relationship between the current speculative accumulation provisions and the classification of CRTs as solid wastes. The speculative accumulation provisions apply to materials that are not solid wastes at the beginning of the accumulation period; if they are not recycled in sufficient quantities within the specified period, they become solid wastes (and, if they are hazardous waste, subject to all applicable Subtitle C requirements). If used CRTs were classified as spent materials as soon as they were taken out of service, they

would instead be subject to the shorter accumulation times (90 or 180–270 days) allowed for generators of hazardous wastes pursuant to 40 CFR 262.34, rather than the one-year period allowed under 40 CFR 261.1(c)(8).

Use Constituting Disposal

In our June 12, 2002 notice, we proposed a condition prohibiting land placement of processed CRT glass, unless it met the use constituting disposal requirements of Part 266, Subpart C. We solicited comment on whether to impose the same prohibition on broken CRTs as well. We asked for information about the current uses for broken CRTs or processed CRT glass that involved use constituting disposal. We received very little data on this issue, although a few commenters mentioned the use of processed glass in road building materials. Because we have no information about this practice that would justify distinguishing it from use constituting disposal of processed CRT glass, today's rule imposes the same prohibition on both kinds of materials (see 40 CFR 261.39(a)(4) and (d)). We also note that for materials to be used in a manner constituting disposal, such recycling must be legitimate rather than a form of treatment. For guidance in determining such legitimacy, see the Memorandum entitled "F006 Recycling" from Sylvia K. Lowrance to Hazardous Waste Division Directors, April 26, 1989.

C. Used CRT Processing

Requirements for CRT Processors

The Agency also proposed an exclusion from the definition of solid waste for used CRTs undergoing glass processing, if certain conditions were met (see proposed 40 CFR 261.39(b)). CRT glass processing was defined in proposed 40 CFR 260.10 as the receiving of intact or broken used CRTs, intentionally breaking them, sorting or otherwise managing glass removed from CRT monitors, and cleaning coatings from the glass. CRT users and collectors sometimes break CRTs before sending them to a processor. Therefore, under the proposal, breaking used CRTs would not by itself subject a facility to the CRT glass processing conditions. In order to be classified as a CRT glass processor, the facility would have to perform all of the enumerated activities.

Under the proposal, used, broken CRTs undergoing glass processing would not have been solid wastes if they were stored in a building with a roof, floor, and walls. If they were not stored inside a building, they would have to be packaged and labeled under conditions identical to those proposed for used, broken CRTs prior to processing, including the prohibition on speculative accumulation. All glass processing activities would have to be conducted in a building with a roof, floor, and walls. In addition, no activities could be performed during glass processing that used temperatures high enough to volatilize lead from CRTs.

The CSI Council had recommended that glass processors install and maintain systems sufficient to minimize releases of glass and glass particulates via wind dispersal, runoff, and direct releases to soil. We solicited comment in the proposal on whether to require additional performance standards for glass processors. However, we did not propose the general performance standard recommended by the CSI Council, citing the Council's statement that storing broken CRTs and CRT glass in buildings or closed containers (as we proposed) were examples of ways to control wind dispersal, runoff, and direct releases to soil.

We also did not propose the CSI Council recommendation that glass processors implement a procedure for advising local communities of the nature of their activities, including the potential for resident and worker exposure to lead or chemical coatings. We stated our belief that matters of local notice and public participation are generally best decided at the state, county, or municipal level. However, we solicited comment on whether to require such procedures under federal regulations in the case of CRT recycling, and the reasons why these procedures would be needed.

EPA stated, at the time of proposal, that the conditions proposed for used, broken CRTs being processed indicate that the materials in question are more commodity-like than waste-like. Used, broken CRTs that are not managed in accordance with these requirements would not be valuable, product-like materials. The opportunity for loss or releases of the materials would indicate that they are wastes. As specifically recommended by the CSI Council, we also proposed that processors be required to conduct their activities without using temperatures high enough to volatilize lead from broken CRTs. Besides increasing the risk of releases to the environment, such practices could be a sign of waste management rather than production.

EPA has determined that used, broken CRTs being processed under these conditions resemble commodities more than wastes. For this reason, we are finalizing these conditions substantially as proposed. However, we have revised some of our proposed language in response to comments received. Significant comments, our responses, and the changes are discussed below.

Response to Comments

Several commenters believed that our proposed temperature requirement was unnecessary, noting that workers' exposure to lead was already covered by OSHA requirements at 29 CFR part 1910, and that a high temperature (or thermal processing) is not by itself an indication that waste management is occurring. Several commenters stated that lead volatilization and other lead releases would also be covered by applicable provisions of the Clean Air Act and the Clean Water Act. Other commenters supported the proposed temperature requirements, in part because they believed that use of high temperature requirements are in fact an indication of waste management. Some commenters asked EPA to specify a particular temperature, beyond which processing would be prohibited.

EPA agrees with those commenters who believed that CRT processing conducted with high temperatures may indicate waste management, because high temperatures are more likely to release lead and other contaminants into the environment, thereby leading to possible loss of materials. Such waste management could occur even if OSHA requirements apply. We are therefore retaining our prohibition on using temperatures high enough to volatilize lead, as proposed. However, we are not adding a specific temperature to the prohibition because the relevant scientific literature reveals differing temperatures for volatilization of lead, possibly depending on various conditions (see, e.g., Volatilization Studies of a Lanthanide Lead Borosilicate Glass, WSRC–MS–98–00240, R.F. Schumacher, D.S. McIntyre, D.K. Peeler, J.M. Parteizs;[5] and Effect of Heating on the Sintering Behavior and the Piezoelectric Properties of Lead Zirconate Titnate Ceramics, Jungho Ryu, Jong-Jin Choi, and Hyoun-EeKim, Journal of the American Ceramic Society, Vol. 84, No. 4, pp. 902–904, April 2001). We therefore believe that this requirement is more appropriately expressed as a performance standard than as a numeric value.

Some commenters mistakenly thought that the proposed temperature requirement would apply to "end users" of recycled CRT glass such as glass furnaces or smelters. One commenter

[5] *http://sti.srs.gov/fulltext/ms9800240/ms9800240.html.*

asked EPA to impose a performance standard on both CRT processors and glass manufacturers (and presumably smelters as well) that would ensure that no temperatures would be employed that released toxic metals into the work environment or the surrounding air. Another commenter suggested requiring that CRT processors be required to monitor for fugitive emissions of lead, silica, and mercury. The Agency does not agree with those commenters who suggested additional requirements for glass manufacturers and smelters, or emissions monitoring for CRT processors. EPA did not solicit comment on any of these measures and they are inappropriate for commodity-like materials. They could also be duplicative of requirements that are already applicable under OSHA, the Clean Air Act, the Clean Water Act, and RCRA.

One commenter stated that EPA's proposed requirement that CRTs undergoing processing be stored (unless packaged) in a building "with a roof, floor, and walls" could lead to placing CRTs in locations with inadequate containment. This commenter suggested replacing the Agency's proposed requirement with a provision calling for "storage within a permanently constructed building consisting of at least a roof and three walls permanently affixed to an impermeable floor placed on the ground."

We remain unconvinced that such requirements are necessary for buildings where CRTs are processed. For example, it is not clear that CRT processing would pose environmental risks (or that CRTs would be handled as wastes instead of commodities) if such processing work took place in a temporary building, since no liquids are involved in the processing. We also note that spills or releases would in any event be considered solid wastes.

One commenter disagreed with EPA's statement in our proposal that persons who break CRTs before sending them to processors should not be subject to our proposed conditions for CRT glass processing. Breaking CRTs and separating components constitute reclamation and should require a permit, according to this commenter.

EPA disagrees that breaking CRTs and separating components should require a permit. These actions may be performed by almost anyone sending a CRT to a recycler. The requirements of 40 CFR 261.39(a) concerning storage, transportation, labeling, and speculative accumulation are adequate to ensure that broken CRTs are handled as commodities; there is no need to impose other subtitle C requirements required under 40 CFR parts 264 and 265. Nor is there a need to subject persons who merely break CRTs to the provisions concerning high temperature activities. The Agency does not necessarily disagree with the commenter that breaking CRTs and separating the components constitutes reclamation. Nevertheless, when a person receives broken CRTs that are packaged and labeled in accordance with today's rule, the materials are commodity-like and the person or facility in question should not have to comply with the provisions of a hazardous waste storage permit. Moreover, EPA generally does not regulate reclamation processes themselves. States are of course free to impose more stringent requirements if they believe such requirements are justified.

Some commenters urged that EPA impose environmental management standards, emissions and ventilation standards, notification requirements, recordkeeping and tracking of wastes, employee training, and worker health and safety protections. Some of these commenters suggested that these requirements should also be applicable to persons sending CRTs for recycling, as well as processors. Some suggestions were substantially identical to certain practices required under the universal waste rule, such as employee training, container standards, notification, and tracking. Other commenters, however, suggested requirements that were much more stringent than those applicable to universal waste handlers. For example, a few commenters said that additional worker health and safety provisions were needed under our rule, and one commenter expressed concerns that the OSHA permissible exposure limits (PELs) at 29 CFR part 1910 do not apply to handlers of materials that are not solid wastes.

We have responded elsewhere in this notice to those commenters who argued that the Agency should impose the universal waste requirements of notification, tracking, and employee training on CRT processors. With respect to OSHA requirements, we disagree with the commenter who said that the worker health and safety provisions of that statute do not apply to people handling materials that are not solid wastes; the permissible exposure limits (PELs) of section 1910 of the OSHA regulations are not tied to EPA's RCRA definitions. Additional worker health and safety requirements are not necessary.

Some commenters, on the other hand, believed that several of our proposed requirements were unnecessary. For example, some commenters objected to EPA's proposed requirement that broken CRTs be stored either in a container or a building. One commenter believed that these materials should not be classified as solid wastes if they were stored on a concrete pad or the equivalent, since this practice should be adequate for a coarse solid material which is insoluble in water. We continue to believe, however, that storing broken CRTs outdoors prior to processing is inconsistent with the premise that they are commodity-like, since they can easily be damaged by excessive moisture or wind unless they are packaged. The same is true for processing CRTs outdoors, even if the processing takes place on a concrete pad. However, we note that under today's rule, intact CRTs may be stored on concrete pads or on the ground without packaging and labeling (see 40 CFR 261.4(a)(23)). In the case of intact CRTs, packaging or storage in a building is generally not necessary to minimize releases to the environment, since the CRTs are contained in their housing. However, if prolonged storage outdoors renders the CRTs unfit for recycling, they would become solid wastes, subject to full Subtitle C regulation provided they were also hazardous wastes. In addition, the exclusion in today's rule does not affect the obligation to respond to and remediate any releases of hazardous wastes that may occur.

Other commenters suggested replacing our proposed requirements with a requirement that processing and storage of CRT glass must take place in "environmentally contained areas (water and particle containment)" or must be "stored in a manner that meets other environmental regulations that control or limit release to the environment." EPA disagrees with this suggestion because requiring processing to be conducted in "environmentally contained areas" is too vague to provide guidance to the regulated community on the measures required to ensure that they are handled in a commodity-like manner. Similarly, a requirement that materials be "stored in a manner that meets other environmental regulations" would be redundant, since they are required to meet other applicable environmental regulations in any event.

With respect to public notice requirements (which we did not propose), many commenters argued that such notice for CRT processing operations should be conducted pursuant to pre-existing state and local requirements, and should not be imposed as a function of our proposed conditional exclusion. Some commenters pointed out that local notice and public meetings are governed

by various state or local requirements concerning siting, zoning, or licensing. They believed that matters of local notice and public participation are generally best decided at the state, county, or municipal level. One commenter pointed out that additional opportunities for public involvement are also afforded under existing federal laws, such as the Emergency Planning and Community Right-to-Know Act and, in the case of potential worker exposures, the Occupational Safety and Health Act. This commenter feared that imposing additional requirements for public notice could increase costs for CRT processors, thereby undermining the goal of CRT recycling.

Other commenters, however, supported the CSI Council recommendation that glass processors be required to notify local communities of their activities. They thought that a federal public notice requirement was important for the health and well-being of communities that house CRT glass processors. They also believed that workers at these facilities should know of any health or safety risks involved with their daily activities. One commenter stated that it was not sufficient to defer to local authority to provide notice, and that such notice was a federal responsibility that must be retained.

In response to these comments, EPA continues to believe that federal public notice requirements for CRT recycling are unnecessary. In general, we have not mandated such requirements for hazardous waste recycling facilities, unless they obtain RCRA permits for storage of hazardous waste prior to recycling. Since glass processors are managing materials that are commodity-like if handled pursuant to today's conditions, it would be inappropriate to impose the same public notice requirements that are imposed on facilities that store hazardous wastes. In addition, the public may learn of these facilities through other notices or filings at the state, county, or municipal level.

Some commenters appeared to believe (incorrectly) that our proposal would have required processed glass to be packaged or stored in a building. However, we note that under the proposal (and under today's final rule) processed CRT glass sent to a CRT glass manufacturer or to a lead smelter would not have to be either packaged or stored in a building (see 40 CFR 261.39(c)). Under today's final rule, processed glass sent to other kinds of recycling need not be packaged or labeled if it is legitimately reused as an effective substitute for a commercial chemical product (this exclusion is explained further later in today's notice).

Even though we are not significantly modifying our proposed requirements for glass processors, we believe that some of our proposed language could benefit from clarification. We are therefore revising some of this language. First, we note that the proposed storage requirements for broken CRTs prior to processing (storage in a building or in a properly labeled container) would also have applied under our proposal to CRTs actually undergoing processing. This application was not our intent because CRTs cannot physically remain in a container while being processed. Therefore, we are revising proposed 40 CFR 261.39(b) to remove the reference to labeling and placement in a container. Used broken CRTs undergoing processing need only be stored in a building, and may not be speculatively accumulated.

Second, we note that one of the activities encompassed in today's definition of "CRT processing" at 40 CFR 260.10 ("receiving broken or intact CRTs") generally need not (and sometimes cannot) take place in a building. We are therefore removing our proposed requirement that all CRTs be "processed within a building." Instead, today's rule requires that "all activities specified in paragraphs (2) and (3) of the definition of "CRT processing" in 40 CFR 260.10 must take place within a building." This means that only breaking or separating CRTs, or sorting or otherwise managing glass removed from CRT monitors, must be performed in a building. Actual receipt of the CRTs may occur outside.

Exclusions for Processed CRT Glass

Under the proposal, processed glass from used CRTs would be excluded from the definition of solid waste if it were sent for recycling to a CRT glass manufacturer or a lead smelter (40 CFR 261.39(c)). If it were sent to any other kind of recycling, it would be excluded if it were stored, labeled, and transported similarly to used, broken CRTs (40 CFR 261.39(d)). In neither case could the processed glass be speculatively accumulated. If it were used in a manner constituting disposal, all processed glass from used CRTs would have to comply with the storage, labeling, and transportation requirements applicable to used, broken CRTs and the applicable requirements of 40 CFR part 266, subpart C.

In the proposal, we explained that processed glass from used CRTs destined for a CRT glass manufacturer or a lead smelter meets the regulatory criteria in 40 CFR 260.31(c) for a variance from the definition of solid waste. Accordingly, the Agency decided that the resulting material is commodity-like and should be excluded from the definition of solid waste. In particular, the Agency tentatively found that processed CRT glass sent to glass manufacturers or lead smelters needs minimal further processing and has economic value and strong end markets. We also found that processed CRT glass is similar to materials that glass manufacturers and lead smelters use as feedstock, and that it is handled to minimize loss. For a more complete discussion of these criteria and the Agency's findings, see the proposal at 67 FR 40514. As noted below, no comments on these findings have caused the Agency to change them, so we are adopting them as final. We also believe that recycling CRT glass at lead smelters appears to be just as legitimate as glass-to-glass recycling, and that an exclusion for this material could turn out to be useful if the growing use of flat screens decreases the potential for glass-to-glass recycling.

The Agency solicited comment on whether processed glass destined for lead smelters should be eligible for the exclusion. Processed glass is sent to lead smelters for reclamation of lead and also for use as a flux agent (to promote fusing of metals or to prevent the formation of oxides). The Agency also solicited comment on whether to exclude processed glass from the definition of solid waste without packaging and labeling requirements if it were sent to copper smelters for use as a flux agent. In addition, we solicited comment on an identical exclusion for processed glass sent for recycling into other glass materials, such as optical beads, decorative objects, radiation shielding materials, and acoustic barriers. We requested information from commenters about whether processed CRT glass sent for these glass uses or to copper smelters was commodity-like.

After evaluating all comments received, the Agency is retaining our exclusion for processed CRT glass sent to glass-to-glass manufacturers and lead smelters as proposed. Processed glass sent to copper smelters and other glass uses is not a solid waste if it is legitimately used or reused without reclamation as an effective substitute for a commercial product, or as an ingredient in an industrial process to make a product pursuant to 40 CFR 261.2(e)(1)(i) or (ii)). Processed glass sent for any of these types of recycling may not be speculatively accumulated. If it is used in a manner constituting disposal, all processed glass from used CRTs must comply with the storage,

labeling, and transportation requirements applicable to used, broken CRTs and the applicable requirements of 40 CFR part 266, subpart C. In order to be eligible for today's exclusion, importers of processed glass from used CRTs must comply with these requirements as soon as these materials enter the United States.

The significant comments received on this issue and our response to them are described below.

Response to Comments

Commenters who addressed the issue of CRT glass sent to lead smelters generally supported our proposed exclusion from the definition of solid waste for processed glass sent to this destination (without packaging and labeling requirements). These commenters thought that CRT glass sent to lead smelters (for reclamation and use as a flux agent) is commodity-like. Because the Agency agrees with these comments, and for the reasons stated in the proposal (see 67 FR 40514), we find that processed CRT glass is commodity-like and we are finalizing the exclusion at 40 CFR 261.39(c) as proposed.

One commenter believed that the Agency should allow processed glass to be sent to glass manufacturers or lead smelters without any conditions, including those for speculative accumulation. This commenter noted that processed glass sent for these uses already fit the criteria for a "partially reclaimed" variance from the definition of solid waste under 40 CFR 260.31(c); hence, no conditions should be required. The Agency disagrees with this commenter. Even if the processed glass meets the criteria for the variance in question, the speculative accumulation requirement is necessary to ensure that the materials are actually recycled and not abandoned. We also note that the conditions under which such variances are granted are site-specific and vary according to circumstances. They frequently include conditions relating to storage and land disposal.

A few other commenters believed that our proposed exclusions for processed CRT glass were unnecessary, since processed glass sent to a lead smelter is used directly as an ingredient in a production process, and would therefore qualify for the use/reuse exclusion at 40 CFR 261.2(e). Alternatively, they said that if reclamation is required, the glass would be a characteristic by-product destined for reclamation, which again would not be a waste, unless speculatively accumulated (see 40 CFR 261.2(c)(3) and (4)).

Although the Agency has not specifically addressed the regulatory status of processed CRT glass sent to smelters, we note that these commenters' interpretations do not appear to be consistent with previous regulatory interpretations or with regulatory definitions (see the Response to Comment document in the rulemaking record for further discussion of the regulatory interpretations and definitions). In any event, the more specific regulatory exclusions promulgated today for CRT glass provide greater clarity to the regulated community than the more general provisions cited by the commenter.

Some commenters, on the other hand, objected to allowing CRT glass to go to smelters without additional controls. One commenter cited financial and environmental problems caused by smelters located in the commenter's state, and another believed that CRT glass should be restricted from going to smelters because it could lead to an increase in lead air emissions or lead content in the slag from these facilities.

EPA does not agree with the commenter who cited general concerns about smelters as a rationale for restricting processed CRT glass sent to these facilities. The commenter was concerned about financial and environmental problems caused by smelters in one state and did not tie these concerns to the use of processed CRT glass. EPA believes that these concerns are outside the scope of this rulemaking, and that they should be addressed, if necessary, in the context of rulemakings applicable specifically to smelters.

Many commenters supported allowing a similar exclusion for processed glass sent to copper smelters. They pointed out that such glass is used as a flux agent in a very similar manner at copper smelters, and that it seems unjustified to impose different conditions on materials destined for virtually identical uses. One commenter noted that at least one copper smelter has product specifications for recycled flux materials spelled out in its authority to operate issued by the relevant government agency. The specification includes a minimum flux value and maximum contaminant level. The commenter stated that CRT glass met these criteria.

Another commenter pointed out that virgin copper concentrate already contains approximately 1% lead. Therefore, lead is a constituent that is already present in the copper smelting process and is already being managed in process residues. According to this commenter, the use of processed CRT glass will not significantly increase the amount of lead already resulting from the copper smelting process and being managed in the slag or air pollution control sludge.

Some commenters were also concerned about the capacity of CRT glass manufacturers to absorb the large volume of CRT glass that is generated in this country. They urged the Agency to take this concern into account and encourage recycling by allowing similar exclusions for processed CRT glass sent to glass manufacturing, lead smelting, or copper smelting.

The Agency agrees with those commenters who pointed out that the degree of processing that is required for use in a copper smelter appears to be the same as that required for use in a lead smelter. The economics also may be similar for fluxes used in both kinds of smelters. Processed glass is composed mainly of silica, which is useful as a flux, although lead is not recovered when CRT glass is used as a flux at a copper smelter. Nevertheless, the Agency has been unable to confirm that CRT glass is accepted at actual copper smelters. For this reason, we cannot currently make a finding that CRT glass sent to copper smelters is commodity-like, and we are not finalizing our proposed exclusion. However, we note that if the processed CRT glass were legitimately used or reused without reclamation as an effective substitute for a commercial product (i.e., as a flux agent), it could be excluded as an effective substitute for a commercial product under 40 CFR 261.2(e)(ii) (see letter from Michael Shapiro to Christian Richter of the American Foundrymen's Society, March 8, 1995).

With respect to processed CRT glass sent for recycling into other glass uses, commenters were divided. Some believed that these uses were likely to be commodity-like; others disagreed. Commenters submitted very little data about these uses. Since the Agency has at present very little information about their status as commodities, we are not finalizing our proposed exclusion. However, similarly to the case of processed glass sent to copper smelters, if the glass is legitimately used or reused as an effective substitute for a commercial chemical product, or used as an ingredient in an industrial process to make a product (provided the materials are not being reclaimed), it could be excluded from the definition of solid waste under 40 CFR 261.2(e)(i) or (ii).

D. Exports and Imports

Under the June 12, 2002 proposal, exporters of used CRTs for reuse or

recycling would not have been required to submit any notifications prior to export. Processed glass imported into the United States would be excluded if it complied with the proposed conditions. Because the imported processed glass would not be a hazardous waste if it met the conditions of the exclusion, it would not be subject to the hazardous waste import requirements of subpart F of 40 CFR part 262. The CSI Council had recommended that entities exporting CRT and CRT glass be subject to various notice and consent provisions, depending on whether the CRT glass was coated or uncoated and on the destination of the materials (for a complete description of the CSI recommendations, see the proposal at 67 FR 40516). For example, the CSI Council recommended that CRTs and coated CRT glass should be subject to the same notice and consent provisions as exporters of hazardous waste in subparts E or H of 40 CFR part 262.

In our proposal, the Agency stated its belief that we did not have legal authority to require notification under 40 CFR part 262, subparts E and H, or the authority to require additional notifications, for CRTs or CRT glass that were not solid wastes because they were in compliance with our proposed conditions. We noted that if used CRTs were added to the universal waste program, we would have the authority to require notification at least for exported broken CRTs. We solicited comment on whether the need for export notification requirements recommended by the CSI would warrant adding used CRTs to the universal waste program, and whether these requirements would be unduly burdensome.

EPA's proposal elicited many comments and some additional data on the export of CRTs for recycling. These comments and data convinced us that exported CRTs often are not handled as valuable commodities. For this reason, we have reconsidered our earlier position about imposing notification requirements on exports. Therefore, today's rule requires exporters of CRTs for recycling to comply with the notice and consent requirements that are similar to those found in 40 CFR part 262, subparts E and H for exports of hazardous waste. The rule also requires exporters of CRTs for reuse to submit a one-time notification to EPA. In order to be eligible for today's exclusion, importers of used, broken CRTs must comply with the packaging, labeling, and speculative accumulation requirements of 40 CFR 261.39(a)(1)–(4) as soon as the materials enter the United States.

The new export requirements, significant comments received, and our responses to the comments are described in more detail below.

Response to Comments

Many commenters who addressed this question expressed concern about exporting CRTs and other electronics for recycling, especially to developing countries. These commenters argued that our proposed rule would exacerbate the effects of market dynamics, lack of existing regulatory controls, and the absence of a domestic recycling infrastructure and would increase the amount of electronic waste that is shipped abroad and managed inappropriately (see also the report entitled Exporting Harm: The High-Tech Trashing of Asia, prepared by the Basel Action Network and the Silicon Valley Toxics Coalition, February 25, 2002). One commenter further argued that our proposal would prevent the growth of a domestic electronics recycling industry by making it easier to export electronics.

To address such concerns, some commenters suggested that the Agency adopt notice and consent procedures for exported CRTs similar to those currently found at 40 CFR part 262, subparts E and H for exports of hazardous waste. Some of these commenters said that EPA should impose notification requirements on exported CRTs as an additional condition of the exclusion from the definition of solid waste. They believed that the Agency has adequate authority to impose such conditions without adding these materials to the universal waste rule.

After evaluating these comments, the Agency has decided to impose notice and consent requirements as a condition of today's exclusion from the definition of solid waste on CRTs exported for recycling. The comments, and data submitted by the commenters, have convinced us that unfettered export of CRTs for recycling could lead to environmental harm. Information in the record shows that exported electronics may not be handled as valuable commodities in foreign countries. In fact, there is documentation that they are sometimes managed so carelessly that they pose possible human health and environmental risks from such practices as open burning, land disposal, and dumping into rivers. Notice and consent requirements mean that the receiving country will be informed of the proposed export, after which the country may consent or not, based on its analysis of whether the receiving facility can properly recycle the CRTs as commodities in an environmentally sound manner. EPA has therefore decided to ensure that the importing countries are able to consent (or withhold consent) when CRTs are proposed to be recycled within their borders.

EPA believes that sections 2002, 3002, 3007, and 3017 of RCRA provide authority to impose this condition, because used CRTs sent abroad are sufficiently waste-like to justify this requirement, and because notice and consent help ensure that the CRTs are not discarded. We have therefore reconsidered our earlier position (discussed in the preamble of our proposed rule at 67 FR 40516) about imposing notice and consent requirements on CRTs exported for recycling. EPA has the authority to ensure that CRTs exported for recycling are handled in a manner consistent with commodity-like status.

EPA considered simply requiring exporters of CRTs for recycling to comply with the current notice and consent requirements in 40 CFR part 262. These requirements, however, rely on the hazardous waste manifest and other Subtitle C provisions that EPA is not imposing on used CRTs. Consequently, we are promulgating separate (although very similar) export requirements that will apply exclusively to conditionally exempt CRTs exported for recycling. In addition, the notice and consent requirements promulgated today do not apply to processed glass that is exported, since there is no information available to us indicating that this material is not handled as a commodity when exported.

Under today's rule, used CRTs exported for recycling are not solid wastes provided the exporter notifies EPA and obtains a subsequent written consent forwarded by EPA from the receiving country. The provisions that we are promulgating today in 40 CFR 261.39(a)(5)(i)–(ix) and 40 CFR 261.40 require exporters of used CRTs destined for recycling (whether broken or intact) to notify EPA of an intended export 60 days before the initial shipment is intended to be shipped off-site. The notification may cover export activities extending over a 12 month or shorter period. The notification must include contact information about the exporter and the recycler, including any alternate recycler. The notification must include a description of the manner in which the CRTs will be recycled. It must also include the frequency and rate at which CRTs will be exported, the period of time over which they will be exported, the means of transport, the estimated total quantity of CRTs, and information

about transit countries through which the CRTs will pass. Notifications must be sent to EPA's Office of Enforcement and Compliance Assurance, which will notify the receiving country and any transit countries. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward the written consent to the exporter. The exporter may proceed with shipment only after he has received a copy of the written consent from EPA. If the receiving country does not consent to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries. Exporters must keep copies of notifications and consents for a period of three years following receipt of the consent.

EPA has decided to require exporters of used, intact CRTs sent abroad for recycling to meet the same requirements as those applicable to exporters of used, broken CRTs. Although used, intact CRTs are more commodity-like than used, broken CRTs, they are more likely to be exported, and information in the record does not indicate that they are less likely to be discarded or handled as low-value materials abroad. We believe that used, intact CRTs are sufficiently waste-like when exported for recycling to be subject to a condition requiring notice and consent prior to export. Notice and consent help ensure that the CRTs are not discarded.

Some commenters urged EPA to forbid all exports of CRTs to developing countries. EPA does not agree with this suggestion because RCRA does not provide the authority to unconditionally ban exports of solid and hazardous wastes if the exporter complies with the existing regulatory requirements governing the export of these materials. We also disagree with this suggestion for practical reasons. Such a ban would prevent even the safe recycling of hazardous wastes abroad and would discourage resource recovery and reuse.

Some commenters believed that our proposed rule was inconsistent with various international agreements involving the export of hazardous waste. In particular, one commenter stated, the proposal is inconsistent with legal obligations under the treaty law of the Organization for Economic Cooperation and Development (OECD), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the Stockholm Declaration. As noted above, the Agency is sympathetic to concerns about the potential risks of exporting CRTs for recycling. Therefore, to ensure that CRTs exported for recycling are handled in a manner consistent with commodity-like status, we are requiring that these materials be subject to the notice and consent requirements described in detail above. We believe that these requirements address most of this commenter's concerns. The Response to Comment document in the record to this rulemaking addresses these concerns in more detail.

Other commenters argued that notice and consent requirements, besides being unnecessary, were likely to discourage the export of CRTs for desirable recycling by making such export more burdensome. Another commenter noted that glass recyclers need to sell recovered CRT glass to developing countries, because the volume of obsolete CRT equipment will increase just as the domestic demand for CRT glass parts will be reduced because of new technology such as flat panel screens.

We disagree with those commenters who said that an export notification and consent requirement would be burdensome. The Agency estimates that these requirements will impose a burden of approximately four hours per year (on average) per respondent. We believe that this burden is not excessive especially since it helps ensure that exported CRTs are handled in ways consistent with an exclusion from the definition of solid waste. We also do not believe that these requirements will significantly affect the quantity of CRTs or CRT glass exported for recycling, since the relative amount of such materials recycled domestically and abroad depend principally on other economic factors.

One commenter suggested (in lieu of a notice and consent procedure) that EPA require exporters to keep records, such as shipping papers, that would allow tracking of CRT shipments or the amount paid by the shipper for the material. The Agency has rejected this approach because it would not give notice to the receiving country, nor would it give the country the opportunity to refuse consent to a shipment. It is therefore not sufficient to ensure that the material is treated as a commodity. The receiving country should be notified to help ensure that the CRTs will be recycled in an environmentally sound manner. Requiring an exporter to show evidence of payment would not involve the receiving country, and would thus not be a sufficient requirement.

The Agency notes that intact CRTs exported for reuse are identical in appearance to those exported for recycling. Consequently, to help ensure that the intact CRTs are actually reused abroad, we are requiring persons who export used, intact CRTs for reuse to submit a one-time notification to the Regional Administrator with contact information and a statement that the notifier plans to export used, intact CRTs for reuse. These notifications will allow regulatory authorities to contact the notifier, when appropriate, to ask for verification that the CRTs are exported for reuse instead of recycling or disposal. These persons must keep copies of normal business records demonstrating that each shipment of exported CRTs will be reused, and this documentation must be retained for three years from the date the CRTs were exported. Examples of normal business records include those that document the transfer of used equipment to the consignee for reuse, including name and address of the consignee, description of the shipment, and conformance with any product specifications, as well as the amount paid (if any) for the exported material. We believe that our right to require such basic notification is inherent in our authority to regulate discarded materials, and in our RCRA section 3007 authority to obtain information pertaining to materials that may become solid or hazardous wastes. Because a one-time notification is adequate to give the Regional Administrator notice about persons who are exporting for reuse, additional notifications are not necessary each time CRTs are exported for this purpose.

E. Universal Waste

In our June 12, 2002 notice, the Agency proposed a conditional exclusion from the definition of solid waste for used CRTs and CRT glass being recycled. However, we also solicited comment on the alternative approach of adding these materials to the universal waste rule. In particular, we requested comment on whether various universal waste requirements would be appropriate or burdensome for glass processors, or collectors who send used CRTs or CRT glass to these processors. The universal waste requirements in question were employee training, notification of universal waste management activities, and tracking of shipments sent and received. After evaluating all comments, the Agency has decided to retain the proposed conditional exclusion from the definition of solid waste for used CRTs and processed CRT glass, instead of adding these materials to the universal waste rule. Significant comments, our responses, and the rationale for the final rule are explained below.

Response to Comments

Some states and many industry commenters (such as those from the electronics industry) supported the proposed conditional exclusion and did not want EPA to add used CRTs to the universal waste rule. These commenters agreed with the Agency that used CRTs, when managed under the proposed conditions, resemble commodities more than wastes. They argued that adding CRTs to the universal waste scheme would harm the developing infrastructure for electronics recycling by imposing greater burdens and reducing flexibility. According to these commenters, classifying CRTs as hazardous waste would create a "stigma" that would make retailers or collectors reluctant to participate in recycling programs. One state said that adding used CRTs to the universal waste rule would make virtually any business with computers or televisions a potential hazardous waste generator, with negative implications for program implementation and enforcement.

They also believed that the universal waste requirements mentioned above were unnecessary for used CRTs because these materials pose minimal environmental risks. A few commenters feared that glass processors could be classified as "destination facilities" which could possibly need a RCRA storage permit, thereby frustrating CRT recycling goals. Finally, they questioned whether processed glass met the criteria for addition to the universal waste rule because it is not "widely generated."

On the other hand, other commenters, including several states, supported these requirements and suggested that EPA add used CRTs to the universal waste rule. These commenters generally noted that CRTs fit the regulatory criteria for universal waste at 40 CFR part 273, and cited the familiarity of stakeholders with this rule. Some of these commenters argued that keeping CRTs within the universe of hazardous waste would ensure better oversight by regulatory authorities than would a conditional exclusion from the definition of solid waste.

One commenter pointed to the significant amounts of lead contained in many CRTs, and disputed the Agency's assertion that leaded glass from CRTs resembled a commodity more than a waste. This commenter believed that the universal waste rule would ensure more responsible management of such a potentially harmful substance. In particular, this commenter urged imposing the requirements in the universal waste rule for employee training, release response, packaging, labeling, notification, and accumulation time limits. Some states were also concerned about speculative accumulation, and supported the one-year accumulation limit for universal waste. Others preferred the universal waste requirements because 40 CFR 273.17 and 273.37 require universal waste handlers to contain all releases.

According to several commenters, the streamlined requirements of the universal waste rule would also encourage recycling. One commenter believed that adding CRTs to the universal waste rule would facilitate improved voluntary management of CRTs from households or CESQGs, since the universal waste rule specifically allows wastes from these sources to be managed as universal wastes.

After considering these comments, EPA has decided to finalize the proposed conditional exclusion from the definition of solid waste for CRTs and CRT glass being recycled. We agree with the commenters who pointed out that intact or broken CRTs largely fit the regulatory criteria for universal wastes (see 40 CFR 273.81). For example, they are frequently generated in a wide variety of settings and are present in significant volumes in the municipal wastestream. Commenters are also correct that stakeholders are familiar with the universal waste scheme, although they are also quite familiar with the concept of conditional exclusions. However, we disagree with the commenter who implied that the presence of lead in CRT glass prevents this material from being commodity-like. As discussed elsewhere in this notice, there are demonstrated markets for CRTs and CRT glass, and it is generally the presence of lead that contributes to its value to glass manufacturers and smelters. An exclusion is more suitable for materials that resemble commodities more than wastes, especially if conditions are promulgated to ensure that they will be stored and handled as objects of value. In support of our decision, we note that many of the provisions of the conditional exclusion are similar to the provisions suggested by commenters, and recommended by the CSI for CRTs sent for recycling. For example, the packaging and labeling requirements for CRTs are nearly identical. In addition, we are also imposing notice and consent requirements for CRTs exported for recycling, as would be required under the universal waste rule.

Although some commenters believed that regulating CRTs sent for recycling under the universal waste program would ensure greater regulatory oversight, materials destined for the types of recycling addressed in today's rule do not need as much regulatory oversight as other waste materials because, when handled consistently with the specified conditions, they are commodity-like. Furthermore, the requirements of the universal waste rule for employee training, notification of waste management activities, and tracking of shipments are not necessary as a matter of federal law for these materials, when they are not being sent for disposal. The packaging and labeling conditions for broken CRTs that are promulgated today will ensure that the possibility of releases to the environment is very low. In addition, intact CRTs sent for recycling also pose a minimal risk of releases while being transported, since the glass is unlikely to be released unless the vacuum is broken. Lead from CRTs is therefore not readily available to the environment as long as the CRTs are intact. Similarly, we note that under today's rule, the speculative accumulation requirements of 40 CFR 261.1(c)(8) apply to used CRTs (whether broken or intact) and processed CRT glass. These requirements will be as effective in preventing extended accumulation periods as the accumulation limits of 40 CFR 273.15 and 273.35. In addition, processed CRT glass sent for many kinds of recycling is commodity-like. This material fits the criteria for the variance from the definition of solid waste for "partially reclaimed" materials under 40 CFR 260.30(c) and 261.31(c) (see the discussion of this issue in the preamble to our proposal at 67 FR 40514). This variance is specifically designed for commodity-like materials. We agree with the commenter who noted that processed glass does not actually fit the regulatory criteria for the universal waste rule (because it is not widely generated by different types of facilities) and that glass processors might technically be considered destination facilities under the universal waste rule (because they are recyclers).

Under the universal waste approach, CRTs destined for recycling would still be classified as hazardous wastes, although subject to reduced regulation. We agree with those commenters who argued that in the case of CRTs, this classification could discourage recycling. We are concerned that nonprofit organizations might refuse to help collect used CRTs because of this hazardous waste classification. Without their participation, CRT recycling would be greatly inhibited.

A few commenters also believed that adding CRTs to the universal waste rule

would alleviate the need for our proposed distinctions between used and unused or intact and broken CRTs. The Agency does not agree with these commenters. Adding used CRTs to the universal waste rule would not eliminate the need for these distinctions. Unused, intact computers and televisions are often returned to the manufacturer, or they may be sold or donated for use. Long-standing rules define unused materials as products rather than wastes, and products would not be subject to the universal waste rule. Similarly, even if intact and broken CRTs were added to the universal waste rule, the same universal waste requirements would not be appropriate for both categories of materials, since there is a greater possibility of releases from broken CRTs.

It is true that 40 CFR 273.17 and 273.37 require universal waste handlers to contain all releases. Under a conditional exclusion, on the other hand, if a person failed to respond to a release, EPA or the State could take action, including an enforcement action, which is a reactive rather than preventive measure. However, in the case of CRTs and CRT glass, the possibility of immediate environmental harm from a release is expected to be sufficiently low to be outweighed by the benefits from fostering increased recycling.

Some commenters urged us to adopt the universal waste approach because, unlike the conditional exclusion approach, it does not require use of the hazardous waste manifest for materials sent to disposal. Existing universal waste rules are intended to promote safer disposal of waste generated by households and small quantity generators, who are currently exempt from Subtitle C regulation. These commenters wanted this benefit for CRTs sent to disposal; one commenter stated that having similar requirements for recycling and disposal reduces complications for enforcement authorities by eliminating the need to discern the waste handler's intent. Other commenters, however, argued that used CRTs should be fully regulated when sent for disposal, and that such full regulation was necessary to protect human health and the environment.

Even though requiring no manifest for CRTs could simplify the regulations applicable to CRTs, we believe that today's conditional exclusion will foster the equally important goal of collecting CRTs, conserving resources, and minimizing negative impacts on the environment. We anticipate that it will lead to increased recycling and less disposal of CRTs, including those from households and CESQGs, because municipalities and other entities can consolidate CRTs from all sources more easily than if some CRTs were classified as hazardous wastes. In addition, as described earlier in this notice, the Agency and many states are engaged in several efforts to increase the rate of CRT and electronics recycling, including electronics from households and CESQGs. We believe that these efforts, as well as many others at the state and local level, will ultimately bring about a considerable improvement in the rate of voluntary electronics recycling.

With respect to disposal, materials sent to landfills or incinerators under the universal waste rule need not be accompanied by a hazardous waste manifest. Under our proposed conditional exclusion, the manifest would have to accompany CRTs sent for disposal. A few states said the universal waste rule was therefore less stringent (in this respect) than a conditional exclusion. These states were therefore concerned that if a state had already added CRTs to its universal waste program, it would have to amend its rules and seek authorization from EPA to remain equivalent to the federal program. This conclusion is incorrect; the Agency has concluded that adding CRTs to a state universal waste program is permissible under state authorization rules. As commenters pointed out, the universal waste rule is in other respects more stringent than today's conditional exclusion. In addition, the Agency's longstanding position is that under a state universal waste program, individual wastes and management standards are not subject to the authorization revision provisions in 40 CFR 271.21, since the state is already authorized for the universal waste regulations and the regulation of hazardous wastes (see the preamble to the universal waste rule at 60 FR 25537, May 11, 1995). Therefore, states are free to add CRTs to their universal waste programs without seeking authorization from EPA.

F. Definitions

Several commenters suggested changes to some of EPA's proposed definitions. The following is a summary of these suggested changes, with our responses.

"Cathode Ray Tube"

The Agency's proposed definition of "cathode ray tube" was a "vacuum tube, composed primarily of glass, which is the video display component of a television or computer monitor." Some commenters said that our proposed definition did not make clear whether we intended to include such devices as scanning equipment, multichannel analyzers, medical, automotive, oscilloscope, military, aircraft, and appliance CRTs. These commenters apparently believed that these types of CRTs did not fall within the definition of a television or computer monitor. One commenter said that the use of the term "video display" was misleading, since that phrase is associated with television monitors. This commenter suggested that "video or visual display component" would be a better definition. Another commenter suggested that EPA confine the regulatory definition to color CRTs, since monochrome CRTs generally do not exhibit the toxicity characteristic for lead.

The Agency agrees with those commenters who desired a more general definition that would encompass various types of CRTs; we believe that such a definition would provide more clarity to the regulated community and would better reflect the intent of our proposal (see 67 FR 40509). We also agree with the commenter who said that "video or visual display component" would be a more precise definition. For these reasons, we are changing our proposed definition of "cathode ray tube" in 40 CFR 260.10 to read as follows: "cathode ray tube means a vacuum tube, composed primarily of glass, which is the video or visual display component of an electronic device". This definition would encompass all the different types of CRTs mentioned by the commenters.

The Agency does not agree with the commenter who suggested that the definition of "cathode ray tube" be limited to color CRTs, since we are not certain that all color CRTs exhibit the toxicity characteristic for lead, or that no monochrome CRTs exhibit this characteristic. For this reason, we are not revising our proposed definition to include a reference to color or monochrome CRTs. If CRTs do not exhibit the toxicity characteristic for lead, they are not regulated under any of the hazardous waste regulations, including the exclusion promulgated today.

"Intact" and "Broken" CRTs

In our proposal, EPA had defined an "intact" CRT as one remaining within the monitor whose vacuum has not been released. A "broken" CRT, on the other hand, was defined as "glass removed from the monitor after the vacuum has been released". Some commenters pointed out that our proposed

definitions did not take into account two categories of CRTs: those removed from a monitor without release of the vacuum (i.e., "bare" CRTs) or CRTs remaining within the monitor after being inadvertently broken. One commenter believed that intact CRTs removed from the monitor were commodity-like, and should therefore be completely excluded from the definition of solid waste, especially since they presented very little potential for environmental releases. However, another commenter suggested that intact CRTs removed from the monitor should be treated the same as broken CRTs. Some commenters stated that the proposed rule did not address broken CRTs remaining within a monitor because of inadvertent breaking of the glass.

Another commenter pointed out that his company considered CRTs with released vacuum tubes to be intact because they have not been mechanically altered so as to increase the potential release of heavy metals.

After reviewing the comments, the Agency agrees that its proposed definitions did not adequately address at least one category of CRTs. With respect to intact CRTs that are removed from the monitor with the vacuum still unbroken, we understand that these materials must normally be packaged before being shipped for repair or reuse. It would therefore be unnecessary and redundant to subject these materials to the same conditions as broken CRTs sent for recycling. They resemble products more than wastes, and should not be considered solid wastes, unless disposed. In today's rule, therefore, we are clarifying the status of these materials by including them within the definition of "intact CRT," and we are revising that definition to read: "an intact CRT means a CRT whose vacuum has not been released."

However, the Agency is not changing the definition of "broken CRT" to specifically address inadvertently broken CRTs, since such breakage is accidental and does not occur routinely. If some CRTs within a shipment of intact CRTs are accidentally broken, such occurrences are most appropriately addressed on a case-by-case basis by the appropriate regulatory authorities.

One commenter suggested that the definition of "broken CRT" should refer to glass removed from any "housing" or "casing," rather than glass removed from a "monitor." The Agency agrees that the language suggested by the commenter is more descriptive. The same commenter noted that our proposed definition assumed that CRT vacuums are released before the CRT is removed from the monitor, whereas in actuality the CRT is sometimes removed from the monitor, after which the vacuum is released. EPA agrees with the commenter that our intent was not to draw distinctions based on the timing of the vacuum release. We have therefore revised our proposed definition of "broken CRT" to read: "glass removed from its housing or casing whose vacuum has been released."

One commenter noted that EPA did not present data showing that a CRT is not reusable as a product after the vacuum has been released and the glass removed. A few commenters suggested that EPA revise its definition of "broken CRT" to refer to CRTs that were no longer reusable, or to specify that CRTs become wastes when they will no longer be used for the purpose for which they were manufactured. In response to these comments, we note that the Agency specifically requested comment in the preamble to our proposed rule about whether it was possible to repair and reuse a CRT after the vacuum was released. No commenters submitted information or explanations about how this phenomenon might occur. With respect to broken CRTs, a released vacuum facilitates glass breakage and makes subsequent environmental releases more likely, even if these materials have not been substantially altered mechanically. We also believe that it would be much more difficult to implement the definition if regulators or the regulated community were required to ascertain whether a computer, television, or other electronic device could be used again. Such a determination would require considerably more technical expertise than merely examining a CRT to see if the vacuum had been released. Therefore, under today's rule, a CRT will still be considered broken if the vacuum is released.

One commenter suggested that we should change the definitions of "intact" and "broken" CRTs in proposed 40 CFR 260.10 to read "used, intact CRTs" and "used, broken CRTs" (presumably to be consistent with the language in our proposed exclusions). EPA agrees and has added this language to the definitions in today's final rule.

A few commenters objected to the Agency's regulatory distinctions between "unused" and "used" or "intact" and "broken" CRTs. These commenters believed that most CRTs in all of these categories should be treated the same (presumably because the environmental risks were similar).

Although classifying all CRTs in the same regulatory category would undoubtedly lead to simplified program implementation, EPA does not believe that eliminating our proposed distinctions is desirable. Intact CRTs present very little risk of releases, unless they are accumulated for long periods of time; therefore, subjecting them to the same conditions as broken CRTs is not appropriate.

"CRT Processing"

EPA received several comments on the proposed definition of "CRT processing." Specifically, the proposed regulation stated that CRT processing meant conducting all of the following activities: (1) Receiving broken or intact CRTs; (2) intentionally breaking intact CRTs, or further breaking or separating broken CRTs; (3) sorting or otherwise managing glass removed from CRT monitors; and (4) cleaning coatings off the glass removed from CRTs. Some commenters believed that it was not necessary to perform all of these activities in order to be considered a CRT processor. In particular, commenters pointed out that some CRT recyclers do not clean coatings from CRT glass, and that there is an increased market for glass with the coating still on it. These commenters recommended that the definition of "CRT processing" be revised to specify that performing the first three activities listed above, or cleaning coatings from glass removed from CRTs, should be sufficient to classify a person or facility as a CRT processor.

EPA agrees with these commenters. As one commenter stated, coatings do not have to be removed from CRT glass sent to a smelter. We are therefore revising our proposed definition of "CRT processing" to mean conducting all of the following activities: (1) Receiving broken or intact CRTs; and (2) intentionally breaking intact CRTs or further breaking or separating broken CRTs; and (3) sorting or otherwise managing glass removed from CRT monitors. Since any CRT recycler cleaning coatings from CRT glass would necessarily be performing the first three activities, we believe it is unnecessary to refer to such cleaning in the regulations. This revised definition will be more consistent with the current activities of CRT recyclers.

"Processed CRT Glass"

In our proposal, we did not include a definition of "processed CRT glass." One commenter noted that if EPA revised its definition of "CRT processing" to remove the reference to coating, the Agency should then promulgate a definition of "processed CRT glass" that would ensure that only CRT glass with the coatings removed

would be subject to the requirements of proposed 40 CFR 261.39(c) (i.e., no packaging or labeling for the processed glass). This commenter believed that only glass with the coating removed could properly be considered commodity-like. EPA disagrees with this suggestion, because we believe that whether CRT glass is coated or uncoated has little to do with whether the glass resembles a commodity. As stated above, CRT glass sent to smelters does not need to have coatings removed, and we believe that such materials are commodity-like. We believe that the destination of the glass is a more reliable indicator of its nature as a commodity than its coated or uncoated condition.

"CRT Glass Manufacturing"

Finally, one commenter pointed out that our proposed definition of "CRT glass manufacturing facility" could cause confusion because 40 CFR 260.10 defines a "facility" as "land, etc. used for treating, storing, and disposing of hazardous waste," which is not true of CRT glass manufacturers. The Agency agrees with this commenter that the use of the word "facility" could be misinterpreted and has changed the definition in today's rule to read: "CRT glass manufacturer means an operation or part of an operation that uses a furnace to manufacture CRT glass."

G. Disposal

In the preamble to our proposed rule, EPA solicited comment on whether to allow CRTs sent for disposal in hazardous waste facilities (i.e., landfills or incinerators) to comply with streamlined packaging and labeling requirements similar to the ones we proposed for broken CRTs sent for recycling, rather than comply with the full Subtitle C requirements, including use of the hazardous waste manifest.

Some commenters said that disposal of CRTs should be subject to streamlined requirements similar to those applicable to broken CRTs sent for recycling. These commenters generally believed that CRTs presented very low environmental risks, even in landfills. They cited what they believed to be the benefits of simplified program implementation (presumably including facilitation of inspections and enforcement) if CRTs sent for recycling and disposal were subject to the same regulatory requirements. Other commenters supported the application of the full Subtitle C requirements to CRTs sent for disposal. These commenters believed that CRTs sent for disposal presented greater environmental risks; they also supported this approach because they believed it would encourage recycling.

After evaluating these comments, the Agency has concluded that the arguments for streamlining requirements for CRTs sent for disposal do not appear to be justified. As noted by some commenters, the volume of these materials will increase in future years because of evolving computer and television technology. We have not conducted a separate analysis of disposal issues as part of this rulemaking. In addition, we wish to encourage the environmentally sound recycling of this rapidly growing wastestream to conserve resources and raw materials, and we do not want to promulgate regulations that are inconsistent with this policy. For this reason, we are not promulgating streamlined packaging and labeling requirements for CRTs sent for disposal.

H. Enforcement

Under today's rule, CRTs and CRT glass destined for recycling and CRTs exported for reuse are excluded from RCRA Subtitle C regulation if certain conditions are met. Persons that handle CRTs and CRT glass that are subject to this exclusion will be responsible for maintaining the exclusion by ensuring that all of the conditions are met. If the CRTs are not managed as specified by these conditions, they are not excluded. The CRTs would then be considered hazardous waste (if they exhibit a hazardous waste characteristic) for Subtitle C purposes from the time they were "generated", i.e., from the time the decision was made to dispose of them or to release the vacuum for recycling, rather than to send them to facilities where they may be reused.

Persons taking advantage of the exclusion that fail to meet one or more of its conditions may be subject to enforcement action and the CRTs may be considered to be hazardous waste from the point of their generation. EPA could choose to bring an enforcement action under RCRA Section 3008(a) for all violations of the hazardous waste requirements occurring from the time a decision was made to dispose of the CRTs or to release the vacuum for recycling, through the time they are finally disposed of or reclaimed.

EPA believes that this approach, which treats CRTs exhibiting a hazardous waste characteristic that do not conform to the conditions of the exclusion as hazardous waste from their point of generation, provides all handlers with an incentive to handle the CRTs consistent with the conditions. It also encourages each person to take appropriate steps to ensure that CRTs are safely handled and legitimately reused or recycled by others in the management chain.

Persons managing CRTs before they become wastes are not considered generators and are not subject to RCRA requirements. For example, charitable organizations, municipalities, retailers, or manufacturers who collect intact CRTS are not generators when they send CRTs to facilities that decide whether they will be reused, recycled, or disposed.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described in 40 CFR 271.21 (see 40 CFR part 271 for the overall standards and requirements for authorization). EPA continues to have independent authority to bring enforcement actions under RCRA Sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA Section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA Section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1(i)). Therefore, authorized states are not required to adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Today's rule will have a different effect on authorized state programs, depending on how the state is currently regulating CRTs. In the proposal to today's rule, EPA clarified its views on how the current RCRA regulations most appropriately applied to CRTs sent for recycling (see 67 FR 40508 at 40511, June 12, 2002), and we proposed to revise the regulations to clarify any confusion and to set a clear federal floor. In the case of used CRTs going for recycling, EPA at the time encouraged states to implement approaches consistent with the proposal. Today's final rule modifies the proposal in three principal respects: (1) Speculative accumulation requirements for used, intact CRTs; (2) one-time notification requirement for used CRTs exported for reuse; and (3) notice and consent requirements for CRTs exported for recycling. These requirements are more stringent than the approach that EPA, in the proposed preamble, recommended that states adopt under the current regulations. Therefore, states that adopted the approach recommended in the proposed rule must amend their programs so that they are no less stringent than the federal approach. States currently regulating CRTs as hazardous waste, including under the universal waste rule, would not have to amend their programs, since their programs are more stringent than the federal requirements.

The limitations on speculative accumulation for intact CRTs are issued under RCRA authority, and therefore will not go into effect (in states not currently managing intact CRTs as hazardous waste) until states have adopted today's rule. The one-time notification for intact CRTs exported for reuse and notice and consent requirements for CRTs exported for recycling are implemented under HSWA authority (section 3017 of RCRA, which governs notice and consent) and therefore go into effect six months after the publication date of this rule. The Agency is adding the rule to Table 1 in 40 CFR 271.1(j), which identifies the federal program requirements that are promulgated pursuant to the statutory authority that was added by HSWA.

C. Interstate Transport

Because some states may choose to regulate CRTs or processed CRT glass under the universal waste or other hazardous waste rules, there will probably be cases when used CRTs or processed CRT glass will be transported to and from states with different regulations governing these wastes.

First, a waste which is subject to an exclusion from the definition of solid waste in the state where it is generated may be sent to a state where it is subject to the hazardous waste regulations. In this scenario, for the portion of the trip through the originating state, and any other states where the waste is excluded, neither a hazardous waste transporter with an EPA identification number per 40 CFR 263.11 nor a manifest would be required. However, for the portion of the trip through the receiving state, and any other states that do not consider the waste to be excluded, the transporter must have a manifest, except as provided by the universal waste rules, and must move the waste in compliance with 40 CFR Part 263. In order for the final transporter and the receiving facility to fulfill the requirements concerning the manifest (40 CFR 263.20, 263.21, 263.22; 264.71, 264.72, 264.76 or 265.71, 265.72, and 265.76), the initiating facility should complete a manifest and forward it to the first transporter to travel in a state where the waste is not excluded. The receiving facility must then sign the manifest and send a copy to the initiating facility.

Second, CRTs or processed CRT glass generated in a state which regulates them as hazardous waste may be sent to a state where they are excluded. In this scenario, the material must be moved by a hazardous waste transporter, while the material is in the generator's state or any other states where it is not excluded, except as provided by the universal waste rules. The initiating facility would complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving state and any other states that exclude the material would not require a manifest and need not be transported by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by the transporter and sent back to the initiating facility by the receiving facility (see 40 CFR 262.23 and 262.42).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), federal agencies must determine whether this regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Agency has determined that today's rule is a significant regulatory action because it contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's rule.

To estimate the cost savings, incremental costs, economic impacts and benefits from this rule to affected regulated entities, we completed an economic analysis for the rulemaking. Copies of this analysis have been placed in the RCRA docket for public review (see "Economic Analysis of Cathode Ray Tube Management, Final Rulemaking," March 19, 2004).

1. Methodology

To estimate the cost savings, incremental costs, economic impacts and benefits of this rule, the Agency estimated both the affected volume of cathode ray tubes (CRTs) and regulated entities. The Agency has evaluated two baseline (pre-regulatory) scenarios: (1) A scenario which models a distribution of affected monitors as if all affected entities followed standard Subtitle C regulations, and (2) a scenario which models a high percentage of CRTs being discarded untreated in municipal solid waste landfills. This latter scenario is being analyzed to evaluate the possible real-world effect of this rule on affected entities.

The Agency then modeled a post-regulatory scenario that simulates management of CRTs after the regulation promulgated today is implemented. In our economic analysis, we have calculated administrative, storage, transportation and disposal/recovery costs for both baselines and the post-regulatory scenarios and estimated the net cost savings and economic

impacts for each combination of the two baselines and the post-regulatory scenario. The first baseline and post-regulatory scenario is the pairing that we are using to meet our administrative requirements following this section.

2. Results

a. Volume

We have estimated the affected volume of CRTs (including both previously regulated and diverted volumes of monitors) under the post-regulatory scenario to be 54,000 tons. We believe that approximately 10,000 tons of CRTs would be diverted from export or hazardous waste landfill to CRT glass manufacturing under the post-regulatory alternative.

b. Cost/Economic Impact

We estimate that the rule will save CRT handlers $5.0 million per year compared to the scenario which assumed that all affected entities followed the standard Subtitle C regulations. This cost savings comes from reduced administrative, transportation and disposal/management cost.

To estimate the economic impact of the rule on CRT handlers, the Agency evaluated the cost savings or incremental costs as a percentage of firm sales. In virtually all cases, economic impacts are cost savings of less than one percent of firm sales. Under the first scenario, the average savings for a previously regulated small quantity generator is $520 per year; for a previously regulated large quantity generator, the average savings is $1,091 per year.

c. Benefits

EPA has evaluated the qualitative benefits and to a lesser extent, the quantitative benefits of the rule for CRTs. Some of the benefits resulting from today's rule include conservation of landfill capacity, increase in resource efficiency, growth of a recycling infrastructure for CRTs, and possible reduction of lead emissions to the environment from CRT recycling. EPA estimates that approximately 3,690 tons or 545,000 cubic feet of CRTs per year would be redirected away from landfills towards recycling under today's rule. In addition, as mentioned above, the use of processed CRT glass benefits the manufacturer in several ways, such as improving heat transfer and melting characteristics in the furnaces, lowering energy consumption, and maintaining or improving the quality of the final product. This rule may facilitate the growth and development of the CRT glass processing industry by reducing regulatory barriers to the establishment of new glass processing firms. Finally, this rule will encourage reuse and recycling by diverting CRTs from municipal landfills and waste-to-energy facilities.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0053.

The information requirements established for this action, and identified in the Information Collection Request (ICR) supporting today's rule, are largely self-implementing, except for the notice and consent requirements for CRTs exported for recycling. This process will ensure that: (i) Regulated entities managing CRTs are held accountable to the applicable requirements; (ii) state inspectors can verify compliance when needed; and (iii) CRTs exported for recycling or reuse are actually handled as commodities abroad.

EPA has carefully considered the burden imposed upon the regulated community by the regulations. EPA is confident that those activities required of respondents are necessary and, to the extent possible, has attempted to minimize the burden imposed. EPA believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that used CRTs are being managed in a manner protective of human health and the environment.

For the requirements applicable to CRTs, the aggregate annual burden to respondents over the three-year period covered by this ICR is estimated at 5,400 hours, with a cost of approximately $269,100. Average annual burden hours per respondent are estimated to be between 3.4 and 4.1 hours (the latter figure is for respondents who are exporters). There are an estimated 3,775 respondents. However, this represents a reduction in burden to respondents of approximately 17,306 hours, or $878,034. The estimated operation and maintenance costs are $100 (including the cost of postage and envelopes). There are no start-up costs and no costs for purchases of services. Administrative costs to the Agency are estimated to be 371 hours per year, or $11,173. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This 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.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. In addition, EPA is amending the table in 40 CFR Part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, 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 rule on small entities, small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using the North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (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; and (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 hereby certify that this action will not have a significant adverse impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a

substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on all of the small entities subject to the rule.

The small entity analysis conducted for today's rule indicates that streamlining requirements for CRTs would generally result in savings to affected entities compared to baseline requirements. Under the full compliance scenario, the rule is not expected to result in a net cost to any affected entity.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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, EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with "federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA requires federal agencies 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.

This final rule does not include a federal mandate that may result in expenditures of $100 million of more to state, local, or tribal governments in the aggregate, because the UMRA generally excludes from the definition of "federal intergovernmental mandate" duties that arise from participation in a voluntary federal program. States are not legally required to have or maintain a RCRA authorized program. Therefore, today's final rule is not subject to the requirements of Sections 202 or 205 of UMRA. In addition, this final rule contains no regulatory requirements that might significantly or uniquely affect small governments under Section 203 of UMRA. Therefore we have determined that today's rule is not subject to the requirements of sections 202, 203, or 205 of UMRA.

E. 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" is 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 streamlines RCRA management requirements for CRTs and CRT glass being recycled, and will affect primarily those persons who are engaged in CRT recycling. 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.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA consulted with representatives of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) in developing this rule prior to finalization.

F. Executive Order 13175: Consultation and Coordination With Indian 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." This final rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any new requirements on tribal officials nor does it impose substantial direct compliance costs on them. This rule does not create a mandate for tribal governments, nor does it impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risk

"Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is "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 potential 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 concern an environmental health or safety risk that the Agency has reason to believe may have a disproportionate effect on children.

H. Executive Order 13211

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Today's rule streamlines hazardous waste management requirements for used cathode ray tubes. By encouraging reuse and recycling, the rule may save energy costs associated with manufacturing new materials.

I. National Technology Transfer and Advancement Act of 1995

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, though OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards. This rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (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, 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). To address this goal, EPA conducted a qualitative analysis of the environmental justice issues under this rule. Potential environmental justice impacts are identified consistent with the EPA's Environmental Justice Strategy and the OSWER Environmental Justice Action Agenda.

Today's rule would streamline hazardous waste management requirements for used cathode ray tubes sent for recycling. Facilities that would be affected by today's rule include those generating hazardous waste computers and televisions sent for recycling. Also affected would be facilities which recycle these materials. Disposal facilities themselves would not be affected by today's rule.

The wide distribution of affected facilities throughout the United States does not suggest any distributional pattern around communities of concern. Any building in any area could be affected by today's rule. Specific impacts on low income or minority communities, therefore, are undetermined. The Agency believes that emissions during transportation would not be a major contributor to communities of concern through which used CRTs may be transported. Any such material broken during transport would be contained in the required packaging. Overall, no disproportional impacts to minority or low income communities are expected.

K. 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. 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 rule will be effective January 29, 2007.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 260

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

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 19, 2006.

Stephen L. Johnson,

Administrator.

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

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding new entries in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
Identification and Listing of Hazardous Waste	
261.39	2050–0053
261.40	2050–0053
261.41	2050–0053

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

■ 4. Section 260.10 is amended by adding in alphabetical order the definitions of "Cathode ray tube," "CRT collector," "CRT glass manufacturer," and "CRT processing", to read as follows:

§ 260.10 Definitions.

* * * * *

Cathode ray tube or CRT means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

* * * * *

CRT collector means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

CRT glass manufacturer means an operation or part of an operation that uses a furnace to manufacture CRT glass.

CRT processing means conducting all of the following activities:

(1) Receiving broken or intact CRTs; and

(2) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(3) Sorting or otherwise managing glass removed from CRT monitors.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

■ 6. Section 261.4 is amended by adding a new paragraph (a)(22), to read as follows:

§ 261.4 Exclusions.

(a) * * *

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in § 260.10 of this chapter are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in § 261.1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in § 260.10 of this chapter are not solid wastes when exported for recycling provided that they meet the requirements of § 261.40.

(iii) Used, broken CRTs as defined in § 260.10 of this chapter are not solid wastes provided that they meet the requirements of § 261.39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of § 261.39(c).

* * * * *

■ 7. Part 261 is amended by adding subpart E to read as follows:

Subpart E—Exclusions/Exemptions

Sec.

Subpart E—Exclusions/Exemptions

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) *Prior to processing:* These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) *Storage.* The broken CRTs must be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container (*i.e.*, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(2) *Labeling.* Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s)-contains leaded glass " or "Leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

(3) *Transportation.* The used, broken CRTs must be transported in a container meeting the requirements of paragraphs (a)(1)(ii) and (2) of this section.

(4) *Speculative accumulation and use constituting disposal.* The used, broken CRTs are subject to the limitations on speculative accumulation as defined in paragraph (c)(8) of this section. If they are used in a manner constituting disposal, they must comply with the applicable requirements of part 266, subpart C instead of the requirements of this section.

(5) *Exports.* In addition to the applicable conditions specified in paragraphs (a)(1)–(4) of this section, exporters of used, broken CRTs must comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported (*e.g.*, mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

(F) The name and address of the recycler and any alternate recycler.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(5)(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(5)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of

the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (a)(5)(i)(H) of this section) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with paragraph (a)(5)(vi) of this section and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(b) *Requirements for used CRT processing:* Used, broken CRTs undergoing CRT processing as defined in § 260.10 of this chapter are not solid wastes if they meet the following requirements:

(1) *Storage.* Used, broken CRTs undergoing processing are subject to the requirement of paragraph (a)(4) of this section.

(2) *Processing.*

(i) All activities specified in paragraphs (2) and (3) of the definition of "CRT processing" in § 260.10 of this chapter must be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) *Processed CRT glass sent to CRT glass making or lead smelting:* Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in § 261.1(c)(8).

(d) *Use constituting disposal:* Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of 40 CFR part 266, subpart C instead of the requirements of this section.

§ 261.40 Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.

Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of § 261.39(a)(5), and if they are not speculatively accumulated as defined in § 261.1(c)(8).

§ 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) Persons who export used, intact CRTs for reuse must send a one-time notification to the Regional Administrator. The notification must include a statement that the notifier plans to export used, intact CRTs for reuse, the notifier's name, address, and EPA ID number (if applicable) and the name and phone number of a contact person.

(b) Persons who export used, intact CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported.

■ 8. Section 261.38 of subpart D is moved to subpart E.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 9. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

■ 10. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	* * * *	*	*
July 28, 2006	Final Rule for Cathode Ray Tubes	[Insert FR page numbers]	Jan. 29, 2007.
*	* * * *	*	*

[FR Doc. 06–6490 Filed 7–27–06; 8:45 am]
BILLING CODE 6560–50–P