

DEP drops plan to finalize stream list

By Ken Ward Jr.

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State regulators have dropped their plan to finalize a list of protected West Virginia streams, saying they don't want to pick a fight with lawmakers over the issue.

Earlier this year, the Legislature declined to act on the list of more than 300 streams the state Department of Environmental Protection said deserved tougher pollution protections.

DEP Secretary Stephanie Timmermeyer said she planned to finalize the list anyway. Timmermeyer said the DEP had the legal authority to do so.

On Friday, Deputy DEP Secretary Randy Huffman said the agency now plans to start all over.

A new list will be published in draft form. The DEP will accept public comments and then finalize the list. The resulting version will be submitted for legislative review during the 2008 session.

"It was maybe a subversion of the leg-

islative process for us to just go out and file the rule," Huffman said. "It's a legislative process whether you agree or not."

The list in question covers streams that are deemed to qualify for "Tier 2.5" protection under West Virginia's water quality anti-degradation policy.

Under that policy, clean streams are generally supposed to be kept that way. Streams on the Tier 2.5 list could not be degraded by more than 10 percent.

DEP officials had already whittled down the Tier 2.5 list and allowed three separate rounds of public comments. But lawmakers, at the urging of coal companies, timber operators and the Farm Bureau, were slashing dozens of streams from the list.

Originally, the DEP proposed Tier 2.5 protection for about 300 streams, about 4 percent of the waterways in the state, agency officials said.

Don Garvin, lobbyist for the West Virginia Environmental Council, said the DEP's action would help regulated industries gut the stream list.

"It's going to be almost impossible to protect streams in this state," Garvin said.

Huffman said he doesn't believe the DEP ever made a definite decision to move forward without legislative action on the stream list.

"My understanding was that was an option that was on the table at the time," said Huffman, who is running the DEP while Timmermeyer is on maternity leave. "There were a number of options there."

In a March 15 interview, Timmermeyer and DEP spokeswoman Jessica Greathouse said the agency planned to file the final rules, despite legislative inaction.

Timmermeyer cited several state Supreme Court decisions she said supported the DEP's plan.

Under those rulings, she said, lawmakers can approve, reject or amend state agency rules, but she said the Legislature can't veto an agency rule by simply not acting on it at all.

To contact staff writer Ken Ward Jr., use e-mail or call 348-1702.

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Ephraim R. Thurneyer
Authorized Signature

QUESTIONNAIRE

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

DATE: July 28, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Department of Environmental Protection
Division of Water and Waste Management
601 57th Street, SE
Charleston, WV 25304
Telephone: 304-926 -0499

LEGISLATIVE RULE TITLE: Hazardous Waste Management System 33 CSR 20

1. Authorizing statute(s) citation W.Va. Code §§22-18-6.
2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 15, 2006.
 - b. What other notice, including advertising, did you give of the hearing?
DEP Calendar of Events, DEP Website
Secretary of State's Stateline
18 newspapers around the state
 - c. Date of Public Hearing(s) or Public Comment Period ended:
July 19, 2006.
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached Sign-in Sheet.

Number of comments received Comments attached

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

August 27, 2004.

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

Carroll Cather
Environmental Resource Specialist III
Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Telephone: 304-926-0499
Fax: 304-926-0477
Email: ccather@wvdep.org.

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

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

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

Not applicable.

- b. Date of hearing or comment period.

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

- d. Attach findings and determinations and reasons:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: "Hazardous Waste Management System" 33CSR20

- A. AUTHORITY:** WV Code Section 22-18-6
- B. SUMMARY OF RULE:** This rule regulates the generation, treatment, storage and disposal of hazardous waste. The rule proposed for 2007 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, 2006.
- C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:** This rule is proposed to adopt changes to federal hazardous waste management regulations into the State Hazardous Waste Management System, enabling the State hazardous waste program to maintain consistency with the federal program. The changes to the 40 CFR federal regulations are technical corrections, allowance of more flexibility in SW-846 waste 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, and a Burden Reduction Initiative that allows a series of paperwork burden reductions for hazardous waste facilities.
- D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:**
- A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the DEP proposes that the rule incorporate by reference the federal counterparts. Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.
- E. CONSTITUTIONAL TAKINGS DETERMINATION:**
- In accordance with §22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

- F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:** At the June 15, 2006 meeting, the Environmental Protection Advisory Council reviewed and discussed the proposed rule. The Council's comments are contained in the attached minutes.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 33, Series 20, Hazardous Waste Management

Type of Rule: XX Legislative Interpretive Procedural

Agency Department of Environmental Protection

Address Division of Water and Waste Management

601 57th Street, SE

Charleston, WV 25304

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

This amendment will adopt by reference federal regulations in effect as of June 1, 2006 consisting of one change that is essentially a series of paperwork burden reductions for hazardous waste management facilities. The rule amendment is not projected to require additional operating expenses above the current level as the amendment is de-regulatory in nature.

3. Objectives of these rules:

The objective of this rule is to stay in compliance with federal guidelines when implementing the State program. The consistency achieved in these revisions assures the State of maintaining its authorization status and, in turn, the continued receipt of federal funds that are vitally needed to implement the program.

Rule Title: Title 33, Series 20 Hazardous Waste Management

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Not anticipated to be appreciable.

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

Not anticipated to be appreciable.

C. Economic Impact on Citizens/Public at Large.

N/A

FILED

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

JUL 28 P 12: 36

SERIES 20
HAZARDOUS WASTE MANAGEMENT RULE SYSTEM

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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, 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 emission 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.

Board in accordance with the provisions of W.
Va. Code §22B-1-1 et seq.

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

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

BEFORE THE WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT

IN THE MATTER OF:

Public hearing regarding proposed
Rule 33 CSR 20 hazardous waste
management system

 **ORIGINAL**

Transcript of proceedings had at a hearing held in the
aforementioned matter on Wednesday, July 19th, 2006,
beginning at 5:10 p.m. at the West Virginia Department of
Environmental Protection, Dolly Sods Room, 601 57th
Street, S.E., Charleston, Kanawha County, West Virginia,
pursuant to notice.

APPEARING ON BEHALF OF THE WV DEP:

Carroll Cather, Hazardous Waste Coordinator
Pamela Nixon

ACCURATE REPORTING SERVICE, INC.
526 SEVENTH STREET
HUNTINGTON, WEST VIRGINIA 25701

(304) 522-9637 * (304) 345-9891 * (606) 329-2154

1 MR. CATHER: Good evening, I am Carroll Cather,
2 Hazardous Waste Coordinator of the West Virginia DEP,
3 Division of Water and Waste Management and I have been
4 appointed by the secretary to conduct this hearing for the
5 Division of Water and Waste Management.

6 The purpose of this hearing is to receive
7 oral and/or written comments regarding the proposed Rule
8 33 CSR 20 Hazardous Waste Management System.

9 This hearing is being held on the 19th day of
10 July, 2006 at 5:00 p.m. at the DEP office at 601 57th
11 Street, Charleston, West Virginia, 25304.

12 The proposed rule regulates the generation,
13 treatment, storage and disposal of hazardous waste. The
14 rule proposed to 2007 adopts and incorporates by reference
15 the federal regulations set forth in 40 CFR, parts 260
16 through 279 that are in effect as of June 1, 2006.

17 At this time, because there has been no one
18 to show up, we are concluding the hearing.

19 (Whereupon, at 5:15 p.m, the hearing was concluded.)
20
21
22
23
24

1 STATE OF WEST VIRGINIA

2 COUNTY OF KANAWHA, To-wit:

3 I, Tia G. Moseley, a Notary Public and Registered
4 Merit Reporter within and for the State aforesaid, duly
5 commissioned and qualified, do hereby certify that the
6 hearing in the above-entitled matter was duly taken by me
7 and before me at the time and place specified in the
8 caption hereof.

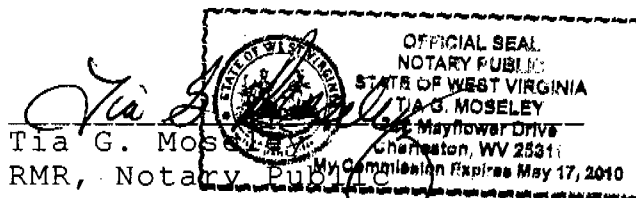
9 I do further certify that said proceedings were
10 correctly taken by me in stenotype notes, that the same
11 were accurately transcribed out in full and true record of
12 the testimony given by said witness.

13 I further certify that I am neither attorney or
14 counsel for, nor related to or employed by, any of the
15 parties to the action in which these proceedings were had,
16 and further I am not a relative or employee of any
17 attorney or counsel employed by the parties hereto or
18 financially interested in the action.

19 My commission expires the 5th day of May, 2010.

20 Given under my hand and seal this 21st day
21 of July, 2006.

22 Tia G. Moseley
23 RMR, Notary Public



***** * (1:24) *****	hazardous (1:7) (2:2) (2:8) (2:13) hearing (1:7) (1:12) (2:4) (2:6) (2:9) (2:18) (2:19) (3:6) held (1:12) (2:9) heraby (3:5) hereof (3:8) hereto (3:17) huntington (1:23)
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written (2:7)

Rule 33CSR20 Sign In Sheet
July 19, 2006
5:00 pm

[illegible]

RESPONSE TO COMMENTS – 33CSR20

The comment period for the Hazardous Waste Management System rule, 33 CSR 20, closed July 19, 2006. Comments were received from the United States Environmental Protection Agency (US EPA).

COMMENT A:

USEPA commented that Section 33-20-.4.c. should be changed to be consistent with federal regulations. Federal regulations require that samples be collected not less than annually.

RESPONSE A:

DEP agrees to change the rule to require that samples be taken no less than annually.

Note: DEP has also made a technical correction to the rule by inserting “shall” in place of “will” and “must” throughout the rule. This change will make the rule consistent with other DEP rules.

From: <Ellerbe.Lillie@epamail.epa.gov>
To: <ccather@wvdep.org>
Date: 6/6/2006 3:58:03 PM
Subject: Fw: West Virginia's 2007 Rule re Hazardous Waste Management

Carroll:

Please see Hilda's e-mail below as it pertains to her comments to the 2007 haz waste rules.

Thanks

Lillie Ellerbe
DE/VAWV Subtitle C State Program Manager
RCRA State Programs Branch
Waste & Chemicals Management Division
Phone: 215-814-5454
Fax: 215-814-3163
E-mail: ellerbe.lillie@epa.gov
----- Forwarded by Lillie Ellerbe/R3/USEPA/US on 06/06/2006 03:41 PM

Hilda	
Burgos/R3/USEPA/	
US	To
	kwatson@wvdep.org
06/06/2006 02:07	cc
PM	Lillie Ellerbe
	Subject
	West Virginia's 2007 Rule re
	Hazardous Waste Management

Dear Karen:

You may recall that we spoke last summer about some issues pertaining to West Virginia's Hazardous Waste Program, and federal authorization requirements. One of the issues we discussed was in reference to §33-20-7.c. of the West Virginia Code. This section states that 40 CFR §264.99(g) is incorporated by reference with modifications. The modifications include a requirement that samples be collected not less than once every five years. As we discussed previously, this requirement is less stringent than the federal regulation, which requires sampling at least annually. The MOA between EPA and WV states that WV will require sampling at least annually, despite the language in §33-20-7.c. Nevertheless, the language in the rule is contrary to this agreement, and to the federal requirement, and we ask that you change this requirement to be at least as stringent as the federal requirement. When we spoke about this last July, you agreed to make the change during the next rule change. We understand that West Virginia is currently

[Federal Register: June 16, 2005 (Volume 70, Number 115)]
[Rules and Regulations]
[Page 35034-35041]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr16jn05-11]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 264, and 265

[FRL-7925-1]
RIN 2050-AE21

Hazardous Waste Management System; Modification of the Hazardous
Waste Manifest System; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors that appeared in the Hazardous Waste Manifest Final Rule, which was published in the Federal Register (FR) on March 4, 2005 (70 FR 10776). This final rule does not create new regulatory requirements.

section. To make this determination, the generator must:

* * * * *

(3) * * *

(iv) * * *

(B) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of paragraph (c) of this section.

* * * * *

[FR Doc. 05-11914 Filed 6-15-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 264, and 265

[FRL-7925-1]

RIN 2050-AE21

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AGENCY: Environmental Protection Agency.

ACTION: Final rule; correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors that appeared in the Hazardous Waste Manifest Final Rule, which was published in the *Federal Register* (FR) on March 4, 2005 (70 FR 10776). This final rule does not create new regulatory requirements.

EFFECTIVE DATE: This final rule is effective September 6, 2005.

ADDRESSES: EPA has established a docket for the manifest final rule under Docket ID No. RCRA-2001-0032. All documents—including this correction—in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., 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 available publicly only in hard copy form. Docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., 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 EPA Docket Center is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: For further information regarding specific aspects of this document, contact Bryan Groce, Office of Solid Waste, (703) 308-8750, groce.bryan@epa.gov, or Richard LaShier, Office of Solid Waste, (703) 308-8796, lashier.rich@epa.gov. Mail inquiries may be directed to the Office of Solid Waste, (5304W), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Does This Rule Create New Federal Requirements?
- II. What Does This Rule Do?
- III. Why Is This Correction Issued as a Final Rule?
- IV. Why Are the Clarifications and Corrections in This Rule Necessary?
 - A. Corrections and Clarifications to the PRA Burden Statement.
 - B. Corrections to Item 5 of the Manifest Form Instructions.
 - C. Corrections to Item 15 of the Manifest Form Instructions.
 - D. Corrections and Clarifications to 40 CFR 262.33 and to 262.20(a)(2).
 - E. Corrections to 40 CFR 264.72(e)(4) and to 265.72(e)(4).
- V. Statutory and Executive Order Reviews.

I. Does This Rule Create New Federal Requirements?

No. This rule creates no new regulatory requirements; rather, it corrects errors made in the Appendix to part 262 of chapter 40 of the Code of Federal Regulations (CFR) and corrects certain manifest regulations that were promulgated in the March 4, 2005 *Federal Register*.

II. What Does This Rule Do?

This rule corrects the printing omissions of the manifest form (EPA Form 8700-22) and the continuation sheet (EPA Form 8700-22A), which were omitted inadvertently from the final rule promulgated on March 4, 2005 (70 FR 10776), by inserting the manifest form (EPA Form 8700-22) and the continuation sheet (EPA Form 8700-22A) into the corresponding manifest instructions. In addition, this rule amends portions of the instructions for the manifest form and continuation sheet, which are contained in the Appendix to part 262 of chapter 40 of the CFR, amends the marking requirements at 40 CFR 262.33 for hazardous waste generators and amends the manifest discrepancy requirements at 40 CFR 264.72 and 265.72. Specifically, the rule:

- (1) Corrects the EPA mailing address for comment submissions regarding the

Paperwork Reduction Act (PRA) burden statement estimates;

- (2) Corrects the incorrect description of the telephone number to insert in Item 5 of the manifest instructions;

- (3) Corrects the wording in the instructions to the first certification (i.e., the Generator Certification) in Item 15 so that it is consistent with the revised certification wording on the manifest form;

- (4) Clarifies that the reference to the DOT marking regulation (i.e., 49 CFR 171.3(b)(1)) in 40 CFR 262.33 does not apply to generators, and deletes it from the placarding regulation that is applicable to generators; and,

- (5) Corrects errors in 40 CFR 264.72(e)(4) and in 265.72(e)(4) pertaining to manifest discrepancies.

This final rule will be effective on September 6, 2005, which is the same effective date of the March 4, 2005 Manifest Final Rule. We believe this approach will minimize confusion about the new manifest form and procedures.

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

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because these corrections to the final rule do not change the requirements of the final rule. They are minor corrections and are not controversial. Thus, notice and public comment are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Why Are the Clarifications and Corrections in This Rule Necessary?

EPA believes the errors in the March 4, 2005 *Federal Register* notice may cause confusion about the new manifest form and procedures. Therefore, we are explaining the corrections below.

A. Corrections and Clarifications to the PRA Burden Statement

The EPA mailing address contained in the PRA burden statement for manifest completion is incorrect. We are amending the manifest instructions in the Appendix to 40 CFR part 262 by correcting the EPA mailing instructions contained in the PRA burden statement so that any correspondence regarding

the manifest burden estimate is sent to the appropriate division in the Office of Information Collection. We also are amending the PRA burden statement by removing the mailing address for the Office of Management and Budget. Any correspondence regarding the PRA burden statement for the manifest must be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

B. Corrections to Item 5 of the Manifest Form Instructions

Item 5 instructions require a manifest preparer to enter the generator's name, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number (including the area code). However, the instructions published on March 4 incorrectly state that the telephone number should be the number where the generator or his authorized agent may be reached to provide instructions in the event of an emergency. Given that Item 3 already requires an emergency phone number, that information does not need to be repeated in Item 5. Instead, the number provided in Item 5 should be the normal business phone number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Therefore, we are correcting the Item 5 instruction accordingly.

C. Corrections to Item 15 of the Manifest Instructions

The wording of the shipper's certification statement contained in the Generator's certification on the manifest, and the wording of the shipper's certification statement contained in the instructions to Item 15 are different. This final rule corrects the wording in the shipper's certification statement contained in the instructions to Item 15 so that it matches exactly the wording in the Generator's certification on the manifest. The corrected wording in the instructions is as follows:

"I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export

shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent."

D. Corrections and Clarifications to 40 CFR 262.33 and to 262.20(a)(2)

In the May 2001 proposed rule, EPA proposed to amend 40 CFR 262.33 by referencing an existing DOT marking regulation (49 CFR 171.3(b)(1)) in 40 CFR part 262.33, which requires hazardous material (Hazmat) carriers (*i.e.*, transporters) to mark their name and motor carrier identification number on their vehicles. We proposed this change and subsequently retained it in the March 4, 2005 final rule to make generators aware of the DOT requirement, and because we believed that generators also are required to mark transportation vehicles, according to 49 CFR 171.3(b)(1), in situations where placards are not required. We did not intend to create new marking requirements for hazardous waste generators; rather, we added the reference to 49 CFR 171.3(b)(1) because at that time we understood the existing DOT regulation to apply to both generators and transporters. However, we now understand that 49 CFR 171.3(b)(1) only applies to persons who accept for transportation, transport, or deliver hazardous waste (*i.e.*, carriers or transporters), and it is therefore inappropriate to include this reference in EPA's generator regulations. This final rule deletes the DOT reference to 49 CFR 171.3(b)(1) from the placarding requirement at 40 CFR 262.33 and reinstates the placarding provisions that were in effect prior to the March 4, 2005 final rule. Therefore, existing generator marking requirements remain unchanged. Generators must placard or offer the initial transporter the appropriate placards according to DOT regulations in part 172, subpart F of Chapter 49 of the CFR, before transporting hazardous waste or offering hazardous waste for transportation off-site. Per the correction made to 40 CFR part 262.33 in this final rule, we also are correcting 40 CFR 262.20(a)(2). The reference to 40 CFR 262.33 in that section no longer is relevant. Therefore, we are removing it accordingly.

E. Corrections to 40 CFR 264.72(e)(4) and to 265.72(e)(4)

Paragraph (e)(4) in 40 CFR 264.72 and in 265.72 incorrectly contains the words "of this chapter" at the end of the sentence. These words are not necessary, and this notice corrects the error by removing those words from the

end of the sentence in 40 CFR 264.72(e)(4) and in 265.72(e)(4).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order No. 12866 (58 FR 51735, October 4, 1993), Federal agencies must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "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, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This final rule corrects errors in a previous rule and does not create any new regulatory requirements, and thus it does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Analysis

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. EPA has determined that today's rule will not have significant

economic impact on a substantial number of small entities. The rule does not impose any additional burdens on small entities because it does not create any new regulatory requirements. Therefore, EPA has determined that it is appropriate to certify that this rule will not have a significant economic impact on a substantial number of small entities.

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. For the reason described above, the rule does not create any new requirements, and does not contain a Federal mandate that may result in expenditures of \$100 million or more to State, local, or tribal governments in the aggregate, or for the private sector. The rule likewise contains no regulatory requirements that might significantly or uniquely affect small governments under section 203 of the UMRA and imposes no burdens that may result in annual expenditures of \$100 million or more. Accordingly, the requirements of UMRA do not apply.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires Federal agencies 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." The Executive Order defines "policies that have federalism implications" 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 create any new Federal requirements. Therefore, this final rule does not have federalism implications, and it would 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.

F. Executive Order 13175: Consultation With Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 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. This rule corrects errors to existing regulations governing the tracking of hazardous waste from a generator's site to the site of its disposition. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children—Applicability of Executive Order 13045

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered.

This correction is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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 this correction does not create any new Federal requirements, and it will not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This correction does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. 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 become effective on September 6, 2005.

List of Subjects

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, Security measures.

40 CFR Part 265

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

Dated: June 10, 2005.

Stephen L. Johnson,
Administrator.

■ For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 2. Section 262.20 is amended by revising paragraph (a)(2) to read as follows:

§ 262.20 General Requirements

* * * * *

(a) * * *

(2) The revised manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, 262.34,

262.54, 262.60, and the appendix to part 262, shall not apply until September 5, 2006. The manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, 262.60, and the Appendix to part 262, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

* * * * *

■ 3. Section 262.33 is revised to read as follows:

§ 262.33 Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F.

■ 4. The appendix to part 262 is amended by adding the manifest form (EPA Form 8700–22) and continuation

sheet (EPA Form 8700–22A) into the corresponding manifest instructions, by revising paragraph 2 of the introductory text (the manifest Paperwork Reduction Act burden statement), the two paragraphs preceeding the Instructions for Generators, and by revising Item 5 and Item 15 of the manifest instructions to read as follows:

Appendix to Part 262—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700–22 and 8700–22a and Their Instructions) U.S. EPA Form 8700–22

* * * * *

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700–22) and, if necessary, the continuation sheet (FORM 8700–22A) for both inter- and intrastate transportation of hazardous waste.

BILLING CODE 6560–50–P

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form Approved, OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator ID Number	2. Page 1 of	3. Emergency Response Phone	4. Manifest Tracking Number
5. Generator's Name and Mailing Address		Generator's Site Address (if different than mailing address)			
Generator's Phone:					
6. Transporter 1 Company Name		U.S. EPA ID Number			
7. Transporter 2 Company Name		U.S. EPA ID Number			
8. Designated Facility Name and Site Address		U.S. EPA ID Number			
Facility's Phone:					
9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers		11. Total Quantity	12. Unit Wt./Vol.
		No.	Type		
1.					
2.					
3.					
4.					
13. Waste Codes					
14. Special Handling Instructions and Additional Information					
15. GENERATOR'S/OFFEROR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.					
Generator's/Offeror's Printed/Typed Name		Signature		Month	Day Year
16. International Shipments ☐ Import to U.S. ☐ Export from U.S.		Port of entry/exit: _____			
Transporter signature (for exports only):		Date leaving U.S.: _____			
17. Transporter Acknowledgment of Receipt of Materials					
Transporter 1 Printed/Typed Name		Signature		Month	Day Year
Transporter 2 Printed/Typed Name		Signature		Month	Day Year
18. Discrepancy					
18a. Discrepancy Indication Space ☐ Quantity ☐ Type ☐ Residue ☐ Partial Rejection ☐ Full Rejection					
Manifest Reference Number: _____					
18b. Alternate Facility (or Generator)		U.S. EPA ID Number			
Facility's Phone:					
18c. Signature of Alternate Facility (or Generator)		Signature		Month	Day Year
19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)					
1.	2.	3.	4.		
20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a					
Printed/Typed Name		Signature		Month	Day Year

EPA Form 8700-22 (Rev. 3-05) Previous editions are obsolete.

DESIGNATED FACILITY TO DESTINATION STATE (IF REQUIRED)

Manifest 8700-22

The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Any correspondence regarding the PRA burden statement for the manifest must be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Do not send the completed form to this address.

I. Instructions for Generators

* * * * *

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the

telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

* * * * *

Item 15. Generator's/Offerrer's Certifications

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully

and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offerrer certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre-printed.

* * * * *

Item 20. Designated Facility Owner or Operator Certification of Receipt (Except as Noted in Item 18a)

* * * * *

EPA Form 8700-22A (Rev. 3-05) Previous editions are obsolete.

DESIGNATED FACILITY TO DESTINATION STATE (IF REQUIRED)

Instructions—Continuation Sheet, U.S. EPA Form 8700-22A

* * * * *

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

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

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

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 6. Section 264.72 is amended by revising paragraph (e)(4) to read as follows:

§ 264.72 Manifest discrepancies.

* * * * *

(e) * * *

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

* * * * *

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

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

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 8. Section 265.72 is amended by revising paragraph (e)(4) to read as follows:

§ 265.72 Manifest discrepancies.

* * * * *

(e) * * *

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

* * * * *

[FR Doc. 05-11915 Filed 6-15-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. RSPA-03-15852; Amdt. Nos. 192-99, 195-83]

RIN 2137-AD96

Pipeline Safety: Pipeline Operator Public Awareness Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: PHMSA is correcting a Final Rule published in the *Federal Register* on May 19, 2005 (70 FR 28833). That Final Rule amended requirements for pipeline operators in 49 CFR parts 192 and 195 to develop and implement public awareness programs and incorporated by reference the guidelines of the American Petroleum Institute (API) Recommended Practice (RP) 1162. The document was assigned the amendment numbers 192-100 and 195-84, which were already assigned to different amendments. This document corrects the amendment numbers, and corrects the language amending part 192 so that it is consistent with part 195.

DATES: Effective June 20, 2005.

FOR FURTHER INFORMATION CONTACT: Blaine Keener by phone at 202-366-0970, by mail at 400 7th St. SW., Room 2103, Washington, DC 20590, or by e-mail at blaine.keener@dot.gov.

SUPPLEMENTARY INFORMATION: On May 19, 2005, PHMSA published a Final Rule in the *Federal Register* entitled "Pipeline Safety: Pipeline Operator Public Awareness Program" (70 FR 28833) under amendment numbers 192-100 and 195-84. PHMSA discovered that a rule published on March 3, 2005 entitled "Pipeline Safety: Operator Qualifications; Statutory Changes" had been assigned unsequential amendment numbers and already existed as amendments 192-100 and 195-84. Since the existing amendment numbers are already in use, this document corrects the amendment numbers for the Final Rule "Pipeline Safety: Operator Public Awareness Program" to reflect correct numbering as 192-99 and 195-83.

The Operator Public Awareness Program Final Rule incorporated by reference API RP 1162 into 49 CFR parts 192 and 195. After the rule's publication, PHMSA received a request to clarify the difference between the

requirements in 195.440 (c) and 192.616 (c). The comment identified a language inconsistency requiring operators to "follow the general program recommendations of API RP 1162" in part 192, while part 195 specified that the operator "must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162".

PHMSA intended the amending language in parts 192 and 195 to be consistent. The language used in part 192 should match the language in part 195, which clarifies that the operator must follow both baseline and supplemental requirements of API RP 1162. In consideration of the foregoing, PHMSA corrects 49 CFR part 192 by making the following correcting amendments:

List of Subjects in 49 CFR Part 192

Pipeline safety and Reporting and recordkeeping requirements.

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, and 60118; and 49 CFR 1.53.

■ 2. Section 192.616 paragraph (c) is revised to read as follows:

§ 192.616 Public awareness.

* * * * *

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

* * * * *

Issued in Washington, DC, on June 10, 2005.

Siacey L. Gerard,

Acting Assistant Administrator/Chief Safety Officer.

[FR Doc. 05-11865 Filed 6-15-05; 8:45 am]

BILLING CODE 4910-60-P

[Federal Register: June 16, 2005 (Volume 70, Number 115)]
[Rules and Regulations]
[Page 35032-35034]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr16jn05-10]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[RCRA-2003-0001; FRL-7924-9]
RIN 2050-AD80

Hazardous Waste Management System; Identification and Listing of
Hazardous Waste; Dyes and/or Pigments Production Wastes; Land Disposal
Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance
Designation and Reportable Quantities; Designation of Five Chemicals as
Appendix VIII Constituents; Addition of Four Chemicals to the Treatment
Standards of F039 and the Universal Treatment Standards; Correction

AGENCY: EPA.

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule in the Federal Register on February
24, 2005, listing as hazardous under the Resource Conservation and
Recovery Act (RCRA) nonwastewaters generated from the production of
certain dyes, pigments, and FD&C colorants. This document corrects
typographical errors in the regulatory text and notes other
typographical errors in the preamble.

adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (32)(e) of the Instruction, from further environmental documentation. There are no expected environmental consequences of the action that would require further analysis and documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. From 9 p.m. July 15, 2005, to 5 a.m. November 15, 2005, in § 117.1041, suspend paragraph (a)(1) and add a new paragraph (a)(3) to read as follows:

§ 117.1041 Duwamish Waterway.

(a) * * *

(3) Monday through Friday, except all Federal holidays but Columbus Day, the draws of the First Avenue South Bridges, mile 2.5, need not be opened for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., except that the draw shall open on one-hour notice for a vessel of 5000 gross tons and over, a vessel towing a vessel of 5000 gross tons and over, and a vessel proceeding to pick up for towing a vessel of 5000 gross tons and over.

Sunday through Friday, the draws need not be opened for the passage of any vessels from 9 p.m. to 5 a.m.

* * * * *

Dated: June 8, 2005.

J.M. Garrett,
Rear Admiral, U.S. Coast Guard, Commander,
Thirteenth Coast Guard District.

[FR Doc. 05-11850 Filed 6-15-05; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[RCRA-2003-0001; FRL-7924-9]

RIN 2050-AD80

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dyes and/or Pigments Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Designation of Five Chemicals as Appendix VIII Constituents; Addition of Four Chemicals to the Treatment Standards of F039 and the Universal Treatment Standards; Correction

AGENCY: EPA.

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule in the *Federal Register* on February 24, 2005, listing as hazardous under the Resource Conservation and Recovery Act (RCRA) nonwastewaters generated from the production of certain dyes, pigments, and FD&C colorants. This document corrects typographical errors in the regulatory text and notes other typographical errors in the preamble. **DATES:** This correction is effective on August 23, 2005.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the *Federal Register* document of February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Kayser, Hazardous Waste Identification Division, Office of Solid Waste (5304W), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308-7304; fax number: (703) 308-0514; e-mail address: kayser.robert@epa.gov. For general information on the final rule, review our Web site at <http://www.epa.gov/epaoswer/hazwaste/id/dyes/index.htm>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

The Agency included in the final rule of February 24, 2005, a list of those who

may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of This Document and Other Related Information?

In addition to using the EDOCKET at <http://www.epa.gov/edocket/>, you may access this *Federal Register* document electronically through the EPA Internet under the *Federal Register* listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 261 is available at e-CFR Beta Site at <http://www.gpoaccess.gov/ecfr/>.

II. What Does This Correction Do?

This Action corrects two typographical errors in the final rule, both of which are the same but occur in different paragraphs, published in the *Federal Register* of February 24, 2005 (see FR Doc. 05-3454; 70 FR 9138-9180) (FRL-7875-8). The first error appears at 70 FR 9176 in the text of § 261.32(d)(2). At the end of the first sentence, the phrase "listing levels of this section" is misplaced and is in part repetitive. The phrase "listing levels of" should immediately precede "paragraph (c)" in that sentence and the last usage of the phrase "this section" at the end of the sentence should be deleted. Thus, the first sentence of § 261.32(d)(2) should conclude as follows: "to conclude that annual mass loadings for the K181 constituents are below the listing levels of paragraph (c) of this section."

The second error also appears at 70 FR 9176 in the text of § 261.32(d)(3)(iv)(B). At the end of the sentence, the phrase "listing levels of this section" is misplaced and is in part repetitive. The phrase "listing levels of" should immediately precede "paragraph (c)" in the sentence and the last usage of the phrase "this section" at the end of the sentence should be deleted. Thus, § 261.32(d)(3)(iv)(B) should conclude as follows: "to support any claim that the constituent mass loadings are below the listing levels of paragraph (c) of this section."

We also note that the preamble to the final rule contains several erroneous regulatory citations. The first one appears at 70 FR 9145, in the second column, in the first paragraph under the heading "1. Toluene-2,4-diamine," line three. The correct regulatory citation is to "§ 261.32(c)(1)" and not "§ 261.31(c)(1)". The second one appears in line six of the same paragraph. The correct citation is to

“§ 261.32(c)(2)” and not to “§ (c)(2)”. The last one appears at 70 FR 9145, in the third column, in line six. The correct citation is to “§ 261.32(c)(1)” and not “§ 261.31(c)(1)”.

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

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's correction final without prior proposal and opportunity for comment, because EPA is merely correcting language to allow the affected rule sections to make sense grammatically. Therefore, EPA finds that additional public comment is not necessary under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to This Action?

This final rule implements an amendment to the Code of Federal Regulations that has no substantive impact on the underlying regulations, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that such amendments are not a “significant regulatory action” subject to review by OMB under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). This action does not require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or OMB review or any Agency action under Executive Order 13045, entitled Protection of Children from

Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since the action does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled Federalism (64 FR 43255, August 10, 1999). Executive Order 13132 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 action does not alter the relationships or distribution of power and responsibilities. For similar reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and

responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. 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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

Dated: June 10, 2005.

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 261—[CORRECTED]

■ 1. 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.

■ 2. Section 261.32 is amended by revising the introductory text to paragraph (d)(2) and paragraph (d)(3)(iv)(B) to read as follows:

§ 261.32 Hazardous wastes from specific sources.

* * * * *

(d) * * *

(2) *Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents.* If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes (e.g., knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the listing levels of paragraph (c) of this

section. To make this determination, the generator must:

* * * * *

(3) * * *

(iv) * * *

(B) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of paragraph (c) of this section.

* * * * *

[FR Doc. 05-11914 Filed 6-15-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 264, and 265

[FRL-7925-1]

RIN 2050-AE21

Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors that appeared in the Hazardous Waste Manifest Final Rule, which was published in the *Federal Register* (FR) on March 4, 2005 (70 FR 10776). This final rule does not create new regulatory requirements.

EFFECTIVE DATE: This final rule is effective September 6, 2005.

ADDRESSES: EPA has established a docket for the manifest final rule under Docket ID No. RCRA-2001-0032. All documents—including this correction—in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, 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 available publicly only in hard copy form. Docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., 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 EPA Docket Center is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: For further information regarding specific aspects of this document, contact Bryan Groce, Office of Solid Waste, (703) 308-8750, groce.bryan@epa.gov, or Richard LaShier, Office of Solid Waste, (703) 308-8796, lashier.rich@epa.gov. Mail inquiries may be directed to the Office of Solid Waste, (5304W), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

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 - D. Corrections and Clarifications to 40 CFR 262.33 and to 262.20(a)(2).
 - E. Corrections to 40 CFR 264.72(e)(4) and to 265.72(e)(4).
- V. Statutory and Executive Order Reviews.

I. Does This Rule Create New Federal Requirements?

No. This rule creates no new regulatory requirements; rather, it corrects errors made in the Appendix to part 262 of chapter 40 of the Code of Federal Regulations (CFR) and corrects certain manifest regulations that were promulgated in the March 4, 2005 *Federal Register*.

II. What Does This Rule Do?

This rule corrects the printing omissions of the manifest form (EPA Form 8700-22) and the continuation sheet (EPA Form 8700-22A), which were omitted inadvertently from the final rule promulgated on March 4, 2005 (70 FR 10776), by inserting the manifest form (EPA Form 8700-22) and the continuation sheet (EPA Form 8700-22A) into the corresponding manifest instructions. In addition, this rule amends portions of the instructions for the manifest form and continuation sheet, which are contained in the Appendix to part 262 of chapter 40 of the CFR, amends the marking requirements at 40 CFR 262.33 for hazardous waste generators and amends the manifest discrepancy requirements at 40 CFR 264.72 and 265.72. Specifically, the rule:

(1) Corrects the EPA mailing address for comment submissions regarding the

Paperwork Reduction Act (PRA) burden statement estimates;

(2) Corrects the incorrect description of the telephone number to insert in Item 5 of the manifest instructions;

(3) Corrects the wording in the instructions to the first certification (*i.e.*, the Generator Certification) in Item 15 so that it is consistent with the revised certification wording on the manifest form;

(4) Clarifies that the reference to the DOT marking regulation (*i.e.*, 49 CFR 171.3(b)(1)) in 40 CFR 262.33 does not apply to generators, and deletes it from the placarding regulation that is applicable to generators; and,

(5) Corrects errors in 40 CFR

264.72(a)(4) and in 265.72(e)(4) pertaining to manifest discrepancies.

This final rule will be effective on September 6, 2005, which is the same effective date of the March 4, 2005 Manifest Final Rule. We believe this approach will minimize confusion about the new manifest form and procedures.

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

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because these corrections to the final rule do not change the requirements of the final rule. They are minor corrections and are not controversial. Thus, notice and public comment are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Why Are the Clarifications and Corrections in This Rule Necessary?

EPA believes the errors in the March 4, 2005 *Federal Register* notice may cause confusion about the new manifest form and procedures. Therefore, we are explaining the corrections below.

A. Corrections and Clarifications to the PRA Burden Statement

The EPA mailing address contained in the PRA burden statement for manifest completion is incorrect. We are amending the manifest instructions in the Appendix to 40 CFR part 262 by correcting the EPA mailing instructions contained in the PRA burden statement so that any correspondence regarding

be treated in a biological wastewater treatment unit without the facility having to manage the resulting treatment residue as a listed hazardous waste.

While very supportive of a potential rulemaking addressing leachates, several commenters objected to our use of the most recent EPA study of landfill leachate characteristics (65 FR 3007, January 19, 2000) as a factor in our decision to not exempt non-solvent leachates during this rulemaking. This study, which was conducted as part of data collected to establish technology-based effluent limitations guidelines and standards for landfills, determined that leachates from hazardous waste landfills had a greater number of constituents than leachates from non-hazardous landfills. In addition, the study concluded that the constituents present in the leachates from hazardous waste landfills were an order of magnitude greater than their counterparts in non-hazardous waste landfills.³ The commenters argued that the results of the study might be biased for two reasons. First, the commenters stated that leachates from hazardous waste landfills are analyzed for more constituents as well as analyzed more frequently than leachates from non-hazardous landfills. Therefore, the lack of data resulting from non-hazardous waste landfill leachates not being routinely analyzed cannot be an indicator for the absence of constituents in those leachates. Second, commenters were concerned that the contents of the non-hazardous landfill database may have been skewed towards landfills that do not accept hazardous wastes from households, conditionally exempt small quantity generators, or other wastes that do not require pretreatment, such as construction/demolition types of landfills. Therefore, the commenters question whether or not the comparison made between leachates from hazardous waste and non-hazardous waste landfills is based upon equivalent data. Finally, due to the concern that our decision was based upon an insufficient analysis, one commenter submitted analytical data from their facilities on leachate composition.

The Agency disagrees that it is inappropriate to base the decision not to include leachates in the exemption, in part, on the study of landfill leachate characteristics. The results of the study are based on data gathered to support the final effluent guidelines for the

landfill point source category (65 FR 3007, January 19, 2000) and was therefore designed to be comparable. The Agency analyzed all wastewater samples that it collected for the study for the same list of constituents regardless of whether the landfill was considered a hazardous or non-hazardous waste landfill. While the Agency disagrees with the commenters regarding the appropriateness of utilizing the landfill leachate characteristics study as a decision factor to not include leachates in the exemption at this time, we do believe, as stated in the preamble to the proposed rule, that the results of the study indicate that further analysis is needed before an exemption is considered.

V. State Authorization

A. How Will Today's Regulatory Changes Be Administered and Enforced in the 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. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new federal regulatory requirements promulgated under the authority in the RCRA statute which existed 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. The state must adopt such requirements to maintain authorization. In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. Although unauthorized states still are required to update their hazardous waste programs to remain equivalent to the federal

program, 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 promulgates 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, either HSWA or non-HSWA, that are considered less stringent.

Today's rule is finalized pursuant to non-HSWA authority. The finalized changes in the conditional exemptions from the definition of hazardous waste under the headworks rule are less stringent than the current federal requirements. Therefore, states will not be required to adopt and seek authorization for the finalized changes. EPA will implement the changes to the exemptions only in those states which are not authorized for the RCRA program. Nevertheless, EPA believes that this rulemaking has considerable merit, and we thus strongly encourage states to amend their programs and become federally-authorized to implement these rules.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 **Federal Register** 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and 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 a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the

³ Development Document for Final Effluent Limitations Guidelines and Standards for the Landfills Point Source Category, EPA-821-R-99-019, U.S. EPA, January 2000.

President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because this rule contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or

recommendations will be documented in the public record. EPA's economic analysis suggests that this rule is not economically significant under Executive Order 12866, because EPA estimates that the overall national economic effect of the rule is \$11.4 million to \$48.6 million in average

annual potential cost savings for RCRA regulatory compliance. The following table presents an itemization of EPA's estimated count of affected facilities, affected annual RCRA waste quantities, and estimated annual cost savings for each of the five main features of this final rule.

SUMMARY OF ESTIMATED POTENTIAL NATIONAL ECONOMIC IMPACT FROM THE FINAL REVISIONS TO THE "HEADWORKS EXEMPTION" OF THE RCRA HAZARDOUS WASTE MIXTURE RULE (40 CFR 261.3(A)(2)(IV)(A) TO (E))

Item	Final regulatory revision to "headworks exemption"	Count of potentially affected entities (eligible industrial facilities)	Annual quantity of potentially affected (eligible) RCRA hazardous waste (tons/year)	Estimate of average annual economic impact* (\$/year)
1	Add two F005 spent solvents (benzene & 2-ethoxyethanol) to the "headworks exemption; for the RCRA hazardous waste mixture rule**.	115 to 1,800 facilities	0.036 to 0.594 million tons/year; spent solvent wastes (aqueous & non-aqueous forms).	\$0.32 to \$5.65 million/year in spent solvent waste management cost savings (netting-out implementation paperwork costs).
2	Provide "headworks exemption" for F001 to F005 spent solvent hazardous waste combustion "scrubber waters".	3 to 9 facilities	0.20 to 0.61 million tons/year scrubber wastewater.	\$0.53 to \$1.58 million/year in scrubber wastewater management cost savings.
3	Allow "direct monitoring" of F001 to F005 spent solvent waste concentrations in headworks influent wastewaters, in lieu of "mass balance" computations.	1,811 to 7,300 facilities	1.13 to 4.58 million tons/year; spent solvent wastes; (aqueous & non-aqueous forms).	\$10.09 to \$40.88 million/year in spent solvent waste management cost savings.
4	Revise RCRA hazardous waste "de minimis" exemption to include RCRA F- & K-listed wastes.	71 facilities	30 tons/year; spill incidents	\$0.03 million/year in spill response cost savings.
5	Revise RCRA hazardous waste "de minimis" exemption to include non-manufacturing facilities.	1,266 facilities	570 tons/year; spill incidents	0.48 million/year in spill response cost savings.
	Column totals =	3,266 to 10,446 facilities	1.37 to 5.78 million; tons/year	\$11.4 to 48.6 million/year cost savings.

*Economic impact based on year 2000 price levels for waste management systems. Also, for reasons explained in the Economic Background Document, the upper-ends of the numerical ranges in this table probably represent over-estimation of potential impacts; actual impacts are probably closer to the lower-ends of impact ranges.

**In comparison, expansion of the RCRA "headworks exemption" to include all four chemical solvents examined in the 8 April 2003 proposed rule, would likely only result in addition of one wastestream, at an additional annual cost savings of about \$19,000 (consisting tons/year aqueous spent solvent).

A detailed presentation of EPA's methodology, data sources, and computations applied for estimating the number of affected entities (industrial facilities) and economic impacts attributable to today's final rule is provided in the "Economic Background Document."

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The rule requires generators wanting to demonstrate compliance with the RCRA headworks exemptions through

direct monitoring (rather than by the mass balance computation method as required before this rule), to submit a one-time copy of their wastewater headworks sampling and analysis plan (SAP), to the EPA Regional Administrator (or to the State Director in an authorized State), and to maintain in on-site files, all direct monitoring records for a minimum of three years. The SAP requirements for direct monitoring shall be site-specific. As with all other exemptions and exclusions from EPA's RCRA definition of hazardous waste, a facility is required under 40 CFR 268.7(a)(7) to place a one-time notice concerning RCRA hazardous waste generation, subsequent exclusion from the RCRA definition of hazardous waste, or RCRA definition of solid

waste, or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's on-site files. Generally, such notification, as well as certifications, waste analysis data, and other documentation must be kept in on-site files for a period of three years, unless an enforcement action by the Agency extends the record retention period (40 CFR 268.7(a)(8)).

EPA estimates that the incremental, three-year average annualized respondent burden for the new paperwork requirements in the rule, including initial burden to exemption claimants for reading the rule, is 45,900 hours per year, and the three-year annualized respondent cost for the new paperwork requirements in the rule is \$8.56 million per year. However, in

addition to the new paperwork requirements in the rule, EPA also estimated the burden and cost that generators could expect as a result of complying with the existing RCRA hazardous waste information collection requirements for the excluded materials. Because the addition of benzene and 2-ethoxyethanol would increase the number of facilities that participate in the existing headworks exemptions (and the greater possibility of using direct monitoring), EPA expects there would be both a reduction in some RCRA paperwork requirements (*i.e.*, preparation of RCRA hazardous waste manifests and RCRA Biennial Reports), and an increase in other RCRA paperwork requirements (*i.e.*, demonstrating compliance by using mass balance and submitting a one-time LDR notification under 40 CFR 268.7(a)(7)). Taking both revised and existing RCRA requirements into account, EPA expects the rule's revisions to the headworks exemption, would result in a net annualized burden of about 46,200 hours per year at a cost of \$8.53 million per year. EPA expects this net additional paperwork cost to be offset by annual costs savings to respondents from reduced waste management costs, resulting in a net cost savings of \$11.4 to \$48.6 million per year. In addition to respondent burden, EPA estimates the paperwork burden cost to RCRA-authorized State agencies of administering the rule at about 370 hours per year at a cost of \$13,800 per year. Because of the fact that some of the rule's paperwork requirements are one-time only (*e.g.*, sampling and analysis plan) rather than annually-recurring burden, the actual annual burden hours and burden costs after the first-year in which the rule takes effect, will be lower than the three-year average annual values summarized above. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or 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 in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations 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 final rule on small entities, I certify that this action will not have a significant economic 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 proposed 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 economic effect on all of the small entities subject to the rule.

Because this final rule expands the existing wastewater treatment

exemptions, the Agency believes that the hazardous waste management costs for both small and large entities will be reduced. In addition, these new exemptions are non-mandatory; therefore, the exemptions do not need to be claimed unless it is cost-effective. The net cost savings for affected entities has been estimated to be \$11.4–48.6 million (please refer to the economic background document to this final rule for more information). We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

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 proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and

tribal governments, in the aggregate, or the private sector in any one year. This is because this final rule imposes no enforceable duty on any state, local or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the 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 final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule directly affects primarily generators of hazardous wastewaters containing spent solvents, generators of scrubber waters derived from the incineration of spent solvents, and generators releasing *de minimis* amounts of listed wastes under certain conditions. There are no state and local government bodies that incur direct compliance costs by this rulemaking. State and local government implementation expenditures are expected to be less than \$500,000 in any one year. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposed rule from state and local officials.

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 9, 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. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

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. This final rule reduces regulatory burden. It thus should not adversely affect energy supply, distribution or use.

I. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities

unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System ("PBMS"), EPA has decided not to require the use of specific, prescribed analytic methods. Rather, the rule will allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

J. 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 November 3, 2005.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Waste treatment and disposal.

Dated: September 27, 2005.

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 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6983.

■ 2. Section 261.3 is amended by revising paragraphs (a)(2)(iv)(A), (a)(2)(iv)(B), (a)(2)(iv)(D), (a)(2)(iv)(F) and (a)(2)(iv)(G) to read as follows:

§ 261.3 Definition of hazardous waste.

- (a) * * *
- (2) * * *
- (iv) * * *

(A) One or more of the following spent solvents listed in § 261.31—benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents—*Provided*, That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million, OR the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative ("Director" as defined in 40 CFR 270.2). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the

sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in § 261.31—methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived from the combustion of these spent solvents—*Provided* That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million, OR the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative ("Director" as defined in 40 CFR 270.2). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above

information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in §§ 261.31 through 261.33, arising from *de minimis* losses of these materials. For purposes of this paragraph (a)(2)(iv)(D), *de minimis* losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for *de minimis* quantities of wastes listed in §§ 261.31 through 261.32, or any nonmanufacturing facility that claims an exemption for *de minimis* quantities of wastes listed in subpart D of this part must either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed (in 40 CFR 261 appendix VII) of this part; and the constituents in the table "Treatment Standards for Hazardous Wastes" in 40 CFR 268.40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible *de minimis* releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority must be placed in the facility's on-site files; or

(F) One or more of the following wastes listed in § 261.32—wastewaters

from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—*Provided* that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, *i.e.*, what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight OR the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative ("Director" as defined in 40 CFR 270.2). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and

carbamoyl oximes (EPA Hazardous Waste No. K156).—*Provided*, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter OR the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative ("Director" as defined in 40 CFR 270.2). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

* * * * *

[FR Doc. 05-19841 Filed 10-3-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 413, 415, 419, 422, and 485

[CMS-1500-F2]

RIN-0938-AN57

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects technical errors in the final rule that appeared in the August 12, 2005 *Federal Register* entitled "Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates."

EFFECTIVE DATE: This correcting amendment is effective August 12, 2005.

FOR FURTHER INFORMATION CONTACT: Marc Hartstein, (410) 786-4548.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Errors

In FR Doc. 05-15406 (70 FR 47278), the final rule entitled "Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates" (hereinafter referred to as the FY 2006 final rule), there were technical errors that are identified and corrected in the regulations text of this correcting amendment. The provisions of this correcting amendment are effective August 12, 2005.

On page 47487 of the FY 2006 final rule, we made technical errors in the regulation text of § 412.230(d)(2)(iii). In this paragraph, we inadvertently omitted qualifying language related to our reclassification policy. Accordingly, we are revising § 412.230(d)(2)(iii) to accurately reflect our policy on reclassification of a campus of a multicampus hospital. Therefore, on page 47487 first column, lines 23 through 25, the phrase "may seek reclassification to a CBSA in which another campus(es) is located" would be corrected to read "may seek reclassification only to a CBSA in which another campus(es) is located" and on lines 29 and 30, the phrase "may submit" would be corrected to read "must submit."

[Federal Register: June 14, 2005 (Volume 70, Number 113)]
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Part II

Environmental Protection Agency

40 CFR Parts 63, 268, et al.

Waste Management System; Testing and Monitoring Activities; Final Rule:
Methods Innovation Rule and SW-846 Final Update IIIB; Final Rule

[[Page 34538]]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 258, 260, 261, 264, 265, 266, 268, 270, 271, and
279

[RCRA-2002-0025; FRL-7916-1]
RIN 2050-AE41

Waste Management System; Testing and Monitoring Activities; Final
Rule: Methods Innovation Rule and SW-846 Final Update IIIB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is amending a variety of
testing and monitoring requirements in the Resource Conservation and

Recovery Act (RCRA) hazardous and non-hazardous solid waste regulations and for certain Clean Air Act (CAA) regulations that relate to hazardous waste combustors. These amendments allow more flexibility when conducting RCRA-related sampling and analysis by removing from the regulations a requirement to use the methods found in ``Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' also known as ``SW-846,'' in conducting various testing and monitoring and by limiting required uses of an SW-846 method to circumstances where the method is the only one capable of measuring the particular property (i.e., the method is used to measure a required method-defined parameter). This action is an important step forward in implementing the use of a performance-based approach, which is part of the Agency's efforts toward Innovating for Better Environmental Results. Additionally, the Agency is making certain other clarifications and technical amendments. These changes should make it easier and more cost effective to comply with the affected regulations, without compromising human health or environmental protection.



Federal Register

Tuesday,
June 14, 2005

Part II

Environmental Protection Agency

40 CFR Parts 63, 268, et al.

**Waste Management System; Testing and
Monitoring Activities; Final Rule: Methods
Innovation Rule and SW-846 Final Update
IIIB; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 63, 258, 260, 261, 264, 265, 266, 268, 270, 271, and 279****[RCRA-2002-0025; FRL-7916-1]****RIN 2050-AE41****Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW-846 Final Update IIIB****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency is amending a variety of testing and monitoring requirements in the Resource Conservation and Recovery Act (RCRA) hazardous and non-hazardous solid waste regulations and for certain Clean Air Act (CAA) regulations that relate to hazardous waste combustors. These amendments allow more flexibility when conducting RCRA-related sampling and analysis by removing from the regulations a requirement to use the methods found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW-846," in conducting various testing and monitoring and by limiting required uses of an SW-846 method to circumstances where the method is the only one capable of measuring the particular property (*i.e.*, the method is used to measure a required method-defined parameter). This action is an important step forward in implementing the use of a performance-based approach, which is part of the Agency's efforts toward Innovating for Better Environmental Results. Additionally, the Agency is making certain other clarifications and technical amendments. These changes

should make it easier and more cost effective to comply with the affected regulations, without compromising human health or environmental protection.

DATES: This final rule is effective on July 14, 2005. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 14, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA-2002-0025. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information for which 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 in EDOCKET or in hard copy at the OSWER RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., 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. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: For information on this rulemaking, contact Kim Kirkland at: Office of Solid Waste (5307W), U. S. Environmental Protection Agency, 1200 Pennsylvania Avenue, SW., Washington, DC 20460-0002, (703) 308-8855, e-mail address: kirkland.kim@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. Does This Action Apply to Me?**

You may be covered by this action if you conduct waste sampling and analysis for Resource Conservation and Recovery Act (RCRA)-or National Emission Standards for Hazardous Air Pollutants (NESHAP)-related activities. Covered entities include anyone who generates, treats, stores, or disposes of hazardous or nonhazardous solid waste and is subject to RCRA subtitle C or D sampling and analysis requirements; and entities subject to NESHAP final standards for hazardous waste combustors (40 CFR part 63, subpart EEE). All types of industries, governments, and organizations may have entities that generate or manage RCRA-regulated hazardous and nonhazardous solid wastes and may be subject to RCRA-related sampling and analysis requirements.

To determine whether your facility, company, business organization, etc., is covered by this action, you should carefully examine the applicability criteria in part 63 and in parts 258 through 299 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult your regulatory authority.

B. How Do I Obtain Copies of SW-846?

The Third Edition of SW-846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, and IIIB will be available in pdf format on the Internet at <http://www.epa.gov/SW-846>. A paper copy of Final Update IIIB is also located in the docket for this rule (see section I.A above). Table 1 below provides sources for both paper and electronic copies of the Third Edition of SW-846 and all of its updates.

TABLE 1.—SOURCES FOR SW-846, THIRD EDITION, AND ITS UPDATES

Source	Available portions of SW-846
Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, phone (202) 512-1800, toll free (866) 512-1800, fax orders (202) 512-2250, and online: http://bookstore.gpo.gov .	—Paper copies of the SW-846, Third Edition, basic manual and of certain updates, including Final Updates, I, II, IIA, IIB, III, and IIIB and Draft Update IVA. The subscriber must integrate the updates.
National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847.	—Paper copy of an integrated version of SW-846, Third Edition, as amended by Final Updates, I, II, IIA, IIB, III, and IIIA. —Individual paper copies of the SW-846, Third Edition, basic manual and of certain updates, including Final Updates I, II, IIA, IIB, III, IIIA, and IIIB and Draft Updates IVA and IVB. —CD-ROM of integrated version of SW-846, Third Edition, as amended by Final Updates I, II, IIA, IIB, and III (pdf and WordPerfect electronic copies). —CD-ROM of Draft Update IVA (pdf and WordPerfect electronic copies).
Internet: http://www.epa.gov/SW-846	—Integrated version of SW-846, Third Edition, as amended by Final Updates I, II, IIA, IIB, III, IIIA, and IIIB (pdf electronic copy). —Draft Update IVA (pdf electronic copy). —Draft Update IVB (pdf electronic copy).

C. What Is the Legal Authority for This Action?

We are promulgating the part 258, 260, 261, 264–266, 268, 270, 271, and 279 regulations under the authority of sections 1006, 2002(a), 3001–3007, 3010, 3013–3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended. We are promulgating the part 63 regulation under the authority of sections 112 and 114 of the Clean Air Act.

D. How Is the Rest of This Preamble Organized?

II. Summary of Today's Rule

III. Background and Purpose of Action To Reform RCRA-Related Testing and Monitoring

- A. Public Comments Regarding How to Determine if a Method Is Appropriate
 - B. Public Comments Regarding Other Approaches
 - C. Public Comments Regarding Impacts From Removal of Required Uses of SW-846 Methods
- IV. Regulatory Revisions Involving Removal of SW-846 Requirements
- V. Editorial Corrections to SW-846 References in the RCRA Testing and Monitoring Regulations
- VI. Action to Withdraw the Reactivity Interim Guidance from SW-846 Chapter Seven and Remove Required SW-846 Reactivity Analyses and Threshold Levels from Conditional Delistings
- VII. Clarifications to Corrosivity and Ignitability Hazardous Waste Characteristics
- A. Revision to § 261.22(a)(2) to Clarify that SW-846 Method 1110A Is the SW-846 Standardized Version of the NACE Standard Specified for Corrosivity Characteristic Testing
 - B. Revisions to § 261.21(a)(1) to Remove an Unnecessary Referral to Method Equivalency Petitions; and an Explanation regarding the Decision to Not Revise the Regulation to Include the Updated ASTM Standards and References to Methods 1010A and 1020B as Proposed
- VIII. Availability of Final Update IIIB and Status of Final Update IV to SW-846
- IX. Addition of Method 25A to §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv)
- X. Removal of Requirements from § 63.1208(b)(8)(i) and (ii) in the NESHAP Standards to Demonstrate Feedstream Analytes Are Not Present at Certain Levels
- XI. Status of the RCRA Waste Sampling Draft Technical Guidance
- XII. State Authorization Procedures
- A. Applicability of Federal Rules in Authorized States
 - B. Authorization of States for Today's Rule
 - C. Abbreviated Authorization Procedures
- XIII. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act

- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

II. Summary of Today's Rule

On October 30, 2002 (67 FR 66251–66301), the Environmental Protection Agency (EPA) proposed to amend the testing and monitoring requirements under the hazardous and nonhazardous solid waste regulations, and a testing requirement under the Clean Air Act (CAA) in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste combustors. EPA is finalizing those regulatory revisions at this time. Some of the public comments are summarized and addressed in the sections to follow, and a background document containing our responses to all public comments can be found in the docket to this rule, RCRA–2002–0025. After consideration of all comments and for the reasons summarized in today's rule, we are finalizing the following actions:

1. Reforming RCRA-related testing and monitoring by restricting requirements to use SW-846 to only those situations where the method is the only one capable of measuring the property (*i.e.*, it is used to measure a method-defined parameter). This will allow more flexibility in RCRA-related sampling and analysis by removing unnecessary required uses of SW-846.
2. Withdrawing the cyanide and sulfide reactivity guidance from sections 7.3.3 and 7.3.4 of SW-846 Chapter Seven and withdrawing required uses of reactive cyanide and sulfide methods and threshold levels from conditional delistings.

3. Amending the regulations for the ignitability and corrosivity hazardous waste characteristics. As part of this, we are clarifying in § 261.22(a)(2) that SW-846 Method 1110A, "Corrosivity Toward Steel," is the "standardized" (as described in § 261.22(a)(2)) SW-846 method that is required to be used to determine the characteristic of corrosivity for steel. We are also removing the unnecessary reference to equivalency petitions in the ignitability

characteristic at § 261.21(a)(1). However, regarding the methods required for the determination of flash point under the characteristic of ignitability, the Agency decided not to replace the standard test methods ASTM D 3278–78 and D 93–79 with the latest versions of those methods.

4. Incorporating by reference Update IIIB to SW-846, which includes the revised Chapter Seven, and eleven revised methods, including method revisions to remove a requirement to use the SW-846 Chapter Nine, "Sampling Plan."

5. Adding Method 25A as an analytical option to analyses conducted in support of air emission standards for process vents and/or equipment leaks at treatment, storage, and disposal facilities.

6. Removing a requirement to demonstrate that feedstream analytes are not present at levels above the 80% upper confidence limit above the mean for sources subject to NESHAP: Final Standards for Hazardous Waste Combustors.

7. Removing from the regulations unnecessary references to SW-846, which do not affect the intent of the RCRA regulation.

This rule does not add any additional requirements to the regulations. Instead, this rule removes the requirement to use SW-846, and it clarifies what the Agency believes should be considered during the selection of other appropriate methods. Our purpose for the regulatory revisions is to make it easier and more cost effective to comply with the RCRA regulations by allowing more flexibility in method selection and use. If you prefer, where you find that a specific SW-846 method yields data that is suitably effective for demonstrating compliance in the particular matrix being analyzed, you can still use the SW-846 methods.

III. Background and Purpose of Action to Reform RCRA-Related Testing and Monitoring

Typically, the hazardous and nonhazardous solid waste RCRA regulations for testing and monitoring activities or the permits or waste analysis plans of facilities regulated by RCRA specify the analytes of concern to be determined in a matrix of concern at a particular regulatory level of concern. Additionally, some recently promulgated regulations specify the confidence level of concern. Most of the RCRA regulations leave the how (*i.e.*, which test method to use) up to the regulated community. Some RCRA regulations, however, specify the use of methods from the EPA publication

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW-846."

Initially, EPA issued SW-846 in 1980 soon after the first RCRA regulations were published. At that time, we intended that SW-846 serve two roles. First, the Agency intended that it serve as a guidance manual of generally appropriate and reliable analytical methods for RCRA-related testing and monitoring. Second, we intended that it serve as a readily-available source of those few analytical methods which were required in order to comply with the RCRA regulations. Since that time, EPA published regulations that required the use of SW-846 methods in general. Subsequently, members of the regulated public made it clear to EPA that they would like the opportunity to use other reliable methods, and EPA also decided that some of the SW-846 requirements were not necessary.

The regulatory requirement to use SW-846 in general (e.g., as in the delisting regulations at § 260.22 prior to this final rule) did not identify specific SW-846 methods. Rather, this requirement typically included the regulation of many different analytes which could be determined by many different methods. Almost every update to SW-846 includes at least one method that may be applicable to one or more of these general analytical requirements. Therefore, whenever SW-846 was updated to revise or add methods, EPA had to incorporate by reference all of the new and revised methods into the RCRA regulations as part of a rulemaking. EPA issued the updates as a proposed rule, requested public comment, and then promulgated the update in a final rule. This lengthy process delayed the timely use of the new analytical technologies.

On October 30, 2002 (67 FR 66251-66301), EPA proposed to remove from the regulations a requirement to use a method found in SW-846, except when that method is the only one capable of measuring the particular property. At that time, we described our reasons for wanting to remove this requirement from the regulations, including the Agency's desire to fully implement a performance-based measurement system (PBMS) in the RCRA program. Specifically, we noted that such a change would: (1) Allow the regulated community more flexibility in method use during RCRA-required testing; (2) stimulate the development and timely use of innovative and more cost-effective monitoring technologies and approaches in the RCRA program; (3) allow more efficient and timely releases of SW-846 methods by decoupling most of the methods from required uses in the

RCRA regulations; and (4) make the RCRA program more effective by focusing on measurement objectives rather than on measurement technologies. As noted, the Agency proposed to restrict the requirement to use a specific SW-846 method to only those situations where its particular procedure is the only one that is capable of measuring the property (i.e., a method-defined parameter, or MDP). For example, to determine whether the levels of hazardous constituents in a particular waste stream are equal to or greater than the toxicity characteristic (TC) levels specified in § 261.24, waste generators must test their waste using SW-846 Method 1311, the "Toxicity Characteristic Leaching Procedure," or "TCLP." If levels in the waste are greater than or equal to the TC levels, the waste is a hazardous waste and is subject to the RCRA hazardous waste regulations. This is the only reliable method for determining whether TC levels are met. Thus, testing of any material to determine whether it meets the Toxicity Characteristic levels must be done using the TCLP. EPA describes the measurement obtained from the TCLP, as well as from certain other methods, as a required "method-defined parameter."

We requested public comment on the proposed revisions to the RCRA regulations, although not to the method-defined parameters, and received comments on the proposed action from over 20 different commenters, which included representatives of Federal Government agencies, State Government agencies, industry, waste generation and management entities, and analytical laboratories. The majority (86%) of the commenters generally supported, with comment, the MIR action and EPA's efforts to allow more flexibility in method selection when conducting RCRA-related sampling and analysis. Regarding the positive comments, one commenter, a state agency representative, applauded EPA for recognizing that regulating does not have to be prescriptive. Another commenter, a representative of analytical laboratories, believed that the additional flexibility will result in data quality improvements. Two representatives of waste generation or management entities concurred with EPA that the majority of the MIR revisions should make it easier and more cost effective to comply with RCRA-related regulations.

For the most part, the negative public comments may have reflected a misunderstanding of certain important aspects and premises of the MIR, which we are clarifying in our responses to

those comments. With respect to other negative comments, the Agency expects that the discussion below will further clarify the purposes and premises of the MIR, and will clarify options for dealing with the inherent flexibility of this approach. Also, the Agency will continue to provide training on the concepts of this rule to further clarify its intent and support its implementation. You will find a background document containing our complete responses to all relevant public comments in the docket to this rule, docket number RCRA-2002-0025, at the location listed above under **ADDRESSES**. Some of the public comments are also addressed within this preamble to the final rule.

Based on our review of the public comments regarding the October 30, 2002 proposed rule, we are proceeding with publication of this final rule, which finalizes the proposed revisions to the RCRA regulations. That is, this rule removes unnecessary required uses of SW-846 in general and it removes any unnecessary required uses of specific SW-846 methods. Other reliable methods can now be used by the regulated public for compliance with the affected regulations. This action also encourages the timely use of new and innovative methods outside of SW-846 in that, for most sampling and analysis scenarios, it will not be necessary to submit an equivalency petition when using a non-SW-846 method. However, some regulations will still require use of a specific SW-846 method when that method is for determination of a RCRA-required method-defined parameter (MDP); in those cases, a regulated entity has to submit an equivalency petition and receive approval of that petition from the Agency before an alternative method can be used.

This final rule will allow the Agency to make final updates to SW-846 available in a more timely manner. For example, soon after publication of this document, we will announce the availability of Final Update IV (see section VIII of this document). The methods of Final Update IV did not have to go through the rulemaking process because, with publication of this final rule, SW-846 is no longer required in general by any existing RCRA regulation and none of the new or revised methods in Update IV are specifically required by any RCRA regulation for the analysis of method-defined parameters (MDPs). However, we did solicit and consider public comments on the methods through **Federal Register** notices, see 63 FR 25430-25438, May 8, 1998 (Draft

Update IVA), and 65 FR 70678–70681, November 27, 2000 (Draft Update IVB).

A. Public Comments Regarding How To Determine if a Method Is Appropriate

In section III.A of the preamble to the October 30, 2002 proposed rule, we discussed our proposed revisions to remove the requirement to use SW-846 methods by adding regulatory language allowing the use of appropriate methods such as those found in SW-846 or other reliable sources. In the preamble of the proposed rule, we provided guidance on how to determine if a method is appropriate for its analytical purpose. Specifically, we mentioned that such a method might be one published by EPA in a different manual or regulation or published by another government agency, a voluntary standards setting organization, or other well-known sources. We also proposed to retain mention of the SW-846 methods in the regulations as guidance and as examples of methods that could be appropriate.

In the proposed rule preamble, we gave two primary considerations in selecting an appropriate method, which together serve as our general definition of an appropriate method. As done in the preamble to the proposed rule, the text to follow explains each of these concepts and identifies other guidance that may be helpful to the regulated community.

1. Appropriate methods are reliable and accepted as such in the scientific community.

2. Appropriate methods generate effective data.

Regarding the first consideration, we noted that methods which are reliable and accepted in the scientific community might include those published by the Agency or other government entities using techniques that have documented reliability. SW-846 methods, for example, are reviewed by a technical workgroup composed of national expert-level chemists who provide peer input and determine whether method reliability is sufficiently documented. The technical reliability and acceptance of other methods published by other governmental or non-governmental organizations may also be documented, especially if the methods are subjected to some form of objective scientific review. For instance, to qualify for recognition as having developed a voluntary consensus standard (e.g., analytical method) under the National Technology Transfer & Advancement Act of 1995 (NTTAA), an organization must produce standards by consensus, observe the principles of openness and

balance of interests, and provide due process, including an appeals process.

Regarding the second consideration in the identification of appropriate methods—generation of effective data—we described in the preamble to the proposed rule examples of tools that might be used in this determination. *This consideration is project-specific* and therefore the tools and criteria will be different for each analytical effort. As stated in the proposed rule preamble, effective data are data of sufficiently known and appropriate quality to be used in making project-specific decisions. An example of such a decision is whether a particular waste is hazardous because a constituent of concern is present above a level of concern. Before sampling and analysis begins, project planners should identify why the analysis is being done, how the data will be used, and how “good” the data has to be (e.g., the quality objectives for the project as established through a systematic planning process). Effective data meet the quality objectives set by the project planners for the specific project. The quality objectives should be rationally and systematically identified during the planning of the project and development of the project-specific Quality Assurance Project Plan (QAPP), Waste Analysis Plan (WAP), Sampling and Analysis Plan (SAP), or other appropriate systematic planning document. Sampling and analysis documentation should be sufficient to confirm that the data are effective and that the selected method is appropriate.

Quality objectives generally refer to the necessary quality of the overall decision to be made or, in other words, the tolerable error (i.e., acceptable level of uncertainty for the decision). For example, a quality objective for waste analysis may be that one must demonstrate that an analyte is not present above the reported level at the 80 percent upper confidence around the mean, and that the method could have detected the presence of the analyte at that level and confidence limit. A quality objective may be specified in a regulation, a permit, a corrective action agreement, or other regulatory or enforcement document. Sometimes you must consider a quality objective regulatory specification when selecting an appropriate method. For example, the RCRA comparable fuels’ provisions include quality objectives in lieu of naming the use of specific methods (see 63 FR 33781, June 19, 1998). You can find guidance on the development of formal data quality objectives (DQOs) in EPA’s “Guidance for the Data Quality Objectives Process” (EPA QA/G-4)

found at EPA’s Quality Staff’s Web site (<http://www.epa.gov/quality/>), in Chapter One, “Quality Control,” of SW-846, and in ASTM D 5792, “Standard Practice for Generation of Environmental Data Related to Waste Management Activities: Development of Data Quality Objectives.” You may also use other scientifically valid systematic planning processes for developing quality objectives based on specific project needs.

In the project planning document, you should identify the types of quality control (QC) concepts (e.g., spike recovery analyses, blanks, etc.) you will use to determine if you meet your objectives. For example, selection of an appropriate method is sometimes demonstrated by adequate recovery of spiked or surrogate analytes and reproducible results, or through successful analysis of a standard reference material of a matrix-type analogous to that of the actual sample matrix. The method may not be appropriate for its intended use if your data show inadequate recovery of an analyte at a level that impairs a decision regarding whether the analyte is present at or below its regulatory level. Such a method would not generate effective data. Based on your QC data, you should determine whether the method generates results that are sufficiently sensitive, unbiased, and precise to demonstrate compliance with the subject regulation.

However, you should not just focus on controlling or documenting analytical quality, because regulatory decisions are also susceptible to error due to sampling procedures. If the contaminant variability is not properly addressed during the planning and collection of samples, an incorrect decision could be reached even though the method performed well in terms of laboratory quality control. No matter how accurate or precise the laboratory analysis, the data will provide misleading information if excessive error is introduced by improper sampling procedures. Guidance on identifying the necessary quality control procedures and on minimizing the potential for both analytical and sampling error can be found at the EPA Quality Staff’s Web site (<http://www.epa.gov/quality/>) or in Chapters One, Two, and Nine of SW-846. In addition, guidance on determining and demonstrating the appropriateness of a selected measurement method for a particular application may be found in ASTM D 6956–03, “Standard Guide for Demonstrating and Assessing Whether a Chemical Analytical Measurement

System Provides Analytical Results Consistent with Their Intended Use."

Finally, EPA noted in the proposed rule preamble that you should identify appropriate methods for a specific project *before* sampling and analysis begins. As the regulated entity, you are ultimately responsible for compliance with a particular regulation. Therefore, you should not rely on the laboratory or other project participant to select an appropriate method. We recommend that you consult with your regulating authority during identification of performance goals and the selection of appropriate methods.

We requested and received public comment on the above considerations and on the proposal to allow the use of appropriate methods such as those found in SW-846 or other reliable sources. One supportive commenter believed the Agency had provided sufficient guidance in the preamble to the proposed rule on how to identify appropriate methods. As discussed below, a few commenters requested additional guidance regarding the selection of appropriate methods or had questions regarding the approach.

One commenter requested that an appropriate method definition be codified in the regulations. The Agency believes that codification of an appropriate method definition would be both very difficult and contrary to the intent and purpose of this rule, given the project-specific nature of "appropriate method selection" and the wide variety of data collection objectives that may be encountered. In the paragraphs above, the Agency has provided the key generic considerations for appropriate method selection, which together serve as our general definition for an appropriate method, and identified guidance sources, in the hope that this information will assist readers of this rule during the selection of appropriate methods, regardless of whether the methods are from SW-846 or other sources. In addition, since publication of the proposed rule, ASTM International published D 6956-03, "Standard Guide for Demonstrating and Assessing Whether a Chemical Analytical Measurement System Provides Analytical Results Consistent with Their Intended Use." This guidance document is not required by any EPA program, but may be useful to the regulated community during the selection of appropriate methods and during the evaluation of analytical results. The document can be obtained from ASTM by visiting its Web site at <http://www.ASTM.org> or by writing to: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West

Conshohocken, PA 19418-2959. EPA also plans to continue to provide training to affected entities on the concepts of this rule and to support its implementation. When using any appropriate method, you should be able to determine the analyte of concern (e.g., the regulated constituent to be measured), in the matrix of concern (e.g., the physical substance which might contain the regulated constituent), at the level of concern (e.g., the regulated level of or the action level for the analyte).

One commenter was concerned that the regulated public might use other methods that do not meet the QC criteria in the SW-846 methods. The Agency does not believe that this should be a concern. The performance data and QC criteria given in the SW-846 methods are only examples, and are not requirements for analysis. The SW-846 example criteria may not be appropriate for every analytical purpose. Establishing QC criteria is a project planning issue and not a method issue. Methods should be adapted into standard operating procedures (SOPs) to meet QC criteria from systematic planning documents, not the other way around. Some analytical applications may require more or less stringent QC criteria than that given as examples in the SW-846 methods, and it would be contrary to promoting a PBMS approach if all analyses using any methods are expected to conform to the example criteria published in SW-846 methods. Sometimes, even when using an SW-846 method, it may not be necessary to fully meet its example performance criteria because project-specific quality objectives may not require evaluation of the same performance indicators or the criteria may not be appropriate to the specific application. In keeping with a PBMS approach and the goals of this rule, performance criteria should be determined on a project-specific basis during the planning stage.

Another commenter was concerned that some regulated entities might use methods that were not originally developed for environmental purposes, and thus data validity may be suspect. Provided that the method is appropriate based on the factors discussed above and in the proposed rule preamble, we do not believe that this should be a concern. If the data are suspect or otherwise not of sufficient quality for their intended use, then the method is not appropriate, regardless of its source, and thus the data are not acceptable for demonstrating compliance. Regardless of the original purpose or source of a method, it can be an appropriate method if it generates effective data,

e.g., the data quality objectives and performance criteria are met. Even an SW-846 method may not be appropriate for a particular application if it does not generate effective data. In addition, the application of method technologies from other disciplines promotes the use of innovative approaches and technologies, which may benefit RCRA-related analyses. Finally, many of the analytical techniques used today in environmental analyses were initially developed for other purposes.

One commenter agreed with EPA's approach to appropriate method selection, but had comments regarding the data quality objectives approach. The commenter believed that the DQO approach can be expensive and is not usually used during small analytical projects. In response, the Agency notes that, when data are being used in decision making involving two clearly alternative conditions (e.g., compliance vs. noncompliance with a regulatory standard), the Agency's recommended systematic planning tool is the DQO process. While there is no regulatory obligation to use the DQO process, it is the recommended planning approach for many EPA data collection activities. However, the DQO process may be too complicated for some projects and is not the only way to generate quality data through systematic planning. It is presented here in the MIR only as an example of an approach involving systematic planning. However, at a minimum, the Agency recommends that some form of systematic planning be implemented for every data collection effort in order to generate effective data, and notes that such systematic planning should also involve consideration of cost. Systematic planning is a common sense approach, designed to ensure that the level of detail in planning is commensurate with the importance and intended use of the work and the available resources.

One commenter supported EPA's proposed flexibility, but thought that EPA should continue to use SW-846 as the primary vehicle for making recommendations regarding procedures that will meet minimum quality objectives for RCRA analyses. Thus, one would not be required to use SW-846 methods, but could choose to use them and be confident that they are appropriate sampling and analysis procedures, provided that they can be demonstrated to meet project quality objectives. Another commenter believed that it would be unrealistic for a regulated entity to agree to the use of other methods if EPA has not approved them. The commenter believed that such approval would guarantee

acceptance of the data, provided that the method was properly followed.

First, it should be noted that there are no "PBMS methods." PBMS is a regulatory approach where what has to be accomplished is specified, rather than how the monitoring is to be conducted. Under such a system, regulated entities are permitted to employ any method that is technically adequate to accomplish the compliance demonstration. Regarding EPA's approval of PBMS, EPA has already stated its objective to employ the performance approach in its regulatory and other monitoring programs to the extent feasible. On October 6, 1997 (62 FR 52098-52100), EPA published in the **Federal Register** its intent to adopt PBMS agency-wide. Subsequently, on May 8, 1998 (63 FR 25430-25438), EPA published in the **Federal Register** a notice of intent and request for comment regarding its plans to reform implementation of RCRA-related monitoring by formally adopting PBMS and by removing unnecessary required uses of methods from the RCRA regulations (part of PBMS).

EPA also believes that method selection should be a project-specific decision and therefore cannot recommend or approve any methods—even SW-846 methods—as always being appropriate for any given application. For that very reason, with this rule, EPA removed the requirement to use SW-846 methods, except when the methods are the only ones capable of measuring a particular property. Relying on the fact that a method is contained in SW-846 does not guarantee that the method will always generate effective data under any situation. If the SW-846 method is not an appropriate method for its intended application, following it exactly could generate erroneous data and could fail to demonstrate compliance with the RCRA requirements.

Second, EPA does not agree with the recommendation that it categorically state that any method is always an effective means of demonstrating compliance (with the exception of methods for the analysis of method-defined parameters) since the Agency has no way of knowing that a particular method is going to yield valid data in all potential situations and it goes counter to the performance approach which requires that regulated entities demonstrate compliance using data of known and documented quality. The Agency believes that it is up to the individual regulated entity to decide which methods are appropriate to use for any given compliance demonstration and that this determination should be initiated during the project planning

stage. When considering method selection, the analytical performance indicators are key to the specific project goals that should be considered. Examples of analytical performance indicators that might be addressed include method sensitivity and selectivity, precision, bias, and reproducibility. The data user may even choose to revise method selection if additional information gathered during the project indicate that the initial selection was not appropriate. Therefore, method selection is a project-specific activity implemented by the regulated entity, and EPA's only concern is that the generated data be effective for its purpose, regardless of the method selection. The Agency does recommend that a regulated entity seek assistance from its regulating authority should the regulated entity have concerns regarding the use of any particular method. EPA also notes that guidance regarding demonstrating the performance of a given analytical method can be found in EPA-published guidance documents (some of which are listed above) and documents published by other Agencies (e.g., ASTM).

One commenter was concerned regarding how method performance would be demonstrated under PBMS. The commenter claimed that implementation of a PBMS approach is very difficult and that, for it to work, there must be a "reference method" to be used as a benchmark against which to measure other methods.

EPA notes that the RCRA program does not use reference methods. Many different methods produce effective data for a particular project, which are not necessarily "equivalent," but all could be "applicable." For example, there are many analytical methodologies that can be used in analyzing a particular metal species (e.g., ICAP, AA). In selecting a particular method for metal analysis, the analyst will consider analytical costs, accuracy and sensitivity needed, freedom from potential interferences, amount of sample required for an analysis, reagents to be used, and other factors in the overall process to select a method that will yield effective data at the lowest cost to the user. These factors should be considered when evaluating any method, including those published in SW-846, and the user needs to conduct the appropriate verifications to demonstrate the appropriateness of any method that is selected against its intended application. There are a number of approaches that can be used to demonstrate that a method is valid for a particular use. These include: use of appropriate reference standards, analysis of spiked samples, comparison

of results to results generated using a method that employs a fundamentally different measurement process and would not be subject to the same potential interferences, etc. For further guidance in demonstrating method validity, see the previously cited ASTM document D 6956-03, "Standard Guide for Demonstrating and Assessing Whether a Chemical Analytical Measurement System Provides Analytical Results Consistent with their Intended Use."

B. Public Comments Regarding Other Approaches

As explained in section III.B of the proposed rule preamble, EPA considered several approaches to promoting "method use" flexibility in the RCRA regulations. We selected the "appropriate method" approach because it is universally applicable to the subject RCRA regulations. It also requires only minimal revisions to the regulations for implementation.

In addition, the option to use "appropriate methods" is not new to the RCRA regulations. For example, use of the TCLP, SW-846 Method 1311, is required for determining whether a waste is hazardous for the toxicity characteristic (the TC). It generates an extract (the leachate) which is subject to a determinative analysis for comparison with the TC regulatory limits. However, the TCLP procedure does not require specific analytical methods for the leachate determinative analysis, nor does it specify the use of even SW-846 methods in general for such analysis of the leachate. It allows method flexibility similar to that proposed by this rule by stating in section 7.2.14: "The TCLP extract shall be prepared and analyzed according to appropriate analytical methods."

Nevertheless, in the proposed rule preamble, the Agency requested the public's opinion on two alternative approaches that we considered during development of this rulemaking.

1. As a variation to the "appropriate method" approach described above, should we remove mention of SW-846 methods as examples of potentially appropriate methods from the subject regulations?

2. In lieu of the "appropriate method" approach, should we instead add specific measures of required measurement system performance or data quality objectives to each regulation, such as done in the comparable fuel rulemaking, and not mention or require the use of an appropriate method (including any SW-846 methods)? In the proposed MIR, we did not select this approach because it

might require significant regulatory changes with difficult to quantify impacts.

Most of the commenters preferred that EPA retain mention of SW-846 in the regulations as examples of potentially appropriate methods. However, some of these commenters appeared to believe that, by mentioning SW-846 methods as examples, it meant that such methods will always be appropriate for every data collection effort addressed by the regulation, and thus the performance of other candidate methods should be compared with the performance of the similar SW-846 method. One commenter wanted the Agency to legally recognize that the SW-846 methods are appropriate methods under the RCRA regulations.

The Agency strongly disagrees with commenters that SW-846 methods should be identified as always appropriate. As explained in section III.A of this rule, the determination of an appropriate method should be made on a project-specific basis and involves consideration of various project-specific objectives and criteria. As noted, an appropriate method might be one published by EPA in a different manual from SW-846 or might be a method published by a different government agency, a voluntary standards setting organization, or other well-known scientific sources. Whether a method is contained in SW-846 is not a primary criterion for determining if a method is appropriate. For example, there is a common misconception that the different SW-846 methods for sample extraction all have the same extraction efficiency, which is not the case at all, since the methods were intended to be appropriate for different applications. Methods found in other publications may be more appropriate based on the project-specific considerations.

Regarding the addition of performance criteria to the regulations, a few commenters did prefer that such criteria be added to the regulations. However, these commenters did not provide suggestions regarding how to best resolve those instances when such an approach might result in requiring use of methods which are more accurate or sensitive than necessary (with the result that monitoring costs may increase unnecessarily) or in other cases would not yield data of a sufficient quality to definitively determine if a facility is in compliance with a regulatory or permit level. Given these impact issues and the project-specific nature of what determines an appropriate method, it would be contrary to the purpose of this rulemaking and very difficult to develop

and implement performance criteria and definitions that would be universally applicable. EPA therefore decided against adding criteria at this time to all of the regulations. We strongly believe that the appropriate method determination should be made on a project-specific basis by those familiar with the purpose of the analysis and should not be dictated by regulatory definition. EPA believes that generic performance criteria assigned by EPA would not assure consistent application of PBMS, but rather might discourage a PBMS application and flexibility in method selection and use. However, to further evaluate this issue, the Agency's Forum on Environmental Measurements (FEM) has formed an Action Team to address issues related to implementation of the performance approach. It is anticipated that the Action Team will address issues related to data quality and data quality documentation for use by all Agency programs.

In conclusion, as a result of consideration of all comments, we decided to not add performance criteria to the regulations. In addition, unlike the proposal, we decided to not include any references to SW-846 or "using appropriate methods such as those found in * * * SW-846" in the regulatory provisions because those references to SW-846 were unnecessary and, based on public comment, the regulated community may continue to believe that SW-846 methods will always be most appropriate.

C. Public Comments Regarding Impacts From Removal of Required Uses of SW-846 Methods

In the preamble to the proposed rule, we summarized the expected impacts on the regulated entities and the states, and requested public comment on the assumptions made in the analysis. We also requested public comment on the impact of this rule and how we might promote its successful implementation. The paragraphs to follow summarize our responses to some of the public comments regarding these topics.

As a result of this final rule, you can use any appropriate analytical test method in demonstrating compliance with the RCRA regulations, except for those regulatory provisions involving method-defined parameters. We believe that this action will not significantly or adversely impact the regulated community or other potentially affected parties because the Agency is not adding any additional regulatory requirements to the RCRA regulations, but rather is clarifying and expanding

the flexibility that regulated entities have had in selecting appropriate methods to employ to demonstrate compliance whether or not such methods were described in SW-846. By making it clear that one may use any appropriate method, regulated entities may be able to cut the cost of compliance monitoring by using less expensive methods. Regulated entities may continue to use SW-846 methods to demonstrate compliance when it is appropriate to do so, and thus experience no impact from this rulemaking. EPA will also continue to publish and update SW-846 methods and ensure their scientific soundness by following peer review guidelines and requesting public comment on the methods through **Federal Register** notices.

Thus, as we noted in section III.C of the proposed rule preamble, the primary impact of this rule will be better analytical results (e.g., due to paying better attention to method performance). The Agency also anticipates a tendency toward lower costs during compliance with the affected RCRA regulations because project planners may identify methods that are potentially less costly to use. Meanwhile, EPA also will continue to provide training and utilize our pool of Agency technical experts to serve the public by answering questions regarding the use of test methods during RCRA-related compliance activities.

Also, a demonstration that another method is appropriate is already allowed within RCRA-related sampling and analysis and will not involve much more than what regulated entities already should be doing. For example, as the regulated entity, you should already be setting method performance goals in your Quality Assurance Project Plan (QAPP), Sampling and Analysis Plan (SAP), or other systematic planning document and then evaluating compliance with those goals based on data quality indicators, including when using SW-846 methods.

Regarding public concerns about the comparability of data generated by different methods for the same purpose, we noted in the proposed rule preamble that this practice is not new because some regulations already allow the use of more than one method. We also do not believe that this should be a concern, provided that any alternative method is also an appropriate method as defined above. Specifically, if both methods generate effective data and meet the data quality objectives of the project, then results from both methods will be acceptable for demonstrating compliance. In addition, for situations where trends or comparability are to be

determined, measurement quality objectives should be selected for use in selecting methods to be used that will ensure that, for whatever desired level of difference one desires to determine, the data will be suitable for the purpose. This has always been EPA's approach in comparing data by different methods, and it is not affected or changed by this rule.

Some commenters preferred a more prescriptive approach in the regulations because method-specific requirements remove the burden of method-selection as it is believed that this translates into lower costs and greater agreement between permit writers and other project participants who may not have method-selection expertise. Because of consequences of this approach, the Agency believes it is undesirable. A major problem with the prescriptive or mandated-methods approach is that it can lead to data of poor quality which can result in an incorrect assessment of compliance. Another problem is that the regulated community may not systematically plan their data collection efforts and thus not fully understand their project-specific goals. Method-selection decisions should be project specific and thus, specific methods should not be required in the regulations.

Some commenters also expressed concern regarding the impact of this rule on existing RCRA permits. RCRA permits are typically effective up to ten years. This rule will only effect new or reissued permits, and only to allow more flexibility in method selection. Therefore, RCRA permits will not be adversely impacted by this action.

Finally, this rule does not add new information collection or reporting requirements for regulated entities. Section 260.22(i) (reporting requirements for petitions to exclude wastes) and §§ 264.13(b) and 265.13(b) (reporting requirements for owners and operators of hazardous waste management facilities) provide sufficient reporting requirements to cover RCRA-related testing and analysis documentation regarding the use of other appropriate methods.

One commenter agreed, regarding impact of the rule, that the MIR will greatly benefit those situations where repeated analyses are needed, such as for a RCRA corrective action or for a WAP for a hazardous waste treatment, storage, or disposal facility (TSDF). However, the commenter also believed that smaller entities involved in waste analyses, such as small quantity generators (SQGs) will probably not benefit from the MIR. For the reasons given above, EPA believes that the

impact of this rule will not be significant for any generator, including small quantity generators (SQGs), largely because the flexibility of method selection will provide better analytical results at a lower cost. Project planners and laboratories used by SQGs will identify methods that are potentially less costly and yet provide effective data. EPA believes that the regulated community will choose appropriate methods based on cost and data quality advantages, and therefore all regulated entities, including SQGs, could benefit from this rule.

One other commenter believed that if PBMS is adopted, prior approval by the State or other regulator of the method should be mandatory. The commenter argued that State reviewers are more familiar with SW-846 methods and data indicators and that a state's unfamiliarity with other methods might mean the State may not perform a timely review of the data.

As explained in the previous section, EPA believes that method approval prior to use would be contrary to the intent and philosophy of the performance concept and would negate the positive impacts of this rule. However, as also noted, the regulated community can consult with their regulating authority during the identification of performance goals and the selection of appropriate methods. EPA appreciates the commenter's concern regarding potentially negative impacts on the timely review of data. It is true some delay in data review may occur if the reviewer is not familiar with the procedure. Nevertheless, review of data should not be a new step in the process since effected entities should already be reviewing data indicators from the SW-846 methods during RCRA-related sampling and analysis. Once the reviewer and user become more familiar with a new method, less time will be needed to perform an equally thorough review. In the end, we believe the benefits of modifying the rules will far outweigh these potential impacts on data review time through the improvement of data effectiveness and a decrease in other costs. To help mitigate any potential negative impacts, we will continue to provide training and our staff are available to assist you during all stages of the process.

Some commenters expressed a concern that this action will impose an additional resource burden on States. In response, we note that the regulatory changes in this rule are equivalent to or less stringent than the existing Federal regulations which they amend. Therefore, authorized States are not required to adopt and seek authorization

for this rulemaking within their programs. If a State believes that adoption may be too burdensome on their resources, then they need not adopt the revised regulations. Nevertheless, we encourage the adoption of these or similar revisions by authorized States in order to promote the national adoption of the performance approach in environmental regulations, permits, and monitoring. In addition, if States choose to adopt these revisions, the impact should not be significant since they already conduct method selection and data quality reviews to determine compliance with their testing and monitoring regulations.

Some commenters expressed a need for communication and training to assist in implementation of the MIR. We agree and the Agency plans to continue to provide education and training to States, EPA Regions, and the regulated community regarding the implementation of this rule, through such mechanisms as workshops, fact sheets, and Internet training modules. Over the past seven years, OSW has offered program-specific training (e.g., "Analytical Strategy for the RCRA Program: A Performance-Based Approach") for EPA Headquarters, Regional, and State personnel involved in RCRA activities that include sampling and analysis. The Agency plans to expand its performance approach training program and offer other courses on the evaluation of data and permit writing from a PBMS and effective data standpoint. These communication and training efforts will help ensure consistency in implementation of this and other Agency performance-based rules by the States, Regions, and regulated community and help limit any associated costs.

IV. Regulatory Revisions Involving Removal of SW-846 Requirements

In section IV of the proposed rule preamble, EPA listed and discussed each of the proposed regulatory revisions which removed the requirement to use SW-846 methods and stated that appropriate methods may be used. We requested public comment on these individual regulatory section revisions (e.g., comments regarding any impacts on implementation of each affected regulation that we may have overlooked) and in general did not receive any significant negative comments regarding the removal of the SW-846 requirements from any of the regulations. We are therefore finalizing the removal of the requirement to use SW-846 in those regulatory sections.

In addition, we are finalizing revisions to three conditional delistings in part 261, appendix IX, which were not included in the proposed rule, but which, like those delistings that were included in the proposal, unnecessarily require the use of SW-846 methods. We announced our intent to revise these delistings in a memorandum to the facilities and to the relevant EPA Regional offices. We gave the entities three weeks to comment on the revisions. One of the affected companies did not respond to the memorandum, while the other two companies responded, but did not have comments regarding the revisions.

Therefore, we decided to proceed with finalizing the revisions to these three delistings. The revisions to the conditional delistings are very similar to the other conditional delistings. We did not receive negative comments regarding the general removal of required uses of SW-846 in any of the conditional delistings listed in the proposed rule. We believe that these revisions are fully consistent with EPA's original intent to make such changes to any conditional delisting, or other regulations, which unnecessarily required the use of SW-846 methods for analyses other than for required MDPs.

The additional conditional delistings revised by this final rule are found in Table 1 of appendix IX of part 261 and address delisted wastes at the following facilities:

- Bekaert Corp., Dyersburg, TN
- OxyVinyls, L.P., Deer Park, TX
- Tokusen USA, Inc., Conway, AR

In addition, since publication of the proposed MIR, the Office of Federal Register (OFR) revised its format for incorporation by reference. Specifically,

the OFR requires that the MDP methods incorporated by reference at § 260.11 be specifically mentioned in the relevant sections of the regulations, and not just include referrals to § 260.11. Therefore, in the conditional exclusion listings of part 261, appendix IX, we included a listing of the method-defined parameter methods to replace our proposed language stating that the methods listed in § 260.11 must be used without substitution when required. Those methods must be used as applicable to the particular delisting.

Finally regarding the conditional delistings, we are taking this opportunity to make several editorial corrections to Tables 1, 2 and 3 of appendix IX of part 261, which in no way substantially change or remove any requirements. We are removing repeats of the Bekaert Corp., Dyersburg, TN, conditional delisting from Tables 2 and 3 of appendix IX of part 261 because those entries were added to the tables in error. The Bekaert Corp. conditional delisting is for an F006 waste, which is from a non-specific source, and therefore the delisting only belongs in Table 1, which lists wastes excluded from non-specific sources (i.e., "F" coded listed wastes). Tables 2 and 3 of appendix IX of part 261 are meant to only list the conditional delistings of wastes excluded from specific sources (Table 2, i.e., "K" coded listed wastes) or from commercial chemical products, off-specification species, container residues, and soil residues thereof (Table 3, i.e., "P" and "U" coded listed wastes). Similarly, we are removing the OxyVinyls, Deer Park, TX, delisting from Table 1 and adding it to Table 2 of appendix IX. This is necessary because the OxyVinyls' delisting

addresses K017, K019, and K020 wastes and was incorrectly placed in Table 1. Since these are changes that do not affect the implementation of the regulations, or add new or remove existing regulatory requirements, the Agency is providing notice of the changes without opportunity for comment.

Table 2 lists the regulatory revisions finalized by this rule to remove the requirement to use SW-846 methods and allow the flexibility to use other appropriate methods. As noted in the previous section of this preamble, the proposed references to "using appropriate methods such as those found in * * * SW-846" is not being included in the final regulation because the Agency decided that those references to SW-846 were unnecessary and because the regulated community may continue to believe that SW-846 methods will always be most appropriate. Finally, we corrected our proposed revision to § 261.35(b)(2)(iii)(B) by adding the relevant data from Table 1 of Method 8290 to the regulatory text so that Method 8290 (which contained the table but is not an MDP method) no longer has to be incorporated by reference. In the proposed rule, § 261.35(b)(2)(iii)(B) read as follows: "Not detected means at or below the lower method calibration limit (MCL) in SW-846 Method 8290, Table 1. Other appropriate methods from other reliable sources may be used provided that these criteria are met." In the final rule, we copied the relevant data from Table 1 directly into § 261.35(b)(2)(iii)(B) and so it is no longer necessary to mention Method 8290.

TABLE 2.—REVISIONS TO RCRA REGULATIONS TO REMOVE REQUIRED USES OF SW-846 METHODS

Regulation	Affected topic or program
§ 260.22(d)(1)(i)	Petitions to exclude waste from a particular facility.
Appendix IX to part 261	Wastes excluded under §§ 260.20 and 260.22.
§§ 261.35(b)(2)(iii)(A) and (B)	Deletion of certain waste codes following equipment cleaning.
§ 261.38(c)(7)	Comparable/syngas fuel exclusion.
§§ 264.1034(d)(1)(iii), 264.1063(d)(2), 265.1034(d)(1)(iii), and 265.1063(d)(2)	Air emission standards for process vents and equipment leaks.
§§ 265.1084(a)(3)(iii) and (b)(3)(iii), and 265.1084(a)(3)(ii)(C), (b)(3)(ii)(C), and (c)(3)(i)	Air emission control requirements for tanks, surface impoundments, and containers.
§§ 266.100(d)(1)(ii) and (g)(2), and 266.102(b)(1)	Hazardous wastes burned in boilers and industrial furnaces (BIFs).
§ 266.106(a)	Control of metal emissions at BIFs.
§§ 266.112(b)(1) and (b)(2)(i)	Residues from burning of wastes in BIFs.
Appendix IX, part 266	Methods Manual for BIF regulations.
§§ 270.19(c)(1)(iii) and (iv), 270.22(a)(2)(ii)(B), 270.62(b)(2)(i)(C) and (D), 270.66(c)(2)(i) and (ii)	Part B information and trial burn plan requirements for incinerators and BIFs.

This rule also revises the incorporation by reference of SW-846 in § 260.11 so that the paragraph only

includes SW-846 methods that are required for method-defined parameters. Therefore, for each section where we

removed the requirement to use only SW-846 methods, we also removed the SW-846 incorporation by reference.

Prior to this rule, all methods of SW-846 were incorporated by reference at § 260.11 "when used" within the RCRA regulations. All of SW-846 had to be incorporated by reference because some RCRA regulations required in general the SW-846 methods, *e.g.*, the delisting regulations at § 260.22(d)(1)(i). The required methods had to be incorporated by reference because their full text is too lengthy for publishing directly in the regulations and the methods are readily available to the public in the SW-846 manual. As a result of this rule, we are limiting the requirement to use SW-846 methods to when the methods analyze required method-defined parameters. Therefore, we revised § 260.11 to remove the incorporation by reference of all SW-846 methods, except those SW-846 methods that may be required for the analyses of method-defined parameters. Those methods will remain

incorporated by reference when used for method-defined parameters and required by the RCRA regulations.

It is important to note that, while a method is listed in § 260.11 because it is used for analysis of a method-defined parameter, it also may be used for non-mandatory purposes. In those cases where the method is required by a specific regulation and is listed in § 260.11, it is a method-defined parameter. For example, Method 9010C, "Total and Amenable Cyanide: Distillation," and Method 9012B, "Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation)" are required under § 268.44, the universal treatment standards of the land disposal restrictions regulations, and are listed in § 260.11 as required by § 268.44. In that case, the methods cannot be substituted. However, in other circumstances, these two methods may be used when they are not required by

their regulations (*e.g.*, during delistings) and in those cases they will only be considered appropriate methods and not MDPs. It is the application of a method in a regulation that determines whether a method is being used to analyze a required method-defined parameter—not simply whether the method is listed in § 260.11.

The SW-846 methods that remain as incorporated by reference in § 260.11 are listed in Table 3. The final list is different from that proposed in that Methods 3542 ("Extraction of Semivolatile Analytes Collected Using Method 0010 (Modified Method 5 Sampling Train)") and 5041A ("Analysis for Desorption of Sorbent Cartridges from Volatile Organic Sampling Train (VOST)") are no longer included. The methods were removed because they are currently not used as method-defined parameters under the RCRA program.

TABLE 3.—SW-846 METHODS TO REMAIN IN § 260.11

SW-846 method	Chapter location	Method title
0010	Ten	Modified Method 5 Sampling Train.
0011	Ten	Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources.
0020	Ten	Source Assessment Sampling System (SASS).
0023A	Ten	Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources.
0030	Ten	Volatile Organic Sampling Train.
0031	Ten	Sampling Method for Volatile Organic Compounds (SMVOC).
0040	Ten	Sampling of Principal Organic Hazardous Constituents from Combustion Sources Using Tedlar® Bags.
0050	Ten	Isokinetic HCl/Cl ₂ Emission Sampling Train.
0051	Ten	Midget Impinger HCl/Cl ₂ Emission Sampling Train.
0060	Ten	Determination of Metals in Stack Emissions.
0061	Ten	Determination of Hexavalent Chromium Emissions from Stationary Sources.
1010A	Eight	Pensky-Martens Closed-Cup Method for Determining Ignitability.
1020B	Eight	Setaflash Closed-Cup Method for Determining Ignitability.
1110A	Eight	Corrosivity Toward Steel.
1310B	Eight	Extraction Procedure (EP) and Structural Integrity Test.
1311	Eight	Toxicity Characteristic Leaching Procedure.
1312	Six	Synthetic Precipitation Leaching Procedure.
1320	Six	Multiple Extraction Procedure.
1330A	Six	Extraction Procedure for Oily Wastes.
9010C	Five	Total and Amenable Cyanide: Distillation.
9012B	Five	Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation).
9040C	Eight	pH Electrometric Measurement.
9045D	Six	Soil and Waste pH.
9060A	Five	Total Organic Carbon (TOC).
9070A	Five	n-Hexane Extractable Material (HEM) for Aqueous Samples.
9071B	Five	n-Hexane Extractable Material (HEM) for Sludge, Sediment, and Solid Samples.
9095B	Six	Paint Filter Liquids Test.

Please note that we are not adding any new methods to § 260.11—each method listed in Table 3 is already a part of SW-846 and was incorporated by reference during previous rulemakings. For each method retained as incorporated by reference, we are listing in § 260.11 the promulgated version of the method which was last incorporated by reference and thus which must be used during regulatory compliance.

In addition, since proposal of this rule, the Office of Federal Register (OFR) has revised the format of incorporation by reference sections within the Federal regulations, for instance, to include information regarding those regulatory sections or parts that specify use of the methods. We revised § 260.11(a) to reflect this new format.

V. Editorial Corrections to SW-846 References in the RCRA Testing and Monitoring Regulations

In section V of the preamble to the proposed rule, the Agency proposed to correct inaccurate references to SW-846 (some of which are logical outgrowths to the revision to § 260.11), and to clarify method selection flexibility in the RCRA regulations. We did not receive any negative comments regarding that

section of the proposed rule and thus are finalizing the editorial corrections, as proposed.

In addition, we are correcting certain regulations so that they include the

appropriate suffix of the SW-846 MDP method required by them. As a result of these corrections, the method number in the regulation includes the suffix and

matches the respective method number and suffix listed in § 260.11.

Table 4 lists and summarizes the editorial corrections to the RCRA regulations made by this final rule.

TABLE 4.—CORRECTIONS, CLARIFICATIONS OR REMOVALS

Regulation	Text correction, clarification, or removal
§ 258.28(c)(1)—Liquids restrictions	Correction to add "incorporated by reference in § 260.11" after "Paint Filter Liquids Test," and addition of the suffix "B" to the method number "9095."
Appendix I to part 258—Constituents for detection monitoring	Removal of footnote 1 to the table, which contains unnecessary references to SW-846.
Appendix II to part 258—List of inorganic and organic hazardous constituents.	Clarification regarding the use of other appropriate methods by removing the "Suggested Methods" and "PQLs (µg/L)" columns, removing footnotes 1, 5 and 6 and revising and renumbering the remaining footnotes, as appropriate.
§ 260.21(d)—Petitions for equivalent methods	Clarification that equivalent methods will be added to § 260.11, instead of just added to SW-846.
§ 260.22(d)(1)(i)—Petitions to amend part 261 to exclude a waste produced at a particular facility.	Removal of unnecessary reference to SW-846.
§§ 261.3(a)(2)(v), 279.10(b)(1)(ii), 279.44(c), 279.53(c), and 279.63(c)—Rebuttable presumption for used oil.	Removal of unnecessary references to SW-846.
§ 261.22(a)(1)—Characteristic of corrosivity	Addition of the suffix "C" to method number "9040."
Appendix I to part 261—Representative sampling methods ...	Removal of unnecessary references to SW-846.
Appendix II to part 261—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP).	Removal of text in Appendix II to part 261; appendix reserved.
Appendix III to part 261—Chemical analysis test methods	Removal of text in Appendix III to part 261; appendix reserved.
§§ 264.190(a) and 265.190(a)—Applicability	Addition of the suffix "B" to method number "9095."
§ 264.314(c) and § 265.314(d)—Special requirements for bulk and containerized liquids.	Addition of the suffix "B" to method number "9095."
§§ 264.1034(f) and 265.1034(f)—Test methods and procedures.	Clarification that direct measurement is allowed to resolve disagreements regarding concentration estimates, and removal of unnecessary references to SW-846.
Appendix IX to part 264—Ground-water monitoring list	Clarification regarding the use of other appropriate methods by removing the "Suggested Methods" and "PQLs (µg/L)" columns and removing footnotes 1, 5 and 6 and revising and renumbering the subsequent footnotes, as appropriate.
§ 265.1081—Definitions	Correction to SW-846 reference in definition of "waste stabilization process."
Appendix IX to part 266—Methods manual for compliance with BIF regulations.	Corrections to reflect removal of SW-846 methods from the BIF Methods Manual on June 13, 1997 and clarification in existing guidance regarding use of other appropriate methods and SW-846.
§ 268.40(b) and table—Applicability of treatment standards ...	Addition of the suffix "B" to method number "1310," addition of the suffix "C" to method number "9010," and addition of the suffix "B" to method number "9012."
§ 268.44, table—Variance from a treatment standard	Addition of the suffix "C" to method number "9010" and the addition of the suffix "B" to method number "9012."
§ 268.48, table—Universal treatment standards	Addition of the suffix "C" to method number "9010" and addition of the suffix "B" to method number "9012."
Appendix IX to part 268—Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (Method 1310).	Addition of the suffix "B" to method number "1310."

VI. Action To Withdraw the Reactivity Interim Guidance From SW-846 Chapter Seven and Remove Required SW-846 Reactivity Analyses and Threshold Levels From Conditional Delistings

In section VI of the preamble to the proposed rule, the Agency proposed to withdraw the reactivity interim threshold levels and reactive cyanide and sulfide methods from Chapter Seven of SW-846 and from certain conditional delistings found in appendix IX to 40 CFR part 261. EPA proposed these actions based on conclusions it reached and announced in an April 21, 1998 memorandum, a copy of which is available in the docket to this rulemaking, in which EPA addressed concerns about the

effectiveness of the reactivity analysis procedures (see the proposed rule preamble for details regarding the content of this memo and its history). (See the April 21, 1998 memorandum at <http://www.epa.gov/SW-846/> for detailed information regarding NEIC's concerns and EPA's conclusions.) EPA consequently withdrew the July 1985 guidance through the aforementioned April 21, 1998 memorandum. To summarize, EPA concluded that the guidance had the following significant problems:

- (1) The test conditions evaluate a single pH condition and not the range of pH conditions (2 to 12.5) specified in the reactivity regulation;
- (2) The test conditions do not adequately recover the analyte and thus

the tests predict low percentages of analyte releases in the waste;

(3) The mismanagement scenario and test conditions are not correctly scaled between each other; and

(4) The mismanagement scenario of an open pit is not the only exposure of concern and may not represent a plausible worst case scenario.

EPA received comments from eleven different commenters regarding this topic. You will find a background document containing our complete responses to all relevant public comments in the docket to this rule, docket number RCRA-2002-0025, at the location listed above under **ADDRESSES**. Three commenters supported the removal of the reactivity test procedures, stating that they believed

the test and guidance is flawed and that appropriate waste classifications can be made in the absence of guidance. On the other hand, three other commenters opposed the removal of the reactivity test procedures. One of these commenters stated that there are a number of concerns about the technical reasons for removal of the procedures, and believed that these warrant reconsideration of the proposed deletion of the guidance. In reviewing these concerns, the Agency found that the commenter may be misreading the Agency's basis for deletion of the guidance from SW-846. The commenter was concerned both about the impact of certain pH testing conditions and the use of Henry's Law in the guidance. However, these topics were not the reasons for withdrawing the guidance from SW-846. The Agency will investigate the commenter's concerns regarding pH testing conditions and Henry's Law as it develops revised guidance. Another one of the commenters asserted that the narrative criteria alone can be used for classification of high concentration cyanide wastes, but that additional guidance is needed for classifying lower level cyanide-bearing wastes. The other commenter understood the difficulties associated with the reactivity method guidance, but believed that the regulated community needed something other than the "honor system" to classify these reactive wastes.

The remaining five commenters had general concerns about making the reactivity characteristic determinations, but did not specifically support or oppose deletion of the tests or threshold levels. Four commenters out of the total of eleven commenters requested that EPA replace the deleted tests with other method guidance.

In response to all comments, the Agency is currently reviewing several test methods for possible inclusion in SW-846 as methods for characterizing cyanide-bearing wastes. However, the Agency still believes it inappropriate to retain the reactive cyanide and reactive sulfide methods in SW-846 for the reasons presented in the proposed rule preamble and listed above. Regarding the characteristic of reactivity, regulated parties have always been responsible for complying with the regulation at § 261.23—Characteristic of reactivity, which does not require any particular test methods for the characterization. Therefore, generators and other persons can use other appropriate methods or process knowledge in determining whether a particular waste is hazardous due to its reactivity.

VII. Clarifications to Corrosivity and Ignitability Hazardous Waste Characteristics

In sections VII.A and VII.B of the preamble to the proposed rule, the Agency proposed revisions to the corrosivity characteristic and the ignitability characteristic testing requirements. The proposed revisions included changes to references to ASTM standards and SW-846 methods. We considered these revisions to be non-substantive updates of the methods presently used in the regulations and we believed the revisions would not affect which wastes are determined to be hazardous based on the characteristics. We requested public comment on each of the proposed revisions. Significant comments and our responses are provided below.

A. Revision to § 261.22(a)(2) To Clarify That SW-846 Method 1110A Is the SW-846 Standardized Version of the NACE Standard Specified for Corrosivity Characteristic Testing

In section VII.A of the preamble to the proposed rule, EPA addressed proposed revisions to the corrosivity characteristic testing requirements, which included a clarification to § 261.22(a)(2). Section 261.22(a)(2) defines the hazardous waste characteristic of corrosivity for a liquid which corrodes steel. The required test method is identified as "the test method specified in NACE * * * Standard TM-01-69 as standardized in * * * SW-846 * * *" As explained in the May 19, 1980 regulations (see 45 FR 33084) which added § 261.22 to the RCRA regulations, EPA standardized the NACE Standard TM-01-69 in SW-846. As also explained in the background document to the corrosivity characteristic of the 1980 regulations, NACE Standard TM-01-69 describes a simple immersion test to determine the rate of corrosion. However, the procedure described in the background document, in fact, was not completely standardized because it was designed to test the suitability of metals for a variety of uses. As a result, a comment was submitted at that time which expressed concern with the incomplete standardization of the NACE Standard which allowed variation in test conditions. EPA agreed and, in response to the comment, put a standardized version of the method in SW-846 so that the procedure more clearly defined the appropriate test conditions. At the time, we did not specify which test method of SW-846 included the standardized version of the NACE method. This SW-846 method has

always been Method 1110 (now Method 1110A as of Update IIIB), "Corrosivity Toward Steel." Therefore, in the proposed MIR, we proposed adding the number of this method to § 261.22(a)(2) for clarification of which SW-846 test method is the standardized version of NACE. This revision to § 261.22(a)(2) does not represent a change to the characteristic.

Three commenters addressed this section of the proposed MIR. Two of these commenters explicitly supported the clarification in § 261.22(a)(2) that SW-846 Method 1110A, "Corrosivity Toward Steel," is the standardized version of the NACE Standard TM-01-69. The other commenter did not comment on the proposed revision, but instead requested that EPA address a unrelated concern regarding the content of Method 1110A. None of the commenters disagreed with the Agency statement that the revisions were non-substantive.

Regarding SW-846 Method 1110A, the commenter believed that the method significantly differed from the corresponding Department of Transportation (DOT) corrosivity method. Specifically, Method 1110A suggests that a 24-hour test duration be used, while the DOT method indicates use of a longer test period. The commenter requested that EPA either clarify this difference or amend the regulations to allow the use of DOT's comparable corrosivity characteristic procedure, as set out in 49 CFR 173.137(c)(2), as an alternative test method for corrosivity under the hazardous waste regulations.

First, EPA notes that the test duration time in Method 1110A was not addressed or proposed for revision by the MIR. The MIR only proposed to clarify that Method 1110A is "the test method * * * standardized * * * in SW-846" for the corrosivity characteristic determination. The commenter does not appear to disagree with the proposed clarification. Because the Agency did not take comment, or even raise an issue, with the test duration time, we believe it inappropriate to address this provision in this final rule. Nevertheless, the Agency plans to evaluate the commenter's concerns to determine if future regulatory changes are warranted.

Therefore, in response to the comments submitted, the Agency is finalizing the regulatory revision whereby Method 1110A will be specified in § 261.22(a)(2). It is not necessary to also reference the NACE Standard TM-01-69 in the regulatory text. The NACE method was used to

initially develop Method 1110A and the two methods are not identical.

B. Revisions to § 261.21(a)(1) To Remove an Unnecessary Referral to Method Equivalency Petitions; and an Explanation Regarding the Decision To Not Revise the Regulation To Include the Updated ASTM Standards and References to Methods 1010A and 1020B as Proposed

In section VII.B of the preamble to the proposed rule, the Agency addressed proposed revisions to the ignitability characteristic testing requirements in § 261.21(a)(1). Section 261.21(a)(1) of the RCRA regulations defines the hazardous waste characteristic of ignitability as a liquid which has a flash point less than 60 °C (140 °F) as determined by the use of ASTM Standard D 93-79 or D 93-80 (Pensky-Martens Closed Cup Tester) or ASTM Standard D 3278-78 (Setaflash Closed Cup Tester). Since publication of the regulation, the ASTM Standard has been revised. However, before proposing to replace the ASTM Standard now in the regulation with the newer versions D 93-99c and D 3278-96, EPA compared the newer versions of the test protocol with the older versions of the protocol and found only non-substantive differences. Therefore, EPA proposed and requested comment on replacing the older versions of the ASTM Standard in § 261.21(a)(1) with the more recent versions. In addition, although ASTM Standard D 93-00 is newer than D 93-99c, EPA proposed that D 93-99c replace D 93-80 because EPA found that D 93-00 differed in a possibly substantial manner from D 93-80 and, if it were to be specified instead of D 93-99c, characteristic results may be significantly affected. Specifically, we found that the D 93-00 version specifies different sample container volumes for different sample types. It requires that all matrices, except residual fuel oil, be collected in containers not more than 85% or less than 50% full. This revision may significantly affect the characteristic results, since the potential to lose flammable volatile constituents will be greater from sample containers that may now have as much as 50% headspace. The Agency requested comment on this evaluation.

Finally, the Agency proposed to revise § 261.21(a)(1) to clarify that the ASTM standards for ignitability characteristic determinations are used and referenced by SW-846 Methods 1010A and 1020B. The Agency believed these revisions to § 261.21(a)(1) to be non-substantive and that the changes would not affect which wastes are

determined to be hazardous based on the characteristic.

Five commenters addressed this section of the proposed MIR. Two commenters supported EPA's proposal to update the references to ASTM standards in § 261.21(a)(1). Two other commenters had general concerns about the ignitability characteristic and the ASTM standards, but did not appear to specifically support or oppose the replacements. Only one commenter commented on revising § 261.21(a)(1) to clarify that the ASTM standards for the ignitability characteristic are used and referenced by SW-846 Methods 1010A and 1020B. The commenter supported the regulatory revision.

Regarding ASTM Standards D 93-99c and D 93-00, the two commenters that supported updating the references agreed with EPA that D 93-99c and D 93-00 could yield different results and therefore, different conclusions as to whether or not a waste would be identified as hazardous. The two commenters that disagreed with the Agency's conclusion regarding D 93-00 maintained that the potential to lose volatile compounds also existed in the 1999 version. One of these commenters noted that an even newer version than D 93-00 was now available from ASTM, namely D 93-02. The commenter recommended that the Agency study that standard for any significant differences.

The Agency has considered all of the comments and decided to retain the existing ASTM regulatory standards and not replace them with the newer versions at this time. The Agency agrees with the commenter who suggested that EPA further study and review the new versions of the ASTM standards. Both newer versions of D 93 require that certain ASTM sampling procedures be used, which are unnecessarily prescriptive and often inapplicable to hazardous waste collection. The newer version of D 93 may also promote potential problems with requirements for sampling and automated test equipment. As a result, the Agency believes that a more detailed evaluation is warranted. In addition, the Agency believes that, although the newer versions of D 93 allows for automated test equipment, including the use of an electric igniter which may save time, a rigorous comparison of the electrical igniter versus the flame igniter should be conducted.

In addition, the Agency decided to not finalize the addition of references to Methods 1010A and 1020B in the regulations as proposed, but rather Methods 1010A and 1020B were revised as part of Final Update IIIB (final today

as part of this rule, see section VIII), whereby all method text was replaced with direct references to the ASTM standards listed in § 261.21(a)(1).

Finally, as proposed regarding § 261.21(a)(1), we are removing that portion of the last sentence which refers to the equivalent test method demonstration. This information is adequately addressed in §§ 260.20 and 260.21. It is not necessary to repeat the information regarding method equivalency petitions in each section of a RCRA regulation which requires use of a specific test method(s). Also, this revision is consistent with similar sections on testing in part 261 and other parts of the RCRA regulations.

VIII. Availability of Final Update IIIB and Status of Final Update IV to SW-846

SW-846 is a guidance document that changes over time as new information and data are developed. On October 30, 2002, we proposed to revise several methods and chapters of SW-846 and release these revisions as Update IIIB to the Third Edition of SW-846. To date, EPA has finalized Updates I, II, IIA, IIB, III, and IIIA to the Third Edition of the SW-846 manual. On May 8, 1998 (see 63 FR 25430) and on November 27, 2000 (see 65 FR 70678), we also announced the availability of Draft Update IVA and IVB, respectively, which we published for guidance purposes only.

As part of this rule, we are finalizing Update IIIB. The Methods Team Web site at <http://www.epa.gov/SW-846> has been revised to remove Proposed Update IIIB and include an integrated electronic version of SW-846 which incorporates the final version of that update. In the near future after publication of this rule, Draft Updates IVA and IVB will be replaced by Final Update IV and its availability will be announced by a Federal Register notice.

The revised methods of Update IIIB are used for method-defined parameters and thus, any required uses of those methods will remain in the RCRA regulations. Therefore, we revised § 260.11 to include the Update IIIB methods.

In the proposed rule preamble, we also requested comments on certain parts of the Update IIIB methods and chapters. We did not consider comments on the other sections or parts of the methods or chapters because those portions were not proposed for revision. Most of the comments concerned the removal of the reactivity guidance methods from Chapter Seven and updating the ASTM standards. Those comments are addressed in previous sections of this preamble. The

Agency received a few other comments regarding the documents contained in Proposed Update IIIB. The docket to this rule (RCRA-2002-0025) contains a background document with our responses to all the comments submitted. The responses also identify any revisions made to the methods due to the comments.

Table 5 provides a listing of the four chapters and eleven methods in Final

Update IIIB. The method numbers in the table reflect the appropriate method revision letter suffix (e.g., A, B, C, etc.). These suffixes were not always reflected in the RCRA regulations themselves, e.g., the regulations cited the method number without a suffix. The relevant regulations revised by today's rule do reflect the latest suffix. Accordingly, this final rule identifies the latest promulgated version of the methods that

remain as incorporated by reference at § 260.11 in the RCRA regulations. During compliance with those regulations, the regulated community must only use the latest promulgated revision of the methods as indicated in § 260.11, *i.e.*, the regulated community must only use the version of the method cited by § 260.11.

TABLE 5.—FINAL UPDATE IIIB METHODS AND CHAPTERS

Chapters or method number	Method or chapter title
Chapter Five	Miscellaneous Test Methods.
Chapter Six	Properties.
Chapter Seven	Characteristics Introduction and Regulatory Definitions.
Chapter Eight	Methods for Determining Characteristics.
1010A	(Referral to) Pensky-Martens Closed Cup Method for Determining Ignitability.
1020B	(Referral to) Setaflash Closed Cup Method for Determining Ignitability.
1110A	Corrosivity Toward Steel.
1310B	Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test.
9010C	Total and Amenable Cyanide: Distillation.
9012B	Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation).
9040C	pH Electrometric Measurement.
9045D	Soil and Waste pH.
9060A	Total Organic Carbon.
9070A	n-Hexane Extractable Material (HEM) for Aqueous Samples.
9095B	Paint Filter Liquids Test.

Note: A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times).

IX. Addition of Method 25A to §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv)

In section IX of the preamble to the proposed rule, the Agency proposed to revise §§ 264.1034(c)(1)(ii) and (iv) and §§ 265.1034(c)(1)(ii) and (iv) to allow the use of Method 25A, as well as Method 18, during analyses in support of air emission standards for process vents and/or equipment leaks at hazardous waste management facilities. All comments supported these revisions and therefore we finalized these changes, as proposed.

X. Removal of Requirements From §§ 63.1208(b)(8)(i) and (ii) in the NESHAP Standards To Demonstrate Feedstream Analytes Are Not Present at Certain Levels

In section X of the preamble to the proposed rule, the Agency proposed to remove the requirements for analytical DQOs (e.g., 80% upper confidence limit) for feedstream analyses found in §§ 63.1208(b)(8)(i) and (ii) that were previously promulgated in the National Emission Standards for Hazardous Air

Pollutants (NESHAP) for Hazardous Waste Combustors on September 30, 1999. All comments supported these revisions and therefore we are finalizing these changes, as proposed.

XI. Status of the RCRA Waste Sampling Draft Technical Guidance

In section XI of the preamble to the proposed rule, we announced the availability of a stand-alone sampling guidance document entitled, "RCRA Waste Sampling Draft Technical Guidance." We intended to replace the original sampling guidance version of Chapter Nine found in EPA publication SW-846 with this new document. We requested comment on the guidance. The Agency received a number of comments which are still under review and consideration. This additional review of the document will help us improve the guidance and ensure that it is most useful in its final form. Therefore, we are not at this time issuing a final version of the sampling guidance. Once we complete our review and evaluation of the comments, we will revise the document as appropriate and announce its availability in the **Federal Register**.

XII. State Authorization Procedures

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to

administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law. A state may receive authorization by following the approval process described in 40 CFR part 271. 40 CFR part 271 also describes the overall standards and requirements for authorization.

After a state receives initial authorization, new regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (*i.e.*, 42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. Although authorized states are still required to

update their hazardous waste programs to remain equivalent to the Federal program, 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.

Finally, authorized states are required to modify their programs only when EPA promulgates 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 § 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Authorization of States for Today's Rule

Today's rule affects many aspects of the RCRA Program and is promulgated pursuant to both HSWA and non-HSWA statutory authority. Therefore, the Agency added the rule to Table 1 in § 271.1(j), which identifies Federal regulations that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions, as discussed in the following section of this preamble.

Today's rule language provides standards that are equivalent to or less stringent than the existing provisions in the Federal regulations which they would amend. Therefore, States would not be required to adopt and seek authorization for this rulemaking. EPA would implement this rulemaking only in those states which are not authorized for the RCRA Program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that would be amended. In authorized States, the changes will not be applicable until and unless the State revises its program to adopt the revisions.

(Note: Procedures and deadlines for State program revisions are set forth in § 271.21.)

This rule will provide significant benefits to EPA, the states, and the regulated community, without compromising human health or environmental protection. Therefore, EPA strongly encourages authorized states to amend their programs and seek authorization for today's rule.

C. Abbreviated Authorization Procedures

EPA considers today's rule to be a minor rulemaking and is adding it to the list of minor or routine rulemakings in Table 1 to § 271.21. Placement in this table will enable states to use the abbreviated procedures located in § 271.21(h) when they seek authorization for today's changes. These abbreviated procedures were established in the HWIR-media rulemaking (see 63 FR 65927, November 30, 1998).

XIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant," and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines a "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, 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 a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

OMB determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review and the requirements of the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. There are no additional reporting, notification, or recordkeeping provisions associated with today's rule. However, the Office of Management and Budget (OMB) previously approved the information collection requirements contained in some of the existing regulations being revised by this rule, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control numbers for those

information collection requirements, as follows:

- 40 CFR 258.28: OMB control number 2050-0122
- 40 CFR 260.21 and 260.22: OMB control number 2050-0053
- 40 CFR 261.3: OMB control number 2050-0085
- 40 CFR 261.35: OMB control number 2050-0115
- 40 CFR 264.1034, 264.1063, 265.1034, and 265.1063: OMB control number 2050-0050
- 40 CFR 266.100, 266.102, 266.106, 266.112, Appendix IX to part 63, and 270.22: OMB control number 2050-0073
- 40 CFR 270.19: OMB control number 2050-0009
- 40 CFR 270.62: OMB control numbers 2050-0009 and 2050-0149
- 40 CFR 270.66: OMB control numbers 2050-0073 and 2050-0149
- 40 CFR 279.10, 279.44, 279.53 and 279.63: OMB control number 2050-0124

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or 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 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 independently owned and operated and not dominant in its field as defined by Small Business Administration (SBA) regulations under Section 3 of the Small Business Act for SIC; (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 final rule on small entities, I certify that this action will not have a significant economic 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. sections 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 economic effect on all of the small entities subject to the rule. Today's rule is specifically intended to reduce economic burden for all entities. The action will provide greater flexibility and utility to all affected entities, including small entities, by providing an increase in choices of appropriate analytical methods for RCRA applications. It does not create any new regulatory requirements or require any new reports beyond those now required by the revised regulations. In addition, its revisions need not be adopted by regulated entities. If the methods are appropriate, such entities can continue to use the methods previously specified in the regulations before today instead of choosing the option to use other appropriate methods

from other reliable sources. We have therefore concluded that today's final rule will relieve regulatory burden for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA or the Act), Pubic 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 UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed, section 205 of the Act generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator explains in the final rule why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

First, this rule does not contain a Federal mandate. The rule imposes no enforceable duty on any State, local or tribal governments. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. This is due to the fact that this rule does not add any new regulatory requirements and States need not adopt its revisions. This rule only revises certain regulatory sections to remove the requirement to use SW-846 methods and allow the use of other appropriate methods—that is, clarify allowed flexibility in method selection for meeting RCRA-related testing and monitoring requirements. Under RCRA, regardless of the method used—the one previously specified in the regulation

before today or another appropriate method—regulated entities should be demonstrating that the method is appropriate for its intended use. This rule also does not propose new monitoring or information collection requirements. The additional flexibility allowed by this rule should result in improved data quality at reduced cost. Thus, today's rule is not subject to the requirements of sections 202, 203 and 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 final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained above, today's rule does not impose new requirements on the States and its regulatory changes need not be adopted by the States. Thus, Executive Order 13132 does not apply to this rule. Because these changes are equivalent to or less stringent than the existing Federal program, States would not be required to adopt and seek authorization for them.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Today's rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. For many of the same reasons described above under unfunded mandates, the requirements of the Executive Order do not apply to this rulemaking. As stated above, this rule does not propose any new regulatory requirements and Indian tribal governments need not adopt it. It does not impose any direct compliance costs on tribal governments.

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

Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Also, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action discussed in today's rule is intended to provide increased flexibility in the use of methods for RCRA-related testing and monitoring, and thus is not subject to Executive Order 13045.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule increases flexibility in the use of methods for RCRA-related testing and monitoring and does not itself identify or require the use of new methods or other technical standards. In fact, this rule, may increase the use of available voluntary consensus standards for some RCRA applications, provided that such methods are appropriate for the regulatory application.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, requires that regulatory actions be accompanied by an environmental justice analysis. This analysis must look at potentially disproportionate impacts the action may have on minority and/or low-income communities.

The Agency has determined that the action does not raise environmental justice concerns. The impact of this rule will be to provide increased flexibility in the choice of appropriate analytical methods for RCRA applications. The Agency is not aware of any disproportionate impacts that such flexibility may have on minority and/or low-income communities.

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 July 14, 2005.

List of Subjects

40 CFR Part 63

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

40 CFR Part 258

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 260

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

40 CFR Part 261

Environmental protection, Comparable fuels, syngas fuels, Excluded hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Incorporation by reference, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Incorporation by reference, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Incorporation by reference, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Incorporation by reference, 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, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 279

Environmental protection, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: May 16, 2005.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, EPA amends title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

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

■ 2. Section 63.1208 is amended by revising paragraph (b)(8) to read as follows:

§ 63.1208 What are the test methods?

* * * * *

(b) * * *

(8) *Feedstream analytical methods.* You may use any reliable analytical method to determine feedstream concentrations of metals, chlorine, and other constituents. It is your responsibility to ensure that the sampling and analysis procedures are unbiased, precise, and that the results are representative of the feedstream.

* * * * *

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

■ 3. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c), and 6949a(c).

Subpart C—Operating Criteria

■ 4. Section 258.28 is amended by revising paragraph (c)(1) to read as follows:

§ 258.28 Liquids restrictions.

* * * * *

(c) * * *

(1) Liquid waste means any waste material that is determined to contain "free liquids" as defined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846) which is incorporated by reference. A suffix of "B" in the method number indicates revision two (the method has been revised twice). Method 9095B is dated November 2004. This incorporation by reference was approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register**. A copy may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

* * * * *

■ 5. Appendix I to part 258 is revised to read as follows:

Appendix I to Part 258—Constituents for Detection Monitoring

Common name ¹	CAS RN ²
Inorganic Constituents:	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)
Organic Constituents:	
(16) Acetone	67-64-1
(17) Acrylonitrile 1	107-13-1
(18) Benzene	71-43-2
(19) Bromochloromethane	74-97-5
(20) Bromodichloromethane	75-27-4
(21) Bromoform; Tribromomethane	75-25-2
(22) Carbon disulfide	75-15-0
(23) Carbon tetrachloride	56-23-5

Common name ¹	CAS RN ²
(24) Chlorobenzene	108-90-7
(25) Chloroethane; Ethyl chloride	75-00-3
(26) Chloroform; Trichloromethane	67-66-3
(27) Dibromochloromethane; Chlorodibromomethane	124-48-1
(28) 1,2-Dibromo-3-chloropropane; DBCP	96-12-8
(29) 1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(32) trans-1, 4-Dichloro-2-butene	110-57-6
(33) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(34) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
(37) trans-1, 2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(38) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(39) cis-1,3-Dichloropropene	10061-01-5
(40) trans-1,3-Dichloropropene	10061-02-6
(41) Ethylbenzene	100-41-4
(42) 2-Hexanone; Methyl butyl ketone	591-78-6
(43) Methyl bromide; Bromomethane	74-83-9
(44) Methyl chloride; Chloromethane	74-87-3
(45) Methylene bromide; Dibromomethane	74-95-3
(46) Methylene chloride; Dichloromethane	75-09-2
(47) Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
(48) Methyl iodide; Iodomethane	74-88-4
(49) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
(50) Styrene	100-42-5
(51) 1,1,1,2-Tetrachloroethane	630-20-6
(52) 1,1,2,2-Tetrachloroethane	79-34-5
(53) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(54) Toluene	108-88-3
(55) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(56) 1,1,2-Trichloroethane	79-00-5
(57) Trichloroethylene; Trichloroethene	79-01-6
(58) Trichlorofluoromethane; CFC-11	75-69-4
(59) 1,2,3-Trichloropropane	96-18-4
(60) Vinyl acetate	108-05-4
(61) Vinyl chloride	75-01-4
(62) Xylenes	1330-20-7

¹ Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

² Chemical Abstract Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

■ 6. Appendix II to part 258 is revised to read as follows:

**Appendix II to Part 258—List of
Hazardous Inorganic and Organic
Constituents**

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208-96-8	Acenaphthylene
Acetone	67-64-1	2-Propanone
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile
Acetophenone	98-86-2	Ethanone, 1-phenyl-
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-
Acrolein	107-02-8	2-Propenal
Acrylonitrile	107-13-1	2-Propenenitrile
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1,4,4a,5,8,8a)-
Allyl chloride	107-05-1	1-Propene, 3-chloro-
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine
Anthracene	120-12-7	Anthracene
Antimony	(Total)	Antimony
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71-43-2	Benzene
Benzo[a]anthracene; Benzanthracene	56-55-3	Benzo[a]anthracene
Benzo[b]fluoranthene	205-99-2	Benzo[e]acephenanthrylene
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene
Benzyl alcohol	100-51-6	Benzenemethanol

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
Beryllium	(Total)	Beryllium
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 β ,4 α ,5 β ,6 β)-
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 β ,3 α ,4 β ,5 α ,6 β)-
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 α ,4 β ,5 α ,6 β)-
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6- hexachloro-, (1 α ,2 α , 3 β , 4 α ,5 α ,6 β)-
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1'-[methylenebis (oxy)]bis [2-chloro-
Bis(2-chloroethyl)ether; Dichloroethyl ether	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
Bis(2-chloro-1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether; DCIP, See footnote 4.	108-60-1	Propane, 2,2'-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75-15-0	Carbon disulfide
Carbon tetrachloride	56-23-5	Methane, tetrachloro-
Chlordane	See footnote 5 ..	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-
Chlorobenzene	108-90-7	Benzene, chloro-
Chlorobenzilate	510-15-6	Benzenecetic acid, 4-chloro-(4-chlorophenyl)-hydroxy-, ethyl ester.
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-
2-Chlorophenol	95-57-8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218-01-9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol; 3-Methylphenol	108-39-4	Phenol, 3-methyl-
o-Cresol; 2-Methylphenol	95-48-7	Phenol, 2-methyl-
p-Cresol; 4-Methylphenol	106-44-5	Phenol, 4-methyl-
Cyanide	57-12-5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene) bis[4-chloro-
4,4'-DDE	72-55-9	Benzene, 1,1'-(dichloroethenyldiene) bis[4-chloro-
4,4'-DDT	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-chloro-
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3-dichloro-2-propenyl) ester.
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene
Dibenzofuran	132-64-9	Dibenzofuran
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-
3,3'-Dichlorobenzidine	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane; CFC 12	75-71-8	Methane, dichlorodifluoro-
1,1-Dichloroethane; Ethyldiene chloride	75-34-3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	75-35-4	Ethene, 1,1-dichloro-
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-(Z)-
2,4-Dichlorophenol	156-60-5	Ethene, 1,2-dichloro-, (E)-
2,6-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-
1,2-Dichloropropane	87-65-0	Phenol, 2,6-dichloro-
1,3-Dichloropropane; Trimethylene dichloride	78-87-5	Propane, 1,2-dichloro-
2,2-Dichloropropane; Isopropylidene chloride	142-28-9	Propane, 1,3-dichloro-
1,1-Dichloropropene	594-20-7	Propane, 2,2-dichloro-
cis-1,3-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-
trans-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-
Dieldrin	10061-02-6	1-Propene, 1,3-dichloro-, (E)-
	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-, (1 α ,2 β ,2 α ,3 β ,6 α ,7 β ,7 α)-

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester.
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
3,3'-Dimethylbenzidine	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
alpha, &alpha-Dimethylphenethylamine	122-09-8	Benzenethanamine, alpha-dimethyl
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
Diphenylamine	122-39-4	Benzenamine, N-phenyl-
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3alpha,5alpha,6beta,9beta,9alpha)-
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide
Endrin	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-, (1alpha, 2beta,2alpha,3alpha,6alpha,6alpha,7beta,7alpha)-
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-(1alpha,2beta,2alpha,4beta,4alpha,5beta,6alpha,6beta,7R*)-
Ethylbenzene	100-41-4	Benzene, ethyl-
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester
Famphur	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]-O,O-dimethyl ester
Fluoranthene	206-44-0	Fluoranthene
Fluorene	86-73-7	9H-Fluorene
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a,6a-hexahydro-, (1alpha,1bbeta,2alpha,5alpha,5alpha,6beta,6alpha)
Hexachlorobenzene	118-74-1	Benzene, hexachloro-
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane	67-72-1	Ethane, hexachloro-
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,1,0,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1alpha, 4alpha, 4alpha,5beta,8beta,8alpha)-
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta-[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-
Methapyrilene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2,2-trichloroethylidene)bis [4-methoxy-
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-
Naphthalene	91-20-3	Naphthalene
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione
1-Naphthylamine	134-32-7	1-Naphthalenamine
2-Naphthylamine	91-59-8	2-Naphthalenamine
Nickel	(Total)	Nickel
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-
m-Nitroaniline; 3-Nitroaniline	99-09-2	Benzenamine, 3-nitro-
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro-
Nitrobenzene	98-95-3	Benzene, nitro-
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine.	621-64-7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester
Pentachlorobenzene	608-93-5	Benzene, pentachloro-
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-
Pentachlorophenol	87-86-5	Phenol, pentachloro-
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85-01-8	Phenanthrene
Phenol	108-95-2	Phenol
p-Phenylenediamine	106-50-3	1,4-Benzenediamine
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S- [(ethylthio)methyl] ester
Polychlorinated biphenyls; PCBs	See footnote 6	1,1'-Biphenyl, chloro derivatives
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile
Pyrene	129-00-0	Pyrene
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
Styrene	100-42-5	Benzene, ethenyl-
Sulfide	18496-25-8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108-88-3	Benzene, methyl-
o-Toluidine	95-53-4	Benzenamine, 2-methyl-
Toxaphene	See footnote 7	Toxaphene
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-
Xylene (total)	See footnote 8	Benzene, dimethyl-
Zinc	(Total)	Zinc

¹ Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

² Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

³ CAS index names are those used in the 9th Cumulative Index.

⁴ This substance is often called bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, propane, 2,2'-oxybis[2-chloro- (CAS RN 39638-32-9).

⁵ Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6).

⁶ Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5).

⁷ Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

⁸ Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 7. 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

■ 8. Section 260.11 is revised to read as follows:

§ 260.11 References.

(a) When used in parts 260 through 270 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.

(1) ASTM D-93-79 or D-93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester," IBR approved for § 261.21.

(2) ASTM D-1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography," IBR approved for §§ 264.1033, 265.1033.

(3) ASTM D 2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," IBR approved for § 264.1063.

(4) ASTM D 2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter

(High-Precision Method)," IBR approved for §§ 264.1033, 265.1033.

(5) ASTM D 2879-92, "Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isotenoscope," IBR approved for § 265.1084.

(6) ASTM D-3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester," IBR approved for § 261.21(a).

(7) ASTM E 168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis," IBR approved for § 264.1063.

(8) ASTM E 169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," IBR approved for § 264.1063.

(9) ASTM E 260-85, "Standard Practice for Packed Column Gas Chromatography," IBR approved for § 264.1063.

(10) ASTM E 926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," Test Method C—Bomb, Acid Digestion Method.

(c) The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

(1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 264.1035, 265.1035, 270.24, 270.25.

(2) Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry, PB99-121949, IBR approved for part 261, appendix IX.

(3) The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times).

(i) Method 0010, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.

(ii) Method 0020, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.

(iii) Method 0030, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.

(iv) Method 1320, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.

(v) Method 1311, dated September 1992 and in Update I, IBR approved for part 261, appendix IX, and §§ 261.24, 268.7, 268.40.

(vi) Method 1330A, dated September 1992 and in Update I, IBR approved for part 261, appendix IX.

(vii) Method 1312 dated September 1994 and in Update II, IBR approved for part 261, appendix IX.

(viii) Method 0011, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, and part 266, appendix IX.

(ix) Method 0023A, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.104.

(x) Method 0031, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.

(xi) Method 0040, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.

(xii) Method 0050, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.107.

(xiii) Method 0051, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.107.

(xiv) Method 0060, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, § 266.106, and part 266, appendix IX.

(xv) Method 0061, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, § 266.106, and part 266, appendix IX.

(xvi) Method 9071B, dated April 1998 and in Update IIIA, IBR approved for part 261, appendix IX.

(xvii) Method 1010A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xviii) Method 1020B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xix) Method 1110A, dated November 2004 and in Update IIIB, IBR approved for § 261.22 and part 261, appendix IX.

(xx) Method 1310B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xxi) Method 9010C, dated November 2004 and in Update IIIB, IBR approved for part

261, appendix IX and §§ 268.40, 268.44, 268.48.

(xxii) Method 9012B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§ 268.40, 268.44, 268.48.

(xxiii) Method 9040C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and § 261.22.

(xxiv) Method 9045D, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xxv) Method 9060A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX, and §§ 264.1034, 264.1063, 265.1034, 265.1063.

(xxvi) Method 9070A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, part 261, appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 268.32.

(d) The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

(1) "Flammable and Combustible Liquids Code" (1977 or 1981), IBR approved for §§ 264.198, 265.198.

(2) [Reserved]

(e) The following materials are available for purchase from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.

(1) API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," IBR approved for § 265.1084.

(2) [Reserved]

(f) The following materials are available for purchase from the Environmental Protection Agency, Research Triangle Park, NC.

(1) "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, EPA Publication No. EPA-450/R-92-019, IBR approved for part 266, appendix IX.

(2) [Reserved]

(g) The following materials are available for purchase from the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.

(1) OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations), IBR approved for 262.89 of this chapter.

(2) [Reserved]

Subpart C—Rulemaking Petitions

■ 9. Section 260.21 is amended by revising paragraph (d) to read as follows:

§ 260.21 Petitions for equivalent testing or analytical methods.

* * * * *

(d) If the Administrator amends the regulations to permit use of a new testing method, the method will be incorporated by reference in § 260.11 and added to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, DC 20460.

■ 10. Section 260.22 is amended by revising paragraph (d)(1)(i) to read as follows:

§ 260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility.

* * * * *

(d) * * *

(1) * * *

(i) Does not contain the constituent or constituents (as defined in Appendix VII of part 261 of this chapter) that caused the Administrator to list the waste; or

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 11. 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

■ 12. Section 261.3 is amended by revising paragraph (a)(2)(v) introductory text to read as follows:

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(v) *Rebuttable presumption for used oil.* Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

Subpart C—Characteristics of Hazardous Waste

■ 13. Section 261.21 is amended by revising paragraph (a)(1) to read as follows:

§ 261.21 Characteristic of ignitability.

(a) * * *

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60 °C (140 °F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D 93-79 or D 93-80 (incorporated by reference, see § 260.11), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278-78 (incorporated by reference, see § 260.11).

* * * * *

■ 14. Section 261.22 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 261.22 Characteristic of corrosivity.

(a) * * *

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040C in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 °C (130 °F) as determined by Method 1110A in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart D—Lists of Hazardous Wastes

■ 15. Section 261.35 is amended by revising paragraphs (b)(2)(iii)(A) and (B) to read as follows:

§ 261.35 Deletion of certain hazardous waste codes following equipment cleaning and replacement.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) Rinses must be tested by using an appropriate method.

(B) "Not detected" means at or below the following lower method calibration limits (MCLs): The 2,3,7,8-TCDD-based MCL—0.01 parts per trillion (ppt), sample weight of 1000 g, IS spiking

level of 1 ppt, final extraction volume of 10–50 µL. For other congeners—multiply the values by 1 for TCDF/PeCDD/PeCDF, by 2.5 for HxCDD/HxCDF/HpCDD/HpCDF, and by 5 for OCDD/OCDF.

* * * * *

■ 16. Section 261.38 is amended by revising paragraph (c)(7) introductory text to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

* * * * *

(c) * * *

(7) *Waste analysis plans.* The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The plan shall be followed and retained at the facility excluding the waste.

* * * * *

■ 17. Appendix I to part 261 is amended by revising paragraphs four and five to read as follows:

Appendix I to Part 261—Representative Sampling Methods

* * * * *

Containerized liquid waste—“COLIWASA.”

Liquid waste in pits, ponds, lagoons, and similar reservoirs.—“Pond Sampler.”

* * * * *

Appendices II and III to Part 261 [Removed and Reserved]

■ 18. Part 261 is amended by removing and reserving Appendices II and III.

■ 19. Appendix IX to part 261 is amended in Table 1:

■ a. In the entry for “Aptus, Inc., Coffeyville, Kansas,” under the “Waste description” column, by revising paragraphs (2), (3), and (4);

■ b. In the entry for “Arkansas Department of Pollution Control and Ecology, Vertac Superfund site, Jacksonville, Arkansas,” under the “Waste description” column, by revising the introductory text of paragraph (1) and by revising paragraph (3)(C);

■ c. In the entry for “Bekaert Corp., Dyersburg, TN,” under the “Waste description” column, by revising paragraph (4)(B);

■ d. In the entry for “Bethlehem Steel Corporation, Sparrows Point, Maryland,” under the “Waste description” column, by revising the introductory text of paragraph (1);

■ e. In the entry for “BMW Manufacturing Corporation, Greer, South Carolina,” under the “Waste description” column, by revising the introductory text of paragraph (2);

■ f. In the entry for “DuraTherm, Incorporated, San Leon, Texas,” under the “Waste description” column, by revising the introductory text of paragraph (3);

■ g. In the entry for “Eastman Chemical Company, Longview, Texas,” under the “Waste description” column, by revising the introductory text of paragraph (3);

■ h. In the entry for “Envirite of Pennsylvania (formerly Envirite Corporation), York, Pennsylvania,” under the “Waste description” column, by revising paragraph (2);

■ i. In the entry for “Geological Reclamation Operations and Waste

Systems, Inc., Morrisville, PA,” under the “Waste description” column, by revising the introductory text of paragraph (1);

■ j. In the entry for “McDonnell Douglas Corporation, Tulsa, Oklahoma,” under the “Waste description” column, by revising paragraph (3);

■ k. In the entry for “Occidental Chemical, Ingleside, Texas,” under the “Waste description” column, by revising the introductory text of paragraph (3);

■ l. By removing the entry for “OxyVinyls, L.P., Deer Park, TX;”

■ m. In the entry for “Rhodia, Houston, Texas,” under the “Waste description” column, by revising the introductory text of paragraph (3);

■ n. In the entry for “Syntex Agribusiness, Springfield, MO,” under the “Waste description” column, by revising paragraphs (2), (3), (4), (5), and (6);

■ o. In the entry for “Texas Eastman, Longview, Texas,” under the “Waste description” column, by revising paragraph 3;

■ p. In the entry for “Tokusen USA, Inc., Conway, AR,” under the “Waste description” column, by revising paragraph (2)(C), the introductory text of paragraph (3), and paragraphs (3)(A)(ii), (3)(B), and (3)(C)(ii);

■ q. In the entry for “Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida,” under the “Waste description” column, by revising the introductory text of paragraph (1).

The revisions read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Aptus, Inc.	Coffeyville, Kansas	(1) * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) A minimum of four grab samples must be taken from each hopper (or other container) of kiln residue generated during each 24-hour run; all grabs collected during a given 24-hour run must then be composited to form one composite sample. A minimum of four grab samples must also be taken from each hopper (or other container) of spray dryer/baghouse residue generated during each 24-hour run; all grabs collected during a given 24-hour run must then be composited to form one composite sample. Prior to the disposal of the residues from each 24-hour run, a TCLP leachate test must be performed on these composite samples and the leachate analyzed for the TC toxic metals, nickel, and cyanide. If arsenic, chromium, lead or silver TC leachate test results exceed 1.6 ppm, barium levels exceed 32 ppm, cadmium or selenium levels exceed 0.3 ppm, mercury levels exceed 0.07 ppm, nickel levels exceed 10 ppm, or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with subtitle C of RCRA. Analyses must be performed according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. (3) Aptus must generate, prior to the disposal of the residues, verification data from each 24 hour run for each treatment residue (i.e., kiln residue, spray dryer/baghouse residue) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Condition (2). Analyses must be performed according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Any residues which exceed any of the levels listed below must be retreated or must be disposed of as hazardous. Kiln residue and spray dryer/baghouse residue must not exceed the following levels: Aldrin—0.015 ppm, Benzene—9.7 ppm, Benzo(a)pyrene—0.43 ppm, Benzo(b)fluoranthene—1.8 ppm, Chlordane—0.37 ppm, Chloroform—5.4 ppm, Chrysene—170 ppm, Dibenzo(a,h)anthracene—0.083 ppm, 1,2-Dichloroethane—4.1 ppm, Dichloromethane—2.4 ppm, 2,4-Dichlorophenol—480 ppm, Dichlorvos—260 ppm, Disulfaton—23 ppm, Endosulfan I—310 ppm, Fluorene—120 ppm, Indeno(1,2,3,cd)-pyrene—330 ppm, Methyl parathion—210 ppm, Nitrosodiphenylamine—130 ppm, Phenanthrene—150 ppm, Polychlorinated biphenyls—0.31 ppm, Tetrachlorethylene—59 ppm, 2,4,5-TP (silvex)—110 ppm, 2,4,6-Trichlorophenol—3.9 ppm. (4) Aptus must generate, prior to disposal of residues, verification data from each 24-hour run for each treatment residue (i.e., kiln residue, spray dryer/baghouse residue) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Condition (2). The TCDD equivalent levels for the solid residues must be less than 5 ppt. Any residues with detected dioxins or furans in excess of this level must be retreated or must be disposed of as acutely hazardous. For tetra- and penta-chlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for the solid residues. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for the solid residues. * * * * *
Arkansas Department of Pollution Control and Ecology.	Vertac Superfund site, Jacksonville, Arkansas.	* * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) <i>Testing</i> : Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. * * * * *
		(3) * * *
		(C) <i>Chlorinated dioxins and furans</i> : 2,3,7,8-Tetrachlorodibenzo-p-dioxin equivalents, 4×10^{-7} ppm. The petitioned by-product must be analyzed for the tetra-, penta-, hexa-, and heptachlorodibenzo-p-dioxins, and the tetra-, penta-, hexa-, and heptachlorodibenzofurans to determine the 2, 3, 7, 8-tetra-chlorodibenzo-p-dioxin equivalent concentration. The analysis must be conducted using a measurement system that achieves practical quantitation limits of 15 parts per trillion (ppt) for the tetra- and penta-homologs, and 37 ppt for the hexa- and hepta-homologs. * * * * *
Bekaert Corp.	Dyersburg, TN	* * * * *
		(4) * * *
		(A) * * *
		(B) The sample for the annual testing shall be a representative composite sample for all constituents listed in paragraph (1). * * * * *
Bethlehem Steel Corporation	Sparrows Point, Maryland	(1) <i>Testing</i> : Sample collection and analyses (including quality control (QC) procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the stabilization process to be effective under the conditions used during the initial verification testing, BSC may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). BSC must continue to test as specified in Condition (1)(A) until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B) (to the extent directed by EPA). * * * * *
BMW Manufacturing Corporation	Greer, South Carolina	* * * * *
		(2) <i>Verification Testing Requirements</i> : Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the BMW Sludge meet the delisting levels in Condition (1). * * * * *
DuraTherm, Incorporated	San Leon, Texas	* * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) <i>Verification Testing Requirements:</i> DuraTherm must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, DuraTherm may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). DuraTherm must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B).
Eastman Chemical Company	Longview, Texas	* * * * *
		(3) <i>Verification Testing Requirements:</i> Eastman must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. After completion of the initial verification period, Eastman may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Eastman must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).
		* * * * *
Envirite of Pennsylvania (formerly Envirite Corporation).	York, Pennsylvania	* * * * *
		(2) Each batch of treatment residue must be tested for leachable cyanide. If the leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.
		* * * * *
Geological Reclamation Oper- ations and Systems, Inc.	Morrisville, Pennsylvania	* * * * *
		(1) <i>Testing:</i> Sample collection and analyses, including quality control (QC) procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B.
		* * * * *
McDonnell Douglas Corporation	Tulsa, Oklahoma	* * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. McDonnell Douglas must stabilize the previously unstabilized waste from the bottom portion of the northwest lagoon of the surface impoundment (which was closed as a landfill) using fly ash, kiln dust or similar accepted materials in batches of 500 cubic yards or less. McDonnell Douglas must analyze one composite sample from each batch of 500 cubic yards or less. A minimum of four grab samples must be taken from each waste pile (or other designated holding area) of stabilized waste generated from each batch run. Each composited batch sample must be analyzed, prior to disposal of the waste in the batch represented by that sample, for constituents listed in Condition (1). There are no verification testing requirements for the stabilized wastes in the upper portions of the northwest lagoon, the entire northeast lagoon, and the entire south lagoon of the surface impoundments which were closed as a landfill. * * * * *
Occidental Chemical	Ingleside, Texas	(3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, any analyses requiring use of SW-846 methods incorporated by reference in 40 CFR 260.11 must use those methods without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). * * * * *
Rhodia	Houston, Texas	(3) <i>Verification Testing Requirements:</i> Rhodia must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Rhodia may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Rhodia must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). * * * * *
Syntex Agribusiness	Springfield, MO	

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal the composite samples must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.61 ppm; barium levels exceed 12 ppm; cadmium and selenium levels exceed 0.12 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 6.1 ppm; or cyanide levels exceed 2.4 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. (3) One grab sample must be taken from each drum of kiln and cyclone ash generated during each eight-hour run; all grabs collected during a given eight-hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight-hour run. Prior to the disposal of the residues from each eight-hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide extraction) to demonstrate that the following maximum allowable treatment residue concentrations listed below are not exceeded. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Any residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Maximum Allowable Solids Treatment Residue EP Leachate Concentrations (mg/L) Arsenic—1.6, Barium—32, Cadmium—0.32, Chromium—1.6, Lead—1.6, Mercury—0.065, Nickel—16, Selenium—0.32, Silver—1.6, Cyanide—6.5. (4) If Syntex stabilizes any of the kiln and cyclone ash or separator sludge, a Portland cement-type stabilization process must be used and Syntex must collect a composite sample of four grab samples from each batch of stabilized waste. An MEP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide leachate analysis) to demonstrate that the maximum allowable treatment residue concentrations listed in condition (3) are not exceeded during any run of the MEP extraction. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Any residues which exceed any of the levels listed in Condition (3) must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. (If the residues are stabilized, the analyses required in this condition supercede the analyses required in Condition (3).)

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) Syntex must generate, prior to disposal of residues, verification data from each eight hour run from each treatment residue (i.e., kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Conditions (2) and (3). Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Any solid or liquid residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Maximum Allowable Wastewater Concentrations (ppm): Benz(a)anthracene—1×10^{-7}, Benzo(a)pyrene—4×10^{-4}, Chloroform—0.07, Chrysene—0.002, Dibenz(a,h)anthracene—9×10^{-6}, 1,2-Dichloroethane—0.06, Dichloromethane—0.06, Indeno(1,2,3-cd)pyrene—0.002, Polychlorinated biphenyls—1×10^{-4}, 1,2,4,5-Tetrachlorobenzene—0.13, 2,3,4,6-Tetrachlorophenol—12, Toluene—120, Trichloroethylene—0.04, 2,4,5-Trichlorophenol—49, 2,4,6-Trichlorophenol—0.02, Maximum Allowable Solid Treatment Residue Concentrations (ppm): Benz(a)anthracene—1.1, Benzo(a)pyrene—0.43, benzo(b)fluoranthene—1.8, Chloroform—5.4, Chrysene—170, Dibenz(a,h)anthracene—0.083, Dichloromethane—2.4, 1,2-Dichloroethane—4.1, Indeno(1,2,3-cd)pyrene—330, Polychlorinated biphenyls—0.31, 1,2,4,5-Tetrachlorobenzene—720, Trichloroethylene—6.6, 2,4,6-Trichlorophenol—3.9. (6) Syntex must generate, prior to disposal of residues, verification data from each eight-hour run for each treatment residue (i.e., kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Conditions (2) and (3). The TCDD equivalent levels for wastewaters must be less than 2 ppq and less than 5 ppt for the solid treatment residues. Any residues with detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. For this analysis, Syntex must use appropriate methods. For tetra- and pentachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 300 ppq for wastewaters. * * * * * Texas Eastman Longview, Texas * * * * * (3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing described in Condition Texas Eastman may replace the testing required in Condition (4) with the testing required in Condition (5) below. Texas Eastman must, however, continue to test as specified in Condition (4) until notified by EPA in writing that testing in Condition (4) may be replaced by the testing described in Condition (5). * * * * * Tokusen USA, Inc. Conway, AR (2) * * * (B) * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), Tokusen must retreat the batches of waste used to generate the representative sample until it meets the levels. Tokusen must repeat the analyses of the treated waste.
		(D) * * *
		(3) <i>Verification Testing Requirements:</i> Tokusen must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). Tokusen must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B).
		(A) * * *
		(i) * * *
		* * * * *
		(ii) Make two composites of representative grab samples collected.
		* * * * *
		(B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, Tokusen may substitute the testing conditions in (3)(B) for (3)(A). Tokusen must continue to monitor operating conditions, and analyze representative samples each quarter of operation during the first year of waste generation, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The samples must represent the waste generated during the quarter.
		(C) * * *
		(i) * * *
		(ii) Following cancellation of the quarterly testing, Tokusen must continue to test a representative composite sample for all constituents listed in Paragraph (1) annually (by twelve months after final exclusion), using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B.
		* * * * *
		* * * * *
Tyco Printed Circuit Group, Melbourne Division.	Melbourne, Florida	* * * * *
		(1) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CDJR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Tyco Sludge meet the delisting levels in Condition (3).
		* * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
* * *	* * *	* * *
■ 20. Appendix IX to part 261 is amended in Table 2: ■ a. By removing the entry for “Bekaert Corp., Dyersburg, TN”; ■ b. In the entry for “Bethlehem Steel Corp., Steelton, PA,” under the “Waste description” column, by revising paragraphs (1) and (2); ■ c. In the entry for “Bethlehem Steel Corp., Johnston, PA,” under the “Waste description” column, by revising paragraphs (1) and (2); ■ d. In the entry for “BF Goodrich Intermediates Company, Inc., Calvert City, Kentucky,” under the “Waste description” column, by revising the introductory paragraph and by revising paragraphs (1)(B) and (3); ■ e. In the entry for “CF&I Steel Corporation, Pueblo, Colorado,” under the “Waste description” column, by revising paragraphs (1) and (2); ■ f. In the entry for “Chaparral Steel Midlothian L.P., Midlothian, Texas,” under the “Waste description” column, by revising paragraph (1) and the introductory text of paragraph (3); ■ g. In the entry for “Conversion Systems, Inc., Horsham, Pennsylvania,” under the “Waste description” column,	by revising the introductory text of paragraph (1); ■ h. In the entry for “DOE-RL, Richland, Washington,” under the “Waste description” column, by revising the introductory text of paragraph (1) and by revising paragraph (3); ■ i. In the entry for “Envirite of Pennsylvania (formerly Envirite Corporation), York, Pennsylvania,” under the “Waste description” column, by revising paragraph (2); ■ j. In the entry for “Heritage Environmental Services, LLC, at the Nucor Steel Facility, Crawfordsville, Indiana,” under the “Waste Description” column, by revising paragraph (2); ■ k. In the entry for “Marathon Oil Co., Texas City, TX,” under the “Waste description” column, by revising the introductory text of paragraph (1); ■ l. In the entry for “Occidental Chemical Corp, Muscle Shoals Plant, Sheffield, Alabama,” under the “Waste description” column, by revising the introductory paragraph and by revising paragraphs (1)(A) and (3); ■ m. In the entry for “Occidental Chemical Corporation, Delaware City, Delaware,” under the “Waste	description” column, by revising the introductory paragraph and by revising paragraph (1)(A), the introductory text of paragraph (2) and by revising paragraph (3); ■ n. In the entry for “Oxy Vinyls, Deer Park, Texas,” under the “Waste description” column, by revising the introductory text of paragraph (3); ■ o. By adding the entry for “OxyVinyls, L.P., Deer Park, TX,” after the entry for “Oxy Vinyls, Deer Park, Texas;” ■ p. In the entry for “Roanoke Electric Steel Corp., Roanoke, VA,” under the “Waste description” column, by revising paragraphs (1)(A), (1)(B), and (2); ■ q. In the entry for “USX Steel Corporation, USS Division, Southworks Plant, Gary Works, Chicago, Illinois,” under the “Waste description” column, by revising the introductory text of paragraph (1) and by revising paragraphs (1)(A) and (2).

The revisions read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * *
Bethlehem Steel Corp	Steelton, PA	(1) <i>Testing:</i> (A) <i>Initial Testing:</i> During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions). Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) <i>Subsequent Testing:</i> Bethlehem must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Bethlehem then must analyze each weekly composite sample for the EP leachate concentrations of all the EP toxic metals and nickel. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Pennsylvania. (2) <i>Delisting Levels:</i> If the EP extract concentrations resulting from the testing in condition (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceeds 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be re-treated or managed and disposed in accordance with subtitle C of RCRA.
Bethlehem Steel Corp	Johnstown, PA	* * * * (1) <i>Testing:</i> (A) <i>Initial Testing:</i> During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) <i>Subsequent Testing:</i> Bethlehem must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Bethlehem then must analyze each weekly composite sample for the EP leachate concentrations of all the EP toxic metals and nickel. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Pennsylvania. (2) <i>Delisting Levels:</i> If the EP extract concentrations resulting from the testing in condition (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be retreated until it meets these levels or managed and disposed in accordance with subtitle C of RCRA. * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
BF Goodrich Intermediates Company, Inc.	Calvert City, Kentucky	Brine purification muds and saturator insolubles (EPA Hazardous Waste No. K071) after August 18, 1989. This exclusion is conditional upon the collection and submission of data obtained from BFG's full-scale treatment system because BFG's original data was based on data presented by another petitioner using an identical treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, BFG must implement a testing program. All sampling and analyses (including quality control procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. This testing program must meet the following conditions for the exclusion to be valid: (1) * * * (B) Collect representative grab samples from every batch of treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate weekly composite samples (one of the treated mercury brine muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, two weekly composite samples must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). BFG must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (2) * * * (3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.316 mg/l; for barium exceeds 6.31 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.16 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA. * * * * *
CF&I Steel Corporation	Pueblo, Colorado	* * * * * (1) <i>Testing:</i> (A) <i>Initial Testing:</i> During the first four weeks of operation of the full-scale treatment system, CF&I must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. CF&I must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) <i>Subsequent Testing</i>: CF&I must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. CF&I then must analyze each weekly composite sample for the EP leachate concentrations of all of the EP toxic metals and nickel. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Colorado. (2) <i>Delisting levels</i>: If the EP extract concentrations determined in conditions (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be re-treated or managed and disposed in accordance with Subtitle C of RCRA.
Chaparral Steel Midlothian, L.P.	Midlothian, Texas	* * * * (1) <i>Delisting Levels</i>: All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calendar year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/l (ppm). Constituents must be measured in the waste by appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. * * * * (3) <i>Verification Testing Requirements</i>: Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2). If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced by Condition (3)(B). * * * *
Conversion Systems, Inc.	Horsham, Pennsylvania	* * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B.
DOE-RL	Richland, Washington	* * * * * (1) <i>Testing:</i> Sample collection and analyses (including quality control (QC) procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, DOE may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). DOE must continue to test as specified in Condition (1)(A) until notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B). * * * * * (2) * * * (3) <i>Delisting Levels:</i> All total constituent concentrations in the waste samples must be measured using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. All total constituent concentrations must be equal to or less than the following levels (ppm): Inorganic Constituents, Ammonium—10.0, Antimony—0.06, Arsenic—0.5, Barium—20.0, Beryllium—0.04, Cadmium—0.05, Chromium—1.0, Cyanide—2.0, Fluoride—40.0, Lead—0.15, Mercury—0.02, Nickel—1.0, Selenium—0.5, Silver—2.0, Vanadium—2.0, Zinc—100.0, Organic Constituents, Acetone—40.0, Benzene—0.05, Benzyl alcohol—100.0, 1-Butyl alcohol—40.0, Carbon tetrachloride—0.05, Chlorobenzene—1.0, Chloroform—0.1, Cresol—20.0, 1,4-Dichlorobenzene—0.75, 1,2-Dichloroethane—0.05, 1,1-Dichloroethylene—0.07, Di-n-octyl phthalate—7.0, Hexachloroethane—0.06, Methyl ethyl ketone—200.0, Methyl isobutyl ketone—30.0, Naphthalene—10.0, Tetrachloroethylene—0.05, Toluene—10.0, Tributyl phosphate—0.2, 1,1,1-Trichloroethane—2.0, 1,1,2-Trichloroethane—0.05, Trichloroethylene—0.05, Vinyl Chloride—0.02. * * * * *
Envirte of Pennsylvania (formerly Envirte Corporation)	York, Pennsylvania	* * * * * (2) Each batch of treatment residue (formerly must be tested for leachable cyanide. If the leachable cyanide levels Corporation) (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. * * * * *
Heritage Environmental Services, LLC, at the Nucor Steel facility.	Crawfordsville, Indiana	* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) <i>Verification Testing:</i> On a monthly basis, Heritage or Nucor must analyze two samples of the waste using the TCLP, SW-846 Method 1311, with an extraction fluid of pH 12 ± 0.05 standard units and for the mercury determinative analysis of the leachate using an appropriate method. The constituent concentrations measured must be less than the delisting levels established in Paragraph (1). * * * *
Marathon Oil Co	Texas City, TX	(1) <i>Testing:</i> Sample collection and analyses (including quality control (QC) procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, Marathon may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). Marathon must continue to test as specified in Condition (1)(A), including testing for organics in Conditions (3)(B) and (3)(C), until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B), or that testing for organics may be terminated as described in (1)(C) (to the extent directed by EPA). * * * *
Occidental Chemical Corp., Muscle Shoals Plant.	Sheffield, Alabama	Retorted wastewater treatment sludge from the mercury cell process in chlorine production (EPA Hazardous Plant Waste No. K106) after September 19, 1989. This exclusion is conditional upon the submission of data obtained from Occidental's full-scale retort treatment system because Occidental's original data were based on a pilot-scale retort system. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Occidental must implement a testing program. All sampling and analyses (including quality control procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. This testing program must meet the following conditions for the exclusion to be valid: (1) * * * (A) Collect representative grab samples from every batch of retorted material and composite the grab samples to produce a weekly composite sample. The weekly composite samples, prior to disposal or recycling, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). Occidental must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. * * * * (2) * * * (3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 1.616 mg/l; for barium exceeds 32.3 mg/l; for cadmium or selenium exceed 0.323 mg/l; for mercury exceeds 0.065 mg/l, for nickel exceeds 16.15 mg/l; or for cyanide exceeds 22.61 mg/l, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA. * * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Occidental Chemical Corporation	Delaware City, Delaware	Sodium chloride treatment muds (NaCl-TM), sodium chloride saturator cleanings (NaCl-SC), and potassium chloride treatment muds (KCl-TM) (all classified as EPA Hazardous Waste No. K071) generated at a maximum combined rate (for all three wastes) of 1,018 tons per year. This exclusion was published on April 29, 1991 and is conditioned upon the collection of data from Occidental's full-scale brine treatment system because Occidental's request for exclusion was based on data from a laboratory-scale brine treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment system is in operation, Occidental must implement a testing program for the petitioned waste. All sampling and analyses (including quality control (QC) procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. This testing program must meet the following conditions for the exclusion to be valid: (1) * * * (A) Collect representative grab samples from each batch of the three treated wastestreams (sodium chloride saturator cleanings (NaCl-SC), sodium chloride treatment muds (NaCl-TM) and potassium chloride treatment muds (KCl-TM)) on an as generated basis and composite the samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). Occidental must report the waste volumes produced and the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch. * * * (2) <i>Subsequent Testing:</i> After the first four weeks of full-scale treatment operations, Occidental must do the following; all sampling and analyses (including quality control procedures) must be performed using appropriate methods, and as applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B: * * * (3) If, under conditions (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.77 mg/l; for barium exceeds 15.5 mg/l; for cadmium or selenium exceed 0.16 mg/l; for mercury exceeds 0.031 mg/l, or for nickel or total cyanide exceed 10.9 mg/l, the waste must either be retreated or managed and disposed of in accordance with all applicable hazardous waste regulations. * * * * * (3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, OxyVinyls may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). OxyVinyls must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).
OxyVinyls	Deer Park, Texas	

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
OxyVinyls, L.P.	Deer Park, TX	Incinerator Offgas Scrubber Water (EPA Hazardous Waste Nos. K017, K019 and K020) generated at a maximum annual rate of 919,990 cubic yards per calendar year after April 22, 2004, and disposed in accordance with the TPDES permit. For the exclusion to be valid, OxyVinyls must implement a testing program that meets the following Paragraphs: (1) <i>Delisting Levels:</i> All total concentrations for those constituents must not exceed the following levels (mg/kg) in the incinerator offgas scrubber water. Incinerator offgas treatment scrubber water (i) Inorganic Constituents Antimony—0.0204; Arsenic—0.385; Barium—2.92; Beryllium—0.166; Cadmium—0.0225; Chromium—5.0; Cobalt—13.14; Copper—418.00; Lead—5.0; Nickel—1.13; Mercury—0.0111; Vanadium—0.838; Zinc—2.61 (ii) Organic Constituents Acetone—1.46; Bromoform—0.481; Bromomethane—8.2; Bromodichloromethane—0.0719; Chloroform—0.683; Dibromochloromethane—0.057; Iodomethane—0.19; Methylene Chloride—0.029; 2,3,7,8—TCDD equivalents as TEQ—0.0000926 (2) <i>Waste Management:</i> (A) OxyVinyls must manage as hazardous all incinerator offgas treatment scrubber water generated, until it has completed initial verification testing described in Paragraphs (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) are non-hazardous. OxyVinyls can manage and dispose the non-hazardous incinerator offgas treatment scrubber water according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), OxyVinyls must collect one additional sample and perform the expedited analyses to confirm if the constituent exceeds the delisting level. If this sample confirms the exceedance, OxyVinyls must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels set in Paragraph (1). OxyVinyls must notify EPA of the exceedance and resampling analytical results prior to disposing of the waste. (D) If the waste exceeds the levels in paragraph (1) OxyVinyls must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. (E) Upon completion of the Verification Testing described in Paragraphs 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of Paragraph (1), OxyVinyls may proceed to manage its incinerator offgas treatment scrubber water as non-hazardous waste. If subsequent verification testing indicates an exceedance of the Delisting Levels in Paragraph (1), OxyVinyls must manage the incinerator offgas treatment scrubber water as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels. (3) <i>Verification Testing Requirements:</i> OxyVinyls must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, OxyVinyls may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). OxyVinyls must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) <i>Initial Verification Testing:</i> After EPA grants the final exclusion, OxyVinyls must do the following: (i) Within 60 days of this exclusion becoming final, collect four samples, before disposal, of the incinerator offgas treatment scrubber water. (ii) The samples are to be analyzed and compared against the delisting levels in Paragraph (1) (iii). Within sixty (60) days after the exclusion becomes final, OxyVinyls will report initial verification analytical test data, including analytical quality control information for the first sixty (30) days of operation after this exclusion becomes final of the incinerator offgas treatment scrubber water. If levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) and are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion, OxyVinyls can manage and dispose of the incinerator offgas treatment scrubber water according to all applicable solid water regulations after reporting the analytical results to EPA. (B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, OxyVinyls may substitute the testing conditions in Paragraph (3)(B) for (3)(A). OxyVinyls must continue to monitor operating conditions, and analyze representative samples of each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual composite sample of the incinerator offgas treatment scrubber water. The results are to be compared to the delisting levels in Condition (1). (C) <i>Termination of Testing:</i> (i) After the first year of quarterly testing, if the Delisting Levels in Paragraph (1) are being met, OxyVinyls may then request that EPA stop requiring quarterly testing. After EPA notifies OxyVinyls in writing, the company may end quarterly testing. (ii) Following cancellation of the quarterly testing, OxyVinyls must continue to test a representative sample for all constituents listed in Paragraph (1) annually. (4) <i>Changes in Operating Conditions:</i> If OxyVinyls significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; OxyVinyls may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Paragraph (1) and it has received written approval to do so from EPA. (5) <i>Data Submittals:</i> OxyVinyls must submit the information described below. If OxyVinyls fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. OxyVinyls must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, EPA Region 6 Corrective Action and Waste Minimization Section, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-C) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Finish these records and data when EPA or the State of Texas request them for inspection.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if its never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) <i>Reopener:</i> (A) If, anytime after disposal of the delisted waste OxyVinyls possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, OxyVinyls must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If OxyVinyls fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and environment. (D) If the Regional Administrator or his delegate determines that the reported information does require action by EPA's Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (of no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing EPA actions that are necessary to protect human health or the environment. Any require action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) <i>Notification Requirements:</i> OxyVinyls must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Roanoke Electric Steel Corp	Roanoke, VA	(1) * * * (A) <i>Initial Testing:</i> During the first four weeks of operation of the full-scale treatment system, Roanoke must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions). Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Roanoke must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) <i>Subsequent Testing:</i> Roanoke must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Roanoke then must analyze each weekly composite sample for all of the EP toxic metals and nickel. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection for any employee or representative of EPA or the State of Virginia. (2) <i>Delisting levels:</i> If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l, for nickel exceeds 3.15 mg/l, or for cyanide exceeds 1.26 mg/l, the waste must either be re-treated or managed and disposed in accordance with subtitle C of RCRA. * * * * *
USX Steel Corporation, USS Division, Southworks Plant, Gary Works	Chicago, Illinois	(1) <i>Testing:</i> Sample collection and analyses (including quality control (QC) procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. (A) <i>Initial Testing:</i> During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). USX must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) <i>Delisting levels:</i> If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be re-treated until it meets these levels or managed and disposed in accordance with subtitle C of RCRA.
*	*	*

Appendix IX to Part 261 [Amended]

■ 21. Appendix IX to part 261 is amended in Table 3 by removing the entry for "Bekaert Corp., Dyersburg, TN".

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

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

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6927, 6928(h), and 6974.

Subpart J—Tank Systems

■ 23. Section 264.190 is amended by revising paragraph (a) to read as follows:

§ 264.190 Applicability.

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in § 264.193. To demonstrate the absence or presence of free liquids in the stored/ treated waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

Subpart N—Landfills

■ 24. Section 264.314 is amended by revising paragraph (c) to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/

Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

Subpart AA—Air Emission Standards for Process Vents

■ 25. Section 264.1034 is amended by revising paragraphs (c)(1)(ii), (c)(1)(iv), (d)(1)(iii) and (f) to read as follows:

§ 264.1034 Test methods and procedures.

(c) * * *
(1) * * *
(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_h = Q_{2sd} \left\{ \sum_{i=1}^n C_i MW_i \right\} [0.0416] [10^{-6}]$$

Where:

E_h = Total organic mass flow rate, kg/h;
 Q_{2sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

$$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;
0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

(d) * * *
(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A (incorporated by reference under 40 CFR 260.11) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, or analyzed for its individual organic constituents.

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved by using direct measurement as specified at paragraph (d)(1) of this section.

Subpart BB—Air Emission Standards for Equipment Leaks

■ 26. Section 264.1063 is amended by revising paragraph (d)(2) to read as follows:

§ 264.1063 Test methods and procedures.

(2) Method 9060A (incorporated by reference under 40 CFR 260.11) of "Test Methods for Evaluating Solid Waste,"

EPA Publication SW-846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

* * * * *

Subpart EE—Hazardous Waste Munitions and Explosives Storage

■ 27. Appendix IX to part 264 is revised as follows:

Appendix IX to Part 264—Ground-Water Monitoring List

GROUND-WATER MONITORING LIST

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208-96-8	Acenaphthylene
Acetone	67-64-1	2-Propanone
Acetophenone	98-86-2	Ethanone, 1-phenyl-
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-
Acrolein	107-02-8	2-Propenal
Acrylonitrile	107-13-1	2-Propenenitrile
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1 α ,4 α ,4a β ,5 α ,8 α ,8a β)-
Allyl chloride	107-05-1	1-Propene, 3-chloro-
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine
Aniline	62-53-3	Benzenamine
Anthracene	120-12-7	Anthracene
Antimony	(Total)	Antimony
Aramite	140-57-8	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71-43-2	Benzene
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene
Benzyl alcohol	100-51-6	Benzenemethanol
Beryllium	(Total)	Beryllium
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 β ,4 β ,5 β ,6 β)-
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 β ,3 α ,4 β ,5 α ,6 β)-
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 α ,4 β ,5 α ,6 β)-
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 β ,4 α ,5 α ,6 β)-
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1'-(methylenebis(oxy))bis [2-chloro-
Bis(2-chloroethyl)ether	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
Bis(2-chloro-1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether	108-60-1	Propane, 2,2'-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromodichloromethane	75-27-4	Methane, bromodichloro-
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75-15-0	Carbon disulfide
Carbon tetrachloride	56-23-5	Methane, tetrachloro-
Chlordane	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-
Chlorobenzene	108-90-7	Benzene, chloro-
Chlorobenzilate	510-15-6	Benzenecetic acid, 4-chloro- α -(4-chlorophenyl)- α -hydroxy-, ethyl ester
p-Chloro-m-cresol	59-50-7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-
Chloroform	67-66-3	Methane, trichloro-
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-
2-Chlorophenol	95-57-8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218-01-9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol	108-39-4	Phenol, 3-methyl-
o-Cresol	95-48-7	Phenol, 2-methyl-
p-Cresol	106-44-5	Phenol, 4-methyl-
Cyanide	57-12-5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acids	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-

GROUND-WATER MONITORING LIST--Continued

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene) bis[4-chloro-
4,4'-DDE	72-55-9	Benzene, 1,1'-(dichloroethenylidene) bis[4-chloro-
4,4'-DDT	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-chloro-
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3-dichloro-2-propenyl) ester
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene
Dibenzofuran	132-64-9	Dibenzofuran
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide	106-93-4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-
m-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-
p-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-
3,3'-Dichlorobenzidine	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane	75-71-8	Methane, dichlorodifluoro-
1,1-Dichloroethane	75-34-3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-
trans-1,2-Dichloroethylene	156-60-5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78-87-5	Propane, 1,2-dichloro-
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-
Diieldrin	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-, (1a α ,2 β ,2a α ,3 β ,6 β ,6a α ,7 β ,7a α)-
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
3,3'-Dimethylbenzidine	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
alpha, alpha-Dimethylphenethylamine	122-09-8	Benzenesethanamine, α,α -dimethyl-
2,4-Dimethylphenol	105-67-9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol	534-52-1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
1,4-Dioxane	123-91-1	1,4-Dioxane
Diphenylamine	122-39-4	Benzenamine, N-phenyl-
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3 α ,5a β ,6 α ,9a β)-
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3 α ,5a α ,6 β ,9 β ,9a α)-
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide
Endrin	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-, (1a α ,2 β ,2a β ,3 α ,6 α ,6a β ,7 β ,7a α)-
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1 α ,2 β ,2a β ,4 β ,4a β ,5 β ,6a β ,6b β ,7R*)-
Ethylbenzene	100-41-4	Benzene, ethyl-
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester
Famphur	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]-O,O-dimethyl ester
Fluoranthene	206-44-0	Fluoranthene
Fluorene	86-73-7	9H-Fluorene
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-

GROUND-WATER MONITORING LIST—Continued

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b] oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a,-hexahydro-, (1a α ,1b β ,2 α ,5 α ,5a β ,6 β ,6a α)
Hexachlorobenzene	118-74-1	Benzene, hexachloro-
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane	67-72-1	Ethane, hexachloro-
Hexachlorophene	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone	591-78-6	2-Hexanone
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,1 0,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1 α , 4 α , 4a β , 5 β , 8 β , 8a β)-
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta-[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-
Methapyrilene	91-80-5	1,2-Ethanediamine,N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2,2-trichloroethylidene)bis [4-methoxy-
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-
Methyl ethyl ketone; MEK;	78-93-3	2-Butanone
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl O=(4-nitrophenyl) ester
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-
Naphthalene	91-20-3	Naphthalene
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione
1-Naphthylamine	134-32-7	1-Naphthalenamine
2-Naphthylamine	91-59-8	2-Naphthalenamine
Nickel	(Total)	Nickel
o-Nitroaniline	88-74-4	Benzenamine, 2-nitro-
m-Nitroaniline	99-09-2	Benzenamine, 3-nitro-
p-Nitroaniline	100-01-6	Benzenamine, 4-nitro-
Nitrobenzene	98-95-3	Benzene, nitro-
o-Nitrophenol	88-75-5	Phenol, 2-nitro-
p-Nitrophenol	100-02-7	Phenol, 4-nitro-
4-Nitroquinoline 1-oxide	56-57-5	Quinoline, 4-nitro, 1-oxide
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine;Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethalamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosomorpholine	59-89-2	Morpholine, 4-nitroso-
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester
Polychlorinated biphenyls; PCBs	See footnote 4 ..	1,1'-Biphenyl, chloro derivatives
Polychlorinated dibenzo-p-dioxins; PCDDs	See footnote 5 ..	Dibenzo[b,e][1,4]dioxin, chloro derivatives
Polychlorinated dibenzofurans; PCDFs	See footnote 6 ..	Dibenzofuran, chloro derivatives
Pentachlorobenzene	608-93-5	Benzene, pentachloro-
Pentachloroethane	76-01-7	Ethane, pentachloro-
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-
Pentachlorophenol	87-86-5	Phenol, pentachloro-
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85-01-8	Phenanthrene
Phenol	108-95-2	Phenol
p-Phenylenediamine	106-50-3	1,4-Benzenediamine
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S- [(ethylthio)methyl] ester

GROUND-WATER MONITORING LIST—Continued

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
2-Picoline	109-06-8	Pyridine, 2-methyl-
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile
Pyrene	129-00-0	Pyrene
Pyridine	110-86-1	Pyridine
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
Styrene	100-42-5	Benzene, ethenyl-
Sulfide	18496-25-8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene	127-18-4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-
Tetraethyl dithiopyrophosphate; Sulfotepp	3689-24-5	Thiodiphosphoric acid ((HO) ₂ P(S)) ₂ O, tetraethyl ester
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108-88-3	Benzene, methyl-
o-Toluidine	95-53-4	Benzenamine, 2-methyl-
Toxaphene	8001-35-2	Toxaphene
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-
Trichlorofluoromethane	75-69-4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester
Vinyl chloride	75-01-4	Ethene, chloro-
Xylene (total)	1330-20-7	Benzene, dimethyl-
Zinc	(Total)	Zinc

¹ Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

² Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

³ CAS index names are those used in the 9th Cumulative Index.

⁴ Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5).

⁵ This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins.

⁶ This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

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

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

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937, unless otherwise noted.

Subpart J—Tank Systems

■ 29. Section 265.190 is amended by revising paragraph (a) to read as follows:

§ 265.190 Applicability.

* * * * *

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in § 265.193. To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart N—Landfills

■ 30. Section 265.314 is amended by revising paragraph (d) to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

* * * * *

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart AA—Air Emission Standards for Process Vents

■ 31. Section 265.1034 is amended by revising paragraphs (c)(1)(ii), (c)(1)(iv), (d)(1)(iii) and (f) to read as follows:

§ 265.1034 Test methods and procedures.

(c) * * *
(1) * * *
(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_h = Q_{2sd} \left\{ \sum_{i=1}^n C_i MW_i \right\} [0.0416] [10^{-6}]$$

Where:

E_h = Total organic mass flow rate, kg/h;
 Q_{2sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

$$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A (incorporated by reference under § 260.11 of this chapter) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846; or analyzed for its individual organic constituents.

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved using direct measurement as specified at paragraph (d)(1) of this section.

Subpart BB—Air Emission Standards for Equipment Leaks

■ 32. Section 265.1063 is amended by revising paragraph (d)(2) to read as follows:

§ 265.1063 Test methods and procedures.

(d) * * *

(2) Method 9060A (incorporated by reference under § 260.11 of this chapter) of "Test Methods for Evaluating Solid Waste," EPA Publication SW-846 or analyzed for its individual organic constituents; or

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

■ 33. Section 265.1081 is amended by revising the definition "Waste stabilization process" to read as follows:

§ 265.1081 Definitions.

* * *

Waste stabilization process means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095B (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste

solidification." This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

■ 34. Section 265.1084 is amended by revising paragraphs (a)(3)(ii)(C), (a)(3)(iii), (b)(3)(ii)(C), (b)(3)(iii), and (c)(3)(i) to read as follows:

§ 265.1084 Waste determination procedures.

(a) * * *

(3) * * *

(ii) * * *

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

(iii) *Analysis.* Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed waste concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m³] at 25 degrees Celsius. At the owner or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than

or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in paragraph (a)(3)(iii)(A) or (B) of this section and provided the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at 25 degrees Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

* * * * *

- (b) * * *
- (3) * * *
- (ii) * * *

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

* * * * *

(iii) *Analysis.* Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified

and summed and the summed waste concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at 25 degrees Celsius. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) of this chapter, or § 265.1083(c)(2)(i) through (c)(2)(vi) of this subpart are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. At the owner or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in paragraph (a)(3)(iii)(A) or (B) of this section and provided the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at 25 degrees Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding

calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

* * * * *

(c) * * *

(3) * * *

(i) *Sampling.* A sufficient number of samples shall be collected to be representative of the waste contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 35. 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, 6922, 6924–6927, 6934 and 6937.

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

■ 36. Section 266.100 is amended by revising paragraphs (d)(1)(ii) and (g)(2) to read as follows:

§ 266.100 Applicability.

* * * * *

(d) * * *

(1) * * *

(ii) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this paragraph by using appropriate methods; and

* * * * *

(g) * * *

(2) Sample and analyze the hazardous waste as necessary to document that the waste contains economically significant

amounts of the metals and that the treatment recovers economically significant amounts of precious metal; and

■ 37. Section 266.102 is amended by revising paragraph (b)(1) to read as follows:

§ 266.102 Permit standards for burners.

(b) * * * (1) The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in appendix VIII of part 261 of this chapter that may reasonably be expected to be in the waste. Such constituents must be identified and quantified if present, at levels detectable by using appropriate analytical procedures. The appendix VIII, part 261 constituents excluded from this analysis must be identified and the basis for their exclusion explained. This analysis will be used to provide all information required by this subpart and §§ 270.22 and 270.66 of this chapter and to enable the permit writer to prescribe such permit conditions as necessary to protect human health and the environment. Such analysis must be included as a portion of the part B permit application, or, for facilities operating under the interim status standards of this subpart, as a portion of the trial burn plan that may be submitted before the part B application under provisions of § 270.66(g) of this chapter as well as any other analysis required by the permit authority in preparing the permit. Owners and operators of boilers and industrial furnaces not operating under the interim status standards must provide the information required by §§ 270.22 or 270.66(c) of this chapter in the part B application to the greatest extent possible.

■ 38. Section 266.106 is amended by revising paragraph (a) to read as follows:

§ 266.106 Standards to control metals emissions.

(a) *General.* The owner or operator must comply with the metals standards provided by paragraphs (b), (c), (d), (e), or (f) of this section for each metal listed in paragraph (b) of this section that is present in the hazardous waste at detectable levels by using appropriate analytical procedures.

■ 39. Section 266.112 is amended by revising paragraph (b)(1) introductory text and paragraph (b)(2)(i) to read as follows:

§ 266.112 Regulation of residues.

(b) * * *
(1) *Comparison of waste-derived residue with normal residue.* The waste-derived residue must not contain appendix VIII, part 261 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in appendix VIII of this part that may be generated as products of incomplete combustion. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8-TCDD equivalent values using the procedure specified in section 4.0 of appendix IX of this part.

(2) * * * (i) *Nonmetal constituents:* The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in appendix VII of this part, or the level of detection, whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix VII of this part, then a limit of 0.002 micrograms per kilogram or the level of detection (which must be determined by using appropriate analytical procedures), whichever is higher, must be used. The levels specified in appendix VII of this part (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of appendix VII of this chapter) are administratively stayed under the condition, for those constituents specified in paragraph (b)(1) of this section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable Agency guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or

standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by § 268.43 of this chapter for F039 nonwastewaters. In complying with the § 268.43 of this chapter F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans.

Note to this paragraph (b)(2)(i): The administrative stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the **Federal Register** and the Code of Federal Regulations.

■ 40. Appendix IX of part 266 is amended to:

- a. Revise sections 1.0 and 3.0,
- b. Revise the first paragraph of section 4.0,
- c. Revise paragraph (2) of section 10.3,
- d. Revise the introductory text of the fifth bullet of paragraph (1) of section 10.5,
- e. Revise the third dash text under the second bullet of paragraph (2) of section 10.5,
- f. Revise the third and the introductory text of the fifth bullet of paragraph (5) of section 10.5,
- g. Revise the introductory text of the fourth bullet of paragraph (1) of section 10.6,
- h. Revise the third and the introductory text of the fourth bullet of paragraph (5) of section 10.6.

The revisions read as follows:

Appendix IX to Part 266—Methods Manual for Compliance With the BIF Regulations

Section 1.0 Introduction

This document presents required methods for demonstrating compliance with U.S. Environmental Protection Agency regulations for boilers and industrial furnaces (BIFs) burning hazardous waste (see 40 CFR part 266, subpart H). The methods included in this document are:

1. Performance Specifications for Continuous Emission Monitoring (CEM) of Carbon Monoxide, Oxygen, and Hydrocarbons in Stack Gases.
2. Procedures for Estimating the Toxicity Equivalency of Chlorinated Dibenzo-p-dioxin and Dibenzofuran Congeners.

3. Hazardous Waste Combustion Air Quality Screening Procedures (HWCASP).

4. Simplified Land Use Classification Procedure for Compliance with Tier I and Tier II Limits.

5. Statistical Methodology for Bevill Residue Determinations.

6. Procedures for Determining Default Values for Air Pollution Control System Removal Efficiencies.

7. Procedures for Determining Default Values for Partitioning of Metals, Ash, and Total Chloride/Chlorine.

8. Alternate Methodology for Implementing Metals Controls.

a. Sampling and analytical methods for multiple metals, hexavalent chromium, HCl and chlorine, polychlorinated dibenzo-p-dioxins and dibenzofurans, and aldehydes and ketones can be found in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication SW-846). Additional methods referenced in subpart H of part 266 but not included in this document can be found in 40 CFR parts 60 and 61, and SW-846.

b. The CEM performance specifications of section 2.0, the relevant sampling Methods 0011, 0023A, 0050, 0051, 0060, and 0061 of SW-846, incorporated by reference in § 260.11, and the toxicity equivalency procedure for dioxins and furans of section 4.0 are required procedures for determining compliance with BIF regulations. For the determination of chloride from HCl/Cl₂ emission sampling train, you must use appropriate methods. For the determination of carbonyl compounds by high-performance liquid chromatography, you must use appropriate methods. The CEM performance specifications are interim. The finalized CEM performance specifications will be published in 40 CFR parts 60 and 61.

* * * * *

Section 3.0 Sampling and Analytical Methods

Note: The sampling and analytical methods to the BIF manual are published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846.

Section 4.0 Procedure for Estimating the Toxicity Equivalency of Chlorinated Dibenzo-p-Dioxin and Dibenzofuran Congeners

PCDDs and PCDFs must be determined using whichever is the most recent version between of SW-846 Method 0023A (incorporated by reference, in § 260.11) as identified, or OAQPS Method 23 of appendix A to part 60. In this method, individual congeners or homologues¹ are measured and then summed to yield a total PCDD/PCDF value. No toxicity factors are specified in the method to compute risks from such emissions.

* * * * *

¹ The term "congener" refers to any one particular member of the same chemical family; e.g., there are 75 congeners of chlorinated dibenzo-p-dioxins. The term "homologue" refers to a group of structurally related chemicals that have the same degree

of chlorination. For example, there are eight homologues of CDs, monochlorinated through octachlorinated. Dibenzo-p-dioxins and dibenzofurans that are chlorinated at the 2,3,7, and 8 positions are denoted as "2378" congeners, except when 2,3,7,8-TCDD is uniquely referred to; e.g., 1,2,3,7,8-PeCDF and 2,3,4,7,8-PeCDF are both referred to as "2378-PeCDFs."

* * * * *

Section 10.0 Alternative Methodology for Implementing Metals Controls

* * * * *

10.3 Basis

* * * * *

(2) The metal concentrations in the collected kiln dust can be accurately and representatively measured.

* * * * *

10.5 Implementation Procedures

* * * * *

(1) * * *

• Follow appropriate guidelines for preparing test plans and waste analysis plans for the following tests:

* * * * *

(2) * * *

—Follow appropriate sampling and analytical procedures such as those described in the waste analysis plan as they pertain to the condition and accessibility of the dust.

* * * * *

(5) * * *

• Follow the sampling, compositing, and analytical procedures described in this method and in other appropriate methods, as they pertain to the condition and accessibility of the kiln dust. * * *

• Samples must be collected at least once every 8 hours, and a daily composite must be prepared according to appropriate procedures.

* * * * *

10.6 Precompliance Procedures

* * * * *

(1) * * *

• Follow appropriate procedures for preparing waste analysis plans for the following tasks:

* * * * *

(5) * * *

• Follow the sampling, compositing, and analytical procedures described in this method and in other appropriate methods as they pertain to the condition and accessibility of the kiln dust.

• Samples must be collected at least once every 8 hours, and a daily composite must be prepared according to appropriate procedures.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

■ 41. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart D—Treatment Standards

■ 42. Section 268.40 is amended by revising paragraph (b) and footnote 7 of the table "Treatment Standards for Hazardous Wastes" to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

(b) For wastewaters, compliance with concentration level standards is based on maximums for any one day, except for D004 through D011 wastes for which the previously promulgated treatment standards based on grab samples remain in effect. For all nonwastewaters, compliance with concentration level standards is based on grab sampling. For wastes covered by the waste extract standards, the test Method 1311, the Toxicity Characteristic Leaching Procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11, must be used to measure compliance. An exception is made for D004 and D008, for which either of two test methods may be used: Method 1311, or Method 1310B, the Extraction Procedure Toxicity Test. For wastes covered by a technology standard, the wastes may be land disposed after being treated using that specified technology or an equivalent treatment technology approved by the Administrator under the procedures set forth in § 268.42(b).

* * * * *

Treatment Standards for Hazardous Wastes

* * * * *

⁷ Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010C or 9012B, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

* * * * *

■ 43. Section 268.44 is amended by revising footnote 4 of the table "Wastes Excluded From the Treatment Standards Under § 268.40" to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

Table—Wastes Excluded From the Treatment Standards Under § 268.40

* * * * *

(4)—Cyanide nonwastewaters are analyzed using SW-846 Method 9010C or 9012B, as incorporated by reference in § 260.11 of this

chapter, sample size 10 grams, distillation time, 1 hour and 15 minutes.

■ 44. Section 268.48 is amended by revising footnote 4 of the table "Universal Treatment Standards" to read as follows:

§ 268.48 Universal treatment standards.

Universal Treatment Standards

4 Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010C or 9012B, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

■ 45. Appendix IX to part 268 is revised as follows:

Appendix IX to Part 268—Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (Method 1310B)

Note: The EP (Method 1310B) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

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

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

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

Subpart B—Permit Application

■ 47. Section 270.19 is amended by revising paragraphs (c)(1)(iii) and (iv) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

(c) * * *

(1) * * *

(iii) An identification of any hazardous organic constituents listed in part 261, appendix VIII, of this chapter,

which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in part 261, appendix VIII, of this chapter which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

■ 48. Section 270.22 is amended by revising paragraph (a)(2)(ii)(B) to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.

(a) * * *

(2) * * *

(ii) * * *

(B) Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in appendix VIII of part 261 of this chapter, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on appropriate analytical techniques.

Subpart F—Special Forms of Permits

■ 49. Section 270.62 is amended by revising paragraphs (b)(2)(i)(C) and (D) to read as follows:

§ 270.62 Hazardous waste incinerator permits.

(b) * * *

(2) * * *

(i) * * *

(C) An identification of any hazardous organic constituents listed in part 261, appendix VIII of this chapter, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in part 261, appendix VIII, of this chapter

which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for the exclusion stated. The waste analysis must rely on appropriate analytical techniques.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

■ 50. Section 270.66 is amended by revising paragraphs (c)(2)(i) and (ii) to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

(c) * * *

(2) * * *

(i) An identification of any hazardous organic constituents listed in appendix VIII, part 261, of this chapter that are present in the feed stream, except that the applicant need not analyze for constituents listed in appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with appropriate analytical techniques.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 51. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

■ 52. 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
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TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984—Continued

Promulgation date	Title of regulation	Federal Register reference	Effective date
July 14, 2005	Process Vent and Equipment Leak Organic Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	[Insert FR page citation of publication date].	July 14, 2005.
July 14, 2005	Burning of Hazardous Waste in Boilers and Industrial Furnaces.	[Insert FR page citation of publication date].	July 14, 2005.
July 14, 2005	Air Emission Standards Tanks, Surface Impoundments, Containers.	[Insert FR page citation of publication date].	July 14, 2005.

* * * * *

■ 53. Section 271.21 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:

§ 271.21 Procedures for revision of State programs.

* * * * *

TABLE 1 TO § 271.21

Title of regulation	Promulgation date	Federal Register reference
Office of Solid Waste Testing and Monitoring Activities, Methods Innovation Rule.	July 14, 2005	[Insert FR page citation of publication date].
Process Vent and Equipment Leak Organic Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	July 14, 2005	[Insert FR page citation of publication date].
Burning of hazardous waste in boilers and industrial furnaces	July 14, 2005	[Insert FR page citation of publication date].
Air Emissions Standards for Tanks, Surface Impoundments, and Containers.	July 14, 2005	[Insert FR page citation of publication date].

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

■ 54. 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)).

Subpart B—Applicability

■ 55. Section 279.10 is amended by revising paragraph (b)(1)(ii) introductory text to read as follows:

§ 279.10 Applicability.

* * * * *

(b) * * *

(1) * * *

(ii) *Rebuttable presumption for used oil.* Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in

appendix VIII of part 261 of this chapter).

* * * * *

Subpart E—Standards for Used Oil Transporter and Transfer Facilities

■ 56. Section 279.44 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 279.44 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

Subpart F—Standards for Used Oil Processors and Re-Refiners

■ 57. Section 279.53 is amended by revising paragraph (c) introductory text to read as follows:

§ 279.53 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

Subpart G—Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

■ 58. Section 279.63 is amended by revising paragraph (c) introductory text to read as follows:

§ 279.63 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with

halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant

concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

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Part V

Environmental Protection Agency

40 CFR Parts 260, 261 et al.

Hazardous Waste Management System; Modification of the Hazardous Waste
Program; Mercury Containing Equipment; Final Rule

[[Page 45508]]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 268, 270, and 273

[RCRA-2004-0012; FRL-7948-1]
RIN 2050-AE52

Hazardous Waste Management System; Modification of the Hazardous
Waste Program; Mercury Containing Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's final rule adds mercury-containing equipment to the
federal list of universal wastes regulated under the Resource
Conservation and Recovery Act (RCRA) hazardous waste regulations.

Handlers of universal wastes are subject to less stringent standards for storing, transporting, and collecting these wastes. EPA has concluded that regulating spent mercury-containing equipment as a universal waste will lead to better management of this equipment and will facilitate compliance with hazardous waste requirements.



Federal Register

Friday,
August 5, 2005

Part V

Environmental Protection Agency

40 CFR Parts 260, 261 et al.

**Hazardous Waste Management System;
Modification of the Hazardous Waste
Program; Mercury Containing Equipment;
Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 268, 270, and 273

[RCRA-2004-0012; FRL-7948-1]

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ACTION: Final rule.

SUMMARY: Today's final rule adds mercury-containing equipment to the federal list of universal wastes regulated under the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. Handlers of universal wastes are subject to less stringent standards for storing, transporting, and collecting these wastes. EPA has concluded that regulating spent mercury-containing equipment as a universal waste will lead to better management of this equipment and will facilitate compliance with hazardous waste requirements.

DATES: This final rule is effective on August 5, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA-2004-0012. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., 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 materials are available either electronically in EDOCKET, or in hard copy at the HQ EPA Docket Center, RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., 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: Kathy Blanton, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone number: (703) 605-0761; fax number: (703) 308-0514; email: blanton.katherine@epa.gov.

SUPPLEMENTARY INFORMATION:

a. General Information

1. Does This Rule Apply to Me?

This rule affects persons who generate, transport, treat, recycle, or dispose of mercury containing equipment (MCE), unless those persons are 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**.

Preamble Outline

I. Statutory Authority

II. List of Abbreviations and Acronyms

III. Background

- What is Mercury-Containing Equipment?
- Previous Regulations for Mercury-Containing Equipment
- Universal Waste Rule
- Proposed Rule

IV. Rationale for Including Mercury-Containing Equipment in the Scope of the Universal Waste Rule

- Factors for Inclusion in the Universal Waste Rule
- Effect of Designation as a Universal Waste
- Expected Changes in Management of Mercury-Containing Equipment

V. Discussion of Final Rule

- Effective Date
- Waste Covered by Final Rule
- Management Requirements for Spent Mercury-Containing Equipment
- Summary of Requirements
- Requirements for Small and Large Quantity Handlers
- Requirements for Transporters
- Requirements for Destination Facilities
- Effect of Today's Rule on Household Wastes and Conditionally Exempt Small Quantity Generators
- Land Disposal Restriction Requirements

IV. Discussion of Comments Received in Response to Proposed Rulemaking and the Agency's Responses

- Regarding the Addition of Mercury-Containing Equipment to the Universal Waste Rule
- Regarding the Universal Waste Notification Requirement

VII. State Authority

- Applicability of Rule in Authorized States
- Effect on State Authorization
- Interstate Transport

VIII. Statutory and Executive Order Reviews

I. Statutory Authority

These regulations are 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. 6921(a), 6921, 6922, 6924, and 6926.

II. List of Abbreviations and Acronyms

Acronym	Definition
CESQG	Conditionally Exempt Small Quantity Generator.
CFR	Code of Federal Regulations.
DOT	Department of Transportation.
HSWA ..	Hazardous and Solid Waste Amendments of 1984.
ICR	Information Collection Request.
LDR	Land Disposal Restriction.
LQG	Large Quantity Generator.
LQHUW	Large Quantity Handler of Universal Waste.
NTTAA	National Technology Transfer and Advancement Act of 1995.
OMB	Office of Management and Budget.
RCRA ...	Resource Conservation and Recovery Act.
SIC	Standard Industry Code.
SQG	Small Quantity Generator.
SQHUW	Small Quantity Handler of Universal Waste.
TC	Toxicity Characteristic.
TCLP ...	Toxicity Characteristic Leaching Procedure.
TSDF ...	Treatment, Storage, and Disposal Facility.
UMRA ..	Unfunded Mandates Reform Act.
U.S.C. ..	United States Code.
USWAG	Utilities Solid Waste Activities Group.

III. Background

a. What Is Mercury-Containing Equipment?

Mercury-containing equipment (MCE) consists of devices, items, or articles that contain varying amounts of elemental mercury that is integral to their functions, including several types of instruments that are used throughout the electric utility industry and other industries, municipalities, and households. Some commonly recognized devices are thermostats, barometers, manometers, and mercury switches, such as light switches in automobiles. This definition does not include mercury waste that is generated as a by-product through the process of manufacturing or treatment.

b. Previous Regulations for Mercury-Containing Equipment

Any person who generates a solid waste, as defined in 40 CFR 261.2, must determine whether or not the solid waste is a hazardous waste. The waste may be hazardous either because it is listed as a hazardous waste in subpart D of 40 CFR part 261 or because it exhibits one or more of the characteristics of hazardous waste, as provided in subpart C of 40 CFR part 261.

Mercury-containing equipment is likely to be a hazardous waste when disposed of or reclaimed because it exhibits the toxicity characteristic (TC)

for mercury. Mercury-containing equipment that is a hazardous waste is referred to in this preamble as "spent mercury-containing equipment" or "spent MCE." Before today's rulemaking, many generators of spent mercury-containing equipment identified or listed as a hazardous waste were subject to the full RCRA subtitle C hazardous waste management requirements. Specifically, generators were subject to all applicable requirements of 40 CFR parts 260 through 268, including the on-site management, pre-transport, and manifesting requirements of part 262.

However, not all generators of spent mercury-containing equipment have had to manage it as a hazardous waste or be subject to the full set of RCRA hazardous waste requirements. Under RCRA subtitle C, there are different requirements for generators of hazardous waste depending on the amount of hazardous waste they generate in a calendar month. In addition, as discussed below, certain spent mercury-containing equipment are already subject to the universal waste rule.

Specifically, generators of more than 1,000 kilograms of hazardous waste in a month (considered large quantity generators (LQGs)) are required to comply fully with the federal hazardous waste regulations. On the other hand, generators of more than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month (considered small quantity generators (SQGs)) are subject to the RCRA hazardous waste management standards, but are allowed to comply with certain reduced regulatory requirements (see 40 CFR 262.34(d), (e), and (f)). In addition, under 40 CFR 261.5, conditionally-exempt small quantity generators (CESQGs), defined as facilities that generate less than 100 kilograms of hazardous waste in a calendar month, are not subject to the RCRA subtitle C hazardous waste management standards, provided they send their waste to a municipal solid waste landfill or non-municipal nonhazardous waste facility approved by the state for the management of CESQG wastes. Finally, households that generate spent mercury-containing equipment are exempt from the federal hazardous waste management requirements under the household hazardous waste exemption in 40 CFR 261.4(b)(1).

c. Universal Waste Rule

In 1995, EPA promulgated the universal waste rule (60 FR 25492, May 11, 1995) to establish a streamlined

hazardous waste management system for widely generated hazardous wastes as a way to encourage environmentally sound collection and proper management of the wastes within the system. Hazardous waste batteries, certain hazardous waste pesticides, mercury-containing thermostats, and hazardous waste lamps are already included on the federal list of universal wastes.

Handlers and transporters who generate or manage items designated as a universal waste are subject to the management standards under 40 CFR part 273, rather than the full RCRA subtitle C regulations. Handlers include universal waste generators and collection facilities. The regulations distinguish between "large quantity handlers of universal waste" (those who handle more than 5,000 kilograms of total universal waste at one time) and "small quantity handlers of universal waste" (those who handle 5,000 kilograms or less of universal waste at one time). The 5,000 kilogram accumulation criterion applies to the quantity of all universal wastes accumulated. The streamlined standards include requirements for storage, labeling and marking, preparing the waste for shipment off site, employee training, response to releases, and notification.

Transporters of universal waste are also subject to less stringent requirements than the full subtitle C hazardous waste transportation regulations. The primary difference between the universal waste transporter requirements and the subtitle C transportation requirements is that no manifest is required for transport of universal waste. The details of the universal waste management standards for both handlers and transporters will be addressed later in this preamble.

Under the universal waste rule, destination facilities are those facilities that treat, store, dispose, or recycle universal wastes. Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste treatment, storage, and disposal facilities (TSDFs) and must receive a RCRA permit for such activities. Hazardous waste recycling facilities that do not store hazardous wastes prior to recycling may be exempt from permitting under the federal regulations (40 CFR 261.6(c)(2)).

Finally, some states are authorized to add wastes that are not federal universal wastes to their lists of universal wastes. Therefore, in some states, spent mercury-containing equipment may already be regulated as a universal waste.

d. Proposed Rule

On June 12, 2002 (67 FR 40508), EPA proposed to add spent mercury-containing equipment to the federal list of universal waste.¹ EPA believes that adding these materials to the universal waste rule will facilitate their collection and will reduce the amount of mercury reaching municipal landfills and incinerators.

Mercury-containing equipment, other than mercury thermostats, was not included in the 1995 universal waste rule because EPA felt that it did not have sufficient information to include all spent mercury-containing equipment in the rulemaking. The Agency decided to begin implementation of its new universal waste program with a limited number of waste types.

However, EPA stated in the preamble to the universal waste final rule that it would welcome a petition to add a broad category of mercury-containing equipment to the universal waste rule, and specifically asked for views defining such a category of waste, information on the amounts of mercury contained in such devices, and information on the construction of such devices (60 FR 25508).

On October 11, 1996, the Utility Solid Waste Activities Group (USWAG), the Edison Electric Institute, the American Public Power Association, and the National Rural Electric Cooperative Association submitted a rulemaking petition to add mercury-containing equipment to the universal waste program. The petition explained that spent mercury-containing equipment is well-suited for the universal waste rule because it meets the factors that EPA laid out in the original universal waste rule for wastes that warrant inclusion into the program, particularly the widespread uses of MCE and the potential for the universal waste program to divert waste from the municipal waste stream into hazardous waste management. The petition also provided EPA with some of the information the Agency needed to evaluate spent MCE for inclusion into the program, as explained in the proposal.

The Agency received a number of comments in response to its proposal to add spent mercury-containing equipment to the list of universal wastes. Most commenters supported the proposal, though some had comments or questions on some of the details. The more significant comments on this

¹ In the same Federal Register notice, EPA proposed to conditionally exclude cathode ray tubes (CRTs) from the definition of solid waste. The CRT proposal will be addressed in a separate rulemaking package.

proposal are addressed later in this preamble, but all are addressed in background documents for today's final rule, which are in the docket.

IV. Rationale for Including Spent Mercury-Containing Equipment in the Scope of the Universal Waste Rule

a. Factors for Inclusion in the Universal Waste Rule

EPA is adding spent mercury-containing equipment to the universal waste rule today because it believes this waste meets the factors that describe waste that is appropriate for management under the streamlined universal waste system. There are numerous and varied generators of spent MCE, and MCE is generated sporadically. Adding MCE to the universal waste rule simplifies handling and disposal of the equipment for generators, while ensuring that spent MCE is sent to the appropriate destination facilities, where it will be managed as a hazardous waste with all applicable subtitle C requirements.

The universal waste regulations include eight factors to consider in evaluating whether a waste is appropriate for inclusion in the universal waste rule. These factors, codified at 40 CFR 273.81, are to be used to determine whether regulating a particular hazardous waste under the streamlined standards would improve overall management of the waste and, therefore, whether the waste is a good candidate for the universal waste rule.

As the Agency noted in the preamble to the final universal waste rule (60 FR 25513), not every factor must be met for a waste to be appropriately regulated under the universal waste system. However, consideration of all the factors should result in a conclusion that regulating a particular hazardous waste under 40 CFR part 273 will improve waste management.

EPA has examined spent mercury-containing equipment using the criteria in section 273.81, and has considered the information submitted in the October 11, 1996 rulemaking petition, as well as the public comments submitted in response to the proposed rule. The Agency has determined that, on balance, these wastes are appropriate for inclusion onto the federal list of universal wastes for management under part 273. EPA believes that adding spent MCE to the universal waste rule will make collection and transportation of this waste to an appropriate facility easier and, therefore, will reduce the amount of mercury being released into the environment.

The results of the Agency's evaluation of these wastes using the universal waste factors are described below—further details on the use of mercury-containing equipment can be found in the economic analysis to this rulemaking, available in the docket:²

1. The Waste, as Generated by a Wide Variety of Generators, Should Be a Listed or Characteristic Hazardous Waste (40 CFR 273.81(a))

Some spent mercury-containing equipment contains a few grams of mercury, whereas larger articles, items, or devices contain much more mercury. Many of these pieces of equipment would fail the toxicity characteristic leaching procedure (TCLP) toxicity level for mercury of 0.2 mg per liter and are therefore classified as a D009 characteristic hazardous waste.³

2. The Waste, or Category of Waste, Should Not Be Exclusive to a Particular Industry or Group of Industries, But Generated by a Wide Variety of Establishments (40 CFR 273.81(b))

Spent mercury-containing equipment is generated by a variety of industries or groups of industries. Electric and gas utilities generate the greatest amount of this waste, but mercury-containing equipment is used to regulate pressure and temperature or to conduct electricity in switches or regulators in many other fields, for example, medicine, farming, and automobile manufacture. Generators of spent mercury-containing equipment, therefore, are from a wide range of sectors, from utilities to manufacturers, commercial establishments, universities, hospitals, and households.

3. The Waste Should Be Generated by a Large Number of Generators and Generated Frequently, But in Relatively Small Quantities (40 CFR 273.81(c))

Spent mercury-containing equipment is generated by a large number of generators and generator sites throughout different industries. Most facilities generate spent MCE sporadically because of the frequent, but unpredictable, nature of equipment failures and in relatively small quantities, because MCE often contains small amounts of mercury.

² The eighth factor, "Such other factors as may be appropriate," is not discussed here.

³ The TCLP is a laboratory test designed to simulate leaching from a sanitary landfill, and, therefore, identify wastes likely to leach hazardous concentrations of particular toxic constituents into the ground water. If a sample of the test leachate contains a contaminant appearing in 40 CFR 261.24's Table 1 at a level higher than the regulatory level given in that table, the waste is hazardous for the toxicity characteristic.

4. Systems To Be Used for Collecting the Waste (Including Packaging, Marking, and Labeling Practices) Should Ensure Close Stewardship of the Waste (40 CFR 273.81(d))

The packaging and labeling standards finalized today for spent mercury-containing equipment, and already in place for used thermostats, will ensure close stewardship of the waste.

5. Risks Posed by the Waste During Accumulation and Transport Should Be Relatively Low Compared to the Risks Posed by Other Hazardous Waste, and Specific Management Standards Would Be Protective of Human Health and the Environment During Accumulation and Transport (40 CFR 273.81(e))

The Agency believes that the requirements of the universal waste program are highly effective in mitigating risks posed by spent mercury-containing equipment. Specifically, the requirements for handlers to manage and transport ampules of mercury in a way that will prevent breakage or to seal the MCE in its original housing and ship it sealed will ensure safe management and transport. In addition, the universal waste program requires proper training for employees in handling universal waste and responding to releases and shipment in accordance with Department of Transportation (DOT) regulations. These requirements will make the risks posed during accumulation and transport very low.

6. Regulation of the Waste Under 40 CFR Part 273 Will Increase the Likelihood That the Waste Will Be Diverted From Non-Hazardous Waste Management Systems (e.g., the Municipal Solid Waste Stream) to Recycling, Treatment, or Disposal in Compliance With Subtitle C of RCRA (40 CFR 273.81(f))

Managing spent mercury-containing equipment under the universal waste program is expected to increase the number of these articles, items and devices collected, but more importantly, to increase the amount of mercury being diverted from the non-hazardous waste stream into the hazardous waste stream because it will allow generators, especially those that generate this waste sporadically, to send it to a central consolidation point.

Before today, these materials could not be consolidated by an entity unless it had a RCRA permit. Under the universal waste rule, a handler of universal waste can send the universal waste to another handler, where it can be consolidated into a larger shipment

for transport to a destination facility. Therefore, spent MCE will be easier to send to recycling and proper disposal, making it less likely that it will be sent for improper disposal in municipal landfills or incinerators. In addition, because of the streamlined structure of the universal waste rule, spent MCE that might otherwise be sent to a municipal landfill under a CESQG or household hazardous waste exemption, can now be more easily collected and consolidated for hazardous waste disposal by those who are interested in managing it this way. This waste would be diverted out of the municipal solid waste stream.

In public comments responding to EPA's proposal on MCE, both New Jersey and Minnesota referred to their state programs, which already allow spent MCE to be managed under pilot programs like the universal waste rule. In both cases, the programs have been a success, facilitating the collection and safe management of mercury for proper management.

7. Regulation of the Waste Under 40 CFR Part 273 Will Improve the Implementation and Compliance With the Hazardous Waste Regulatory Program (40 CFR 273.81(g))

The structure and requirements of the universal waste rule are well suited to the circumstances of handlers of spent mercury-containing equipment and their participation in the universal waste program will improve compliance with the hazardous waste regulations. Because spent MCE is generated in small quantities in geographically dispersed operations, compliance with full subtitle C requirements is difficult to achieve. Compliance with subtitle C is particularly difficult for electric or gas utility operations which are located on customer's properties. In addition, handlers of spent MCE who are infrequent generators of hazardous waste and who might otherwise be unfamiliar with the more complex subtitle C management structure, but who generate spent MCE, will be able to more easily send this waste for proper management.

Therefore, adding spent MCE to the universal waste rule will improve compliance with the hazardous waste regulations by making it more achievable. As a result of improved compliance, human health and the environment will benefit.

b. Effect of Designation as a Universal Waste

After recognizing that MCE meets the factors described in 40 CFR 273.81, EPA developed this rulemaking to create a streamlined structure for managing

spent MCE that is protective of human health and the environment and, at the same time, facilitates compliance by users of this equipment. Management of MCE as universal waste means that (1) the MCE waste must meet land disposal restrictions (LDRs) when treated and (2) the waste must be sent to Subtitle C permitted facilities. When managed improperly, mercury poses a threat to human health and the environment; these features of the universal waste program ensure that the mercury in these devices ends up at a destination facility equipped to manage it properly.

As described in section III.C. of this preamble, under the universal waste rule, requirements are streamlined only for generators and transporters of universal waste. Destination facilities must comply with the substantive requirements of the LDR provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). These include (1) A prohibition on accumulating prohibited wastes directly on the ground; (2) a requirement to treat waste to meet treatment standards before land placement; (3) a prohibition on dilution; and (4) a prohibition on accumulation, except for purposes of accumulating quantities sufficient for proper recovery, treatment, or disposal. The Agency believes that compliance with the substantive requirements of the LDR program is necessary to minimize risks from mismanaging spent mercury-containing equipment.

The management controls that are already built into the universal waste system for labeling, accumulation, training, response to releases, and exports also will apply to waste MCEs. As discussed later in this preamble, the packaging and management standards of the universal waste rule are meant to assure that spent MCE will be managed to prevent releases.

c. Expected Changes in Management of Mercury-Containing Equipment

EPA also expects an increase in the amount of MCE waste that is recycled or disposed of in Subtitle C facilities. Small and large quantity generators are already required to manage their mercury waste as hazardous waste under RCRA subtitle C. As a result of implementation of this rule in the states, some of these generators are likely to begin managing their MCE waste as a universal waste, either to save money or to improve implementation of their existing waste management program.

The universal waste rule allows consolidation of MCE at central locations, which makes it easier for smaller users to arrange for hazardous waste management of these materials

when they are generated. For example, under the universal waste rule, a fire station, community center, or retail store could participate in MCE collection programs without having to get a RCRA permit, as they would be required to under full subtitle C regulation. EPA intends to encourage individual households and CESQGs to participate in such programs, which would divert MCE from the municipal waste stream.

EPA expects greater quantities of MCE to be collected and managed under the universal waste rule based on a recent evaluation of how the universal waste rule has influenced management of nickel-cadmium batteries, one of the original universal wastes included in the 1995 rulemaking. The evaluation shows that between 1997 and 2003, collection of nickel-cadmium batteries increased from approximately 950 tons per year in 1997 to almost 1700 tons in 2003. While this dramatic improvement in collection is due to a number of factors, anecdotal evidence described in the evaluation report shows that the establishment of consolidation facilities, which was made possible by the universal waste rule, significantly reduced the administrative and financial burden of collection and transportation of these batteries. The relevant chapter of the program evaluation report is available in the docket to this rulemaking.

In summary, EPA believes that controls to address the environmental hazards of spent MCE can best be implemented through a universal waste approach where handlers are operating within a simple, streamlined management system with some limited oversight. The universal waste program addresses the environmental concerns surrounding the management of such wastes, while at the same time putting into place a structure that will allow for and encourage increased collection of spent MCE. Comments from the public and other regulatory agencies, particularly state hazardous waste authorities, support EPA's conclusion that management of spent MCE as a universal waste will maximize the amount of this waste being managed properly and, therefore, will protect human health and the environment from exposure to the mercury in this equipment.

V. Discussion of Final Rule

a. Effective Date

Today's rule will become effective immediately upon publication in the **Federal Register**. The RCRA statute establishes six months as the usual

effective date for Subtitle C rules (see RCRA section 3010 (b)), though the Agency may provide for a shorter or immediate effective date in the case of regulations with which the regulated community does not need six months to come into compliance, as determined by the Administrator. Because today's final rule reduces regulatory burden, as well as because some states already have similar programs in place, we see no reason to delay its effective date. Thus, today's rule will be effective immediately upon publication in the **Federal Register**.

b. Waste Covered by Final Rule

Today's final rule incorporates into the universal waste scheme spent mercury-containing equipment that is hazardous waste due to mercury. The definition of mercury-containing equipment promulgated today states that mercury-containing equipment means a device or part of a device that contains elemental mercury integral to its function.

Note that the definition of "mercury-containing equipment" in today's rule includes mercury thermostats. Mercury thermostats, which formerly were a separate category of universal waste, are now incorporated into the spent MCE category for the final rule. As a result of public comments, EPA determined that mercury thermostats are a type of spent MCE as the category of universal waste is being defined in the rule; therefore, having a separate section of the regulations for them would be duplicative and potentially confusing.⁴

EPA has changed some of the wording in the definition of "mercury-containing equipment" from the proposed " * * * contains elementary mercury necessary for its operation" to " * * * contains elemental mercury integral to its function." We believe that "integral to its function" more clearly explains EPA's meaning that the mercury must be part of the function of the device for it to be covered by the universal waste rule. If the mercury is in the device accidentally, or the device has been contaminated by an external source of mercury, the device would not be eligible for management as a universal waste.

This change will clear up some confusion about the phrase "necessary for its operations," expressed in the comments to the proposed rule. One

commenter asked if EPA's requirement that mercury in MCE be "necessary for [the device's] operation" meant that only equipment for which no alternative to mercury is available were eligible for management as a universal waste. Although EPA encourages the use of alternatives to mercury whenever possible, the definition of MCE does not speak to whether there are feasible alternatives to mercury available, but rather to whether the equipment contains mercury in its regular use.

Some examples are helpful in understanding what kind of devices fall into today's definition of mercury-containing equipment. These devices vary in size and function, but, for the most part, the mercury (1) is a relatively small amount of the complete piece of equipment, (2) is encapsulated in some way in an ampule or other housing, and (3) is used for delicate measuring of temperature or pressure or for completing an electrical circuit. Some of the various types of MCE are manometers, barometers, flow meters, mercury light switches, mercury regulators, pressure relief gauges, water treatment gauges, and gas safety relays. A more comprehensive list of examples of MCE is available in the docket to the rulemaking in the Economic Analysis to this rule.

c. Management Requirements for Spent Mercury-Containing Equipment

The following requirements were developed to prevent releases of mercury while it is being managed as a universal waste. Mercury, although a naturally occurring element, is released into the environment by human industrial practices. It is easily volatilized and can be dispersed widely through the air and transported thousands of miles, accumulating in plants, animals, and humans as it travels. Once released, mercury persists in the environment. Once mercury enters water, biological processes transform it to methylmercury, a highly toxic form that builds up in fish and animals that eat fish. Exposure to high levels of mercury has been linked to serious nervous system and developmental problems in humans. Therefore, EPA is concerned about mercury releases to the environment that might occur if spent MCE is managed improperly in the municipal waste stream. The universal waste rule is designed to maximize collection of spent MCE while preventing releases from management of those wastes. It does so through its management requirements.

1. Summary of Requirements

The universal waste rule classifies regulated persons managing universal wastes into four categories: (1) Small quantity handlers of universal waste (SQHUWs), (2) large quantity handlers of universal waste (LQHUWs), (3) universal waste transporters, and (4) destination facilities. The term "universal waste handler" is defined in 40 CFR 273.9 as a generator of universal waste, or the owner or operator of a facility that receives universal waste from other universal waste handlers, accumulates universal waste and sends it to another universal waste handler, to a destination facility or to a foreign destination. The definition of "universal waste handler" does not include (1) a person who treats, disposes of, or recycles universal waste (except under the provision of § 273.13(a) or (c) and § 273.33(a) or (c)); or (2) a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

Whether a universal waste handler is a SQHUW or LQHUW depends on the amount of universal waste it accumulates at any time. Large quantity handlers of universal waste are subject to certain regulatory requirements in addition to those applicable to SQHUWs. A small quantity handler of universal waste is defined under 40 CFR 273.9 as a universal waste handler who accumulates less than 5,000 kilograms of universal waste, calculated collectively, at any time. The 5,000 kilogram accumulation limit applies to the total quantity of all universal waste handled on-site, regardless of the category of universal waste.

If, at any time, a SQHUW accumulates 5,000 kilograms or more of universal waste, then it becomes a large quantity universal waste handler for that calendar year. A handler may re-evaluate its status as a LQHUW in the following calendar year.

Today's management requirements for spent mercury-containing equipment are generally the same as the existing requirements for mercury-containing thermostats. In fact, as already noted, the Agency, in response to public comments, has incorporated mercury thermostats into today's new category of universal waste—mercury-containing equipment—as they meet the definition of spent MCE under today's rule.

2. Requirements for Small and Large Quantity Handlers

Under today's rule, the existing universal waste requirements currently applicable to SQHUWs and LQHUWs

⁴ Batteries and lamps remain covered under their respective sections of the universal waste rule, 273.13(a) & (d) and 273.33(a) & (d), even though wastes can contain mercury. The specific management standards promulgated specifically for them in part 273 are more appropriate than the ones in today's rule.

also apply to handlers of spent mercury-containing equipment. For both SQHUWs and LQHUWs, these requirements include waste management standards, labeling and marking, accumulation time limits, employee training, response to releases, requirements related to off-site shipments, and export requirements. LQHUWs are subject to additional notification and tracking requirements.

As described above, in response to public comment that universal waste thermostats are actually a subset of the new category, spent MCE, the Agency has decided to fold mercury thermostats into the category for spent MCE to avoid confusion over the identical standards and to avoid duplicative labeling and reporting requirements by generators of both materials. Because mercury thermostats are like many other types of MCE, as they contain mercury in ampules that are sometimes removed for transport for mercury recovery, the management standards for SQHUWs and LQHUWs in today's rule are very similar to those promulgated in 1995 for mercury thermostats. However, we added some standards to account for the wider range of devices that will be encompassed by this broader category. Those changes are explained in more depth below.

We also made several technical changes to the regulations in order to broaden the previously existing category of mercury thermostats to cover all mercury-containing equipment. In order to make this shift in the regulatory text, we have (1) replaced references to universal waste thermostats throughout parts 260 through 273 with references to universal waste mercury-containing equipment and (2) replaced the universal waste applicability section for mercury thermostats in § 273.4 with an applicability section for mercury-containing equipment.

In the proposed rule, the waste management requirements for spent mercury thermostats and spent MCE under 40 CFR 273.13 and 40 CFR 273.33 were already consolidated; therefore, no significant changes were required to that language in the final rule as a result of the removal of the thermostat category. The final rule does change the labeling requirement, however. The labeling requirement for both SQHUWs and LQHUWs of spent mercury-containing equipment is comparable to the requirements for other types of universal waste. In addition, if a handler of universal waste handles mercury thermostats, but not other types of universal waste mercury-containing equipment, it may label or mark them, or the container in which they are

collected, as universal waste thermostats (e.g., "Universal Waste—Mercury Thermostats"), rather than having to make or buy new labels for Mercury-Containing Equipment.

For the purpose of creating waste management standards for this waste stream, we have distinguished between several different ways that mercury may be contained in an MCE and determined what the management standards should be for each category to assure protection of human health and the environment. The waste management standards in today's rule address how handlers should manage (1) whole spent MCE with ampules, and (2) whole spent MCE with open original housings, as well as how to manage (3) ampules that have been removed from the device they were in, (4) open tubes of mercury removed from a device (such as a barometer or manometer), and (5) ancillary parts of spent MCE that may have mercury in them, such as a valve.

Primarily, a handler of universal waste spent MCE must manage it in such a way that prevents releases of any component of the universal waste into the environment, especially mercury. Thus, any MCE that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable circumstances must be contained to prevent the release of mercury. The container must be closed, structurally sound, compatible with the contents of the spent MCE, must not have any evidence of leakage, spillage, or damage that could result in leakage under reasonably foreseeable circumstances, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

Many types of MCE, for example, thermometers, thermostats, and mercury switches, have an ampule in which the mercury is held. An ampule, as defined in this rule, is an airtight vial made of glass, plastic, metal, or any combination of these materials. Handlers of undamaged whole spent MCEs must comply with part 273 standards such as labeling, accumulation time, training, and response to releases, and must manage the MCE to prevent releases, as described above.

Other types of MCE, however, like those that measure pressure, such as barometers and manometers, contain mercury in a tube that is open at one end. In this rule, we refer to this type of device as MCE with "open original housing." Mercury "housing" is a container that holds the mercury while it performs its function in the piece of MCE, such as a case or enclosure that, unlike an ampule, is open at one end

and may allow for escape of mercury unless sealed before management as waste.

Many of these devices with an open original housing are designed to be sealed for transportation in a way that prevents mercury escape because it is likely that during their lifecycles, they will have to be moved from one location to another. If, however, the device cannot be sealed in such a way to prevent release of mercury to the environment during universal waste accumulation and transportation, it is not eligible for management in the universal waste program because it cannot meet the management standards in §§ 273.13 and 273.33.

The management requirements for leaking or damaged spent MCE above are also appropriate for intact spent MCE in which the mercury is in an open housing and not in an ampule, and which have not been sealed. Because this type of MCE, even when intact, has a greater potential to release mercury into the environment than MCE in which the mercury is wholly contained in an ampule, these devices must be managed with more caution. In addition, ancillary pieces of spent MCE that contain mercury not contained in an ampule must also be contained to minimize the chance of any releases due to their management. Sometimes, in a device that contains mercury not in an ampule, the mercury can escape into other parts of the device. For instance, mercury might get into a valve that separates the mercury in a MCE from the rest of the device. For these reasons, under today's rule, when the mercury is not contained, both intact spent MCE and any MCE parts must be managed in a container that is closed, structurally sound, compatible with the contents of the spent MCE, reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means, and that does not have any evidence of leakage, spillage, or damage that could result in leakage under reasonably foreseeable circumstances.

A final category of spent MCE that must be managed in these same containers is ancillary equipment that came in contact with mercury and has been removed from MCE. Mercury containing devices in which the mercury is not in an ampule can contain valves or other pieces that have come in contact with the mercury and, therefore, are best managed under the universal waste rule, so they are sent to a destination facility. Like damaged whole spent MCE or whole spent MCE with mercury in an open housing, they must be contained in a container that is closed, structurally sound, compatible

with the contents of the spent MCE, reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means, and that does not have any evidence of leakage, spillage, or damage that could result in leakage under reasonably foreseeable circumstances.

Today's standards also state that ampules of mercury may be removed from spent MCE for waste management if the handler follows a set of requirements to ensure that the handler minimizes the chance of breakage of the ampules and, if breakage does occur, that there is containment to prevent mercury from escaping to the environment. In addition, employees must be trained in waste management and emergency procedures. The specific requirements are in 40 CFR 273.13(c)(2)(i) through (viii) for SQHUWs and 40 CFR 273.33(c)(2)(i) through (viii) for LQHUWs.

In response to public comments that not all spent mercury-containing equipment that we described in the proposed rulemaking contains mercury in ampules, EPA is finalizing regulations that allow a handler of universal waste to remove the part of the mercury-containing equipment that contains the mercury in its original housing, even if it is not an ampule. In this case, the handler must immediately seal the original housing for the mercury with an airtight seal to prevent the escape of any mercury into the environment and must then follow all the requirements for managing removed ampules, referred to above.

How the original housing is sealed with an airtight seal will depend on the size and shape of the housing itself, as they vary depending on what kind of device the MCE is. Therefore, today's rule does not mandate a particular way to seal this housing. However, the seal must be airtight. The housing must be sealed in a manner that does not allow mercury to be released before or during the sealing process, and the housing must be packaged in a manner that prevents releases when transported to the destination facility. Examples of methods EPA believes would be effective to prevent releases from a smaller device are placing the housing in containers that are sealed with electrician's tape or placing the housing in a sealed zipper storage bag and then in a secondary container. Most important in this management step is that no mercury escapes into the environment from the sealed housing. EPA believes that allowing the original housings of mercury to be sealed and managed in the same way as ampules are managed will bring waste into the

universal waste system that might have otherwise been disposed of inappropriately.

Handlers of universal waste that remove an ampule or remove the original housing of mercury and seal it must also determine whether mercury has leaked from the equipment. The handlers must evaluate any leaked materials, any clean-up residues resulting from spills or leaks, or any other solid waste generated from the removal of ampules or removal and sealing of mercury housing to determine if it exhibits a characteristic of hazardous waste, including, but not limited to, the toxicity characteristic for mercury. Any material exhibiting a characteristic of hazardous waste would have to be managed in accordance with all applicable requirements of 40 CFR parts 260 through 279, instead of as a universal waste.

In summary, leaking whole spent MCE, spent intact MCE with open original housing, and ancillary equipment all must be managed in containers that will not allow escape of mercury to the environment, and ampules and housings of mercury with airtight seals must be managed to minimize breakage and must be managed in containers that prevent the escape of mercury if breakage does occur.

The notification requirement in today's rule for LQHUWs of spent mercury-containing equipment is consistent with the existing notification requirement for LQHUWs of all other universal wastes (40 CFR 273.32). Under today's rule, a large-quantity handler of spent MCE is required to notify the Regional Administrator and receive an identification number before meeting or exceeding the accumulation limit. In addition, these handlers are required to keep records of universal waste shipments received or sent off-site. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping document.

Handlers of spent mercury-containing equipment are also subject to the requirements applicable to all universal waste handlers in the existing universal waste rule framework. These requirements can be found in 40 CFR part 273 subparts B and C, and cover accumulation time limits, employee training, response to releases, off-site shipments, and exports.

3. Requirements for Transporters

Under 40 CFR 273.9, the definition of a universal waste transporter is "a person engaged in the off-site transportation of universal waste by air, rail, highway, or water." Persons

meeting the definition of universal waste transporter include those persons who transport universal waste from one universal waste handler to another, to a processor, to a destination facility, or to a foreign destination. These persons are subject to the universal waste transporter requirements of part 273, subpart D. Today's rule does not change any of the existing requirements applicable to universal waste transporters.

EPA notes that today's rule also does not affect the applicability of shipping requirements under the hazardous waste materials regulations of the Department of Transportation. Transporters continue to be subject to these requirements, if applicable (e.g., 49 CFR 173.164: Metallic Mercury and Articles Containing Mercury).

4. Requirements for Destination Facilities

Under 40 CFR 273.9, the definition of a destination facility is "a facility that treats, disposes of, or recycles a particular category of universal waste" (except certain activities specified in the regulations at § 273.13(a) and (c) and § 273.33(a) and (c)). Today's rule does not change any of the existing requirements applicable to universal waste destination facilities (subpart E of part 273).

5. Effect of Today's Rule on Household Wastes and Conditionally-Exempt Small Quantity Generators

Adding spent mercury-containing devices to the federal definition of universal wastes does not impose any requirements on households and conditionally-exempt small quantity generators for managing these devices.⁵ Household waste continues to be exempt from RCRA subtitle C regulations under 40 CFR 261.4(b)(1). However, under the universal waste rule, households and CESQGs may choose to manage their spent mercury-containing equipment in accordance with either the CESQG regulations under 40 CFR 261.5 or as a universal waste under part 273 (40 CFR 273.8(a)(2)).

It should be noted, however, that 40 CFR 273.8(b) continues to apply. Under this provision, if household or CESQG wastes are mixed with universal waste subject to the requirements of 40 CFR

⁵ Conditionally-exempt small quantity generators (CESQGs) generate less than 100 kilograms of hazardous waste in a calendar month and are not subject to RCRA subtitle C hazardous waste management standards, provided they send their waste to a municipal solid waste facility or other facility approved by the state for the management of industrial or municipal non-hazardous wastes (40 CFR 261.5).

part 273 (*i.e.*, universal waste that is not generated by households or CESQGs), the commingled waste must be handled as universal waste in accordance with part 273. Under today's rule, handlers of universal waste who collect 5,000 kilograms or more of this commingled waste are considered large quantity handlers of universal waste and must meet the requirements of that category of universal waste handler.

Spent mercury-containing equipment that is managed as a universal waste under 40 CFR part 273 is not required to be included in a facility's determination of hazardous waste generator status (40 CFR 261.5(c)(6)). Therefore, a generator that manages such devices under the universal waste rule and does not generate any other hazardous waste is not subject to other subtitle C hazardous waste management regulations, such as the hazardous waste generator regulations in part 262.

A universal waste handler that generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month in addition to the universal waste it generates is regulated as a small quantity generator of hazardous waste and is required to manage all hazardous waste not included within the scope of that universal waste rule in accordance with all applicable subtitle C hazardous waste management standards. Similarly, a universal waste handler that generates 1000 kilograms or more of hazardous waste in a calendar month in addition to the universal waste it generates is regulated as a large quantity generator of hazardous waste.

6. Land Disposal Restriction Requirements

As discussed above, under the existing regulations (40 CFR 268.1(f)), universal waste handlers and transporters are exempt from the land disposal restriction (LDR) requirements regarding testing, tracking, and recordkeeping in 40 CFR 268.7 and the storage prohibition in 40 CFR 268.50. Today's rule does not change the regulatory status of destination facilities; they remain subject to the full LDR requirements.

VI. Discussion of Comments Received in Response to Proposed Rulemaking and the Agency's Responses

EPA received 49 comments on the mercury-containing equipment portion of the June 12, 2002 proposed rule for cathode ray tubes and mercury-containing equipment. Thirty-six of these comments expressed agreement that EPA should finalize this rule,

though some included suggestions to change the rule.

In this section, we are addressing those comments that we believe are of interest to the general public or which resulted in significant changes to the final rule from the proposal. A full record of the comments we received and our responses to them is available in a Response to Comments document in the docket for this rulemaking.

a. Regarding the Addition of Mercury-Containing Equipment to the Universal Waste Rule

EPA received several comments on the topic of ampules of mercury. There were five basic categories of comments: (1) EPA did not include a definition of "ampule;" (2) many types of mercury-containing equipment do not contain mercury in ampules; (3) spent MCE with mercury not in ampules should still be able to be managed as universal waste; (4) mercury not in ampules should be able to be removed from larger MCE and managed as universal waste; and (5) there should be more stringent management standards for mercury from spent MCE that is not in ampules.

The original proposal did not include a requirement that only spent MCE with ampules would be eligible as a universal waste. The first paragraph of proposed §§ 273.13(c) and 273.33(c) discusses management of whole spent MCE, regardless of whether the mercury is contained in an ampule. This remains the case in the final rule. However, in response to these comments on ampules, EPA has made several changes to the final rule.

First, EPA included in the final rule a definition of "ampule." Although many ampules are glass vials, EPA is aware that they can be made of glass, plastic, or metal. EPA's primary concern with these items is that they are airtight and will not allow mercury to escape into the surrounding environment. Therefore, EPA defined an ampule as "an airtight vial made of glass, plastic, metal, or any combination of these materials."

Secondly, EPA has added language to the first paragraph of § 273.13(c) and § 273.33(c) to address concerns that intact spent MCE could cause releases to the environment even when not damaged. The proposed language assumed that spent MCE would only release mercury if damaged, but we also want to prevent potential releases that happen because of an item's design, not damage. To account for this, EPA has added language in both relevant sections stating that containers must be reasonably designed to prevent the escape of mercury into the environment

by volatilization or any other means. This standard requires that the handlers design containers for spent MCE that will prevent releases under reasonably foreseeable conditions, which is similar to other standards in the universal waste rule that rely on a handlers anticipating the fate of the universal wastes they are handling under reasonably foreseeable conditions.

In addition, in the final rule, mercury not in ampules may be removed from the larger MCE for management as a universal waste, as described under the requirements for large and small quantity handlers. Again, in response to concerns that this could lead to mercury releases, EPA stipulates that once the housing of mercury is removed, it must be immediately sealed and managed in the same manner as an ampule.

In summary, universal waste MCE includes whole spent MCE, both with and without ampules, ampules of mercury, and the original housing of mercury removed from its device and sealed with an airtight seal. EPA believes that these changes address the concerns of the commenters on the issue of ampules.

We also received several comments stating that to avoid duplicative labeling and notification requirements, EPA should put spent MCE and thermostats in the same category of universal waste. EPA agrees with these comments and decided that thermostats are, in fact, one kind of mercury-containing equipment and should not be distinguished from other kinds of MCE. Therefore, we have replaced the thermostat category in the universal waste regulations with the category for mercury-containing equipment. Although this may cause some confusion in the short-term for people already familiar with the regulations for mercury thermostats, EPA decided that the long-term benefits of having one category of universal waste for all types of spent MCE outweighed any short-term confusion.

To assuage two foreseeable concerns with this approach, we made two adjustments. First, we clarified that thermostats are included in the universal waste category of MCE in several places in the regulatory text, including the definitions and the title of the waste management standards for universal waste spent MCE. In addition, to preclude handlers of only mercury thermostats from having to change their labeling procedures, the final rule allows such handlers to continue to label a universal waste thermostat or a container containing only universal waste thermostats with the previous language required in these regulations: "Universal Waste—Mercury

Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

In addition to these changes to the final rule, EPA is clarifying several issues in response to comments received.

Several commenters asked whether the weight of an entire device needs to be counted toward the 5,000 kilogram total universal waste threshold for a small quantity generator of universal waste. If the mercury has not been removed from the device, then the weight of the entire device is counted toward the 5,000 kilogram limit. However, EPA clarifies that if the mercury has been removed from a device and the rest of the device is managed as non-hazardous waste, then only the weight of the part being managed as spent MCE needs to be counted as universal waste. In this case, the generator is responsible for ensuring that any part of the device that may have become contaminated with mercury, especially in the case of an open housing of mercury, is being managed appropriately under RCRA.

We also received a comment asking EPA to clarify the status of MCE being sent to a reseller for further evaluation as to whether it is usable in its current condition. Like other materials, MCE being sent to a reseller for possible reuse is not a solid waste, and, therefore, not a hazardous or universal waste until the handler has decided to discard it. If it is not discarded, it is not a waste and therefore not a universal waste.

With respect to the scope of the term "mercury-containing equipment," we received a comment regarding the items listed in the preamble to the rule. We clarify today that the items mentioned in this preamble as MCE do not constitute a comprehensive list of MCE. Any item that meets the definition of mercury containing equipment in today's rule is eligible for management as a universal waste.

EPA also received several comments to the proposed rulemaking suggesting that EPA promulgate a conditional exclusion from the definition of solid waste for MCE that is recycled. These comments are beyond the scope of today's rulemaking, which is a response to a petition to add MCE to the universal waste rule. The proposed rule for these materials did not discuss development of a conditional exclusion from the definition of solid waste, and such an action would raise very different issues and require a separate rulemaking.

b. Regarding the Universal Waste Notification Requirement

In the proposed rule, EPA specifically requested comment on the notification requirements in the universal waste rule. Specifically, the Agency requested comments on deleting 40 CFR 273.32(b)(5), which requires that when large quantity handlers of universal waste notify the EPA Regional Administrator of their large quantity handler status, they include a statement that (1) states that they are accumulating over 5,000 kilograms of universal waste and (2) lists the types of universal wastes they are accumulating above this quantity.

EPA believes the latter half of this requirement is unnecessary. In 40 CFR 273.32(b)(4), the regulations already require LQHWs to include a list of all the types of universal waste managed by the handler in their notification. Also, the 5,000 kilogram limit for LQHWs is for all universal waste accumulated by the handler, not for any one universal waste. Therefore, EPA proposed to delete the requirement to notify the Regional Administrator of which particular universal wastes exceed the 5,000 kilogram limit.

In response to its solicitation of comment on this issue, EPA received 16 comments from state regulatory agencies and the regulated community in support of this change and no comments in opposition to the change. Therefore, EPA is finalizing this change to the universal waste regulations in today's final rule.

VII. State Authority

a. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits.

When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state, until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states 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). Therefore, authorized states may, but 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 is less stringent than the current federal program. Because states are not required to adopt less stringent regulations, they do not have to adopt the universal waste regulations for spent mercury-containing devices, although EPA encourages them to do so. Some states may already be in the process of streamlining their regulations for these materials or adding them to their list of universal wastes. If a state's standards for spent mercury-containing equipment are less stringent than those in today's rule, the state must amend its regulations to make them equivalent to today's standards and pursue authorization.

c. Interstate Transport

Because some states may choose not to seek authorization for today's rule, there will probably be cases when spent mercury-containing equipment will be transported through states with different regulations governing them.

First, a waste which is subject to the universal waste regulations may be sent to a state, or through a state, where it is

subject to the full hazardous waste regulations. In this scenario, for the portion of the trip through the originating state, and any other states where the waste is a universal waste, 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 spent MCE to be a universal waste, the transporter must have a manifest, 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 a universal waste. The receiving facility must then sign the manifest and send a copy to the initiating facility. EPA recommends that the initiating facility note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the wastes are under the universal waste regulations in the initiating state, but not in the receiving facility's state.

Second, a hazardous waste generated in a state which does not regulate it as a universal waste may be sent to a state where it is regulated as a universal waste. In this scenario, the waste must be moved by a hazardous waste transporter while the waste is in the generator's state or any other states where it is not a universal waste. 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 regulate it as a universal waste 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 any non-hazardous waste transporter and sent back to the initiating facility by the receiving facility (see 40 CFR 262.23 and 262.42). EPA recommends that the generator note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the waste is covered under the universal waste regulations in the receiving facility's state, but not in the generator's state.

Third, a waste may be transported across a state in which it is subject to the full hazardous waste regulations although, other portions of the trip may

be from, through, and to states in which it is covered under the universal waste regulations. Transport through the state must be conducted by a hazardous waste transporter and must be accompanied by a manifest. In order for the transporter to fulfill its requirements concerning the manifest (subpart B of part 263), the initiating facility must complete a manifest as required under the manifest procedures and forward it to the first transporter to travel in a state where the waste is not a universal waste. The transporter must deliver the manifest to, and obtain the signature of, either the next transporter or the receiving facility.

As more states streamline their regulatory requirements for spent MCE, the complexity of interstate transport should be reduced.

VIII. 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 a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "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 proposal.

To estimate the cost savings, incremental costs, economic impacts, and benefits from this rule to affected regulated entities, we completed an economic analysis for this rule. Copies

of this analysis, "Economic Analysis of Including Mercury Containing Devices In the Universal Waste System" have been placed in the RCRA Docket.

EPA estimated through this analysis that 1,877 generators handling approximately 550 tons of MCE would be affected by this rule. EPA estimates a cost savings from the rule to be \$273,000 per year. Of this, about \$200,000 would be savings to generators of mercury-containing equipment, an average of \$106 per generator per year. The remaining \$73,000 is attributable to retorters and waste brokers.

In addition to cost savings, EPA's analysis showed qualitative benefits to adding spent MCE to the universal waste program: improved implementation of and compliance with the hazardous waste program, establishment of facilities to consolidate mercury waste, increased recovery and recycling of mercury from these devices, and reduced mercury emissions.

b. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements established for this action, and identified on the Information Collection Request (ICR) supporting today's rule are largely self-implementing. This process will ensure that (1) regulated entities managing mercury-containing equipment are held accountable to the applicable requirements; and (2) state inspectors can verify compliance when needed. For example, the universal waste standards require LQHUWs and SQHUWs to demonstrate the length of time that spent MCE has been accumulated from the date they were received or became a waste. The standards also require LQHUWs and destination sites to keep records of all shipments sent and received. Further, the standards require waste handlers and processors to notify EPA under certain circumstances (e.g., when large amounts of waste are accumulated or when illegal shipments are received).

EPA will use the collected information in the event of an inspection to ensure that spent mercury-containing equipment is being managed in a protective manner. The information aids the Agency in tracking waste shipments and identifying improper management practices. In addition, information kept in facility records helps handlers, processors, and

destination facilities to ensure that all facilities are managing these wastes properly.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, no questions of a sensitive nature are included in any of the information collection requirements associated with today's action.

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 spent MCE are being managed in a manner protective of human health and the environment.

The aggregate annual burden to respondents of this action over the three-year time period covered by the ICR is estimated at 114,770 hours, with a cost of approximately \$825,158. Average annual burden hours per respondent are estimated to be 4.5 hours for small quantity handlers; 15 hours for large quantity handlers; 10 hours for treatment, storage, and disposal facilities; and 16 hours for transporters. There are an estimated 2495 respondents. This level of burden represents a reduction of approximately 18,493 hours, since the spent MCE will no longer need to comply with the full RCRA requirements for generators and transporters.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or 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 in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

c. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 as defined by the Small Business Administration's (SBA) regulations 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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic 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 economic 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 spent mercury-containing devices would generally result in savings to affected

entities compared to the baseline requirements. Under a scenario assuming full compliance, the rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated. Costs could increase for entities that are not complying with current requirements, but even these costs, which are not properly attributable to the current rulemaking, would not be expected to result in significant impacts on a substantial number of small entities. We have therefore concluded that today's final rule will relieve regulatory burden for small entities.

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 proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory

provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. The UMRA generally excludes from the definition of "federal governmental mandate" (in sections 202, 203, and 205) and from the definition of "federal private sector mandate" duties that arise from participation in a voluntary federal program. Today's final rule is voluntary in that it is less stringent than the current regulations. As a result, state governments are not required to adopt the changes and the private sector is not required to participate. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the 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 final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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 9, 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 will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. In fact, EPA expects that the result of this final rule will be to increase compliance with the hazardous waste regulations and reduce exposures to mercury by the public, including children.

h. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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. Further, we have concluded that this rule is not likely to have any adverse energy effects.

i. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

j. 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 August 5, 2005.

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 264

Environmental protection, Hazardous waste, Packaging and containers, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Hazardous materials transportation, Reporting and recordkeeping requirements.

40 CFR Part 273

Environmental protection, Hazardous materials transportation, Hazardous waste.

Dated: July 26, 2005.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, parts 260, 261, 264, 265, 268, 270, and 273 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.

Subpart B—Definitions

■ 2. Section 260.10 is amended by adding the definition of “Mercury-containing equipment” and by republishing the introductory text of and revising paragraph (3) to the definition of “Universal Waste” to read as follows:

§ 260.10 Definitions.

* * * * *

Mercury-containing equipment means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

* * * * *

Universal Waste means any of the following hazardous wastes that are managed under the universal waste requirements of part 273 of this chapter:

* * * * *

(3) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. 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

■ 4. Section 261.9 is amended by revising paragraph (c) to read as follows:

§ 261.9 Requirements for universal waste.

* * * * *

(c) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

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

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

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

Subpart A—General

■ 6. Section 264.1 is amended by revising paragraph (g)(11)(iii) to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(g) * * *

(11) * * *

(iii) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

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

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

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

Subpart A—General

■ 8. Section 265.1 is amended by revising paragraph (c)(14)(iii) to read as follows:

§ 265.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(14) * * *

(iii) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

■ 9. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

■ 10. Section 268.1 is amended by revising paragraph (f)(3) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(f) * * *

(3) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

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

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

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

Subpart A—General Information

■ 12. Section 270.1 is amended by revising paragraph (c)(2)(viii)(C) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(viii) * * *

(C) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

■ 13. The authority for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

Subpart A—General

■ 14. Section 273.1 is amended by revising paragraph (a)(3) to read as follows:

§ 273.1 Scope.

(a) * * *

(3) Mercury-containing equipment as described in § 273.4; and

* * * * *

■ 15. Section 273.4 is revised to read as follows:

§ 273.4 Applicability—Mercury-containing equipment.

(a) *Mercury-containing equipment covered under this part 273.* The requirements of this part apply to persons managing mercury-containing equipment, as described in § 273.9, except those listed in paragraph (b) of this section.

(b) *Mercury-containing equipment not covered under this part 273.* The requirements of this part do not apply to persons managing the following mercury-containing equipment:

(1) Mercury-containing equipment that is not yet a waste under part 261 of this chapter. Paragraph (c) of this section describes when mercury-containing equipment becomes a waste;

(2) Mercury-containing equipment that is not a hazardous waste. Mercury-containing equipment is a hazardous

waste if it exhibits one or more of the characteristics identified in part 261, subpart C of this chapter or is listed in part 261, subpart D of this chapter; and

(3) Equipment and devices from which the mercury-containing components have been removed.

(c) *Generation of waste mercury-containing equipment.* (1) Used mercury-containing equipment becomes a waste on the date it is discarded.

(2) Unused mercury-containing equipment becomes a waste on the date the handler decides to discard it.

■ 16. Section 273.9 is amended by adding the definitions of "Ampule," and "Mercury-containing equipment," and by revising the definitions of "Large quantity handler of universal waste," "Small quantity handler of universal waste," and republishing the introductory text and revising paragraph (3) of the definition of "Universal waste" to read as follows:

§ 273.9 Definitions.

* * * * *

Ampule means an airtight vial made of glass, plastic, metal, or any combination of these materials.

* * * * *

Large Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded.

Mercury-containing equipment means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

* * * * *

Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

* * * * *

Universal Waste means any of the following hazardous wastes that are subject to the universal waste requirements of this part 273:

* * * * *

(3) Mercury-containing equipment as described in § 273.4; and

* * * * *

Subpart B—Standards for Small Quantity Handlers of Universal Waste

■ 17. Section 273.13 is amended by revising paragraph (c) to read as follows:

§ 273.13 Waste management.

* * * * *

(c) *Mercury-containing equipment.* A small quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of 40 CFR 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules to a container that meets the requirements of 40 CFR 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 40 CFR part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

* * * * *

■ 18. Section 273.14 is amended by revising paragraph (d) to read as follows:

§ 273.14 Labeling/markings.

* * * * *

(d) (1) Universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste—Mercury Containing Equipment," "Waste

Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste—Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

* * * * *

Subpart C—Standards for Large Quantity Handlers of Universal Waste

■ 19. Section 273.32 is amended by revising paragraphs (b)(4) and (b)(5) to read as follows:

§ 273.32 Notification.

* * * * *

(b) * * *

(4) A list of all the types of universal waste managed by the handler (e.g., batteries, pesticides, mercury-containing equipment, and lamps); and

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time.

■ 20. Section 273.33 is amended by revising paragraph (c) to read as follows:

§ 273.33 Waste management.

* * * * *

(c) *Mercury-containing equipment.* A large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that meets the requirements of 40 CFR 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph

(c)(2) of this section;
and

(4) (i) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 40 CFR part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

■ 21. Section 273.34 is amended by revising paragraph (d) to read as follows:

§ 273.34 Labeling/markings.

* * * * *

(d) (1) Mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste—Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste—Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

* * * * *

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[Rules and Regulations]
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Part II

Environmental Protection Agency

40 CFR Parts 124, 260, et al.

Hazardous Waste Management System; Standardized Permit for RCRA
Hazardous Waste Management Facilities; Final Rule

[[Page 53420]]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 260, 261, 267, and 270

[RCRA-2001-0029; FRL-7948-4]
RIN 2050-AE44

Hazardous Waste Management System; Standardized Permit for RCRA
Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to the RCRA hazardous waste permitting program, originally proposed on October 12, 2001, to allow for a ``standardized permit.''

The standardized permit will be available to RCRA treatment, storage, and disposal facilities (TSDs) otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings.

The standardized permit will also be available to facilities which receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and which then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. The standardized permit will streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protection as individual permits.

This rule finalizes the proposal, with changes based on public comments. In the preamble to proposed rule, the Agency also requested comments on other permitting-related topics including: how cleanups under non-RCRA state cleanup programs might be reflected in RCRA permits; the conclusions about captive insurance in a March, 2001 report by EPA's Inspector General; and whether insurers that provide financial assurance for hazardous waste and PCB facilities have a minimum rating from commercial rating services. The Agency is not taking action at this point on these questions.



Federal Register

Thursday,
September 8, 2005

Part II

Environmental Protection Agency

40 CFR Parts 124, 260, et al.

**Hazardous Waste Management System;
Standardized Permit for RCRA Hazardous
Waste Management Facilities; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 124, 260, 261, 267, and 270**

[RCRA-2001-0029; FRL-7948-4]

RIN 2050-AE44

Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities**AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to the RCRA hazardous waste permitting program, originally proposed on October 12, 2001, to allow for a "standardized permit." The standardized permit will be available to RCRA treatment, storage, and disposal facilities (TSDs) otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings.

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DATES: This rule is effective on October 11, 2005. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 11, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA-2001-0029. All documents

in the docket are listed in the DOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., 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 in DOCKET or in hard copy at the Resource Conservation and Recovery Act (RCRA) Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., 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: Jeff Gaines, Permits and State Programs Division, Office of Solid Waste, Mail Code 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-308-8655; fax number: 703-308-8609; e-mail address: gaines.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:**How Can I Get Copies of the Standardized Permit Rule and Other Related Information?**

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA-2001-0029. The official public docket is the collection of materials specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the RCRA Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment

system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number. The official record for this action will be kept in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center.

Our responses to comments, whether the comments are written or electronic, appear in a response to comments document that we will place in the official record for this rulemaking.

Acronyms used in today's preamble are listed below:

APA: Administrative Procedures Act
EAB: Environmental Appeals Board
EPA: Environmental Protection Agency
CAMU: Corrective Action Management Unit
CFR: Code of Federal Regulations
EO: Executive Order
FR: Federal Regulations
HSWA: Hazardous and Solid Waste Amendments
MOU: Memorandum of Understanding
MSWLF: Municipal Solid Waste Landfill Facilities
NAICS: North American Industry Classification System
NPDES: National Pollution Discharge Elimination System
NTTAA: National Technology Transfer and Advancement Act
OMB: Office of Management and Budget
PIT: Permit Improvement Team
PPE: Personal Protection Equipment
RCRA: Resource Conservation and Recovery Act
RFA: RCRA Facility Assessment
SIC: Standard Industrial Classification
SBREFA: Small Business Regulatory Enforcement Fairness Act
SWMU: Solid Waste Management Unit
TSD: Treatment Storage and Disposal (facility)

UMRA: Unfunded Mandates Reform Act

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- I. Authority

The Environmental Protection Agency is promulgating these regulations under

the authority of sections 1003, 2002(a), 3004, 3005, 3006, 3007, and 3010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

II. Overview and Background

A. Background

On October 12, 2001, we proposed revisions to the RCRA Hazardous Waste permitting program to allow for a "standardized permit" for RCRA TSDs that are otherwise subject to permitting and that generate and then store and/or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings. In the proposal, we also requested comment on expanding the scope of the rule, e.g., to all off-site facilities, to facilities who

centralize their waste management operations, or to recyclers. The proposal laid out a streamlined approach to the permitting process, anticipating savings to both the regulatory authority and the permit applicant, while still providing protection to human health and the environment. Today's final rule adopts that proposal with some changes based on comments.¹

B. Overview

This final rule describes the standardized permit, who is eligible for the permit, how facilities apply for the permit, how to make changes to the permit, and what the responsibilities are for the regulatory authority in reviewing and issuing the permit.

1. Effect of Today's Rule

Today's action potentially affects about 870 to 1,130 private sector and federal facilities that (a) generate and then store and/or non-thermally treat

hazardous wastes on-site in tanks, containers, and/or containment buildings; and (b) which receive hazardous waste generated off-site by a generator that is under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. We estimate that these three types of eligible units represent 50% prevalence of the eleven major types of hazardous waste management units. Table 1 below identifies the economic sectors and associated counts of RCRA hazardous waste management units and facilities likely to be affected by this action. It is possible that other types of entities not identified in the Table could also be impacted; however the rule only affects three types of waste units. To determine whether you may be impacted, you should carefully examine the applicability section of the rule.

TABLE 1.—IDENTITY OF ECONOMIC SECTORS WHICH OWN AND OPERATE FACILITIES POTENTIALLY AFFECTED BY THIS RULE*

SIC code	Economic sector	NAICS code	Count of facilities with potentially affected hazardous waste management units (Note: low-end represents "on-site" only, and high-end represents on-site + off-site units)		
			Waste Containers	Waste tank systems*	Waste containment buildings
0	Agriculture, Forestry & Fisheries	11	21 to 30	12 to 17	0.
1	Mining, Oil/Gas & Construction	21, 23	26 to 37	16 to 23	0.
2	Manufacturing (Food, Textile/Apparel, Lumber/Wood, Furniture/Fixtures, Paper, Printing/Publishing, Chemicals & Allied Products, Petroleum/Coal).	31–33, 511	427 to 606	313 to 445	5 to 7.
3	Manufacturing (Rubber/Plastic, Leather, Stone/Clay/Glass, Primary Metals, Fabricated Metals, Industrial Machinery, Electronics, Transportation Equipment, Instruments, & Misc. Mfg).	31–33	285 to 405	136 to 193	17 to 24.
4	Transport, Communication, Utilities	22, 48, 49, 513, 562.	272 to 386	201 to 285	10 to 14.
5	Wholesale & Retail Trade	42, 44, 45	175 to 249	132 to 187	3 to 4.
6	Finance, Insurance & Real Estate	52, 53	5 to 7	2 to 3	0.
7	Services (Hotels, Personal, Automotive, Repair, Motion Pictures, & Recreation).	71, 72, 512, 514, 811, 812.	221 to 314	183 to 260	2 to 3.
8	Services (Health, Legal, Social, Museums/Gardens, Membership Organizations & Engineering Mgt.).	54, 55, 561, 61, 62, 813, 814.	90 to 128	38 to 54	0.
9	Public Administration, Environment & Not Elsewhere Classified.	92	200 to 284	85 to 121	4 to 6.
	Non-duplicative column totals** = ...		800 to 1,136	623 to 885	22 to 31.
	Non-duplicative total for three waste unit types = ...		866 to 1,133 facilities		

Explanatory Notes:

- (a) SIC = "Standard Industrial Classification" system.
 (b) NAICS = "North American Industry Classification System", adopted by the U.S. Federal Government in 1997, replacing the SIC code system (for SIC/NAICS conversion tables see <http://www.census.gov/epcd/www/naics.html>).
 (c) * Only above-ground hazardous waste tanks are potentially eligible, not in-ground or underground tanks.
 (d) ** Some facilities report multiple SIC and NAICS codes for their operations to the EPA; consequently both the facility and unit total counts in this table exceed the non-duplicative total numbers of facilities shown in the bottom row above.

2. What Is Being Finalized in Today's Rule?

We are finalizing revisions to the hazardous waste permitting program to

allow for issuance of a RCRA standardized permit for RCRA TSDs that

¹ The Agency also took comment on other permitting related topics, including how facilities

can satisfy corrective action through alternate cleanup programs, and issues related to financial

assurance. The Agency is deferring action on those portions of the proposal.

are otherwise subject to RCRA permitting and that generate hazardous waste, and then store and/or non-thermally treat that waste on-site in tanks, containers, and/or containment buildings. The standardized permit will also be available to facilities that receive hazardous waste generated from off-site, as long as the off-site generator that sends the waste is under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or containment buildings. Throughout the remainder of this preamble, the term "manage" and "management" will be used to mean storage or non-thermal treatment, unless otherwise noted. The specific provisions being finalized in today's rule are discussed in Sections III, IV, and V of this preamble. In this final rule, some changes have been made from what was proposed. Some of those changes include: Requiring the submission of the closure plan with the Notice of Intent, rather than 180 days prior to closure; adding a third category for making changes to permits (modifications); allowing for a 180-day extension to completing closure; and allowing a 30-day extension for agency review of the Notice of Intent materials. We are also requiring that off-site facilities, that are eligible for the standardized permit, must submit a waste analysis plan with their Notice of Intent.

C. What Is a Standardized Permit?

A standardized permit is a special kind of permit that would be available for certain facilities that manage hazardous waste in tanks, containers, and containment buildings. The permit consists of two parts: A uniform portion included in all cases, and a supplemental portion included at EPA's or the State permitting authority's discretion. (See Section I.C.1 of the proposed rule at 66 FR 52195 for a more detailed discussion regarding the two parts of the permit.) The part 267 requirements being finalized today provide the basis for the uniform portion of the permit. The supplemental portion includes additional provisions deemed necessary to be protective of human health and the environment, including any corrective action, and would be based on site-specific factors at the facility.

D. Who Is Eligible for a Standardized Permit?

Throughout this preamble, we use the terms on-site and off-site in reference to facilities managing hazardous waste. When we use the term off-site, we use it to help describe where the waste is

being managed. For example, if facility "A" generates a waste and then sends the waste to facility "B" for treatment, storage or disposal, the waste is being managed off-site. In the final rule, two types of facilities will be eligible for a standardized permit. To be eligible, a facility must:

- (1) Generate hazardous waste and then store or non-thermally treat the hazardous waste on-site in containers, tanks, or containment buildings, or
- (2) Receive hazardous waste generated from off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

In the proposed rule, we limited the applicability of the standardized permit to those facilities that manage hazardous waste on-site. However, we also requested comment on whether we should extend eligibility to facilities managing wastes generated off-site (commercial, recyclers, and captives). A number of commenters argued that we should extend eligibility to off-site facilities suggesting that commercial facilities are better prepared and equipped to conduct waste storage (since they were specifically in the hazardous waste management business), that the rule would provide flexibility for facilities in accepting a variety of waste streams, and would benefit facilities and States by reducing costs.

On the other hand, other commenters, particularly States, believed that the standardized permit should be limited to facilities that generate and manage hazardous waste on-site and not be extended to off-site facilities. Commenters argued that such off-site facilities are often more complex and may in some cases pose a greater potential for harm to the environment. Other concerns were also raised, including that off-site facilities might not have adequate knowledge of the wastes they receive, that off-site facilities may potentially accept a wide variety of incompatible wastes, and that inadequate waste analysis could be a problem for off-site facilities. As such, these commenters argued that direct review of the permit application (*i.e.*, the material normally submitted as part of a Part B application) by the permitting authority was an essential step in permitting off-site facilities.

A number of commenters noted that some facilities accept waste from off-site locations of the same company for centralized management of their wastes, and argued that these facilities would be appropriate candidates for a standardized permit. For example, one commenter suggested these types of

facilities could be granted a standardized permit on a case-by-case basis, depending on complexity of their processes and waste streams.

Another commenter noted that extending the standardized permit to centralized facilities would allow a company with multiple manufacturing locations to centralize its management of hazardous waste at a single location without being denied the tangible benefits of streamlined permitting proposed in the Standardized Permitting Rule. Since the company would only be managing its own waste generated from its own operations, the company could reasonably be expected to know the chemical make-up and compatibility of the different incoming waste streams. Moreover, companies have procedures in place to assure that off-site waste streams are properly stored and/or treated at centralized locations.

Another commenter noted that managing wastes at these facilities (centralized facilities) should not be more complicated or require greater attention than managing wastes generated on-site because " * * * a company managing only its own waste generated at several locations * * * should know what specific wastes are generated by the company and be able to manage them properly at a centralized location."

Still another commenter noted problems with off-site facilities in general, but also noted that it would expect that fewer problems would result from allowing off-site facilities who manage only their own wastes generated at different locations to be eligible for the standardized permit because of the familiarity of the company with the composition and character of its own wastes.

Another commenter argued that multiple sources of waste generated by the same company and managed in a consolidated fashion at a treatment/storage (T/S) facility owned and operated by that company (a captive facility as opposed to a commercial one) should still be eligible for the standardized permit. Captive facilities have greater control over the waste generation process and therefore the characteristics of the waste to be managed at the T/S facility.

In response to comments on the proposal, the Agency has been persuaded by the commenters who argued that facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or

containment buildings should be eligible for the standardized permit. Therefore, the final rule expands the eligibility so that a facility with a standardized permit can also receive waste generated at another location that is under the same ownership as the receiving facility. For example, waste from one company could be sent to the standardized permit facility owned by that company. This would also apply to wholly owned subsidiaries, for example where a national corporation had wholly owned subsidiaries separately incorporated in different States. As long as the corporate ownership was the same, and the same corporate entity had ultimate oversight and responsibility, off-site management under the standardized permit would be allowed. EPA anticipates that this change will broaden the benefits of this rule to operations under the same entity. To use this flexibility, the Notice of Intent must include documentation that the off-site facility is under the same ownership as the facility seeking the standardized permit. In addition, to receive wastes from off-site, facilities must also submit a waste analysis plan with the Notice of Intent. We discuss the need for waste analysis plans later in the preamble in Section IV.C.4.

With respect to federal facilities, this rule would allow the transfer of waste between sites under the jurisdiction, custody, or control of the same federal agency. For instance, today's rule would, for instance, allow waste from one Department of Defense installation to go to another such installation because the Department has overall responsibility for the waste. The Department of Energy's comments on the proposal suggested allowing for consolidation of waste from multiple facilities within the DOE complex at a regional facility with a standardized permit. This expansion of the eligibility would allow for this consolidation.

EPA did not, however, extend the applicability to wastes that were not generated by the same entity. While we are extending eligibility to a limited subset of off-site facilities, we are not extending eligibility for the standardized permit rule to all off-site facilities.

One commenter noted that "As the number of waste streams increases so does the complexity of identification and handling. As a commercial TSD a large portion of our infrastructure is devoted to waste identification, verification analysis to ensure proper disposal. This follows detailed procedures. The 'physical' aspects such as handling, storage or treatment are minor compared to the identification,

tracking and documentation aspects of waste handling. It is difficult to conceive how the EPA could allow this kind of activity to be conducted without prior review of appropriate procedures."

Another commenter noted that "In general, facilities that treat or store waste generated off-site should not be allowed to get a standardized permit. Most of the facilities which accept off-site wastes are commercial facilities that accept many of the waste codes listed in 40 CFR part 261. This creates the need for a fairly in-depth waste analysis plan which would be hard to review within the 120-day limit."

Because of the potential variation in types of wastes managed at off-site facilities in general, and the length of time necessary to review waste analysis plans associated with such facilities, we believe it appropriate to limit applicability of the standardized permit rule to those facilities receiving wastes from generators under the same ownership as the receiving facility.

Commenters expressed concerns about the complexity of operations on many "non-captive" and commercial facilities, the large number of wastes that may come in to the sites from many different locations and the environmental problems they've encountered. Commenters believed such facilities needed closer scrutiny to ensure they are operating in a safe manner, and would be better served by operating under an individual RCRA permit. In considering all the comments, and in attempting to balance the streamlined permitting that would be gained from the rule against the possible risk to human health and the environment, we have decided to allow the following types of facilities to be eligible for the standardized permit: (1) Facilities that manage their hazardous waste on-site in tanks, containers, and containment buildings and (2) facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. The response to comments document on this final rule provides additional discussion on this topic.

It should also be noted that the Agency is exploring whether to extend eligibility for the standardized permit to other off-site facilities that have demonstrated superior environmental performance; the National Performance Track Program provides an example of the kind of criteria/facilities that EPA is

considering in this context.² We believe it may be appropriate to offer this option to such facilities to further encourage superior environmental results. In fact, the Agency believes it important to reward companies that are top environmental performers and therefore, believe that such a change may be appropriate. The Agency anticipates issuing a proposed rulemaking involving Performance Track facilities in the near future.

An additional situation involves facilities that manage hazardous wastes in units eligible for the standardized permit, and also manage hazardous wastes in other types of waste management units. In our proposal, we solicited comment on whether a facility that manages some of its hazardous waste in on-site storage and/or non-thermal treatment units and some of its hazardous waste in other types of waste management units should be eligible for a standardized permit for their storage and/or non-thermal treatment activities. Several commenters agreed that on-site storage should be eligible for the standardized permit, even if the facility has other permitted operations on-site. Other commenters, however, did not support this measure, noting that having two regimes of RCRA permitting at the same facility would complicate matters. In this final rule, we are allowing facilities to have both a standardized permit for their eligible units, and an individual permit for their other regulated waste management activities because we believe there is a benefit in terms of permit streamlining for those eligible units. Some facilities may have a significant portion of their operations devoted to standardized permit-eligible storage and/or non-thermal treatment activities, which may make a dual permitting scenario worthwhile. Moreover, if a facility believes that having two RCRA permitting schemes at their plant would complicate matters, they need not apply for a standardized permit.

Therefore, the final rule will allow facilities with regular RCRA permits to apply for a standardized permit for their storage and non-thermal treatment operations occurring in eligible units. Such facilities could then have an individual permit for some of their operations, and a standardized permit for their eligible units. However, the

² The National Environmental Performance Track program recognizes and encourages top environmental performance among private and public facilities in the United States. Performance Track members go beyond compliance with regulatory requirements to achieve environmental excellence. Currently the program has approximately 300 members.

Director has the final decision on whether a facility will be allowed to operate with dual permits, based on facility-specific factors.

One commenter urged the Agency to be clearer in the final rule that the standardized permit rule will not require generators, already exempt from permitting in certain circumstances under § 262.34, to obtain permits. This rulemaking does not modify the provisions applicable to generators managing wastes within the time limits and conditions of § 262.34. It applies only to activities of RCRA TSDs that are otherwise subject to permitting (and who generate and then store or treat waste on-site in containers, tanks, or containment buildings, or facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings). We have revised the regulatory language and the preamble to make this point clear.

E. Other General Comments on the Standardized Permit Rule

We believe the standardized permit should result in time and resource savings in the overall permitting process. While owners/operators of such facilities will be required to gather nearly the same information that an individual permit applicant must gather, such information (e.g., Part B application) will only need to be kept at the facility, or other location designated by the Director, as opposed to submitting it to the permitting authority. In fact, several commenters mentioned that the standardized permit would provide a less cumbersome approach for such storage units, than would the individual RCRA permitting process. Specifically noted was the provision that fewer documents would need to be submitted in the application phase, which should save time during the application review phase. We believe that because the standardized permit process would involve review of fewer materials, permits could be issued in less time than with the typical Part B permitting process.

Some commenters argued that the standardized permit process does not facilitate public involvement, because the technical parts of the application will not be circulated as is the case with the individual permitting process, or because the public might not feel comfortable going to the facility to review information. We believe the public will have ample opportunity to be involved, both with the pre-application meeting, and during the

public comment period after the draft permit is public noticed. It should also be noted that the Director has the discretion to establish an information repository that contains the permit information at a location off-site from the facility, if such a location will better foster public participation. To the extent that the public has concerns with the uniform portion of the permit being fully protective because of unique facility circumstances, the public can request that these concerns be addressed in the supplemental portion of the permit. Nevertheless, the facility would still be subject to similar management standards and thus, would still be fully protective of human health and the environment.

Other commenters argued that the standardized permit process could result in unsafe waste storage practices, because not all the technical information about the facility processes would be reviewed prior to permit issuance. We disagree with these commenters. We believe the regulations in today's rule provide the mechanisms necessary to ensure safe waste management even without requiring the up-front submission of all of the technical information about the facility processes.

The units eligible for the standardized permit (tanks, containers, and containment buildings) are relatively straightforward technologies, with straightforward permitting requirements, and, as we discuss in the proposed rule preamble (66 FR 52196), are relatively simple to design and properly construct. The engineering and construction knowledge and skills necessary to design and construct these units are relatively basic. These units are in common usage in many applications and are frequently bought "off-the-shelf" or built from "off-the-shelf" designs. Industry associations and standards organizations have developed standards for these units that are in widespread use. Past experience with these units indicates that they are simpler to design, construct, and manage than units such as combustion units or land disposal units. Storage and non-thermal treatment of waste in these types of units is generally less complicated than thermal treatment of waste (e.g., combustion of hazardous waste in incinerators, boilers, or industrial furnaces) or disposal of waste (e.g., landfilling). It is easier to control risks at these simpler storage and treatment units. We believe that the streamlined standardized permit allows adequate interaction and oversight by the regulating agency and would provide sufficient technical controls to

protect human health and the environment. Furthermore, the permitting requirements in part 267 largely reflect the existing part 264 requirements, which are protective of human health and the environment. For example, part 267 includes unit specific requirements for how waste management units are operated and maintained (e.g., secondary containment, response to spills, condition of units, etc.). Part 267 also includes corrective action and financial responsibility requirements. Today's rule also provides for public comment and review on the draft permit prior to final permit issuance, as well as a mechanism for public involvement prior to the submission of the Notice of Intent. In addition, even though this information will not be required to be submitted as part of the Notice of Intent, the information must be retained at the facility, and be made available for the Director/Permitting authority to review, should any questions remain about whether a standardized or individual permit should be issued, or whether additional site-specific conditions are necessary. Finally, the Director retains the ability to impose any site-specific conditions, in the supplemental portion of the permit, necessary to protect human health and the environment. Thus, the standardized permit process, while it will likely speed up the process of issuing permits for eligible facilities that store or non-thermally treat waste in tanks, containers, or containment buildings, will do so in a manner that would still provide full protection of human health and the environment.

One commenter requested clarification that the standardized permit could apply to mixed wastes. The standardized permit rule could in fact apply to the management of mixed waste, presuming the other regulatory conditions were met.

Finally, one commenter noted that the standardized permit process would limit the regulatory authority's ability to determine compliance with the waste analysis and closure plans. We agree with the commenter, at least with respect to the closure plan, and in part to the waste analysis plan. The rule has been modified to require facilities to submit a closure plan with the Notice of Intent. Requiring the plan up front would allow the regulatory authority to review the plan, and would also allow the public to review the plan during the public comment period for the publicly noticed permit. The closure plan would become part of the permit at final permit issuance. The rule also has been modified to require submission of the waste analysis plan for facilities that are

applying to manage waste that were generated off-site.

Due to the streamlined nature of the standardized permit process, we believe that facilities conducting routine storage and treatment on-site have good knowledge of the characteristics of the waste they generate and manage and should be able to safely operate within a self-certification of compliance process, while maintaining the extensive information, normally submitted with a Part B application, on-site. Furthermore, 40 CFR 267.13 provides a detailed account of the waste analysis plan requirements, which when combined with an audit and compliance certification should be sufficient to ensure compliance. However, facilities that receive waste from off-site will be required to submit a waste analysis plan and maintain a copy of the waste analysis plan on-site. Although we generally believe that common ownership between the generating and receiving facilities means that the receiving facility could reasonably be expected to have a greater familiarity with the characteristics of the wastes generated from off-site than other off-site facilities, such facilities will still likely have less knowledge/familiarity than the waste generator. Consequently, the Agency believes that the additional safeguard provided by submission of the waste analysis plan is necessary to reduce any uncertainties regarding extension of the standardized permit to such facilities, and to allow the regulatory authority an adequate opportunity to determine whether management procedures are adequately protective, or whether additional, site-specific conditions are warranted.

F. Should a Standard Form Be Developed for Preparing the Required "Part B" Information?

We requested comment in the proposal on whether we should develop a "fill-in-the-blank" type form that facilities could use as a tool to help prepare the information required to be maintained at the facility. A number of commenters supported the development of a "fill in the blank" type of form. Therefore, we are currently looking into the feasibility of developing a form that can be used to assist permit applicants gather the required information that must be maintained at the facility to support a standardized permit. If and when a form is developed, it will be available from EPA on OSW's hazardous waste permitting Web site at: <http://www.epa.gov/epaoswer/hazwaste/permit/index.htm>.

G. Should the Current Provisions for Final Issuance of an Individual Permit Apply to Standardized Permits?

As proposed, the provisions for final issuance of the standardized permit are set forth in § 124.205, and are the same as the current procedures for final issuance of an individual permit, codified in § 124.15. We did not receive any significant comment on this question, and believe that the current provisions for final permit issuance are appropriate for issuing standardized permits. Therefore, we are finalizing § 124.205, as proposed.

III. Section by Section Analysis and Response to Comments for the 40 CFR Part 124 Requirements Related to the Standardized Permit Rule

A. Applying for a Standardized Permit

This section discusses the overall process of how owners and/or operators apply for and obtain a standardized permit. For clarification, the application for a standardized permit is known as a "Notice of Intent."

1. How Do I Apply for a Standardized Permit?

This part of the preamble discusses the steps involved in applying for a standardized permit which are laid out in 40 CFR part 124 subparts A, B, and G. The steps involve the pre-application meeting with the public followed by the submission of a Notice of Intent and supporting materials. The Notice of Intent and supporting materials, in most cases, should provide sufficient information for the Director to make a draft permit decision. Any lack of information could be a basis for the Director to determine that a facility is ineligible for a standardized permit.

a. How Do I Conduct a Pre-Application Meeting?

Today's rule subjects you to the existing requirements of § 124.31, obligating you to advertise and host a meeting with the neighboring community before submitting your Notice of Intent. The meeting with your community is designed to provide an open, flexible, and informal occasion for you and the public to share ideas, educate each other, and start building the framework for a solid working relationship. The meeting discussion should address topics such as: The type of facility, the location, the general processes involved, the types of wastes managed, and planned waste minimization and pollution control measures. The discussions also could include such topics as planned procedures for preventing or responding

to accidents or releases. When you submit your Notice of Intent, you will need to provide a summary of the meeting, including a list of attendees. No major comments were received on this section and we are finalizing § 124.31 as proposed.

The Agency encourages facilities to refer to the RCRA Public Participation Manual (EPA530-R-96-007, September 1996, available at <http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm>) to promote successful and equitable public involvement in RCRA permitting activities.

b. How Do I Submit a Notice of Intent To Operate Under the Standardized Permit?

The requirement to submit a Notice of Intent to operate under a standardized permit is laid out in § 124.202, and is consistent with the process and terminology currently used for NPDES general permits. The Notice of Intent is composed of the documents described under § 270.275 and include the RCRA Part A information, the closure plan, the closure cost estimate, documentation of the financial instrument to cover closure, information supporting that you meet the location standards, the pre-application meeting, and materials required under § 270.280 (which include the required certifications and audit report). In addition, facilities that wish to accept waste from off-site, the Notice of Intent must include the waste analysis plan, and documentation that the originating generator and the facility seeking the standardized permit are under the same owner.

While the proposal did not require submission of the closure plan at the time the Notice of Intent was submitted, the final rule does include this requirement. Several commenters argued that the closure plan should be submitted to help assure the regulatory authority of the owner/operator's ability to complete closure, and also that a closure plan would help support closure cost estimate figures. We agree with these commenters and are finalizing the rule to require submittal of the closure plan with the Notice of Intent. See also the discussion in Section IV.G, for additional explanation of EPA's decision to require submission of the closure plan with the Notice of Intent. It should be noted that the closure plan should provide sufficient detail to assure the Director that the facility can close and show how the facility will be closed. Failure to submit sufficient information in the closure plan might be cause for a facility to be considered ineligible for a standardized permit. In addition to the closure plan, a closure

cost estimate must be submitted, as must documentation showing the existence of a financial assurance instrument sufficient to cover closure.

Some commenters also argued that the waste analysis plan should be submitted with the Notice of Intent, and that submitting the plan would help assure the regulatory authority that the owner/operator has adequate knowledge of the waste streams being managed (waste compatibilities, characterization), especially if the rule were extended to include off-site facilities.

We generally believe that on-site facilities have good knowledge of the wastes they are managing, and therefore, we are not requiring that waste analysis plans be submitted with their Notice of Intent. Due to the streamlined nature of the standardized permit process, we believe that facilities conducting routine storage and treatment on-site have good knowledge of the characteristics of the waste they generate and manage, and should be able to safely operate within a self-certification of compliance process, while maintaining the extensive information, normally submitted with a Part B application, on-site. Furthermore, 40 CFR 267.13 provides a detailed account of the waste analysis plan requirements, which when combined with an audit and compliance certification should be sufficient to ensure compliance. In the final rule, we will not require waste analysis plans for such facilities to be submitted, but maintained on-site. However, as noted previously, the Agency is also allowing facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, to also be eligible for the standardized permit. In this situation, the facility will be required to submit the waste analysis plan with the Notice of Intent. As discussed previously, we believe it necessary for the waste analysis plan to be submitted to help ensure that waste management procedures are adequately protective.

You must also certify, as required by § 270.280, that, at the time the Notice of Intent is submitted, that the facility is in compliance with the requirements of part 267, or in the case of a new facility, that the facility will comply with the part 267 requirements when the facility is built and operated. (The proposed rule did not specifically contain a provision to allow the generator to submit the Notice of Intent for new facilities, that are designed, but built later. We believe that such a provision is appropriate and are adding such a provision to the final rule, at § 270.280(a)(1)(ii). In addition to certifying compliance, a compliance

audit must be completed. This audit is a systematic, documented, and objective review of the facility's operations and practices related to meeting environmental requirements, in order to assess the compliance status prior to submitting the Notice of Intent. The audit results must be included in an Audit Report with the compliance certification as supporting documentation to the Notice of Intent.

Regarding compliance audits, several commenters argued that we should not require audits at all, because doing so might unnecessarily burden facilities. Several commenters supported the need for conducting the audit, noting that doing so helped ensure compliance with the regulations and familiarity with facility operations. Other commenters argued that facilities be allowed to perform self-audits, and not be limited to conducting independent, third-party audits. Another commenter, arguing for only third-party audits, believed that some owners or operators of TSDs subject to this rule do not have the expertise to adequately audit their facility's operations. While we appreciate the comments, we believe that compliance audits are an integral part of the standardized permitting process, serving to help ensure that a facility is complying with the applicable requirements. Compliance audits are intended to support the self-certification process, and should not unnecessarily burden facilities. While there may be some owners/operators who lack the expertise to conduct audits we believe it unnecessary to require that only third parties conduct audits, because many facility owners are familiar with, and have the expertise to audit their operations. We did not include specific regulatory provisions detailing how facilities must conduct compliance audits in the final rule, but provided general information and web links to guidance materials for conducting audits. (see Section V.B.3). In addition, the final rule does require that the auditor sign and certify that the audit report is accurate, prior to submitting to the Director with the Notice of Intent, which provides an additional safeguard.

Another commenter said the proposal was not clear on how existing facilities would comply with the part 267 standards if a permit is issued. In the RCRA permit program, terms of how a facility will comply with the permit, once a permit is issued, are specified in the permit. This will continue to be the case for standardized permits—the uniform portion of the permit will contain the requirements as specified by part 267, and the supplemental portion

will provide site specific standards, as needed.

Another commenter argued that the Notice of Intent and supporting documents submission will potentially strain RCRA enforcement resources, as focus is directed to confirm the adequacy of audits and certifications provided by the permit applicant. While it is foreseeable that some additional effort will likely be placed on the Agency's enforcement resources, we believe that the units eligible for a standardized permit involve rather straightforward conditions.

2. How Do I Switch From an Individual Permit to a Standardized Permit?

Switching from an individual permit to a standardized permit could involve a few scenarios. In general, and the most likely case, is where a facility's units are all eligible for the standardized permit. In this case, you could request the Director of the regulatory agency to revoke your individual permit and issue a standardized permit. For facilities where only some of the units are eligible for a standardized permit, you could request the Director to modify the original permit to no longer include those units, and issue a standardized permit for those units. The revocation and reissuance procedures are in § 124.203, as allowed by § 270.41, and are finalized as proposed.

One commenter, while supportive of allowing facilities to switch to a standardized permit for eligible activities while keeping other activities under an individual permit, believed that revocation and reissuance should not be the required procedure to accomplish this. The commenter suggested that the facility should only need to submit a Notice of Intent for the standardized permit operations and, in addition, a conforming modification to the existing permit. We agree with the commenter that submission of the Notice of Intent along with a modification can work in many instances (modification, revocation, and reissuance procedures appear in today's rule at § 124.5). Another commenter argued that a newly permitted facility should not be able to have their permit revoked, and a standardized permit issued, until the term of the existing permit comes to an end. Otherwise, allowing the revocation might be overly burdensome to states. While we agree that there may be some instances where switching to a standardized permit may be challenging to States, we also do not want to burden facilities who are eligible for a standardized permit. In any event, States, who for the most part implement the permitting program, will

decide at what point they will allow facilities to switch from the individual permit to the standardized permit.

B. Issuing a Standardized Permit

1. How Would You as the Regulatory Agency Prepare a Draft Standardized Permit?

Under the final rule, three steps are involved in preparing a draft permit. Step one is for you (as the regulatory agency) to review the Notice of Intent and supporting information and determine if the facility is eligible for a standardized permit. Second, you would tentatively decide whether to grant or deny coverage under the standardized permit. If a decision is made to grant coverage, the draft standardized permit would propose appropriate terms and conditions, if any, to include in the supplemental portion of the permit. Lastly, you would prepare your draft permit decision within 120 days after receiving the Notice of Intent and supporting information. If necessary, a one time 30-day extension is permitted for review of the information, and preparation of the draft permit. Such extensions might be appropriate in cases involving site specific situations requiring more review. We received comments regarding time periods for an extension, from no extension to 180 days. We have decided to limit the extension to 30 days since we believe that due to the nature of the types of units that are eligible for the standardized permit—containers, tanks, and containment buildings, that a one-time 30 day extension should be all that is necessary.

a. Drafting Terms and Conditions for the Supplemental Portion

As noted previously, the supplemental portion of the standardized permit would include any additional provisions that are deemed necessary to protect human health and the environment and would be issued based on the regulatory agency's specific determination of the conditions at the particular facility. If you, as the Director of the regulatory agency, decide to grant coverage under the standardized permit, you must determine whether supplemental conditions are appropriate or necessary and if so, tentatively identify appropriate facility-specific conditions to impose in the supplemental portion of the standardized permit, and include those conditions as part of the draft permit. These proposed facility-specific conditions would go beyond the standard conditions in the uniform

portion of the standardized permit. (The uniform portion of the permit includes standards based on the applicable part 267 requirements.) The supplemental terms and conditions would be those you deem necessary for corrective action purposes, or to ensure protection of human health and the environment. We expect that the need to have supplemental conditions, beyond corrective action requirements, will not be a common occurrence. The authority to impose corrective action conditions is found in RCRA section 3004(u) and (v), as well as EPA's implementing regulations at 40 CFR 267.101, and authority to impose conditions for protection of human health and the environment is found at RCRA section 3005(c)(3), as well as EPA's implementing regulations at 40 CFR 270.32(b)(2).

One commenter noted that it was unclear how the regulatory authority would obtain site-specific information in developing permit conditions. It should be noted that § 270.10(k) allows the Director to require the submission of such information as necessary to establish permit conditions. In addition, information from the public meeting and inspections could be the basis to help develop permit conditions, as appropriate.

Another commenter supported the idea suggested in the preamble that a facility owner or operator should be allowed to "suggest supplemental conditions that he/she would like the responsible regulatory agency to attach to the standardized permit," and suggested regulatory language to specifically allow that provision. While we certainly support allowing facilities to submit suggested conditions, we do not believe it necessary to specifically include that in the regulations, as it could confuse some permit applicants about what is actually required. If a particular owner/operator wants to suggest that supplemental conditions be included in their standardized permit, they are free to do so in the Notice of Intent.

b. Denying Coverage Under the Standardized Permit

The provisions of § 124.206 for denying coverage under a standardized permit are finalized as proposed. Specifically, under the final rule, the Director could tentatively deny a facility coverage under the standardized permit. Reasons for denial could include failure of the facility owner or operator to submit all the information required under § 270.275, or that the facility does not meet the eligibility requirements for a standardized permit (that is, the

facility's activities are outside the scope of the permit). The Director could also deny coverage based on a facility's compliance history (see § 124.204(b)).

Instances of poor compliance history exists where previous violations by a facility establish a pattern of disregard of environmental requirements under RCRA or other environmental statutes. Some of the factors used to evaluate a facility's compliance history may include:

- Number of previous violations
- Seriousness of previous violations
- The facility's response with regard to correction of the problem (e.g., how quickly the facility achieved compliance)

Consideration of compliance history reflects the self-implementing nature of the requirements that are being imposed under the uniform portion of the standardized permit. A facility with a demonstrated history of noncompliance may not be a viable candidate for a standardized permit. Beyond these points, we believe it is difficult to develop specific criteria defining "poor" compliance history. We believe that the permitting authority is in the best position to determine whether or not a facility has a compliance history that is so poor as to determine that they should be ineligible for a standardized permit.

A number of commenters believe that the regulations should be clearer on the criteria for denying coverage under the standardized permit, and offered suggested situations that could weigh heavily in deciding whether or not to deny a facility from receiving a standardized permit. Among the reasons suggested for denial included a facility's demonstrated history of non-compliance with regulations or permit conditions, demonstrated history of submitting incomplete or deficient permit applications, and that the facility does not meet the criteria of eligibility in § 124.201.

The suggested reasons are consistent with our intent to limit the eligibility for the standardized permit to those facilities that can demonstrate, or have demonstrated, an ability to adhere to the regulations, as we discussed in the preamble to the proposed rule (see 66 FR 52203, Section IV.B.2). Section 124.204(b) provides specific eligibility criteria. Under 124.204(b)(2)(iv), you may consider the facility's compliance history, in cases where the facility is operating under RCRA interim status, or has an existing permit and is choosing to convert to a standardized permit. Poor compliance history could indicate a facility that might more appropriately

be served by an individual permit, or, of course, permit denial if warranted.

c. Preparing the Draft Permit Decision

Under § 124.204(c), the Director needs to make a draft permit decision within 120 days of receiving the Notice of Intent and supporting information. In addition, we are allowing a one time 30-day extension. The original proposal called for a draft permit decision within 120 days, and requested comment on whether additional time should be allowed. Several commenters agreed with the proposal that 120 days is sufficient time to review the information submitted with the Notice of Intent. However, other commenters have argued that the initial 120-day period would not be adequate time to review all the information submitted and conduct the required public comment period. Suggested extensions ranged from those who suggested no extension, all the way up to 180 days suggested by one commenter. We understand that some states have additional requirements that permit applicants must meet, that may necessitate an extension. However, we believe that most submissions should be reviewable in the 120-day time frame. Furthermore, under the standardized permit rule, the public comment period begins once the draft permit is public noticed, and is not part of the 120-day review period.

Nevertheless, there may be situations where additional time is needed, for example, to work out a particular approach to an issue requiring a supplemental condition. For these facilities, and in response to comments, the Agency is providing a one-time extension of 30 days. We believe that the 120-day initial time period, with a one time 30-day extension will provide sufficient time to issue a draft permit (or permit denial).

2. How Does the Regulatory Agency Prepare a Final Standardized Permit?

After the close of the public comment period, the Director would make a final determination on the draft permit decision (*i.e.*, whether to grant or deny coverage for a facility to operate under the standardized permit). The Director would use the same procedures to finalize a draft standardized permit as he or she would use to finalize a draft individual permit, found in § 124.15. Commenters supported this provision of the rule; therefore, § 124.205 for preparing a final permit decision is finalized, as proposed.

C. Public Involvement in the Standardized Permit Process

Public involvement begins early in the standardized permitting process, starting with the public meeting that must occur prior to submission of the Notice of Intent. This meeting is described in more detail in preamble section III.A.1.a.

1. Requirements for Public Notices

The provisions of § 124.207 require the Director to issue a public notice announcing the draft permit decision. The procedures and time periods for public comment are the same as for commenting on draft individual permits. Because we received no significant comment, we are finalizing § 124.207 as proposed.

2. Opportunities for Public Comments and Hearings

The provisions for the comment period and hearings are found in § 124.208. Because we received no significant comment, we are finalizing § 124.208 as proposed.

3. Responding to Comments

The requirements for responding to comments are found in § 124.209. Because we received no significant comment, we are finalizing § 124.209 as proposed.

4. Appealing a Final Permit Decision

Under today's final rule, according to § 124.210, you may appeal the final permit decision to the Environmental Appeals Board within 30 days. You may appeal the permit, including any terms and conditions in the supplemental portion, but only after the final determination is made. At that time, you may also appeal the eligibility of the facility for the standardized permit. (For example, you may challenge whether a unit is a tank.) You may not appeal the terms and conditions of the uniform portion of the standardized permit.

One commenter noted that appealing the supplemental portion of the permit might call into question whether the facility can still operate safely under the unappealed portion of the permit. Just as occurs in the current regulatory process, if an appealed section of the permit is required for safe management of hazardous waste in that unit, then waste cannot be managed in the unit until the appeal has been adjudicated. See 40 CFR 124.16(a). For a standardized permit, if the supplemental portion of the permit is necessary for safe waste management, and that part of the permit is appealed, then waste may not be managed in the unit until the appeal is resolved.

However, if the appealed supplemental portion of the permit deals with SWMU corrective action issues, then safe waste management in the eligible units can likely occur. More directly stated, if the appealed parts of the permit are unrelated to the units eligible for the standardized permit, then safe waste management in those eligible units can likely occur.

D. Maintaining a Standardized Permit

This portion of the preamble discusses what is being finalized today regarding how your standardized permit is modified over time to reflect changes in the facility's design or operations. While the rule provides a mechanism for making changes to standardized permits, we envision that few changes to the actual permit would likely be necessary. This is because standardized permits contain standard conditions based on the requirements of Part 267, and that many changes at the facility would only affect the information kept on-site and not the actual permit. The only thing that would have to be modified, typically, would be supplemental conditions that are unique to the facility. However, when changes to the standardized permit are necessary, they will fall into the categories described below.

1. What Types of Changes Could Owners or Operators Make?

The proposed rule set forth two categories of modifications, routine and significant, for making changes to standardized permits. Routine changes included those changes that, under an individual permit situation, would be classified as either a class 1 or class 2 modification under § 270.42 appendix I, while significant changes included those changes that would have been class 3 modifications. The final rule modifies the routine changes category originally proposed, and adds a third category, routine changes requiring prior approval. The actual procedures for performing routine and significant changes are finalized, as proposed; the only change made is to allow routine changes requiring prior agency approval, as described below.

Several commenters argued that some class 2 modifications are more like class 3 modifications, and should not be considered as routine changes under a standardized permit, but as significant changes. Furthermore, because some class 1 modifications require prior approval under an individual permit, those changes should be treated similarly under a standardized permit. For example, several commenters noted that changes in ownership should not

simply be a routine change under the standardized permit rule, but should require prior approval from the regulatory agency, because of financial assurance and compliance history concerns about a new owner.

Under the original proposed rule, "routine changes" encompassed both class 1 and class 2 modifications, leaving class 3 modifications to be addressed as "significant changes." We agree with commenters to the extent that some changes to standardized permits should require prior approval, especially changes that would require prior approval under individual permitting.

Therefore, the final rule adds a third category of changes to permits, "routine changes with prior approval." (See the next section for a description of the types of modifications that would fall into the various categories.) The addition of another category between "routine" and "significant" should help address the concern that some class 2 modifications are more like class 3 modifications and should be treated as significant changes, because now all class 2 modifications will require prior approval under the standardized permit. Rather than class 2 modifications being a "routine change" as described in the proposed rule, class 2 modifications will now require prior approval, as will class 1 modifications normally requiring prior approval.

While we are adding a third category, the overall permit change process is more streamlined than the existing modification process. The new category—"routine with prior approval"—would not involve a public comment or hearing process, as would be the case with regular class 2 modifications, but would require a notification to, and acknowledgment and approval from the regulatory authority, and also, within 90 calendar days of the approval, notification to the facility's mailing list. The Director would need to respond within 90 days of receiving the modification request, either approving or denying the request.

2. What Are the Definitions of Routine Changes, Routine Changes With Prior Agency Approval, and Significant Changes, and What Are the Requirements for Making Those Changes?

a. Routine Changes

Routine changes are any changes that qualify as a class 1 modification under 40 CFR 270.42 Appendix I that do not require prior approval by the regulatory authority. The requirements for making routine changes are found at § 124.212.

The procedures for making routine changes are described in the preamble of the proposed rule at 66 FR 52206 (Section VI.C). Basically, these procedures allow routine changes to be made without notifying the regulatory authority, as long as those changes do not amend any of the information that was originally submitted under § 270.275 during the standardized permit application process. If the change amends the information provided under § 270.275, then the revised information must be provided to the Director, the facility mailing list, and to state and local governments, as described in § 124.212(b)(1) and (2).

b. Routine Changes With Prior Agency Approval

Routine changes with prior agency approval are changes that, according to 40 CFR 270.42 Appendix I, either qualify as class 1 modifications requiring prior agency approval, or as class 2 modifications. The requirements for making routine changes with prior agency approval are found at § 124.213. The procedures for making changes with prior approval include the same steps that must be followed for making changes that amend the information submitted under § 270.275 (see § 124.212(b)(1) and (2)), and also require approval from the Director.

c. Significant Changes

Significant changes are any changes that qualify as: (1) Class 3 permit modifications under 40 CFR 270.42 Appendix I, (2) any changes not specifically identified in Appendix I, or (3) any changes that amend the terms or conditions in the supplemental portion of the standardized permit. The requirements for making significant changes are found at § 124.214. The procedures for making significant changes to the standardized permit are very similar to the initial standardized permitting process, and is described in the preamble of the proposed rule at 66 FR 52206 (Section VI.D), and are finalized, as proposed.

3. How Do I Renew a Standardized Permit?

The process to renew a standardized permit is the same as for renewing an individual permit. See §§ 270.11(h) and 270.30(b). To renew a standardized permit, you would follow the same procedures as you would to initially obtain coverage under the standardized permit (those in 40 CFR part 124 subpart G). We did not receive any significant comment regarding the process of renewing a standardized

permit, and therefore, are finalizing this section, as proposed.

IV. Section by Section Analysis and Response to Comments for the Part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit

A. Overview

Most of the proposed part 267 requirements have been finalized, as proposed, with few exceptions, which are discussed later in this section. The requirements in part 267 form the basis for the uniform portion of the standardized permit, which is a required part of all standardized permits.

Some commenters argued that the standardized permit rule only adds another set of regulations, and thus, adds to the difficulty of keeping track of the various permits. We acknowledge this rule does add another set of regulations to the CFR. However, these regulations replace the existing technical regulations (part 264) that already apply to tanks, containers, and containment buildings, which these facilities are already subject to. Thus, we would disagree with the commenter that all we are doing is subjecting these units to additional regulation. Moreover, as stated previously, we believe that this rule will help streamline the permitting process, saving time and resources for both the facility and the regulatory agency, while maintaining protection of human health and the environment.

B. Subpart A—General

1. Purpose, Scope, and Applicability

The final rule sets forth the minimum national standards for facilities managing wastes under a standardized permit. The final part 267 standards apply to owners and operators who store or non-thermally treat their wastes on-site in tanks, containers, and containment buildings, and to facilities that manage wastes generated off-site, by a generator under the same ownership as the receiving facility. Based on comments, there appeared to be some confusion on whether facilities with thermal treatment units could apply for a standardized permit for their eligible units in which non-thermal treatment or storage is being conducted. A facility may apply for a standardized permit for its eligible units, regardless of what other hazardous waste management is occurring at the facility. For example, a hazardous waste incineration facility that conducts tank storage for wastes generated on site may apply for a standardized permit for the tank storage. Except for a clarifying

correction to the part 270 reference (subpart J rather than subpart I), the language of § 267.1 is finalized, as proposed.

2. Relationship to Interim Status Standards

The final § 267.2 provisions are similar to the § 264.3 provisions. If you are currently complying with the requirements for interim status, you will need to continue to comply with the interim status standards specified in part 265 until final disposition of your standardized permit application. We received no significant comments on this section. Thus, the § 267.2 requirements are finalized, as proposed.

3. Imminent Hazard Action

The final § 267.3 provisions repeats the current § 264.4 provisions concerning imminent and substantial hazards. We received no significant comments on this section, and therefore, are finalizing these provisions, as proposed.

C. Subpart B—General Facility Standards

These standards are similar to the general facility standards currently found in 40 CFR part 264 subpart B. These standards describe how to obtain an EPA identification number, requirements for waste analysis, security requirements, inspection schedules, employee training, managing ignitable, reactive or incompatible wastes, and location standards.

1. Applicability

The applicability language in § 267.10 is finalized, as proposed, except for the change in the reference to subpart I to subpart J, of part 267. The reason for this change is editorial. No significant comments were received on this section. The purpose of part 267 is to establish minimum national standards for facilities managing waste under a standardized permit, and as such would apply to owners and operators of facilities who non-thermally treat and/or store hazardous waste on-site in tanks, containers, and/or containment buildings, as well as facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility and who store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

2. How Do I Comply With This Subpart?

Section 267.11 lists the steps you need to take if the subpart applies to you. Specifically, you would obtain an EPA identification number, and follow

prescribed requirements for waste analysis, security, inspections, training, special waste handling and location standards. We are finalizing § 267.11, as proposed, because no substantive comments were received on this section.

3. How Do I Obtain an EPA Identification Number?

Section 267.12 generally repeats the requirement currently in § 264.11 with the addition of whom to contact for information. No significant comments were received on this section, and thus, we are finalizing this provision, as proposed.

4. What Are the Waste Analysis Requirements?

The provisions of § 267.13 are finalized and include a change related to eligible off-site facilities. These provisions generally require owners and operators to prepare a waste analysis plan and keep it on-site at their facility. Eligible facilities that receive wastes generated off-site must submit a waste analysis plan with their Notice of Intent, as well as retain the plan on-site.

Several commenters expressed the need for submission and approval of waste analysis plans, particularly if the rule was extended to include off-site facilities. Because we are extending the rule to certain off-site facilities, as described previously, we are requiring those facilities to submit a waste analysis plan with the Notice of Intent. Most commenters addressing waste analysis plans supported the idea that on-site facilities would not need to submit waste analysis plans. Therefore, we are not requiring on-site facilities to submit waste analysis plans with the Notice of Intent. (See the discussions of on-site versus off-site in section II.D, and on waste analysis plans in section III.A.1.b of this preamble.)

A number of commenters discussed the importance of waste analysis plans. DOE noted that a key aspect of the acceptability of this approach [extending the rule to eligible offsites] would be the proper design and implementation of waste analysis requirements to ensure the compatibility of wastes from multiple off-site sources that are stored and treated together. For example, at least one DOE site that receives waste from off-site believes it has as much knowledge and confidence in the compatibility of the off-site wastes as it has for waste generated on-site, because of its approach to waste analysis.

DOE also noted that "to verify that acceptable waste analysis requirements are in place at a facility managing waste from off-site, they suggest that EPA

require the facility to submit a waste analysis plan with the Notice of Intent to operate under a standardized permit.

One commenter noted that where a facility has numerous processes contributing hazardous waste to a storage or treatment unit, the waste analysis plan would be significantly more complex. In this case, it may be prudent to submit the waste analysis plan with the initial notification to ensure that waste management procedures are adequately protective.

Based on these comments and the need they expressed to have adequate knowledge of wastes being received from off-site, we are requiring that waste analysis plans be submitted to the regulatory agency with the Notice of Intent. Multiple facilities under the same owner may be in different states, and may have variations in their waste streams. States should have waste analysis information concerning wastes generated in facilities located in other states in deciding whether the facility should receive a standardized permit, and in ensuring that waste analysis at the receiving facility will be sufficient to protect human health and the environment.

5. What Are the Security Requirements?

The § 267.14 security provisions are similar to the § 264.14 provisions. The proposal in § 267.14(a) and (b) provided for an exemption from the security provisions by requiring a certification that both of the conditions in § 267.14(a) are met. While several commenters supported the exemption in the proposal, most of the commenters believed that the proposed security provisions are reasonable, and that there is no reason for an exemption from those provisions. If, for example, a facility wants consideration for an exemption due to site-specific conditions, such a facility might likely be a better candidate for an individual permit, than for a standardized permit. Commenters also noted that the conditions for the exemption are rarely met.

Based on the comments submitted and upon reflection of the Agency's overall goal in issuing the standardized permit rule, we believe that having an exemption provision would add to the complexity of what is intended to be a streamlined permit process. If allowed, the exemption would require review and approval stages, adding to the time necessary for issuance of a draft permit. Therefore, the final rule does not include the exemption proposed in § 267.14(a), and the remaining language in § 267.14 has been edited accordingly.

6. What Are the Inspection Schedule Requirements?

The § 267.15 inspection schedule requirements are finalized, as proposed. No significant comments were received on this section.

7. What Are the Training Requirements?

The § 267.16 training requirements are essentially the same as the training standards in § 264.16, and are finalized, as proposed. No significant comments were received on this section. Owners/operators will be required to keep a description of the training program and individual personnel training logs with other required records at their facility.

8. What Are the Requirements for Managing Ignitable, Reactive, or Incompatible Waste?

The general requirements of § 267.17 for managing ignitable, reactive, or incompatible waste are very similar to the requirements found in § 264.17, and are finalized, as proposed. No significant comments were received on this section. These general requirements minimize the potential for accidents when handling ignitable or reactive wastes, or when mixing incompatible wastes.

9. What Are the Location Standards?

The § 267.18 location standards are similar to the requirements found in § 264.18, except that today's final rule does not provide for a waiver from the 100-year floodplain restriction, based on the ability to remove the waste.

Most commenters agreed with the Agency that we should not allow a waiver from the location requirements that prohibit locating a facility in a 100-year floodplain, if wastes can be removed before flood waters reach the facility. Commenters provided similar arguments to those regarding the exemption from the security provisions. Moreover, they argued that if a facility believes, based on site-specific conditions, that they should be eligible for a waiver, that the facility would likely be better suited for an individual permit. We agree with these commenters.

However, some commenters argued that the waiver provision should be available for siting a facility in the 100-year floodplain in order to maximize regulatory relief. We disagree. Similar to our reasons for not having an exemption from the security provisions of § 267.14, we believe that having a waiver from the location standards would only add to the complexity of what is intended to be a streamlined permit process. If allowed, waivers would require review and approval stages, adding to the time

necessary for issuance of a draft permit, which detracts from the intent of permit streamlining. Therefore, we are not providing for a waiver from the floodplain location standards in the final rule.

D. Subpart C—Preparedness and Prevention

This subpart requires you as the owner or operator to minimize threats to human health and the environment caused by the release of waste from unplanned events.

1. What Are the Design and Operation Standards?

The requirements of § 267.31 are the same as those found in § 264.31, and include requirements on how to design, construct, maintain and operate your facility to minimize threats to human health and the environment. No significant comments were received on this section. Therefore, we are finalizing the requirements, as proposed.

2. What Equipment Am I Required To Have?

Section 267.32 equipment requirements are finalized, as proposed. This section requires you to have certain equipment at the facility, including an alarm system, communication equipment, fire extinguishers and fire control equipment, and either water at adequate volume and pressure to supply hose streams, foam equipment, or water spray systems. The section also provides an exemption for certain equipment, otherwise required, if the potential hazards at the facility don't warrant the equipment. To make use of that equipment exemption, you would need to submit a certification and keep documentation supporting the exemption at your facility. This exemption has been retained for two reasons: It avoids unnecessary expenditures, and the exemption does not require approval of a demonstration by the permitting agency. However, you would be required to keep documentation supporting any equipment exemption at the facility and you would make the documentation available for review by the permitting agency and the public. No significant comments were received on this section.

3. What Are the Testing and Maintenance Requirements for Equipment?

Section 267.33 is finalized, as proposed, requiring the testing of all equipment identified in § 267.32. No significant comments were received on this section.

4. What Are the Requirements for Access to Communication Equipment or an Alarm System?

Section 267.34 requires all personnel involved in waste handling to have ready access to communication equipment and alarms. The requirement would not apply when the equipment is not required under § 267.32. No significant comments were received on this section. Therefore, this section is finalized, as proposed.

5. What Are the Requirements for Access for Personnel and Equipment During Emergencies?

Section 267.35 is being finalized with additional language as described below. Specifically, a commenter suggested adding the following language to the end of proposed § 267.35: "as appropriate considering the type of waste being stored or treated." We agree with the suggested change because it acknowledges that certain wastes may not necessarily require spill control or fire equipment access to the area.

6. What Are the Requirements for Arrangements With Local Authorities for Emergencies?

Section 267.36, regarding making arrangements with local entities such as police, fire, and response authorities, is finalized, as proposed. No significant comments were received on this section.

E. Subpart D—Contingency Plans and Emergency Procedures

This subpart contains standards requiring a contingency plan that describes how hazards to human health and the environment will be minimized. These requirements are similar to those in part 264 subpart D with the exception that you are not required to submit the plan with your application.

The following Sections of subpart D are finalized, as proposed, because no significant comments were received.

- a. Purpose of the Contingency Plan (§ 267.51)
- b. What is Required to be in the Contingency Plan? (§ 267.52)
- c. Who is Required to Have Copies of the Contingency Plan? (§ 267.53)
- c. Revising the Contingency Plan (§ 267.54)
- d. Role of the Emergency Coordinator (§ 267.55)
- e. Emergency Procedures for the Emergency Coordinator (§§ 267.56 and 267.57)

F. Subpart E—Manifest System, Record keeping, Reporting, and Notifying

This subpart of part 267 contains the standardized permit manifest system, record keeping, reporting, and notifying

requirements. We changed the name of the heading for subpart E to reflect the applicability of the manifest system requirements in cases involving eligible off-site facilities.

1. When Would I Need To Manifest My Waste?

Today's rule extends eligibility for the standardized permit to certain off-site facilities. Because the proposal only addressed on-site generator facilities, § 267.70 did not include all of the provisions from § 264.71 "Use of the Manifest System." We, therefore, are finalizing today's rule to insert the provisions of § 264.71 into § 267.71, now titled "Use of the Manifest System," and the provisions of § 264.72 into § 267.72, now titled "Manifest Discrepancies."

With these insertions, the proposed §§ 267.71 through and 267.74 are renumbered and finalized as follows:

- a. Section 267.71 becomes § 267.73 (What Information Must I Keep?);
 - b. Section 267.72 becomes § 267.74 (Who Sees the Records?);
 - c. Section 267.73 becomes § 267.75 (What Reports Must I Prepare and to Whom Do I Send Them?); and
 - d. Section 267.74 becomes § 267.76 (What Notifications Must I Make?).
- Because we are extending eligibility to certain off-site facilities, we are adding paragraphs to §§ 267.73 and 267.75 that relate to off-site facilities (e.g., § 267.73(b)(11) and (12) and § 267.75(c) and (d)).

One commentator suggested that a change to include manifest requirements in the final rule be made to allow for off-site facility eligibility. Because we are extending this rule to certain off-site facilities, where an owner/operator manages their own waste generated at several locations, the suggested change to Subpart E was appropriate.

2. What Information Would I Need To Keep?

For similar reasons as with the section on "when would I need to manifest my waste?," proposed § 267.71 was developed with on-site generator facilities only. Because certain off-site facilities are now included, we are adding the applicable provisions from § 264.71 that relate to off-site facilities, into § 267.73.

One commentator noted that there appeared to be some confusion on retention times for records. The retention time for records, unless otherwise noted, is until the facility is closed, as is stated at § 267.73(b).

According to § 267.73(b), records must be retained until the facility is

closed. In addition, § 267.74(b) further states this retention period can be extended due to an unresolved enforcement action involving the facility or as requested by the Administrator. For the purpose of clarity, we removed the words "and how long do I keep them" from the heading of § 267.74.

3. Who Sees the Records?

Proposed § 267.72 regarding submission of records to the permitting authority is finalized at § 267.74. No significant comments were received on this section.

4. What Reports Do I Need To Prepare and to Whom Would I Need To Send Them?

Because we are finalizing today's rule to extend to certain off-site facilities, we are adding the applicable provisions from § 264.76 (Unmanifested Wastes) to proposed § 267.73, and finalizing that section at § 267.75. No significant comments were received on this section.

5. What Notifications Must I Make?

Proposed § 267.74 is finalized as § 267.76. No significant comments were received on this section.

G. Subpart F—Releases From Solid Waste Management Units

Section 267.101 of the final rule sets forth requirements for corrective action at facilities that obtain standardized permits. These requirements have not been changed from the October 12, 2001 proposed rule.

Section 3004(u) of RCRA provides that all permits issued after November 8, 1984 and under the authority of section 3005 must require corrective action for all releases of hazardous waste or constituents from any solid waste management units (SWMU) at the facility, as necessary to protect human health and the environment (*see also* 40 CFR 264.101). Section 3004(u) requires that schedules of compliance (where corrective action cannot be completed prior to permit issuance) and financial assurances for completing such corrective action be included in the permit. In addition, section 3004(v) directs EPA to require corrective action as necessary to protect human health and the environment beyond the facility boundary, where permission to conduct such corrective action can be obtained. Because standardized permits, like non-standardized permits (*i.e.*, individual permits and permits-by-rule), will be issued under the authority of section 3005 of RCRA, these statutory corrective action requirements extend to standardized permits as well. Section

267.101(b) provides that corrective action provisions will be specified in the supplemental portion of the standardized permit (as necessary to protect human health and the environment). In the October 12, 2001 proposed rule, the Agency did not propose standardized permit conditions for corrective action. The Agency explained that, while it was attempting to streamline the permit application and permit issuance processes by developing generic design and operating standards for storage permits, it had to balance the desire for a streamlined permitting process against the need for flexibility in the corrective action program. The Agency recognized that most sites in the RCRA corrective action universe are unique, and that site-specific determinations for corrective action remedies are vital to assuring the best remedy is selected at each site. The Agency therefore proposed the same site-specific flexibility for corrective action under standardized permits as is available under non-standardized permits. The Agency believed that this approach would provide flexibility to fashion remedies that are protective of human health and the environment and that reflect the conditions and the complexities of each facility. The Agency solicited comment on this approach, but also requested suggestions for standardized corrective action permit conditions.

The Agency received few comments on this proposed approach. While some commenters agreed that site-specific flexibility should be preserved for corrective action, some suggested standard permit conditions that the Agency might adopt.

One commenter suggested that the Agency develop standard permit conditions for presumptive remedies or specified corrective action approaches which could be incorporated into the uniform portion of the standardized permit. Though the Agency agreed that the commenter raised interesting ideas, the Agency did not develop standard permit conditions based on this comment for several reasons. First, the commenter did not provide sufficient detail to develop standard conditions, and developing the suggested standard permit conditions would have required significant effort on the part of the Agency. The Agency did not believe that the level of interest demonstrated by commenters for standard permit conditions for corrective action warranted those efforts. In addition, the Agency did not believe that this rule was an appropriate forum for addressing the type of streamlined approach suggested by the commenter.

Presumptive remedies and generic standards for streamlined approaches to corrective action are based on factors such as type of waste and media requiring cleanup—factors unrelated to the eligibility criteria for standardized permitted facilities. Thus, presumptive remedies and generic standards for streamlined approaches to corrective action are program-wide issues that the Agency believes are better addressed in other forums.

Another commenter suggested that standardized permits should contain several standard permit conditions, at a minimum, including notification requirements for, and assessment of, newly identified solid waste management units, areas of concern, and newly identified releases; content requirements for workplans and reports; approval procedures for workplans and reports; and approval procedures for final remedies. The Agency did not develop standard permit conditions in response to this comment. As was the case with the first commenter, this commenter did not provide the detail that would have been necessary to develop standard permit conditions. Further, the process-oriented permit conditions suggested by the commenter would have been inconsistent with the Agency's approach to implementation of the corrective action program. Since the time of the proposal, the Agency has continued to move away from a process-oriented corrective action approach toward a results-based strategy for corrective action. In September, 2003, the Agency issued guidance entitled "Results-Based Approaches and Tailored Oversight Guidance," which encouraged the use, where appropriate, of results-based approaches to corrective action. As described in the guidance, results-based approaches emphasize outcomes, or results, in cleaning up releases, and strives to tailor process requirements to the characteristics of the specific corrective action. The Agency believes that development of the standard permit conditions for corrective action as suggested by the commenter would not be consistent with a results-based approach.

The Agency believes that the better approach is to continue to allow regulators the flexibility to develop permit conditions based on the conditions at the site. Thus, § 267.101(b) provides that provisions (or schedules of compliance) for corrective action will be specified in the supplemental portion of a standardized permit, and § 267.101(c) provides for corrective action beyond the facility boundary. These paragraphs impose requirements for corrective action at facilities that

receive standardized permits that are identical to those requirements imposed by § 264.101 at facilities that receive non-standardized permits.

In the proposed rule (*see* 66 FR 52191), the Agency also solicited comment on how cleanups under cleanup programs other than the authorized RCRA program (or under "alternate authorities") might be addressed in RCRA permits, including facilities with standardized permits. The Agency identified two approaches that might be used to address an alternate cleanup authority in a RCRA permit—the approaches were referred to as "postponement" and "deferral." Under the postponement approach, the permitting authority would postpone the determination of RCRA-specific corrective action provisions until a cleanup under an alternate State authority is completed. Under the deferral approach, the permitting authority would make a determination that corrective action is necessary, and that the appropriate corrective action at the site would be the state action run by the state alternate program. The Agency requested comment on the postponement and deferral approaches as part of its ongoing effort to determine how to effectively utilize alternate authorities to address corrective action needs at RCRA facilities.

The Agency is not taking final action in this final rule with respect to the issues raised regarding alternate authorities. The Agency does note, however, that since the time of the proposed rule, the Agency has continued, outside of the context of this rulemaking, to support the appropriate use at specific sites of alternate authorities to address RCRA corrective action, not only at permitted facilities, but at other RCRA facilities as well.³ The Agency plans to address issues and options related to the use of alternate authorities discussed in the proposal, including how to address alternate authorities in RCRA permits, outside of the context of this rulemaking.⁴

H. Subpart G—Closure

1. Does This Subpart Apply to Me?

The language of § 267.110 is finalized, as proposed, since no significant comments were received on this section. You are subject to the requirements of subpart G if you own or operate a

³ Alternate authorities are utilized at RCRA facilities in most States. These authorities include a variety of cleanup programs, including voluntary programs and state superfund-type programs.

⁴ It should be noted that since issues related to use of alternate authorities are not addressed in this final rule, the Agency did not respond to comments related to those issues.

facility treating or storing hazardous waste under a standardized permit.

2. What General Standards Must I Meet When I Stop Operating the Unit?

The language of § 267.111 has been modified to further reinforce that facilities under a standardized permit must clean close. If a facility under a standardized permit cannot clean close, then the owner/operator of the facility must pursue post-closure options.

3. What Procedures Must I Follow?

As discussed below, § 267.112 has been revised to require that the closure plan be submitted with the Notice of Intent, instead of 180 days prior to closure, as proposed. The closure plan, as part of the permit, would be approved with final permit issuance.

The Agency requested comments on several aspects of the closure plan in the proposed rule. Specifically, while the Agency proposed to require that the closure plan be submitted at least 180 days prior to closure, we also requested comment on whether the closure plan should be submitted with the Notice of Intent; not allowing the option to close as a landfill and therefore require clean closure of the units addressed in the standardized permit; and not allowing time extensions for closure. We also requested comments and suggestions for procedures to be followed in the event that you do not know that you are to receive the final volume of hazardous waste until you are within the 180 day period, and proposed options for that occurrence. Finally, we invited comment on an option of not requiring a closure plan, but, instead, including closure conditions in the standardized permit. Our response to these comments are addressed in this section of the preamble and in the Response to Comments document.

The majority of the comments received supported a requirement that the closure plan be submitted with the Notice of Intent. Those who favored the closure plan being submitted with the Notice of Intent argued that early submittal of the closure plan would be more protective of human health and the environment because it would allow for better cost estimates, would allow for early negotiation of closure conditions, and would avoid the problem of meeting time frames within the 180-day window. Moreover, as noted previously, requiring the plan up front would allow the regulatory authority to review the plan and assure the regulatory authority of the owner/operator's ability to complete closure. Early submission of a closure plan would also help support closure cost

estimate figures. Finally, the revision would allow the public to review the plan during the public comment period for the publicly noticed permit. Consequently, we agree that it would be more appropriate to require that the closure plan be submitted with the Notice of Intent and have modified the rule accordingly.

With this change to require closure plan submissions with the Notice of Intent, we have modified the proposed § 267.112(c) language to account for changes to the facility requiring a change to the closure plan. These changes may include, but are not limited to, changes in the operating plan, facility design, change in the year of closure, and unexpected events. These conditions were not relevant in the proposed rule where the closure plan was not required until 180 days prior to closure.

4. Will the Public Have the Opportunity To Comment on the Plan?

Based on the changes discussed in the previous section, the public will have an opportunity to review the closure plan during the public comment period that occurs once the draft permit is public noticed.

5. What Happens if the Plan Is Not Approved?

Because of the change made to require that the closure plan be submitted with the Notice of Intent, § 267.114 is no longer appropriate and thus, is not included in the final rule. The plans are considered approved when the final permit is issued, becoming part of the permit. If the plan is not acceptable, then the standardized permit will not be issued.

6. After I Stop Operating, How Long Until I Must Close?

The proposed rule required that closure begin within 30 days after the facility received its final volume of hazardous waste, and that clean closure be completed within 180 days after receiving the final volume of waste, with no time extensions. (The rule intends that eligible units should be able to clean close.) Our rationale for requiring clean closure of the units subject to the standardized permit was to reduce the likelihood of any unforeseen circumstances and thus, it would be unlikely that closure would take longer than 180 days. Nevertheless, in the proposal, we invited comments on the need for extending the closure time period to allow for more time to clean close.

Most commenters agree with the Agency that, in most cases, 180 days is

an adequate amount of time to clean close container units, tank storage units, and containment buildings. However, commenters also believed it appropriate (and necessary) to include a provision in the final rule that would allow for an extension for circumstances beyond the control of the owner/operator.

Based on these comments and the Agency's experience in implementing the hazardous waste program, we agree with the commenters that a provision should be included in the final rule that would allow a one-time extension for circumstances beyond the control of the owner/operator. Therefore, we are including a provision in the final regulations at § 267.115 to allow for a one-time extension of 180 days to the time allowed to clean close to address circumstances beyond the control of the owner/operator. In cases where closure is expected to take more time, the facility will be required to use post-closure options to close.

7. What Must I Do With Contaminated Equipment, Structures, and Soils?

The language of § 267.116 is finalized, as proposed. No comments were received on this section.

8. How Do I Certify Closure?

The language of § 267.117 is finalized, as proposed. No comments were received on this section.

I. Subpart H—Financial Requirements

Much of the regulatory language in this final rule uses a format of questions and answers that refers to the permittee as "you" and to EPA as "we." Except for the introduction to the regulations (§ 267.140), the language in Subpart H does not follow the question and answer format, and it does not use these first and second person pronouns to identify the subject. There are two main reasons for this difference. First, the underlying current financial responsibility regulations in subpart H of 40 CFR parts 264 and 265, which remain integral to the proposed part 267 regulations, do not use first and second person pronouns, and EPA has not rewritten the existing part 264 and 265 regulations to conform to the question and answer format. The regulations here cross reference the existing part 264 regulations extensively, and often provide that compliance with an existing part 264 provision would constitute compliance with proposed part 267. This linkage of the regulations is necessary so that firms with facilities under both existing part 264 (or part 265 regulations) and proposed part 267 could use the same mechanism for more than one facility, thus eliminating the

expense of a separate mechanism. EPA expects that several firms using the proposed standardized permit could have other facilities operating under existing part 265 interim status or part 264 permitting standards.

Second, unlike many other permitting regulations, the responsibilities in the financial assurance regulations often extend to parties in addition to EPA (or the state permitting agency) and the permittee. For example, a trustee agrees to perform certain functions as part of a trust agreement where EPA is the beneficiary, but EPA is not a signatory. Third, parties must fulfill their responsibilities in accordance with, and the language used for the documents often must conform to, specific industry standards such as the Uniform Commercial Code. Because third parties are integral to the operation of the financial responsibility regulations, EPA has not issued regulatory language based upon first and second person subjects.

1. Who must comply with this subpart and briefly what must they do? The financial responsibility requirements for the standardized permit largely mirror the provisions found currently in 40 CFR part 264 subpart H. As discussed more fully below, the major differences involve the pay-in period for a trust for a new facility, and the adoption of a financial test that differs from the current financial test under 40 CFR part 264 subpart H. Both of these provisions were included in the proposal. Under § 267.140, you must comply with these regulations if you are the owner or operator of a facility that treats or stores waste under a standardized permit, except as provided under § 267.1(b), and § 267.140(d) which, like current part 264 subpart H, exempts the States and the Federal government from the requirements of this subpart. If you are subject to these regulations, you must prepare a closure cost estimate, demonstrate financial assurance for closure, and demonstrate financial assurance for liability. You must also notify the Regional Administrator if you are named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U.S. Code.

2. Definitions. The definitions and terms in § 267.141 largely follow those currently used in § 264.141. As discussed below, the proposed regulatory text included, as a method of complying with the financial assurance requirements, a financial test that reflected the test that EPA had proposed for other hazardous waste TSDFs. Because this proposed test did not use some of the terms in the part 264 financial test, EPA omitted those

definitions from proposed part 267. For the standardized permit rule, EPA has adopted the financial tests that were contained in the proposal and so the definitions that were omitted from the proposal are again omitted from the final text of § 267.141.

3. Closure cost estimates. For traditional permits, the closure plan forms one of the bases for estimating closure costs. However, under the proposed rule, the holder of a standardized permit would not have had to prepare a closure plan until 180 days before closure. Therefore, EPA developed proposed regulatory language that could accommodate this difference. As previously discussed, many commenters objected to this provision (in part because of the difficulty of developing precise cost estimates in the absence of a closure plan) and so in the final rule, EPA has required that the closure plan be submitted with the Notice of Intent and be approved before the issuance of the standardized permit. (See section H. Subpart G, Closure preceding this section for further discussion of this issue.) Because approval of the closure plan is now required before the issuance of the standardized permit, the closure cost estimating requirements can be and are the same as for holders of individual permits. Thus, the regulatory language that was included in the proposal that would have accommodated the difference between proposed § 267.142(a)(1), (2), and (5) and the current part 264 subpart H has been removed from the final rule, and a new § 267.142(c) added. Under § 270.275(i), a copy of the closure cost estimate must be submitted with the Notice of Intent. This is consistent with the requirement for other permits in § 270.14(b)(15).

As under the requirements for other permitted facilities, you must develop and keep at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the closure requirements of §§ 267.111 through 267.117, and applicable closure requirements in §§ 267.176, 267.201, and 267.1108. As under the requirements for facilities operating under individual permits, you must base these cost estimates upon a closure plan. Under § 267.142(a)(1), the estimate must equal the cost of final closure at the point in your facility's active life when the extent and manner of its operation would make closure the most expensive. We are requiring in § 267.142(a)(2) that you base the closure cost estimate on the cost to hire a third party to close the facility. In addition, the closure cost estimate may not

incorporate any salvage value from the sale of hazardous waste, non-hazardous waste, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure (§ 267.142(a)(3)). This disallowance of a salvage credit reflects the Agency's conviction that allowing salvage value to be credited is inconsistent with the goal of ensuring adequate funds are available in the event that the owner or operator fails to cover the costs of closure. Further, your cost estimate may not incorporate a zero cost for hazardous waste or non-hazardous waste that you might be able to sell. The value of waste at closure sometime in the future is too speculative to allow it to offset closure costs (§ 267.142(a)(4)).

Under § 267.142(b), you must adjust the closure cost estimate for inflation within 60 days before the anniversary date you established for the financial instruments utilized to comply with § 267.143. Proposed § 267.143, which we discuss below, would require an instrument to demonstrate financial assurance for closure. If you use the financial test or corporate guarantee to demonstrate financial responsibility, you must update your closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submitting the updated financial test information to the Regional Administrator. Because the financial test submission must be updated for inflation within 90 days of the close of the firm's fiscal year, effectively both users of the financial test and corporate guarantee, and users of the other mechanisms must update the cost estimates on the same schedule.

However, we requested public comment on whether to change the deadline for updating the cost estimate for inflation for users of the financial test to 90 days after the close of the fiscal year. Changing to 90 days would have made this requirement the same as the deadline for updating the financial test. After evaluating the public comments, we decided to keep the dates for updating cost estimates for holders of standardized permits the same as for individual permits. Changing these dates would have made them inconsistent with the dates for individual permits. While two commenters recommended the change, another recommended against it and we determined that keeping the dates consistent with the other program requirements would be preferable.

In adjusting your cost estimate, you may recalculate the maximum costs in current dollars or use an inflation factor derived from the Implicit Price Deflator

for Gross Domestic Product published by the U.S. Department of Commerce. This is a slightly different specification for the adjustment than is currently in § 264.142 because those regulations specify the use of the Implicit Price Deflator for Gross National Product rather than the Gross Domestic Product. We proposed using the Gross Domestic Product deflator under this rule because the Gross Domestic Product Deflator is more readily available. Generally, the differences between the two series are not significant and we believe using the more readily available information will help you to better comply with the requirement to adjust your cost estimate for inflation. We received no adverse comment on using the Gross Domestic Product deflator and therefore, have included it in the final rule. EPA notes it has issued guidance allowing owners and operators of facilities with individual permits to use the Implicit Price Deflator for Gross Domestic Product under § 264.142 so long as they are consistent in its use.

Under proposed § 267.142(a)(5), you would have been required to revise your closure cost estimate in accordance with the closure plan within 30 days after submitting your closure plan. This provision is not part of the final rule because now the closure plan must be submitted with the Notice of Intent. The requirements for closure costs are the same in § 267.142 as in § 264.142. You would also adjust the revised closure cost estimate for inflation as proposed in § 267.142(b). These requirements mirror those currently in part 264 for facilities operating under individual permits and have been incorporated into this final rule.

As with the current § 264.142(c) requirement, under § 267.142(c), you must update the closure cost estimate when a modification to the closure plan has been approved. If you modify your operations so that the cost of closure would increase, you must increase the closure cost estimate and provide financial assurance for that amount under § 267.143.

Similarly, the requirements in § 267.142(d) correspond to the existing requirements in § 264.142(d) and require you to maintain the latest cost estimate at the facility, and, when the cost estimate has been adjusted for inflation as required under § 267.142, the latest adjusted closure cost estimate.

In the preamble and docket to the proposed rule, we described several options that the holder of a standardized permit could use to develop a closure cost estimate in the absence of a closure plan. As discussed more fully above in Subpart G—Closure, EPA is requiring

facilities to submit a closure plan as part of the Notice of Intent and the closure plan will be available when the closure cost estimate is prepared. As a result, the final rule does not need to contain tools to develop a closure cost estimate in the absence of a closure plan. However, because of comments suggesting that the various options for developing closure cost estimates could be useful, we note that the Options remain in the docket and may be used as aids in computing cost estimates.

EPA also requested comment on waiving cost estimates for facilities that use the financial test (Option 6). Some commenters objected to this because firms can initially pass the financial test, but then later fail to qualify. Such firms will need a cost estimate to determine the amount of the replacement financial assurance instrument. EPA agrees with the comments that having a cost estimate will be useful in determining the amount of a replacement financial assurance instrument, if a facility later fails to qualify and, so, EPA is not providing a waiver for cost estimates for facilities that use the financial test. One of the commenters noted that a firm could pass the financial test and then declare bankruptcy without a cost estimate so that the permitting authority could have difficulty in presenting a claim in bankruptcy court. EPA notes that closure costs are not actually "claims" in bankruptcy court, but are regulatory obligations imposed via governmental policy and regulatory filings and, as such, continue despite a bankruptcy filing. The Agency agrees, however, that having a cost estimate in place during a bankruptcy may be helpful, not only because it aids the owner/operator in evaluating its financial and environmental obligations, but also because it may assist the regulatory authority in determining the extent of the owner/operator's regulatory obligations.

4. Financial assurance for closure. We designed the requirements in § 267.142 to ensure that the cost estimate which forms the basis for determining the amount of the financial assurance instrument required in § 267.143 would provide sufficient funds to close the facility properly at any time. We want to ensure that there would be sufficient financial resources to close the facility properly even in the event that the facility enters bankruptcy. The requirements in § 267.143 specify the mechanisms from which you must choose to demonstrate financial assurance for closure obligations.

The requirements in § 267.143 allow the use of the same mechanisms that are

available to owners and operators of facilities operating under individual permits currently issued under part 264. However, we have made modifications to these requirements (from the analogous requirements in part 264) to account for the particular circumstances of the standardized permit. The differences between the requirements under §§ 264.143 and 267.143 are discussed below.

Closure Trust Fund (§ 267.143(a))

Under § 267.143(a), the pay-in period for the closure trust fund for a facility with a standardized permit differs slightly from the pay-in period for facilities with individual permits issued under part 264. Currently, if you have a new facility seeking coverage under a part 264 permit, you must make annual payments into the trust fund over the remaining life of your facility, as estimated by your closure plan, or over the life of the permit (which is usually ten years), whichever is shorter. Under the proposed standardized permit procedures, however, we proposed a period of three years as the pay-in period. We chose this time period (which is shorter than the life of the permit as currently allowed for individual permits under § 264.143(a)(3)) because the current requirements in § 264.143(a)(3) were selected to accommodate the types of operations, such as landfills, which would normally be receiving waste over a period of years, with potentially increasing closure costs over that time period. Conversely, we did not expect facilities proposing to operate under the standardized permit to build up their waste volumes, and the resulting closure costs, over time. Moreover, the cost for closing a facility operating under the standardized permit would not include the costs of ground water monitoring, covers, or post-closure monitoring, so we expected the cost to be less than for many of the other types of facilities with individual permits that are currently subject to § 264.143. Therefore, we anticipated that the burden of the three-year pay-in period would not be excessive. Further, we noted that requiring a three-year pay-in period can preclude some potential problems that can arise under the longer pay-in period. For example, a long pay-in period can lead to insufficient funds being available at the time of closure, if the facility closes early. If the financial condition of the permittee were to deteriorate toward the beginning of the pay-in period, the owner or operator would not yet have funded a substantial fraction of the trust, and the permitting authority could be left with insufficient

funds for closure in the event of the permittee's failure to perform closure. Furthermore, the three-year period is consistent with the requirements for financial assurance for commercial storers of PCB wastes. See § 761.65(g)(1)(i). EPA requested comment on the proposed use of three years as the pay-in period for a trust fund.

We received several comments on the pay-in period for the trust fund for new facilities. One state noted that a three-year pay-in period would reduce the incentive for interim status facilities or generators who wish to have the option to store for more than 90 days to apply for a standardized permit. However, as noted in the preamble to the proposal, the pay-in period for interim status facilities that use, or switch to, a trust fund ended on July 6, 2002 (twenty years after the effective date of the financial responsibility rules for closure and post-closure care). Conversion to a permit, whether standardized or individual, does not reopen the pay-in period or extend the pay-in period. An owner or operator who switches from another mechanism to a trust fund under a standardized permit must fully fund the trust. For a generator who wishes to obtain a standardized permit, we believe that a three-year pay-in period provides sufficient time to afford a trust fund. In addition, we note that generators are not required to use a funded trust fund and can instead use other mechanisms such as a letter of credit or surety bonds that require a smaller cash outlay.

We received a comment from a state and an industry association that the three-year pay-in period was appropriate. On the other hand, some states and the Association of State and Territorial Solid Waste Management Officials objected to the three-year pay-in period and instead recommended a fully funded trust. Upon review of these comments, the Agency believes that the three-year pay-in period strikes an appropriate balance between the need for complete financial assurance, and the possibility that immediate funding of a trust would be prohibitively expensive. Also, a state that wishes to adopt the standardized permit rule, but believes that the three-year pay-in period is too long is not precluded by RCRA from requiring immediate funding of the trust.

An existing facility whose trust fund's value is less than its closure cost estimate when it receives a standardized permit would have 60 days to increase the value of the trust to the amount of the closure cost estimate. The requirement proposed in § 267.143(a)(3)

clarified that the 60 days will apply both to existing facilities under interim status and under individual permits, regardless of when they obtain a standardized permit. This means that the facility would effectively have 60 days to increase the value of the trust. EPA received no comments on this proposal and so has included it in the final rule.

Surety Bonds (§ 267.143(b) and (c))

The proposed rule would have allowed you to use surety bonds guaranteeing either payment or performance as mechanisms to demonstrate compliance with proposed § 267.143(b) or (c), respectively. As in the existing part 264 subpart H standards, you would also have to establish a standby trust fund. Commenters objected to the use of a surety bond in the absence of a closure plan because it would place an undue burden on permitting agencies in the event that the surety had to close the facility under the performance bond. We agree with this comment, and is another reason that the Agency has required an approved closure plan to be submitted with the Notice of Intent and before the issuance of the standardized permit.

We received a comment from a state recommending that we require 120 days of notice before the cancellation of a surety bond, or a letter of credit under the solid waste financial regulations so that those regulations mirror the requirements for hazardous waste facilities. While this comment is outside of the scope of this rulemaking, we would note our agreement with the desirability of 120 days of notice before the cancellation of a surety bond or a letter of credit and point out that this is already required. The financial responsibility regulations for municipal solid waste landfill facilities are in 40 CFR 258.70 to 258.75. In 40 CFR 258.74(b)(7), the surety is permitted to cancel the bond 120 days after sending a notice of cancellation by certified mail to the owner or operator and to the State Director. 40 CFR 258.74(c)(3) has a similar requirement for advance notice of cancellation of a letter of credit. The federal regulations already incorporate the amount of notice recommended by the state in their comment.

Letter of Credit (§ 267.143(d))

The proposed regulations would allow you to use an irrevocable standby letter of credit, and a standby trust fund as specified in existing § 264.143(d). We received no significant comment on this portion of the proposal and have incorporated this portion of the proposal into the final rule.

Closure Insurance (§ 267.143(e))

Under proposed § 267.143(e), we proposed to allow you to use insurance as a mechanism for demonstrating financial assurance for closure. The requirements of this section referenced the corresponding existing requirements in § 264.143(e). We also requested comments on the conclusions of the EPA Inspector's General report about captive insurance, and on whether to require that insurers who provide financial assurance insurance policies must have a minimum rating from a rating agency.

ASTSWMO objected to allowing insurance for closure, and made the following points: "Closure insurance should not be allowed for facilities with standardized permits due to the uncertainties of insurance as an appropriate financial assurance mechanism in general and the potential problems associated with captive insurance in particular. If EPA does wish to allow closure insurance, the insurance policy must guarantee that funds will be available for closure."

In reviewing this comment, EPA contacted the commenter to seek clarification of some of the points raised. The commenter noted that closure insurance policies can present difficulties for permitting agencies because the regulations do not specify the language of the policies, but only the language of the certificate of insurance. The commenter noted that endorsements can require a careful review to ensure that they have not changed the terms of the policy in a way that would render it inconsistent with the regulatory requirements. Also, the commenter clarified that the concern of payment by policies included concern that insurers could become insolvent, as occurred with Reliance Insurance, and be unable to pay claims.

Although EPA agrees that insurance policies can require a careful review, the rights and obligations under insurance policies issued to satisfy state or federal financial assurance requirements are controlled by those requirements. Thus, where a policy is issued to comply with RCRA financial assurance requirements set forth in statutes or regulations, those requirements will be read into the policy and the policy will be effectively amended to conform to the statute. Non-conforming provisions are null and void. See, *Holmes-Appleman on Insurance*, Section 22.1 et seq., esp. pp. 365, 368, 379, 380; *Couch on Insurance*, Third Edition, Sections 19:1, 19:5 and 19:11.

The issues raised by the commenter transcend the standardized permit rule

and could apply to insurance for other financial assurance obligations under parts 264 and 265. EPA did not propose or seek comment on an alternative that would disallow insurance as a financial assurance mechanism. As noted in the preamble to the proposed rule (66 FR 52192 at 52198), we did not reopen the existing regulations to public comment, except as explicitly set forth under the proposed rule.

Because of interest by ASTSWMO and other issues involving insurance, an EPA federal advisory committee, the Environmental Financial Advisory Board, is undertaking a review of insurance as a financial assurance mechanism for Subtitle C facilities; ASTSWMO has been a part of this review. EPA believes that the suitability of insurance as a financial assurance mechanism is best resolved for all Subtitle C facilities, rather than in a piecemeal fashion, following an opportunity to review any recommendations from the Environmental Financial Advisory Board. Since companies that may seek to obtain a standardized permit may already have an insurance policy for the facility, disallowance of insurance in the standardized permit would provide an disincentive to obtaining a standardized permit. States can, however, be more stringent than the federal requirement by prescribing policy language or disallowing insurance when they adopt this rule.

We also agree with the later portion of the ASTSWMO comment that "the insurance policy must guarantee that funds will be available for closure." In the proposal, we had proposed that insurance as specified in 40 CFR 264.143(e) would be an allowable mechanism. 40 CFR 264.143(e)(4) states "The insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to the amount of the policy, upon the direction of the Regional Administrator, to such party or parties as the Regional Administrator specifies." We believe that this language addresses the concern in the ASTSWMO comment regarding the need to guarantee that funds will be available for closure.

On the issue of captive insurance, in addition to the comments from ASTSWMO, we received several comments both supporting and recommending against accepting captive insurance as a mechanism. In the proposed rule, we asked for information regarding captive insurance, but did not make any specific proposals. In this

final rulemaking, we are not determining whether or not to allow captive insurance as a financial assurance mechanism. EPA is continuing to analyze the information and comments it received on the proposed rule, and is preparing a report to Congress that was required by an EPA appropriations bill. While the focus of that report will be on insurance for municipal solid waste landfills, the analysis of financial assurance issues surrounding captive insurance may apply to both municipal solid waste and hazardous waste facilities.

Finally, we had proposed requiring that insurance providers have a minimum rating from either Standard & Poor's, Moody's, or A. M. Best. Comments on this issue included support, objections to the cost of obtaining a rating for a captive insurer, and questions about the relationship between the rating of the parent insurance company and the rating of a subsidiary that would be writing environmental policies. The Agency is still evaluating these issues and the comments submitted; therefore, the Agency is not promulgating a final rule on a minimum rating of insurers at this time.

Financial assurance.

Financial Test (§ 267.143(f)) and Corporate Guarantee (§ 267.143(g))

The proposed regulation in § 267.143(f) would have allowed the use of a financial test by you or by a corporate guarantor, as is currently provided in § 264.143(f). The test that EPA proposed differs from the test that is currently in effect in parts 264 and 265.

The proposal included changes to the financial test that would make the test less available to firms more likely to enter bankruptcy. The test would do this by changing the financial test ratios to make the test less available to firms with large debts compared with their cash flow or net worth. However, the proposed rule allowed firms that pass the financial test to assure a higher level of obligations than the current RCRA Subtitle C financial test. Under the financial test in 40 CFR parts 264 and 265, companies must have tangible net worth at least six times the amount of the obligations covered, and also of at least \$10 million. Firms that pass the proposed test must also have \$10 million in tangible net worth. They can assure an amount of obligations up to \$10 million less than their tangible net worth.

Some commenters suggested that we should reconsider the financial test in light of recent corporate failures and

financial scandals of Fortune 500 companies with audited financial statements, while other commenters argued that the regulations should make available all the mechanisms that are currently available to firms. For the reasons explained at proposal, the Agency continues to believe that the rules should contain a financial test, but are maintaining the approach included in the proposal—that is, continue to make available a mechanism that allows firms with a low probability of failure to self insure, and at the same time reduce the risk of the financial test by disallowing its use by companies that are more likely to enter bankruptcy. Some states may determine that they wish to be more stringent than this requirement and further restrict the availability of the financial test. This is allowable under RCRA.

In the proposal, we also requested comments on not requiring companies that pass the financial test to provide a cost estimate. As noted above, based upon public comment, we have decided that we will still require cost estimates from such firms.

The record keeping and reporting requirements of the proposed rule (§ 267.143(f)(2)(i)(C)) would only require a special report from the independent certified public accountant in instances where the Agency could not verify financial data in the chief financial officer's letter from the firm's financial report. The proposal was intended to reduce the reporting burden and the expense of obtaining a letter from an outside auditor for any user of the financial test whose CFO submitted information that could be verified from the user's audited financial statements. We received comments from states supporting and objecting to this change. The objection involved the difficulty for the regulatory agency in reviewing financial statements and determining whether data in the chief financial officer's letter were taken from the firm's financial report. EPA agrees that this may present some difficulties and is modifying the language of the CFO's letter to require the CFO to note whether the information in the letter is taken directly from the audited financial statement. If not, the regulation requires an outside auditor's report explaining how the information was derived. Because we continue to believe that the proposed approach, as modified, would reduce the reporting burden without significantly impacting the usefulness of the information provided, we have incorporated it in the final rule.

The proposed regulation did not prescribe language for the chief financial officer's letter as we currently

do under § 264.151(f). Commenters advised us that prescribing the language of the Chief Financial Officer's letter would facilitate compliance checks by the state permitting agency. Therefore in the final rule, we are specifying language for the CFO letter. This language appears in § 267.151(a).

Because this rulemaking does not change the financial test in parts 264 and 265, owners or operators who have both standardized permit facilities and facilities using the financial tests in parts 264 and 265 may have questions about which chief financial officer's letter to use. For facilities with the standardized permit, the chief financial officer should use the letter in § 267.151. This letter will require the enumeration of costs assured through financial tests in parts 264 and 265. For interim status or individually permitted facilities, the chief financial officer will continue to use the letters in § 264.151.

Situations may arise where an owner or operator has two types of units at a facility, one type subject to the financial assurance requirements of Part 267, and the second subject to the financial assurance requirements of Part 264 or Part 265, but cannot meet the applicable financial test for both types. For example, the owner or operator of a facility has units subject to an individual permit and provides financial assurance via the financial test in § 264.143(f). The owner or operator wants to add new units subject to a standardized permit, but does not qualify via the financial test in § 267.143(f) for those new units. Such a person would have to use a third-party financial assurance mechanism under § 267.143, to qualify for a standardized permit for the new units.

Similarly, an owner or operator may have two or more facilities, with one set of facilities subject to a standardized permit with Part 267 financial assurance, and another set subject to individual permits or operating in interim status with financial assurance via Part 264 or Part 265. The financial assurance requirement for the facilities are determined by their respective regulations. This is consistent with the situation under Parts 264 and 265. For example, an owner or operator may use a performance surety bond at the facility permitted under an individual permit that requires financial assurance consistent with Part 264, but may use a mechanism other than a bond consistent with part 265 at a facility operating under interim status.

Use of Multiple Mechanisms

Proposed § 267.143(h) would allow you to utilize a combination of

mechanisms at your facility. We received comments both supporting and objecting to this provision. The objection was that if an owner or operator could only cover part of the closure costs with the financial test, they should not be allowed to use the financial test for any of the costs, and instead should be required to use a third-party mechanism.

Because the financial test in the standardized permit rule is a better predictor of bankruptcy than the test in Parts 264 and 265, the risk of a facility qualifying for the test and then entering bankruptcy is lower than with the Parts 264/265 tests. The test in the proposal and the final rule requires that the firm have at least \$10 million more in tangible net worth than the amount assured through a financial test. Disallowing the use of the financial test in combination with a third-party mechanism could establish the situation where owners or operators each with two facilities and each with identical financial characteristics and total closure costs could have different amounts that could be covered by the financial test, based upon how the costs were distributed between their respective operations. For example, two companies could both have \$12 million in tangible net worth and meet the other requirements of the financial test with identical financial statements. The first company has two facilities, one with \$1.6 million in closure costs and the other with \$1.4 million in closure costs. The second company has one facility with \$2 million in closure costs, and another facility with \$1 million in closure costs. If EPA were to disallow the use of the financial test in combination with other mechanisms, the first company could use the test for only \$1.6 million of the closure costs, but the second could use it for \$2 million.

An all or nothing approach also could increase the incentive to underestimate closure costs, particularly for a facility with a closure cost estimate only slightly over the amount that could be covered by the test. The approach in the proposed and final rules is consistent with the regulations already adopted by EPA governing financial requirements for municipal solid waste landfills, and with an earlier proposal to revise the RCRA Subtitle C financial test, which is still under consideration (56 FR 30201, July 1, 1991), and with regulations governing third-party liability coverage. EPA determined that it should incorporate this flexibility into the final rule, but, as previously noted, under RCRA a state may adopt more stringent regulations.

Under proposed § 267.143(i), if you have multiple facilities with a standardized permit, you would be able to use a single mechanism for more than one of your facilities. This provides the same flexibility that owners or operators of facilities with individual permits or interim status facilities have under existing §§ 264.143 and 265.143. This flexibility is also included in the final rule.

5. Post closure financial responsibility. Because the proposed standardized permit rule would only be available to facilities that can clean close, the proposed standardized permit regulation did not anticipate a need for post-closure cost estimates, or financial assurance for post-closure care. Similarly there is no need for mechanisms for combining financial assurance for closure and post-closure care. Therefore, the final regulations in part 267 do not have provisions reflecting the existing requirements of § 264.144–146. As noted in § 267.111(c), however, if a unit at a standardized permit facility cannot be clean closed, then the owner/operator must apply for a permit as a landfill in accordance with 40 CFR part 270. The post closure financial responsibility regulations in §§ 264.144 and 145 would then apply.

6. Liability Requirements. We proposed to require financial assurance for third party liability for sudden accidental occurrences. We proposed that you have and maintain liability coverage of at least \$1 million per occurrence, with an annual aggregate of at least \$2 million exclusive of legal costs (§ 267.147(a)). These proposed requirements are the same as for facilities with individual permits, and apply to the facility or a group of facilities. Thus, if the owner or operator of facilities with individual permits had the required liability coverage for those facilities, then covering these facilities under the standardized permit would not increase the dollar amount of the liability coverage.

The proposed mechanisms available for demonstrating financial assurance for third party liability were the same under the standardized permit rule as for units covered by individual permits. In the proposed rule, we arranged the mechanisms in the same order as they appear for closure, even though this is different from the order currently in § 264.147. We requested comments on whether this makes the regulation easier to follow, or if we should organize proposed § 267.147 in the same order as existing § 264.147. The mechanisms for third party liability would be a trust fund (§ 267.147(a)(1)), surety bond (§ 267.147(a)(2)), letter of credit

(§ 267.147(a)(3)), insurance (§ 267.147(a)(4)), financial test (§ 267.147(a)(5)), or guarantee (§ 267.147(a)(6)). We would also allow the use of multiple mechanisms under proposed § 267.147(a)(7), as are allowed under existing § 264.147(a)(6). In the case of reordering the mechanisms in § 267.147 as they are in § 267.143, the commenters agreed with this approach. On other aspects of the proposal, there were no adverse comments and the final rule has been finalized, as proposed, with respect to these aspects.

In the proposal, we requested comments on whether pure captive insurance should be treated differently for third-party liability coverage, where coverage is based on the risk an event will occur, as compared to closure, where the risk is based on an event that will, in fact, occur. As previously noted, this rulemaking is not promulgating a decision on captive insurance.

We proposed that the standardized permit would not be available for land disposal units such as surface impoundments, landfills, land treatment facilities, or disposal miscellaneous units. Therefore, requirements for land disposal units under existing § 264.147(b) to maintain third party liability for non-sudden accidental occurrences would not be necessary for standardized permit units. The proposed regulation and the final regulation reserves § 267.147(b).

Because the proposed standardized permit was intended to rely upon limited interaction between the permittee and the permitting agency, we believed it would not be appropriate to include the provisions of existing § 264.147(c) and (d). These provisions, respectively, allow the owner or operator to request a variance from the amounts required in § 264.147(a), or allow the Regional Administrator to require a different amount. There is no corresponding provision in the proposed § 264.147 and the corresponding paragraphs were reserved. As EPA received no adverse comment on excluding these provisions, the rule is finalized, as proposed.

Along with the proposed changes to the financial test for closure, we had previously proposed changes to the financial test for liability coverage (56 FR 30201, July 1, 1991 and 59 FR 51523, October 12, 1994). The proposed changes to the financial test for liability coverage were included in the proposal for this regulation. EPA received no adverse comment on this test. As previously noted, we have promulgated the proposed financial test for closure and have also decided to promulgate the proposed financial test for liability here

as well. If a company is using the financial test for closure of its standardized permit units, and wishes to also use the financial test for third party liability coverage of its standardized permit units, it should use the chief financial officer's letter in § 267.151(a). In § 267.151(b) we have provided language for the chief financial officer's letter for companies that use the financial test only for third party liability for facilities with standardized permits.

Finally, because the financial tests for facilities regulated under interim status and individual permits differ from the financial tests under the standardized permit rules, a question may arise on which chief financial officer's letter to use to demonstrate compliance with third-party liability requirements. Companies that use the financial test only for third-party liability (and not for closure), and who also have facilities using the financial test either for a facility with an individual permit or operating under interim status, should use the language for the chief financial officer's letter in 40 CFR 264.151(g). A company that qualifies for the financial test under the individual permit regulations will also qualify under the standardized permit regulations for liability coverage. As noted previously, firms that use the financial test to provide financial assurance for closure for standardized permit units and interim and individual permit units, should use the chief financial officer's letter in § 267.151 for the standardized permit units, and the chief financial officer's letter in § 264.151 for interim status and individual permit units.

7. Other provisions of the financial requirements. We proposed that the requirements in existing § 264.148 to notify the permitting authority in the event of a bankruptcy would apply also to the standardized permit (see proposed § 267.148). We also referenced § 267.140(c). There were no adverse comments on this portion on the proposal, and we have included this provision in the final rule.

Under existing § 264.149, if your facility is in a state where EPA administers the program, but the state imposes its own financial assurance mechanism, you may continue to use the state approved mechanism. There were only three states where we administered the program, and we did not expect that these states have their own mechanisms. Therefore, we did not include an analogous provision in the proposal. We did not receive adverse comment on this omission. For the reasons discussed in the preamble to the

proposal, we did not include the analogous provision in the final rule, and have reserved § 267.149 in this final rulemaking.

In the financial responsibility regulations covering facilities with permits under part 264, States can assume responsibility for an owner or operator's compliance with existing §§ 264.143 and 147 (§ 264.150). We included a similar provision (§ 267.150) in the proposal, but requested comment on whether such a provision is appropriate for standardized permits. We asked if states did in fact undertake such responsibilities, and asked if they would do so for holders of a standardized permit. Only one state commented on this provision and noted that it was not used. While we do not believe that this provision would have much use, we also see no harm in retaining this provision to provide flexibility should the circumstance warrant it. Therefore, we have included this provision in the final rule.

The proposed language of §§ 267.143 and 267.147 references existing § 264.151, and would require the use of the language in existing § 264.151. Section 264.151 contains the exact wording of the instruments used to demonstrate financial assurance. In light of the substantial amount of text in existing § 264.151, we decided not to propose the creation of a § 267.151. This was similar to our decision not to include the instrument language in the current interim status standards in part 265. Because we received comments that we should provide standard language for the chief financial officer's letter as part of the financial test, we have provided that language in § 267.151. If the Agency promulgates changes to the financial test in §§ 264 and 265 for holders of individual permits that mirror the requirements in § 267, EPA may eliminate the language in § 267.151 and simply require the language in a revised § 264.151 in a future rulemaking.

J. Subpart I—Use and Management of Containers

The requirements of part 267 subpart I are finalized, as proposed, and apply to the storage and/or non-thermal treatment of hazardous wastes in containers. No significant comments were received on this subpart, which includes:

1. What Standards Apply to the Containers? (§ 267.171)
2. What are the Inspection Requirements? (§ 267.172)
3. What Standards Apply to the Container Storage Area? (§ 267.173)

4. What Special Requirements Do I Need to Meet for Ignitable or Reactive Waste? (§ 267.174)
5. What Special Requirements Do I Need to Meet for Incompatible Wastes? (§ 267.175)
6. What Must I Do When I Want to Stop Using the Containers? (§ 267.176)
7. What Air Emission Standards Apply? (§ 267.177)

One comment regarding residues in empty containers, addressed the applicability language in § 267.170 which refers to § 267.1(b), which in turn, refers to part 261 subpart A. The commenter suggested that instead of indirectly referencing § 261.7, we add "part 267" to the list of cites in § 261.7 as a more direct method of addressing residues remaining in empty containers. We agree with the commenter, and will finalize the language in § 267.170 as proposed, and will add the requested language to § 261.7.

K. Subpart J—Tank Systems

1. Does This Subpart Apply to Me?

The applicability language of § 267.190 is finalized, as proposed. The final rule applies to above-ground and on-ground tanks, and excludes underground and in-ground tanks. Also excluded, are tanks with underground ancillary equipment (e.g., piping).

We received several comments on the applicability of the standardized permit rule to tanks and tank systems. Most commenters believed that underground and in-ground tanks should be excluded from eligibility, noting that underground and in-ground tanks are more difficult to inspect and are difficult to perform integrity verification, noting that such tanks pose a risk of corrosion, damage, and leakage. Some commenters also argued that underground piping should not be allowed under a standardized permit, for the same reasons underground and in-ground tanks should be excluded. However, one commenter suggested that the final rule should allow underground tanks and/or piping to be eligible for the standardized permit, and that States should be given the discretion to impose individual permits when deemed necessary. The commenter also noted that certain wastes are more safely stored underground. Another commenter also supported allowing underground and in-ground tanks to be eligible for the standardized permit, suggesting the Agency incorporate similar provisions to § 264.192.

Based on the comments received and the Agency's experience in implementing the hazardous waste rules, we agree with those commenters

that argued that underground and in-ground tanks, and underground piping are inherently harder to inspect, and may be more susceptible to corrosion and leakage. The standardized permit is designed to be a streamlined approach to permitting, and therefore we believe that more complex tank systems might be better served under an individual permit. Furthermore, units under the standardized permit would be required to be clean closed, and a properly designed, constructed, and operated tank system with secondary containment should always be able to clean close with minimal unforeseen contingencies. Therefore, the final rule does not allow underground and in-ground tanks, and tanks with underground piping to be eligible for a standardized permit.

2. What Are the Required Design and Construction Standards for New Tank Systems or Components?

The requirements of § 267.191 are finalized, as proposed. We did receive a comment about the Agency not proposing design and construction standards for facilities with underground tank systems. The commenter believed that there was no reason to exclude underground piping associated with above-ground tanks provided the integrity of the underground piping is verified and documented at regular intervals. As we stated previously, underground tank systems, and above ground /on-ground tanks with underground piping are not eligible for a standardized permit. The streamlined nature of the standardized permit process does not lend itself to requiring periodic verification and documentation of underground piping integrity.

3. What Handling and Inspection Procedures Must I Follow During Installation of New Tank Systems?

The requirements of § 267.192 are finalized as proposed. No significant comments were received on this section.

4. What Testing Must I Do for New Tank Systems?

The requirements of § 267.193 are finalized as proposed, except that the title of the section is changed to read "What Testing Must I do for New Tank Systems?" One commenter requested this change to improve the clarity of the section, and we agree.

5. What Installation Requirements Must I Follow?

The tank installation requirements of § 267.194 are finalized as proposed. No

significant comments were received on this section.

6. What Are the Secondary Containment Requirements?

We are finalizing § 267.195 with some changes. In our proposal, we allowed tanks that could not detect a leak or spill within 24 hours to be eligible for the standardized permit. However, instead of providing a demonstration to the Director (as is required in 40 CFR 264.193(c)(3)), we discussed in the preamble that a facility would self-certify and document that a leak or spill cannot be detected and/or removed within 24 hours, and keep the certification on-site.

One commenter noted that the proposed rule included this provision, but was not referenced in subsequent sections about information that must be kept at the facility, or certifications that must be submitted. The standardized permit rule is intended for units (tanks, containers, containment buildings) that are easily designed and operated, and with minimal contingencies. More complex situations involving tank systems where leaks are difficult to detect, are better served under an individual permit. Furthermore, such demonstrations only serve to lengthen the overall permitting process, detracting from the intent of the rule to streamline the process as much as possible. Therefore, in the final rule, the provisions of § 267.195 will require that a facility's secondary containment system be able to detect and/or remove a leak or spill within 24 hours. The rule will not provide a self-certification provision for systems that cannot detect and/or remove leaks or spills within 24 hours. These tank systems will need an individual permit.

7. What Are the Required Devices for Secondary Containment and What Are Their Design, Operating, and Installation Requirements?

The final requirements of § 267.196 are modified from what was proposed. Specifically, although no significant comments were received on this section, we are removing the reference to "vaults" from § 267.196. Vaults are typically associated with underground tanks, and underground tanks are not eligible for a standardized permit.

8. What Are the Requirements for Ancillary Equipment?

The requirements of § 267.197 are finalized as proposed with one minor clarification to the proposed language. That change adds the words "Above ground" at the start of § 267.197(a), making the language consistent with the

language in § 264.193(f)(1). No significant comments were received on this section.

9. The Following Sections of This Subpart are Finalized as Proposed, Because no Significant Comments Were Received.

- What are the general operating requirements for my tank system? (§ 267.198)
- What inspection requirements must I meet? (§ 267.199)
- What must I do in case of a leak or spill? (§ 267.200)
- What must I do when I stop operating the tank system? (§ 267.201)
- What special requirements must I meet for ignitable or reactive wastes? (§ 267.202)
- What special requirements must I meet for incompatible wastes? (§ 267.203)
- What air emission standards apply? (§ 267.204)

L. Subpart DD—Containment Buildings

No comments were received on Subpart DD of Part 267, therefore §§ 267.1100 through 267.1108 are finalized as proposed.

V. Section by Section Analysis and Response to Comments for Part 270—EPA Administered Permit Programs: The Hazardous Waste Permit Program

This part of the RCRA hazardous waste regulations contains specific requirements for permit applications, permit conditions, changes to permits, expirations and continuation of permits, interim status, and special forms of permits.

A. Specific Changes to Part 270

1. Purpose and Scope.

Section 270.1 has been finalized with changes to what facilities are eligible for a standardized permit, as discussed previously. We are also using the following language "Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that generate hazardous waste * * *" The change was intended to further clarify the types of facilities that may be eligible for the standardized permit. No significant comments were received on this section.

2. Definitions

The proposed definitions at § 270.2 for permit and standardized permit are finalized as proposed. No significant comments were received on this section.

3. Permit Applications

The requirements of § 270.10(a) are finalized as proposed. No significant comments were received on this section.

4. Permit Re-Application

The requirements of § 270.10(h) are finalized as proposed. No significant comments were received on this section.

5. Transfer of Permits

The requirements of § 270.40 are changed to indicate how the standardized permit can be modified to reflect a change in ownership. The final rule adds to § 270.40 a reference to § 124.213 (routine changes with prior approval). Comments on this issue are discussed in the preamble at Section III.D—Maintaining a Standardized Permit. With this change, transfer of permits would be a routine change with prior approval of the Director.

6. Modification or Revocation and Reissuance of Permits

The requirements of § 270.41 are finalized as proposed. Comments on this section were discussed previously in the preamble at Section III.A.2.

7. Continuation of Expiring Permits

One commenter noted that in cases where an expiring standardized permit holder is informed that he/she is no longer eligible to continue operating under a standardized permit, the expiring permit holder only has 60 days to submit a part B permit application. Sixty days, the commenter noted, would not be sufficient time to submit the needed materials, and suggests 120 days to submit the information, just as interim status facilities have 120 days to submit their Part B information. We disagree with the commenter. As noted previously, while the permit application submitted to EPA does not need to contain all the information contained in the Part B permit application, that information must still be kept on-site at the facility and available for inspection. Therefore, we believe that 60 days should be adequate time to package and submit the Part B application.

8. Standardized Permits

The language at § 270.67 is finalized as proposed with a minor modification. The applicability of standardized permits has already been discussed previously in this preamble. The modification to this section is to the reference to subpart I of part 270. The part 270 requirements formerly in proposed Subpart I are finalized as part 270 subpart J. Also, the term "TSD" is added, for reasons described previously for § 270.1(b).

B. RCRA Standardized Permits for Storage and Treatment Units

This part of the preamble discusses the new part 270 subpart J requirements for RCRA Standardized Permits for Storage and Treatment Units, originally proposed as part 270 subpart I.

1. General Information About Standardized Permits

a. What Is a RCRA Standardized Permit?

The language in § 270.250 is finalized as proposed. No significant comments were received on this section.

b. Who Is Eligible for a Standardized Permit?

The language in § 270.255 is finalized with changes to what facilities are eligible for the standardized permit. Eligibility was discussed earlier in this preamble in Section II.D.

c. What Requirements of Part 270 Apply to a Standardized Permit?

The language of § 270.260 is finalized as proposed. No significant comments were received on this section.

2. Applying for a Standardized Permit

a. How Do I Apply for a Standardized Permit?

Applying for a standardized permit is discussed earlier in this preamble (see Section III.A. for further discussion). The language of § 270.270 is finalized as proposed. No significant comments were received on this section.

b. What Information Must I Submit to the Permitting Agency To Support My Standardized Permit?

Section 270.275 lists the information that must be submitted to the permitting agency in support of the standardized permit. The final rule adds additional items to this section. These items are the closure plan, documentation demonstrating financial assurance for closure, and, for eligible facilities receiving wastes from off-site, a waste analysis plan, and documentation that the off-site and the receiving facility are under the same ownership. We received comments on the need for submitting a closure plan with the Notice of Intent, rather than 180 days prior to closure. (See preamble section IV.H.3.) The closure cost estimates and financial assurance for closure requirements are further discussed in the preamble in section IV.I. One commenter suggested adding to § 270.275 language providing for an optional submission of information detailing suggested specifications for supplemental terms and conditions, if any, that the owner or operator of the facility, would like the

Director to consider including in their supplemental portion of the standardized permit. A voluntary submission of information was also discussed in the proposed preamble of the proposed rule (see 66 FR 52202, section IV.A.1.). We chose not to include applicable language in the regulatory section, because there is nothing that would prevent the owner/operator of the facility from suggesting such supplemental terms and conditions in their submission.

c. What Are the Certification Requirements?

The signed certification, pursuant to § 270.280, documents the facility owner/operator's compliance with the requirements of part 267. The signed certification is based upon a compliance audit performed either by or for the facility owner/operator.

Proposed § 270.280(a)(ii) is being changed to reflect our intent that a facility (in the case of an existing facility) be in compliance at the time they submit their Notice of Intent, and that if a facility is not in compliance with part 267, based upon their audit and certifications, it should not submit its Notice of Intent until it comes into compliance, and in the case of new facilities, that they be designed and constructed to comply. The new language will read: "Has been designed, and will be constructed and operated to comply with all applicable requirements of 40 CFR part 267, and will continue to comply until expiration of the permit." The facility's audit may either be a self or third party audit. (See section III.A.1.b. of this preamble for a discussion on compliance audit comments.)

3. Conducting Compliance Audits

The following section provides information to assist owners/operators who are seeking a standardized permit to conduct compliance audits, as required by part 270.275(f). Compliance audits may be conducted by either the applicant or a third party.

a. Section 270.275(f) requires the standardized permit applicant to submit to the permitting authority an audit of the facility's compliance status with 40 CFR part 267. When conducting this audit, the auditor may consult the Protocol for Conducting Environmental Compliance Audits of Treatment, Storage and Disposal Facilities under the Resource Conservation and Recovery Act, EPA-305-B-98-006 (December 1998). You will find that protocol at the following web address: <http://www.epa.gov/compliance/incentives/auditing/protocol.html>. In

addition, the auditor may consult Procedures for Conducting Compliance Audit Required by 40 CFR 270.275(f). This document is located in the Docket, as well as on the web site described in paragraph (b) below.

b. The audit must address all the requirements of part 267 that apply to the facility. The auditor may develop a site specific audit protocol or inspection checklist to be used while conducting the audit. Sample audit checklists can be found at the following web address: <http://www.epa.gov/epaoswer/hazwaste/permit/epmt/toolperm.htm>.

c. The person conducting the audit should of course have appropriate training for conducting the audit. The auditor should have a working process knowledge of the facility or of another facility with similar operations, and should have a working knowledge of the proposed 40 CFR part 267 requirements that apply to the facility.

d. The results of the audit (*i.e.*, an audit report) must be prepared documenting compliance with the applicable requirements of part 267. The audit report must be signed and certified by the auditor as accurate. The final rule adds language to § 270.280(c) clarifying that the audit (audit report) must be signed and certified by the auditor as accurate prior to submitting to the Director with the Notice of Intent.

4. What Information Must Be Kept at the Facility

The informational requirements of § 270.290 through § 270.320 are finalized as proposed, except for the portions of § 270.290 noted below.

a. Regarding proposed § 270.290(d), because we are not allowing a waiver for security provisions, the last phrase of proposed § 270.290(d) regarding the waiver is omitted in the final rule.

b. Because we are requiring a closure plan to be submitted with the Notice of Intent, we are omitting proposed § 270.290(m).

One commenter noted that, while we included requirements for information that must be kept on site for tanks and containers, we did not include a similar requirement for containment buildings. The requirements for what information must be kept on site for tanks and containers were based on the previously existing part 270 part B requirements for these units. When the requirements for containment buildings were finalized (57 FR 37265, August 18, 1992), a section detailing the part B informational requirements for those units was not provided. Therefore, in the standardized permit rule, a section in part 270 on containment buildings was not provided. In deciding what

information should be kept on site, the facility should maintain information related to the part 267 containment building requirements.

VI. State Authorization

A. Applicability of the Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states 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). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-

HSWA, that are considered less stringent than previous federal regulations.

B. Effect of State Authorization

Today's rule finalizes regulations that are not promulgated under the authority of HSWA. Thus, the standards finalized today are applicable on the effective date only in those states that do not have final authorization. Moreover, authorized states are required to modify their program only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent or reduce the scope of the Federal program, states are not required to modify their program. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the Federal program. Today's rule however, is considered to be neither more nor less stringent than the current standards. Therefore, authorized states are not required to modify their programs to adopt regulations consistent with and equivalent to today's final standards.

Because the Agency believes that the changes promulgated today will make the permitting program more efficient and save time, EPA strongly encourages States to adopt and seek authorization for this rule as soon as possible. EPA also encourages States to begin implementing this rule as soon as it is allowable under State law, while the RCRA authorization process proceeds.⁵ Note that the requirements in today's rule are not less stringent than the previous federal standards.

As in the case of individual permit procedures, a State that chooses to adopt and request authorization for issuing standardized permits must adopt permitting procedures equivalent, but not necessarily identical to those promulgated by EPA. The authorization regulations in 40 CFR 271.14 list several provisions of the permitting regulations which EPA determined are necessary for an equivalent permitting program. States would need to adopt a similar scope of legal authorities for issuing standardized permits as for individual permits.

⁵ EPA encourages States to take this approach for federal requirements where rapid implementation is important. For example, EPA encouraged States to implement State Corrective Action Management Unit Regulations, once adopted as a matter of State law, prior to authorization (see 58 FR 8677, February 16, 1993).

VII. Regulatory Assessments

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] we must determine whether a regulatory action is "significant" and therefore subject to OMB review and 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 a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

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

Pursuant to the terms of Executive Order 12866, OMB has determined that this proposed rule is a "significant regulatory action" because it raises novel legal or policy issues. As such, we submitted this action to OMB for review before publishing it in the **Federal Register**. Changes made in response to OMB suggestions or recommendations are documented in the public record in support of this final rule.

1. Assessment of Potential Costs and Benefits

For regulations that are projected to have significant economic impacts, agencies are required to conduct a "Regulatory Impact Assessment" of potential costs and benefits of the regulation. Although OMB has not designated this rule as economically significant, we have completed an economic analysis of it (available to the public from the EPA docket at <http://www.epa.gov/edocket>), the results of which we summarize below.

a. Description of entities to which this rule applies. This rule potentially applies to approximately 870 to 1,130 existing private sector and Federal facilities which non-thermally treat and/or store RCRA hazardous waste in tanks, containers, and containment buildings either "on-site" (*i.e.*, at the waste generator site), or at "off-site" facilities that receive waste from off-site, provided that the company/institution is under the same ownership. Eligible

facilities may voluntarily participate in the RCRA standardized permit program. We designed the final rule to reduce the paperwork reporting burden for eligible facilities, as well as to reduce EPA and state administrative review time for these permit activities. Eligible facilities are a mix of small, medium and large facilities.

b. Description of potential impacts of this rule. The RCRA standardized permit rule is designed to streamline the regulatory burden to EPA/states, as well as to private sector and Federal facilities covered by the rule, by reducing the amount of information collected, submitted and reviewed for RCRA permit actions (*i.e.*, new RCRA permit applications, RCRA permit modifications, and RCRA permit renewals). Our economic analysis presents monetary estimates of the future average annual impact expected for five potential impact categories: (1) Paperwork burden reduction, (2) benefits and costs associated with changes to closure financial assurance (three-year pay-in period, financial ratio test, and independent financial audit report), (3) cost for facility certification audit, (4) improvement in financial return on waste management capital assets and investments, and (5) potential reduction in state hazardous waste fees paid by eligible facilities for RCRA permitting.

Based on our economic analysis, we estimate potential average annual cost savings to between 870 to 1,130 eligible facilities of \$100 to \$20,800 per permit action (*i.e.*, between 2 to 480 paperwork burden hours reduction per permit action), which represents a 4% to 40% reduction in burden hours compared to the conventional RCRA permit process. The extent of reduction depends on the type of permit action (*i.e.* new or interim status permits, conversion of existing permits, permit renewals, or permit modifications), and the type of eligible waste management unit (*i.e.* tank, container, or containment building). We estimate an average of 55% of annual permit actions will involve container systems, 43% will involve tank systems (although some small fraction of tanks may be ineligible in-ground and underground tanks), and 2% containment buildings. Aggregated over a future 30-year average annual 166 to 202 RCRA standardized permit actions (11% of which are expected to consist of conversion of existing permits, 61% of interim status and new facility permit applications, 18% modification permit applications, and 10% permit renewal applications upon expiration), produces an expected national paperwork cost savings benefit of \$1.3 million to \$3.4

million annually. This annual savings consists of 35% to 94% of benefits to eligible facilities, and 6% to 65% of benefits to EPA/state permit authorities (numerical ranges reflect two alternative estimation methods). Potential cost savings benefits are incremental to the average annual cost associated with the current (conventional) RCRA permitting process.

In addition to paperwork burden savings, our economic analysis also estimates \$0.01 million to \$0.12 million in average annual potential improvement in financial return to eligible hazardous waste management capital assets and investments (*i.e.* tanks, containers, and containment buildings), from expediting by 2.5 to 28 months per permit action, the time required for the RCRA permitting process. We also estimate a potential net annual cost of \$0.03 million to \$0.04 million associated with changes to closure financial assurance, and potential annual costs of \$0.005 million (if self-audit) to \$2.6 million (if third-party audit) for the certification audit. Taking both benefits and added costs into consideration, we estimate the net annual economic impact of the rule at \$2.8 to \$3.5 million in potential annual paperwork burden cost savings. In addition, we estimate a potential reduction of \$7.2 to \$8.8 million per year in hazardous waste permitting fees paid by eligible facilities to state governments, which represents a "transfer payment" impact, rather than a real resource "economic impact," to avoid double-counting state government paperwork burden impacts in our analysis. This does not necessarily translate into a net revenue loss to state governments, as states may beneficially reallocate these annual administrative resources to other revenue-generating activities. From the perspective of eligible facilities, the potential reduction in state fees added to the net reduction in annual costs to facilities associated with RCRA hazardous waste permits, provides a potential annual regulatory relief to eligible facilities of \$10.0 million to \$12.3 million per year.

These impact estimates represent hypothetical adoption of this rule by all state governments. However, the net benefits of the rule may be less than estimated because not all states may act immediately to change their state laws in order to adopt the standardized permit. Such an assumption is unlikely to occur in practice because (1) it will take states some time to change their laws, and (2) some states may choose not to adopt the EPA rule. For example, five states (AR, GA, MI, TN, WA) oppose offsite facility eligibility based

on state government comments to the October 2001 proposed rule. These five states accounted for 64 (11%) of the 595 offsite facility universe in the 2001 RCRA Biennial Report count of waste management facilities (*i.e.* facilities which received RCRA hazardous waste shipments from offsite). If these five states do not adopt the off-site portion of this voluntary rule, it will result in an 11% smaller net benefit estimate for this final rule.

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 2050-0182.

Section 270.275 requires that applicants for a standardized permit submit to the permitting agency a Notice of Intent that will be used as the basis of the standardized permit application. This information includes:

- The Part A permit application required by § 270.13;

- A summary of the pre-application public meeting and other materials required by § 124.31;

- Documentation of compliance with the location standards of §§ 267.18 and 270.14(b)(11);

- Information that allows the Director to carry out his obligations under other Federal laws required in § 270.3;

- A closure plan as described in § 267.112;

- Solid waste management unit information required by § 270.14(d);

- For facilities managing wastes generated off-site, a copy of the waste analysis plan;

- For facilities managing wastes generated off-site, documentation showing that the waste generator and the receiving facility are under the same ownership;

- A signed certification of the facility's compliance with part 267, as specified at Section. 270.280 and an audit report of the facility's current compliance status; and;

- The most recent closure cost estimate and a copy of the documentation required to demonstrate financial responsibility.

EPA needs this information to comprehensively evaluate the potential risk posed by facilities seeking permits. This information aids EPA in meeting its goal of ascertaining and minimizing risks to human health and the environment from hazardous waste management facilities.

In addition, facilities that store or treat hazardous waste under a

standardized permit must keep at their facilities general types of information (§ 267.290), as well as unit-specific information for containers (§ 267 Subpart I), tanks (§ 267 Subpart J), and containment buildings (§ 267 Subpart DD), equipment subject to part 264, subpart BB (§ 270.310), and tanks, containers and containment buildings subject to part 264, subpart CC (§ 270.315). EPA anticipates that the owner or operator will use this information to ensure that tanks, containers, containment buildings, and other equipment are in good condition, that operating requirements are being satisfied, and to prevent placing in proximity wastes that are incompatible with other wastes that are likely to ignite or explode. These requirements contribute to EPA's goal of insuring that hazardous waste management facilities are operated in a manner fully protective of human health and the environment. Information collection requirements in the standardized permit rule are authorized by sections 2002 and 3007 of RCRA, as amended. In particular, section 2002 gives the Administrator the authority to promulgate such regulations as are necessary to carry out the functions of this subchapter. Section 3007 gives EPA the authority to compel anyone who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes to "furnish information related to such wastes" and make such information available to the government for "the purposes of * * * enforcing the provisions of this chapter." EPA believes the information collection requirements in this rule are consistent with the Agency's responsibility to protect human health and the environment.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that would be requested pursuant to the proposed information collection requirements. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108. Further, no questions of a sensitive nature are included in the proposed information collection requirements.

EPA estimates that a future 3-year average annual 175 (permitted, interim status, and new) on-site captive TSDFs

per year will apply for a RCRA standardized permit in the years after its implementation (not counting a small additional amount of eligible federal facilities which are excluded from ICRs). The Agency has not estimated the burden for eligible off-site facilities. In the ICR, EPA estimates average annual respondent burden to be about 14,400 hours at an annual cost of \$1.42 million, and average annual agency (EPA/state) burden to be about 11,200 hours at an annual cost of \$0.58 million (which on a combined bases totals 25,600 hours/year at \$2.0 million/year). Assuming each eligible TSDF responds once annually (*i.e.* process a RCRA permit action), the average burden per response would be 82 hours. It is important to note that these ICR burden estimates are absolute magnitudes, not incremental; *i.e.* these estimates do not net-out the baseline burden of the existing conventional RCRA permitting process, as was done in the economic analysis summarized a few sections above.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or 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 in 40 CFR 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) 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 as defined by the Small Business Administration's (SBA) regulations 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 final rule on small entities, I certify that this action will not have a significant economic 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 economic effect on all of the small entities subject to the rule. The final rule is expected to provide net annual benefits (in the form of administrative paperwork burden reduction cost savings) from the voluntary participation by eligible facilities in the private sector. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities eligible for the rule.

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 UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before

promulgating an EPA rule which must have a written statement, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes an explanation with the final rule. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not authorized for the RCRA program and therefore will not be implementing these rules.

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 final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Rather, it would provide more flexibility for States to implement already-existing requirements in the RCRA permitting program. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

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 9, 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. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There is no impact to tribal governments as a result of the standardized permit. Thus, Executive Order 13175 does not apply to this rule.

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

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pubic 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 us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not establish any new technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and the National Environmental Justice Advisory Council, we have initiated efforts to incorporate environmental justice into our policies and programs. We are committed to addressing environmental justice concerns and

have assumed a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. Our goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of our policies, programs, and activities, and that all people live in clean and sustainable communities. To address this goal, we considered the impacts of this rule on low-income populations and minority populations.

We concluded that today's final rule will meet environmental justice goals because the public involvement process set forth in today's rule provides the opportunity for all potentially affected segments of the population to participate in public hearings and/or to provide comment on health and environmental concerns that may arise pursuant to a permitting action.

K. The 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 30 days after publication in the **Federal Register**.

VIII. List of References

1. RCRA Standardized Permit Rule Response to Comments Document. EPA Office of Solid Waste, Permits and State Programs Division. March 2005.
2. RCRA Part A Application. EPA/8700-23, May 2002.
3. Economics Background Document: Estimate of Potential National Regulatory Cost Savings for USEPA's RCRA Hazardous Waste Management "Standardized" Permit Final Rule. EPA Office of Solid Waste, Economics, Methods & Risk Analysis Division, March 29, 2005.
4. Protocol for Conducting Environmental Compliance Audits of Treatment, Storage and Disposal Facilities under the Resource Conservation and Recovery Act, EPA-305-B-98-006 (December 1998).
5. Procedures for Conducting Compliance Audit Required by 40 CFR 270.275(f). EPA

Office of Enforcement and Compliance Assurance.

List of Subjects

40 CFR Part 124

Administrative practice and procedure, Hazardous waste, RCRA permits.

40 CFR Part 260

Hazardous waste management system.

40 CFR Part 261

Identification and listing of hazardous waste.

40 CFR Part 267

Corrective action, Financial assurance, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements, Standardized permit requirements.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Incorporation by reference, Permit application and modification procedures, RCRA permits, Standardized permit requirements.

Dated: July 28, 2005.

Stephen L. Johnson,
Administrator.

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

PART 124—PROCEDURES FOR DECISION MAKING

■ 1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

■ 2. Section 124.1 is amended by revising paragraph (b) to read as follows:

§ 124.1 Purpose and scope.

* * * * *

(b) Part 124 is organized into five subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these provisions. Subparts B through D and Subpart G supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for

administrative appeal of the final permit decisions. Subpart B contains public participation requirements applicable to all RCRA hazardous waste management facilities. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D contains specific procedural requirements for NPDES permits. Subpart G contains specific procedural requirements for RCRA standardized permits, which, in some instances, change how the General Program Requirements of subpart A apply in the context of the RCRA standardized permit.

* * * * *

■ 3. Section 124.2 is amended by revising the definition of "Permit" in paragraph (a) and adding a definition for a "Standardized permit" in alphabetical order to read as follows:

§ 124.2 Definitions.

(a) * * *

Permit means an authorization, license or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part and parts 122, 123, 144, 145, 233, 270, and 271 of this chapter. "Permit" includes RCRA "permit by rule" (§ 270.60), RCRA standardized permit (§ 270.67), UIC area permit (§ 144.33), NPDES or 404 "general permit" (§§ 270.61, 144.34, and 233.38). Permit does not include RCRA interim status (§ 270.70), UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

* * * * *

Standardized permit means a RCRA permit authorizing management of hazardous waste issued under subpart G of this part and part 270, subpart J. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Director's discretion.

* * * * *

■ 4. Section 124.5 is amended by revising paragraph (c)(1) to read as follows:

§ 124.5 Modification, revocation and reissuance, or termination of permits.

* * * * *

(c) *(Applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) If the Director tentatively decides to modify or revoke and reissue a permit under 40 CFR 122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 270.41 (other than § 270.41(b)(3)) or § 270.42(c) (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the

proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, other than under 40 CFR 270.41(b)(3), the Director shall require the submission of a new application. In the case of revoked and reissued permits under 40 CFR 270.41(b)(3), the Director and the permittee shall comply with the appropriate requirements in 40 CFR part 124, subpart G for RCRA standardized permits.

* * * * *

■ 5. Section 124.31 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 124.31 Pre-application public meeting and notice.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section shall also apply to hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 part 270, subpart J), including renewal of a standardized permit for such units, where the renewal is proposing a significant change in facility operations, as defined at § 124.211(c). 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.

(b) Prior to the submission of a part B RCRA permit application for a facility, or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J), the applicant must hold at least one meeting with the public in order to solicit questions from the

community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b), or with the written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J).

* * * * *

■ 6. Section 124.32 is amended by revising paragraph (a) to read as follows:

§ 124.32 Public notice requirements at the application stage.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to hazardous waste units for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 CFR part 270, subpart J). The requirements of this section also 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.

* * * * *

■ 7. Subpart G is added to read as follows:

Subpart G—Procedures for RCRA Standardized Permit

General Information About Standardized Permits

Sec.

124.200 What is a RCRA standardized permit?

124.201 Who is eligible for a standardized permit?

Applying for a Standardized Permit

124.202 How do I as a facility owner or operator apply for a standardized permit?

124.203 How may I switch from my individual RCRA permit to a standardized permit?

Issuing a Standardized Permit

124.204 What must I do as the Director of the regulatory agency to prepare a draft standardized permit?

124.205 What must I do as the Director of the regulatory agency to prepare a final standardized permit?

124.206 In what situations may I require a facility owner or operator to apply for an individual permit?

Opportunities for Public Involvement in the Standardized Permit Process

124.207 What are the requirements for public notices?

124.208 What are the opportunities for public comments and hearings on draft permit decisions?

124.209 What are the requirements for responding to comments?

124.210 May I, as an interested party in the permit process, appeal a final standardized permit?

Maintaining a Standardized Permit

124.211 What types of changes may I make to my standardized permit?

124.212 What procedures must I follow to make routine changes?

124.213 What procedures must I follow to make routine changes with prior approval?

124.214 What procedures must I follow to make significant changes?

Subpart G—Procedures for RCRA Standardized Permit**General Information About Standardized Permits****§ 124.200 What is a RCRA standardized permit?**

The standardized permit is a special form of RCRA permit, that may consist of two parts: A uniform portion that the Director issues in all cases, and a supplemental portion that the Director issues at his or her discretion. We formally define the term "Standardized permit" in § 124.2.

(a) What comprises the uniform portion? The uniform portion of a standardized permit consists of terms and conditions, relevant to the unit(s) you are operating at your facility, that EPA has promulgated in 40 CFR part 267 (Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit). If you intend to operate under the standardized permit, you must comply with these nationally applicable terms and conditions.

(b) What comprises the supplemental portion? The supplemental portion of a

standardized permit consists of site-specific terms and conditions, beyond those of the uniform portion, that the Director may impose on your particular facility, as necessary to protect human health and the environment. If the Director issues you a supplemental portion, you must comply with the site-specific terms and conditions it imposes.

(1) When required under § 267.101, provisions to implement corrective action will be included in the supplemental portion.

(2) Unless otherwise specified, these supplemental permit terms and conditions apply to your facility in addition to the terms and conditions of the uniform portion of the standardized permit and not in place of any of those terms and conditions.

§ 124.201 Who is eligible for a standardized permit?

(a) You may be eligible for a standardized permit if:

(1) You generate hazardous waste and then store or non-thermally treat the hazardous waste on-site in containers, tanks, or containment buildings; or

(2) You receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then you store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

(3) In either case, the Director will inform you of your eligibility when a decision is made on your permit.

(b) [Reserved]

Applying for a Standardized Permit**§ 124.202 How do I as a facility owner or operator apply for a standardized permit?**

(a) You must follow the requirements in this subpart as well as those in § 124.31, 40 CFR 270.10, and 40 CFR part 270, subpart J.

(b) You must submit to the Director a written Notice of Intent to operate under the standardized permit. You must also include the information and certifications required under 40 CFR part 270, subpart J.

§ 124.203 How may I switch from my individual RCRA permit to a standardized permit?

Where all units in the RCRA permit are eligible for the standardized permit, you may request that your individual permit be revoked and reissued as a standardized permit, in accordance with § 124.5. Where only some of the units in the RCRA permit are eligible for the standardized permit, you may request that your individual permit be modified to no longer include those units and

issue a standardized permit for those units in accordance with § 124.204.

Issuing a Standardized Permit**§ 124.204 What must I do as the Director of the regulatory agency to prepare a draft standardized permit?**

(a) You must review the Notice of Intent and supporting information submitted by the facility owner or operator.

(b) You must determine whether the facility is or is not eligible to operate under the standardized permit.

(1) If the facility is eligible for the standardized permit, you must propose terms and conditions, if any, to include in a supplemental portion. If you determine that these terms and conditions are necessary to protect human health and the environment and cannot be imposed, you must tentatively deny coverage under the standardized permit.

(2) If the facility is not eligible for the standardized permit, you must tentatively deny coverage under the standardized permit. Cause for ineligibility may include, but is not limited to, the following:

(i) Failure of owner or operator to submit all the information required under § 270.275.

(ii) Information submitted that is required under § 270.275 is determined to be inadequate.

(iii) Facility does not meet the eligibility requirements (activities are outside the scope of the standardized permit).

(iv) Demonstrated history of significant non-compliance with applicable requirements.

(v) Permit conditions cannot ensure protection of human health and the environment.

(c) You must prepare your draft permit decision within 120 days after receiving the Notice of Intent and supporting documents from a facility owner or operator. Your tentative determination under this section to deny or grant coverage under the standardized permit, including any proposed site-specific conditions in a supplemental portion, constitutes a draft permit decision. You are allowed a one time extension of 30 days to prepare the draft permit decision. When the use of the 30-day extension is anticipated, you should inform the permit applicant during the initial 120-day review period. Reasons for an extension may include, but is not limited to, needing to complete review of submissions with the Notice of Intent (e.g., closure plans, waste analysis plans, for facilities seeking to manage hazardous waste generated off-site).

(d) Many requirements in subpart A of this part apply to processing the standardized permit application and preparing your draft permit decision. For example, your draft permit decision must be accompanied by a statement of basis or fact sheet and must be based on the administrative record. In preparing your draft permit decision, the following provisions of subpart A of this part apply (subject to the following modifications):

(1) Section 124.1 Purpose and Scope. All paragraphs.

(2) Section 124.2 Definitions. All paragraphs.

(3) Section 124.3 Application for a permit. All paragraphs, except paragraphs (c), (d), (f), and (g) of this section apply.

(4) Section 124.4 Consolidation of permit processing. All paragraphs apply; however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(5) Section 124.5 Modification, revocation and re-issuance, or termination of permits. Not applicable.

(6) Section 124.6 Draft permits. This section does not apply to the RCRA standardized permit; procedures in this subpart apply instead.

(7) Section 124.7 Statement of basis. The entire section applies.

(8) Section 124.8 Fact sheet. All paragraphs apply; however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(9) Section 124.9 Administrative record for draft permits when EPA is the permitting authority. All paragraphs apply; however, in the context of the RCRA standardized permit, the reference to draft permits is § 24.204(c) instead of § 124.6.

(10) Section 124.10 Public notice of permit actions and public comment period. Only §§ 124.10(c)(1)(ix) and (c)(1)(x)(A) apply to the RCRA standardized permit. Most of § 124.10 does not apply to the RCRA standardized permit; §§ 124.207, 124.208, and 124.209 apply instead.

§ 124.205 What must I do as the Director of the regulatory agency to prepare a final standardized permit?

As Director of the regulatory agency, you must consider all comments received during the public comment period (see § 124.208) in making your final permit decision. In addition, many requirements in subpart A of this part apply to the public comment period, public hearings, and preparation of your final permit decision. In preparing a

final permit decision, the following provisions of subpart A of this part apply (subject to the following modifications):

(a) Section 124.1 Purpose and Scope. All paragraphs.

(b) Section 124.2 Definitions. All paragraphs.

(c) Section 124.11 Public comments and requests for public hearings. This section does not apply to the RCRA standardized permit; the procedures in § 124.208 apply instead.

(d) Section 124.12 Public hearings. Paragraphs (b), (c), and (d) apply.

(e) Section 124.13 Obligation to raise issues and provide information during the public comment period. The entire section applies; however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(f) Section 124.14 Reopening of the public comment period. All paragraphs apply; however, in the context of the RCRA standardized permit, use the following reference: in § 124.14(b)(1) use reference to § 124.204 instead of § 124.6; in § 124.14(b)(3) use reference to § 124.208 instead of § 124.10; in § 124.14(c) use reference to § 124.207 instead of § 124.10.

(g) Section 124.15 Issuance and effective date of permit. All paragraphs apply, however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(h) Section 124.16 Stays of contested permit conditions. All paragraphs apply.

(i) Section 124.17 Response to comments. This section does not apply to the RCRA standardized permit; procedures in § 124.209 apply instead.

(j) Section 124.18 Administrative record for final permit when EPA is the permitting authority. All paragraphs apply, however, use reference to § 124.209 instead of § 124.17.

(k) Section 124.19 Appeal of RCRA, UIC, NPDES, and PSD permits. All paragraphs apply.

(l) Section 124.20 Computation of time. All paragraphs apply.

§ 124.206 In what situations may I require a facility owner or operator to apply for an individual permit?

(a) Cases where you may determine that a facility is not eligible for the standardized permit include, but are not limited to, the following:

(1) The facility does not meet the criteria in § 124.201.

(2) The facility has a demonstrated history of significant non-compliance with regulations or permit conditions.

(3) The facility has a demonstrated history of submitting incomplete or

deficient permit application information.

(4) The facility has submitted an incomplete or inadequate materials with the Notice of Intent.

(b) If you determine that a facility is not eligible for the standardized permit, you must inform the facility owner or operator that they must apply for an individual permit.

(c) You may require any facility that has a standardized permit to apply for and obtain an individual RCRA permit. Any interested person may petition you to take action under this paragraph. Cases where you may require an individual RCRA permit include, but are not limited to, the following:

(1) The facility is not in compliance with the terms and conditions of the standardized RCRA permit.

(2) Circumstances have changed since the time the facility owner or operator applied for the standardized permit, so that the facility's hazardous waste management practices are no longer appropriately controlled under the standardized permit.

(d) You may require any facility authorized by a standardized permit to apply for an individual RCRA permit only if you have notified the facility owner or operator in writing that an individual permit application is required. You must include in this notice a brief statement of the reasons for your decision, a statement setting a deadline for the owner or operator to file the application, and a statement that, on the effective date of the individual RCRA permit, the facility's standardized permit automatically terminates. You may grant additional time upon request from the facility owner or operator.

(e) When you issue an individual RCRA permit to an owner or operator otherwise subject to a standardized RCRA permit, the standardized permit for their facility will automatically cease to apply on the effective date of the individual permit.

Opportunities for Public Involvement in the Standardized Permit Process

§ 124.207 What are the requirements for public notices?

(a) You, as the Director, must provide public notice of your draft permit decision and must provide an opportunity for the public to submit comments and request a hearing on that decision. You must provide the public notice to:

(1) The applicant;

(2) Any other agency which you know has issued or is required to issue a RCRA permit for the same facility or

activity (including EPA when the draft permit is prepared by the State);

(3) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States;

(4) To everyone on the facility mailing list developed according to the requirements in § 124.10(c)(1)(ix); and

(5) To any units of 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.

(b) You must issue the public notice according to the following methods:

(1) Publication in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

(2) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; and

(3) Any other method reasonably calculated to give actual notice of the draft permit decision to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(c) You must include the following information in the public notice:

(1) The name and telephone number of the contact person at the facility.

(2) The name and telephone number of your contact office, and a mailing address to which people may direct comments, information, opinions, or inquiries.

(3) An address to which people may write to be put on the facility mailing list.

(4) The location where people may view and make copies of the draft standardized permit and the Notice of Intent and supporting documents.

(5) A brief description of the facility and proposed operations, including the address or a map (for example, a sketched or copied street map) of the facility location on the front page of the notice.

(6) The date that the facility owner or operator submitted the Notice of Intent and supporting documents.

(d) At the same time that you issue the public notice under this section, you must place the draft standardized permit (including both the uniform portion and the supplemental portion, if any), the Notice of Intent and supporting documents, and the statement of basis or fact sheet in a

location accessible to the public in the vicinity of the facility or at your office.

§ 124.208 What are the opportunities for public comments and hearings on draft permit decisions?

(a) The public notice that you issue under § 124.207 must allow at least 45 days for people to submit written comments on your draft permit decision. This time is referred to as the public comment period. You must automatically extend the public comment period 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.

(b) During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing. If someone wants to request a public hearing, they must submit their request in writing to you. Their request must state the nature of the issues they propose to raise during the hearing.

(c) You must hold a public hearing whenever you receive a written notice of opposition to a standardized permit and a request for a hearing within the public comment period under paragraph (a) of this section. You may also hold a public hearing at your discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(d) Whenever possible, you must schedule a hearing under this section at a location convenient to the nearest population center to the facility. You must give public notice of the hearing at least 30 days before the date set for the hearing. (You may give the public notice of the hearing at the same time you provide public notice of the draft permit, and you may combine the two notices.)

(e) You must give public notice of the hearing according to the methods in § 124.207(a) and (b). The hearing must be conducted according to the procedures in § 124.12(b), (c), and (d).

(f) In their written comments and during the public hearing, if held, interested parties may provide comments on the draft permit decision. These comments may include, but are not limited to, the facility's eligibility for the standardized permit, the tentative supplemental conditions you proposed, and the need for additional supplemental conditions.

§ 124.209 What are the requirements for responding to comments?

(a) At the time you issue a final standardized permit, you must also respond to comments received during

the public comment period on the draft permit. Your response must:

(1) Specify which additional conditions (*i.e.*, those in the supplemental portion), if any, you changed in the final permit, and the reasons for the change.

(2) Briefly describe and respond to all significant comments on the facility's ability to meet the general requirements (*i.e.*, those terms and conditions in the uniform portion) and on any additional conditions necessary to protect human health and the environment raised during the public comment period or during the hearing.

(3) Make the comments and responses accessible to the public.

(b) You may request additional information from the facility owner or operator or inspect the facility if you need additional information to adequately respond to significant comments or to make decisions about conditions you may need to add to the supplemental portion of the standardized permit.

(c) If you are the Director of an EPA permitting agency, you must include in the administrative record for your final permit decision any documents cited in the response to comments. If new points are raised or new material supplied during the public comment period, you may document your response to those matters by adding new materials to the administrative record.

§ 124.210 May I, as an interested party in the permit process, appeal a final standardized permit?

You may petition for administrative review of the Director's final permit decision, including his or her decision that the facility is eligible for the standardized permit, according to the procedures of § 124.19. However, the terms and conditions of the uniform portion of the standardized permit are not subject to administrative review under this provision.

Maintaining a Standardized Permit

§ 124.211 What types of changes may I make to my standardized permit?

You may make both routine changes, routine changes with prior Agency approval, and significant changes. For the purposes of this section:

(a) "Routine changes" are any changes to the standardized permit that qualify as a class 1 permit modification (without prior Agency approval) under 40 CFR 270.42, Appendix I, and

(b) "Routine changes with prior Agency approval" are for those changes to the standardized permit that would qualify as a class 1 modification with prior agency approval, or a class 2

permit modification under 40 CFR 270.42, Appendix I; and

(c) "Significant changes" are any changes to the standardized permit that:

(1) Qualify as a class 3 permit modification under 40 CFR 270.42, Appendix I;

(2) Are not explicitly identified in 40 CFR 270.42, Appendix I; or

(3) Amend any terms or conditions in the supplemental portion of your standardized permit.

§ 124.212 What procedures must I follow to make routine changes?

(a) You can make routine changes to the standardized permit without obtaining approval from the Director. However, you must first determine whether the routine change you will make amends the information you submitted under 40 CFR 270.275 with your Notice of Intent to operate under the standardized permit.

(b) If the routine changes you make amend the information you submitted under 40 CFR 270.275 with your Notice of Intent to operate under the standardized permit, then before you make the routine changes you must:

(1) Submit to the Director the revised information pursuant to 40 CFR 270.275(a); and

(2) Provide notice of the changes to the facility mailing list and to state and local governments in accordance with the procedures in § 124.10(c)(1)(ix) and (x).

§ 124.213 What procedures must I follow to make routine changes with prior approval?

(a) Routine changes to the standardized permit with prior Agency approval may only be made with the prior written approval of the Director.

(b) You must also follow the procedures in § 124.212(b)(1)–(2).

§ 124.214 What procedures must I follow to make significant changes?

(a) You must first provide notice of and conduct a public meeting.

(1) Public Meeting. You must hold a meeting with the public to solicit questions from the community and inform the community of your proposed modifications to your hazardous waste management activities. You must post a sign-in sheet or otherwise provide a voluntary opportunity for people attending the meeting to provide their names and addresses.

(2) Public Notice. At least 30 days before you plan to hold the meeting, you must issue a public notice in accordance with the requirements of § 124.31(d).

(b) After holding the public meeting, you must submit a modification request to the Director that:

(1) Describes the exact change(s) you want and whether they are changes to information you provided under 40 CFR 270.275 or to terms and conditions in the supplemental portion of your standardized permit;

(2) Explain why the modification is needed; and

(3) Includes a summary of the public meeting under paragraph (a) of this section, along with the list of attendees and their addresses and copies of any written comments or materials they submitted at the meeting.

(c) Once the Director receives your modification request, he or she must make a tentative determination within 120 days to approve or disapprove your request. You are allowed a one time extension of 30 days to prepare the draft permit decision. When the use of the 30-day extension is anticipated, you should inform the permit applicant during the initial 120-day review period.

(d) After the Director makes this tentative determination, the procedures in § 124.205 and §§ 124.207 through 124.210 for processing an initial request for coverage under the standardized permit apply to making the final determination on the modification request.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 8. 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, and 6974.

■ 9. In § 260.10, the first sentence of paragraph (2) of the definition of "facility" is revised to read as follows:

§ 260.10 Definitions.

* * * * *

Facility * * * *

* * * * *

(2) For the purpose of implementing corrective action under 40 CFR 264.101 or 267.101, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. * * *

* * * * *

■ 9a. Sections 260.11(c)(1), (c)(3)(xxvii), and (d)(1) are revised to read as follows:

§ 260.11 References.

* * * * *

(c) * * *

(1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 264.1035, 265.1035, 270.24, 270.25, 270.310(d)(3).

* * * * *

(3) * * *

(xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, part 261, appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 267.190(a), 268.32.

* * * * *

(d) * * *

(1) "Flammable and Combustible Liquids Code" (1977 or 1981), IBR approved for §§ 264.198, 265.198, 267.202(b).

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PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 10. 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.

■ 11. Section 261.7(a)(1) is revised to read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either: (i) an empty container; or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under parts 261 through 265, 267, 268, 270, or 124 this chapter or to the notification requirements of section 3010 of RCRA.

* * * * *

■ 12. Part 267 is added to read as follows:

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

Subpart A—General

Sec.

267.1 What are the purpose, scope and applicability of this part?

267.2 What is the relationship to interim status standards?

267.3 How does this part affect an imminent hazard action?

Subpart B—General Facility Standards

267.10 Does this subpart apply to me?

267.11 What must I do to comply with this subpart?

267.12 How do I obtain an identification number?

267.13 What are my waste analysis requirements?

267.14 What are my security requirements?

267.15 What are my general inspection requirements?

267.16 What training must my employees have?

267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?

267.18 What are the standards for selecting the location of my facility?

Subpart C—Preparedness and Prevention

- 267.30 Does this subpart apply to me?
- 267.31 What are the general design and operation standards?
- 267.32 What equipment am I required to have?
- 267.33 What are the testing and maintenance requirements for the equipment?
- 267.34 When must personnel have access to communication equipment or an alarm system?
- 267.35 How do I ensure access for personnel and equipment during emergencies?
- 267.36 What arrangements must I make with local authorities for emergencies?

Subpart D—Contingency Plan and Emergency Procedures

- 267.50 Does this subpart apply to me?
- 267.51 What is the purpose of the contingency plan and how do I use it?
- 267.52 What must be in the contingency plan?
- 267.53 Who must have copies of the contingency plan?
- 267.54 When must I amend the contingency plan?
- 267.55 What is the role of the emergency coordinator?
- 267.56 What are the required emergency procedures for the emergency coordinator?
- 267.57 What must the emergency coordinator do after an emergency?
- 267.58 What notification and recordkeeping must I do after an emergency?

Subpart E Manifest System, Recordkeeping, Reporting, and Notifying

- 267.70 Does this subpart apply to me?
- 267.71 Use of the manifest system.
- 267.72 Manifest discrepancies.
- 267.73 What information must I keep?
- 267.74 Who sees the records?
- 267.75 What reports must I prepare and to whom do I send them?
- 267.76 What notifications must I make?

Subpart F—Releases from Solid Waste Management Units

- 267.90 Who must comply with this section?
- 267.91–267.100 [Reserved]
- 267.101 What must I do to address corrective action for solid waste management units?

Subpart G—Closure

- 267.110 Does this subpart apply to me?
- 267.111 What general standards must I meet when I stop operating the unit?
- 267.112 What procedures must I follow?
- 267.113 Will the public have the opportunity to comment on the plan?
- 267.114 [Reserved]
- 267.115 After I stop operating, how long until I must close?
- 267.116 What must I do with contaminated equipment, structure, and soils?
- 267.117 How do I certify closure?

Subpart H—Financial Requirements

- 267.140 Who must comply with this subpart, and briefly, what do they have to do?

- 267.141 Definitions of terms as used in this subpart.

- 267.142 Cost estimate for closure.
- 267.143 Financial assurance for closure.
- 267.144–267.146 [Reserved]
- 267.147 Liability requirements.
- 267.148 Incapacity of owners or operators, guarantors, or financial institutions.
- 267.149 [Reserved]
- 267.150 State assumption of responsibility.
- 267.151 Wording of the instruments

Subpart I—Use and Management of Containers

- 267.170 Does this subpart apply to me?
- 267.171 What standards apply to the containers?
- 267.172 What are the inspection requirements?
- 267.173 What standards apply to the container storage areas?
- 267.174 What special requirements must I meet for ignitable or reactive waste?
- 267.175 What special requirements must I meet for incompatible wastes?
- 267.176 What must I do when I want to stop using the containers?
- 267.177 What air emission standards apply?

Subpart J—Tank Systems

- 267.190 Does this subpart apply to me?
- 267.191 What are the required design and construction standards for new tank systems or components?
- 267.192 What handling and inspection procedures must I follow during installation of new tank systems?
- 267.193 What testing must I do?
- 267.194 What installation requirements must I follow?
- 267.195 What are the secondary containment requirements?
- 267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?
- 267.197 What are the requirements for ancillary equipment?
- 267.198 What are the general operating requirements for my tank systems?
- 267.199 What inspection requirements must I meet?
- 267.200 What must I do in case of a leak or a spill?
- 267.201 What must I do when I stop operating the tank system?
- 267.202 What special requirements must I meet for ignitable or reactive wastes?
- 267.203 What special requirements must I meet for incompatible wastes?
- 267.204 What air emission standards apply?

Subparts K Through CC [Reserved]**Subpart DD—Containment buildings**

- 267.1100 Does this subpart apply to me?
- 267.1101 What design and operating standards must my containment building meet?
- 267.1102 What other requirements must I meet to prevent releases?
- 267.1103 What additional design and operating standards apply if liquids will be in my containment building?
- 267.1104 How may I obtain a waiver from secondary containment requirements?

- 267.1105 What do I do if my containment building contains areas both with and without secondary containment?
- 267.1106 What do I do if I detect a release?
- 267.1107 Can a containment building itself be considered secondary containment?
- 267.1108 What must I do when I stop operating the containment building?

Authority: 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

Subpart A—General**§ 267.1 What are the purpose, scope and applicability of this part?**

(a) The purpose of this part is to establish minimum national standards which define the acceptable management of hazardous waste under a 40 CFR part 270, subpart J standardized permit.

(b) This part applies to owners and operators of facilities who treat or store hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided otherwise in 40 CFR part 261, subpart A, or 40 CFR 264.1(f) and (g).

§ 267.2 What is the relationship to interim status standards?

If you are a facility owner or operator who has fully complied with the requirements for interim status—as defined in section 3005(e) of RCRA and regulations under 40 CFR 270.70—you must comply with the regulations specified in 40 CFR part 265 instead of the regulations in this part, until final administrative disposition of the standardized permit application is made, except as provided under 40 CFR part 264, subpart S.

§ 267.3 How does this part affect an imminent hazard action?

Notwithstanding any other provisions of this part, enforcement actions may be brought pursuant to section 7003 of RCRA.

Subpart B—General Facility Standards**§ 267.10 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

§ 267.11 What must I do to comply with this subpart?

To comply with this subpart, you must obtain an identification number, and follow the requirements below for waste analysis, security, inspections, training, special waste handling, and location standards.

§ 267.12 How do I obtain an identification number?

You must apply to EPA for an EPA identification number following the EPA notification procedures and using EPA form 8700-12. You may obtain information and required forms from your state hazardous waste regulatory agency or from your EPA regional office.

§ 267.13 What are my waste analysis requirements?

(a) Before you treat or store any hazardous wastes, you must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with this part and 40 CFR part 268.

(1) You may include data in the analysis that was developed under 40 CFR part 261, and published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(2) You must repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, you must repeat the analysis if the process or operation generating the hazardous wastes has changed.

(b) You must develop and follow a written waste analysis plan that describes the procedures you will follow to comply with paragraph (a) of this section. You must keep this plan at the facility. If you receive wastes generated from off-site, and are eligible for a standardized permit, you also must have submitted the waste analysis plan with the Notice of Intent. At a minimum, the plan must specify all of the following:

(1) The hazardous waste parameters that you will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section).

(2) The test methods you will use to test for these parameters.

(3) The sampling method you will use to obtain a representative sample of the waste to be analyzed. You may obtain a representative sample using either:

(i) One of the sampling methods described in appendix I of 40 CFR part 261; or

(ii) An equivalent sampling method.

(4) How frequently you will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.

(5) Where applicable, the methods you will use to meet the additional waste analysis requirements for specific waste management methods as specified

in 40 CFR 264.17, 264.1034(d), 264.1063(d), and 264.1083.

§ 267.14 What are my security requirements?

(a) You must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of your facility.

(b) Your facility must have:

(1) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or

(2) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

(3) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(c) You must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend "Danger—Unauthorized Personnel Keep Out." The legend must be in English and in any other language predominant in the area surrounding the facility (for example, facilities in counties bordering the Canadian province of Quebec must post signs in French, and facilities in counties bordering Mexico must post signs in Spanish), and must be legible from a distance of at least 25 feet. You may use existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

§ 267.15 What are my general inspection requirements?

(a) You must inspect your facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to:

(1) Release of hazardous waste constituents to the environment; or

(2) A threat to human health. You must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health or the environment.

(b) You must develop and follow a written schedule for inspecting, monitoring equipment, safety and emergency equipment, security devices,

and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(1) You must keep this schedule at the facility.

(2) The schedule must identify the equipment and devices you will inspect and what problems you look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump, leaking fitting, etc.).

(3) The frequency of your inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in §§ 267.174, 267.193, 267.195, 267.1103, and 40 CFR 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089, where applicable.

(c) You must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazard. Where a hazard is imminent or has already occurred, you must take remedial action immediately.

(d) You must record all inspections. You must keep these records for at least three years from the date of inspection. At a minimum, you must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

§ 267.16 What training must my employees have?

(a) Your facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. You must ensure that this program includes all the elements described in the documents that are required under paragraph (d)(3) of this section.

(1) A person trained in hazardous waste management procedures must direct this program, and must teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.

(2) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:

- (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment
- (ii) Key parameters for automatic waste feed cut-off systems.
- (iii) Communications or alarm systems.
- (iv) Response to fires or explosions.
- (v) Response to ground water contamination incidents.
- (vi) Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of your standardized permit must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

(d) You must maintain the following documents and records at your facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;

(4) Records that document that facility personnel have received and completed the training or job experience required under paragraphs (a), (b), and (c) of this section.

(e) You must keep training records on current personnel until your facility closes. You must keep training records on former employees for at least three years from the date the employee last worked at your facility. Personnel training records may accompany personnel transferred within your company.

§ 267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?

(a) You must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:

(1) You must separate these wastes and protect them from sources of ignition or reaction such as: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.

(2) While ignitable or reactive waste is being handled, you must confine smoking and open flames to specially designated locations.

(3) "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) If you treat or store ignitable or reactive waste, or mix incompatible waste or incompatible wastes and other materials, you must take precautions to prevent reactions that:

(1) Generate extreme heat or pressure, fire or explosions, or violent reactions.

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.

(4) Damage the structural integrity of the device or facility.

(5) Threaten human health or the environment in any similar way.

(c) You must document compliance with paragraph (a) or (b) of this section. You may base this documentation on references to published scientific or engineering literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in § 267.13), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

§ 267.18 What are the standards for selecting the location of my facility?

(a) You may not locate portions of new facilities where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.

(1) "Fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side.

(2) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(3) "Holocene" means the most recent epoch of the Quaternary period,

extending from the end of the Pleistocene to the present.

Note to paragraph (a)(3): Procedures for demonstrating compliance with this standard are specified in 40 CFR 270.14(b)(11). Facilities which are located in political jurisdictions other than those listed in appendix VI of 40 CFR part 264, are assumed to be in compliance with this requirement.

(b) If your facility is located in a 100-year flood plain, it must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(1) "100-year flood plain" means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.

(2) "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(3) "100-year flood" means a flood that has a one percent chance of being equaled or exceeded in any given year.

Subpart C—Preparedness and Prevention

§ 267.30 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

§ 267.31 What are the general design and operation standards?

You must design, construct, maintain, and operate your facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

§ 267.32 What equipment am I required to have?

Your facility must be equipped with all of the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals),

spill control equipment, and decontamination equipment.

(d) Water at adequate volume and pressure to supply water hose streams, or foam-producing equipment, or automatic sprinklers, or water spray systems.

§ 267.33 What are the testing and maintenance requirements for the equipment?

You must test and maintain all required facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, as necessary, to assure its proper operation in time of emergency.

§ 267.34 When must personnel have access to communication equipment or an alarm system?

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the device is not required under § 267.32.

(b) If just one employee is on the premises while the facility is operating, that person must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless not required under § 267.32.

§ 267.35 How do I ensure access for personnel and equipment during emergencies?

You must maintain enough aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, as appropriate, considering the type of waste being stored or treated.

§ 267.36 What arrangements must I make with local authorities for emergencies?

(a) You must attempt to make the following arrangements, as appropriate, for the type of waste handled at your facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

(2) Agreements designating primary emergency authority to a specific police and a specific fire department where more than one police and fire department might respond to an emergency, and agreements with any others to provide support to the primary emergency authority.

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers.

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(b) If State or local authorities decline to enter into such arrangements, you must document the refusal in the operating record.

Subpart D—Contingency Plan and Emergency Procedures

§ 267.50 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

§ 267.51 What is the purpose of the contingency plan and how do I use it?

(a) You must have a contingency plan for your facility. You must design the plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) You must implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

§ 267.52 What must be in the contingency plan?

(a) Your contingency plan must:

(1) Describe the actions facility personnel will take to comply with §§ 267.51 and 267.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(2) Describe all arrangements agreed upon under § 267.36 by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(3) List names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 267.55), and you must

keep the list up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(4) Include a current list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. In addition, you must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(5) Include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. You must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(b) If you have already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan under 40 CFR part 112, or some other emergency or contingency plan, you need only amend that plan to incorporate hazardous waste management provisions that will comply with the requirements of this part.

§ 267.53 Who must have copies of the contingency plan?

(a) You must maintain a copy of the plan with all revisions at the facility; and

(b) You must submit a copy with all revisions to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

§ 267.54 When must I amend the contingency plan?

You must review, and immediately amend the contingency plan, if necessary, whenever:

(a) The facility permit is revised.

(b) The plan fails in an emergency.

(c) You change the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.

(d) You change the list of emergency coordinators.

(e) You change the list of emergency equipment.

§ 267.55 What is the role of the emergency coordinator?

At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

§ 267.56 What are the required emergency procedures for the emergency coordinator?

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

- (1) Activate internal facility alarm or communication systems, where applicable, to notify all facility personnel, and
- (2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must:

- (1) Immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(2) Assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.

(c) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

- (1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials

decide whether local areas should be evacuated; and

(2) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800/ 424-8802). The report must include:

- (i) Name and telephone number of the reporter.
- (ii) Name and address of facility.
- (iii) Time and type of incident (for example, a release or a fire).
- (iv) Name and quantity of material(s) involved, to the extent known.
- (v) The extent of injuries, if any.
- (vi) The possible hazards to human health or the environment outside the facility.

(d) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(e) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

§ 267.57 What must the emergency coordinator do after an emergency?

(a) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(b) The emergency coordinator must ensure that, in the affected area(s) of the facility:

- (1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed.
- (2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

§ 267.58 What notification and recordkeeping must I do after an emergency?

(a) You must notify the Regional Administrator, and appropriate State and local authorities, that the facility is in compliance with § 267.57(b) before operations are resumed in the affected area(s) of the facility.

(b) You must note the time, date, and details of any incident that requires

implementing the contingency plan in the operating record. Within 15 days after the incident, you must submit a written report on the incident to the Regional Administrator. You must include the following in the report:

- (1) The name, address, and telephone number of the owner or operator.
- (2) The name, address, and telephone number of the facility.
- (3) The date, time, and type of incident (e.g., fire, explosion).
- (4) The name and quantity of material(s) involved.
- (5) The extent of injuries, if any.
- (6) An assessment of actual or potential hazards to human health or the environment, where this is applicable.
- (7) The estimated quantity and disposition of recovered material that resulted from the incident.

Subpart E—Recordkeeping, Reporting, and Notifying**§ 267.70 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that stores or non-thermally treats a hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b). In addition, you must comply with the manifest requirements of 40 CFR part 262 whenever a shipment of hazardous waste is initiated from your facility.

§ 267.71 Use of the manifest system.

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, must:

- (1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;
- (2) Note any significant discrepancies in the manifest (as defined in § 267.72(a)) on each copy of the manifest;
- (3) Immediately give the transporter at least one copy of the signed manifest;
- (4) Within 30 days after the delivery, send a copy of the manifest to the generator; and
- (5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

- (1) Sign and date each copy of the manifest or shipping paper (if the

manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in § 267.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper. Note that the Agency does not intend that the owner or operator of a facility whose procedures under § 267.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 267.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator. Note that § 262.23(c) of this chapter requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment); and

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of part 262 of this chapter. The Agency notes that the provisions of § 262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at

least three years from the date of signature.

§ 267.72 Manifest discrepancies.

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(1) For bulk waste, variations greater than 10 percent in weight; and

(2) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

§ 267.73 What information must I keep?

(a) You must keep a written operating record at your facility.

(b) You must record the following information, as it becomes available, and maintain the operating record until you close the facility:

(1) A description and the quantity of each type of hazardous waste generated, and the method(s) and date(s) of its storage and/or treatment at the facility as required by Appendix I of 40 CFR part 264;

(2) The location of each hazardous waste within the facility and the quantity at each location;

(3) Records and results of waste analyses and waste determinations you perform as specified in §§ 267.13, 267.17, and 40 CFR 264.1034, 264.1063, 264.1083, and 268.7;

(4) Summary reports and details of all incidents that require you to implement the contingency plan as specified in § 267.58(b));

(5) Records and results of inspections as required by § 267.15(d) (except you need to keep these data for only three years);

(6) Monitoring, testing or analytical data, and corrective action when required by subpart F of this part and §§ 267.191, 267.193, 267.195, and 40 CFR 264.1034(c) through 264.1034(f),

264.1035, 264.1063(d) through 264.1063(i), 264.1064, 264.1088, 264.1089, and 264.1090;

(7) All closure cost estimates under § 267.142;

(8) Your certification, at least annually, that you have a program in place to reduce the volume and toxicity of hazardous waste that you generate to the degree that you determine to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to you that minimizes the present and future threat to human health and the environment;

(9) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by you under 40 CFR 268.7; and

(10) For an on-site storage facility, the information in the notice (except the manifest number), and the certification and demonstration, if applicable, required by you under 40 CFR 268.7.

(11) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(12) For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8.

§ 267.74 Who sees the records?

(a) You must furnish all records, including plans, required under this part upon the request of any officer, employee, or representative of EPA who is duly designated by the Administrator, and make them available at all reasonable times for inspection.

(b) The retention period for all records required under this part is extended automatically during the course of any unresolved enforcement action involving the facility or as requested by the Administrator.

§ 267.75 What reports must I prepare and to whom do I send them?

You must prepare a biennial report and other reports listed in paragraph (b) of this section.

(a) Biennial report. You must prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year. The biennial report must be submitted on EPA form 8700-13B. The report must cover facility activities during the previous calendar year and must include:

(1) The EPA identification number, name, and address of the facility;

(2) The calendar year covered by the report;

(3) The method of treatment or storage for each hazardous waste;

(4) The most recent closure cost estimate under § 267.142;

(5) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste.

(6) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(7) The certification signed by you.

(b) Additional reports. In addition to submitting the biennial reports, you must also report to the Regional Administrator:

(1) Releases, fires, and explosions as specified in § 267.58(b);

(2) Facility closures specified in § 267.117; and

(3) As otherwise required by subparts I, J, and DD of this part and part 264, subparts AA, BB, CC.

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator.

§ 267.76 What notifications must I make?

Before transferring ownership or operation of a facility during its operating life, you must notify the new owner or operator in writing of the requirements of this part and 40 CFR part 270, subpart J.

Subpart F—Releases from Solid Waste Management Units

§ 267.90 Who must comply with this section?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b), or unless your facility already has a permit that imposes requirements for corrective action under 40 CFR 264.101.

§ 267.91–267.100 [Reserved]

§ 267.101 What must I do to address corrective action for solid waste management units?

(a) You must institute corrective action as necessary to protect human

health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) The Regional Administrator will specify corrective action in the supplemental portion of your standardized permit in accordance with this section and 40 CFR part 264, subpart S. The Regional Administrator will include in the supplemental portion of your standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.

(c) You must implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless you demonstrate to the satisfaction of the Regional Administrator that, despite your best efforts, you were unable to obtain the necessary permission to undertake such actions. You are not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. You must provide assurances of financial responsibility for such corrective action.

(d) You do not have to comply with this section if you are the owner or operator of a remediation waste site unless your site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

Subpart G—Closure

§ 267.110 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

§ 267.111 What general standards must I meet when I stop operating the unit?

You must close the storage and treatment units in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Meets the closure requirements of this subpart and the requirements of §§ 267.176, 267.201, and 267.1108. If you determine that, when applicable, the closure requirements of § 267.201(tanks) or § 267.1108 (containment buildings) cannot be met, then you must close the unit in accordance with the requirements that apply to landfills (§ 264.310). In addition, for the purposes of post-closure and financial responsibility, such a tank system or containment building is then considered to be a landfill, and you must apply for a post-closure care permit in accordance with 40 CFR part 270.

§ 267.112 What procedures must I follow?

(a) To close a facility, you must follow your approved closure plan, and follow notification requirements.

(1) Your closure plan must be submitted at the time you submitted your Notice of Intent to operate under a standardized permit. Final issuance of the standardized permit constitutes approval of the closure plan, and the plan becomes a condition of the RCRA standardized permit.

(2) The Director's approval of the plan must ensure that the approved plan is consistent with §§ 267.111 through 267.115, 267.176, 267.201, and 267.1108.

(b) Satisfy the requirements for content of closure plan. The closure plan must identify steps necessary to perform partial and/or final closure of the facility. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility subject to this subpart will be closed following § 267.111.

(2) A description of how final closure of the facility will be conducted in accordance with § 267.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility.

(3) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed description of the methods you will use during partial and/or final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable.

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure.

These might include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

(5) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards.

(6) A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure.

(7) For facilities that use trust funds to establish financial assurance under § 267.143 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(c) You may submit a written notification to the Director for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility, following the applicable procedures in 40 CFR 124.211.

(1) Events leading to a change in the closure plan, and therefore requiring a modification, may include:

(i) A change in the operating plan or facility design;

(ii) A change in the expected year of closure, if applicable; or

(iii) In conducting partial or final closure activities, an unexpected event requiring a modification of the approved closure plan.

(2) The written notification or request must include a copy of the amended closure plan for review or approval by the Director. The Director will approve, disapprove, or modify this amended plan in accordance with the procedures in 40 CFR 124.211 and 270.320.

(d) Notification before final closure.

(1) You must notify the Director in writing at least 45 days before the date that you expect to begin final closure of a treatment or storage tank, container storage area, or containment building.

(2) The date when you "expect to begin closure" must be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.

(3) If your facility's permit is terminated, or if you are otherwise ordered, by judicial decree or final order under section 3008 of RCRA, to cease receiving hazardous wastes or to close,

then the requirements of this paragraph (d) do not apply. However, you must close the facility following the deadlines established in § 267.115.

§ 267.113 Will the public have the opportunity to comment on the plan?

(a) The Director will provide you and the public, when the draft standardized permit is public noticed, the opportunity to submit written comments on the plan and to the draft permit as allowed by 40 CFR 124.208. The Director will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the closure plan, and the permit.

(b) The Director will give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

§ 267.114 [Reserved]

§ 267.115 After I stop operating, how long until I must close?

(a) Within 90 days after the final volume of hazardous waste is sent to a unit, you must treat or remove from the unit all hazardous wastes following the approved closure plan.

(b) You must complete final closure activities in accordance with the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit. The Director may approve an extension of 180 days to the closure period if you comply with all applicable requirements for requesting a modification to the permit and demonstrate that:

(1) The final closure activities will take longer than 180 days to complete due to circumstances beyond your control, excluding ground water contamination; and

(2) You have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(3) The demonstration must be made at least 30 days prior to the expiration of the initial 180-day period.

(c) Nothing in this section precludes you from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

§ 267.116 What must I do with contaminated equipment, structure, and soils?

You must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, you may become a generator of hazardous waste and must handle that waste following all applicable requirements of 40 CFR part 262.

§ 267.117 How do I certify closure?

Within 60 days of the completion of final closure of each unit under a part 270 subpart J standardized permit, you must submit to the Director, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both you and an independent registered professional engineer must sign the certification. You must furnish documentation supporting the independent registered professional engineer's certification to the Director upon request until he releases you from the financial assurance requirements for closure under § 267.143(i).

Subpart H—Financial Requirements

§ 267.140 Who must comply with this subpart, and briefly, what do they have to do?

(a) The regulations in this subpart apply to owners and operators who treat or store hazardous waste under a standardized permit, except as provided in § 267.1(b), or § 267.140(d) below.

(b) The owner or operator must:

(1) Prepare a closure cost estimate as required in § 267.142;

(2) Demonstrate financial assurance for closure as required in § 267.143; and

(3) Demonstrate financial assurance for liability as required in § 267.147.

(c) The owner or operator must notify the Regional Administrator if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U.S. Code (See also § 267.148).

(d) States and the Federal government are exempt from the requirements of this subpart.

§ 267.141 Definitions of terms as used in this subpart.

(a) *Closure plan* means the plan for closure prepared in accordance with the requirements of § 267.112.

(b) *Current closure cost estimate* means the most recent of the estimates prepared in accordance with § 267.142 (a), (b), and (c).

(c) [Reserved]

(d) *Parent corporation* means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) [Reserved]

(f) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

Assets means all existing and all probable future economic benefits obtained or controlled by a particular entity.

Current plugging and abandonment cost estimate means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this chapter.

Independently audited refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

Liabilities means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

Tangible net worth means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements, the terms *bodily injury* and *property damage* shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

Accidental occurrence means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

Legal defense costs means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

Sudden accidental occurrence means an occurrence which is not continuous or repeated in nature.

(h) *Substantial business relationship* means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator.

§ 267.142 Cost estimate for closure.

(a) The owner or operator must have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 267.111 through 267.115 and applicable closure requirements in §§ 267.176, 267.201, 267.1108.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (see § 267.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 267.141(d).) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 267.143. For owners and operators using the financial test or

corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 267.143(f)(2)(iii). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 267.142(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with paragraphs (a) and (c) of this section and, when this estimate has been adjusted in accordance with paragraph (b) of this section, the latest adjusted closure cost estimate.

§ 267.143 Financial assurance for closure.

The owner or operator must establish financial assurance for closure of each storage or treatment unit that he owns or operates. In establishing financial assurance for closure, the owner or operator must choose from the financial assurance mechanisms in paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section. The owner or operator can also use a combination of mechanisms for a single facility if they meet the requirement in paragraph (h) of this section, or may use a single mechanism for multiple facilities as in paragraph (i) of this section. The Regional Administrator will release the owner or operator from the requirements of this section after the owner or operator meets the criteria under paragraph (j) of this section.

(a) *Closure Trust Fund.* Owners and operators can use the "closure trust fund," that is specified in 40 CFR 264.143(a)(1) and (2), and 264.143(a)(6)–(11). For purposes of this paragraph, the following provisions also apply:

(1) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period."

(2) For a new facility, the first payment into the closure trust fund must be made before the facility may accept the initial storage. A receipt from the trustee must be submitted by the owner or operator to the Regional Administrator before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (h) of this section for multiple mechanisms. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is

$$\text{Next Payment} = \frac{\text{Current Closure Estimate} - \text{Current Value of the Trust Fund}}{\text{Divided by Years Remaining in the Pay-In Period.}}$$

(3) The owner or operator of a facility existing on the effective date of this paragraph can establish a trust fund to meet this paragraph's financial assurance requirements. If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within 60 days.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(2) or (a)(3) of this section.

(5) The owner or operator must submit a trust agreement with the wording specified in 40 CFR 264.151(a)(1).

(b) *Surety Bond Guaranteeing Payment into a Closure Trust Fund.*

Owners and operators can use the "surety bond guaranteeing payment into a closure trust fund," as specified in 40 CFR 264.143(b), including the use of the surety bond instrument specified at 40 CFR 264.151(b), and the standby trust specified at 40 CFR 264.143(b)(3).

(c) *Surety Bond Guaranteeing Performance of Closure.* Owners and operators can use the "surety bond guaranteeing performance of closure," as specified in 40 CFR 264.143(c), the submission and use of the surety bond instrument specified at 40 CFR 264.151(c), and the standby trust specified at 40 CFR 264.143(c)(3).

(d) *Closure Letter of Credit.* Owners and operators can use the "closure letter of credit" specified in 40 CFR 264.143(d), the submission and use of the irrevocable letter of credit instrument specified in 40 CFR 264.151(d), and the standby trust specified in 40 CFR 264.143(d)(3).

(e) *Closure Insurance.* Owners and operators can use "closure insurance," as specified in 40 CFR 264.143(e), utilizing the certificate of insurance for closure specified at 40 CFR 264.151(e).

(f) *Corporate financial test.* An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified in this paragraph:

(1) *Financial component.*

(i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than:

(A) The sum of the current environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section), including guarantees, covered by a financial test plus \$10 million, except as provided in paragraph (f)(1)(ii)(B) of this section.

(B) \$10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Regional Administrator.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in paragraph (f)(2)(i)(A)(1) of this section.

(2) *Recordkeeping and reporting requirements.*

(i) The owner or operator must submit the following items to the Regional Administrator:

(A) A letter signed by the owner's or operator's chief financial officer that:

(1) Lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs which EPA directly operates and obligations where EPA has delegated authority to a State or approved a State's program. These obligations include, but are not limited to:

(i) Liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR 264.101, 264.142, 264.144, 264.147, 265.142, 265.144, and 265.147;

(ii) Cost estimates required for municipal solid waste management facilities under 40 CFR 258.71, 258.72, and 258.73;

(iii) Current plugging cost estimates required for UIC facilities under 40 CFR 144.62;

(iv) Cost estimates required for petroleum underground storage tank facilities under 40 CFR 280.93;

(v) Cost estimates required for PCB storage facilities under 40 CFR 761.65;

(vi) Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act; and

(vii) Any other environmental obligations that are assured through a financial test.

(2) Provides evidence demonstrating that the firm meets the conditions of either paragraph (f)(1)(i)(A) or (f)(1)(i)(B) or (f)(1)(i)(C) of this section and paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next

sentence. The Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (f)(1)(i)(B) or (f)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (f)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days following the close of the owner or operator's fiscal year. The Regional Administrator may provide up to an

additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) of this section or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) *Corporate Guarantee.*

(1) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent

corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph (f) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording in 40 CFR 264.151(h). The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) For a new facility, the guarantee must be effective and the guarantor must submit the items in paragraph (g)(1) of this section and the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before the owner or operator places waste in the facility.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform closure (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Regional Administrator as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Regional Administrator, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the Regional Administrator. If the owner or operator fails to provide alternate financial assurance and obtain the

written approval of such alternative assurance from the Regional Administrator within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Regional Administrator within 120 days of the cancellation notice.

(4) If a corporate guarantor no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must, within 90 days, obtain alternative assurance, and submit the assurance to the Regional Administrator for approval. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, and submit it to the Regional Administrator for approval.

(5) The guarantor is no longer required to meet the requirements of this paragraph (g) when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with paragraph (j) of this section.

(h) *Use of Multiple Financial Mechanisms.* An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this section. The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), (f), and (g) respectively of this section, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The Regional Administrator may use any or all of the mechanisms to provide for closure of the facility.

(i) *Use of a financial mechanism for multiple facilities.* An owner or operator may use a financial mechanism for multiple facilities, as specified in § 264.143(h) of this chapter.

(j) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving

certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

§ 267.144–267.146 [Reserved]

§ 267.147 Liability requirements.

(a) *Coverage for sudden accidental occurrences.* An owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a)(1) through (a)(7) of this section:

(1) *Trust fund for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in 40 CFR 264.147(j).

(2) *Surety bond for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in 40 CFR 264.147(i).

(3) *Letter of credit for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in 40 CFR 264.147(h).

(4) *Insurance for liability coverage.* An owner or operator may meet the requirements of this section by obtaining liability insurance as specified in 40 CFR 264.147(a)(1).

(5) *Financial test for liability coverage.* An owner or operator may meet the requirements of this section by

passing a financial test as specified in paragraph (f) of this section.

(6) *Guarantee for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a guarantee as specified in paragraph (g) of this section.

(7) *Combination of mechanisms.* An owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by 40 CFR 264.147(a)(6).

(8) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(7) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(7) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(7) of this section.

(b)–(d) [Reserved]

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage from that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

(f) *Financial test for Liability Coverage.* An owner or operator that satisfies the requirements of this paragraph (f) may demonstrate financial assurance for liability up to the amount specified in this paragraph (f):

(1) *Financial component.*

(i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus \$10 million.

(ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.

(iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure under § 267.143(f), through a financial test must meet the requirements of § 267.143(f).

(2) Recordkeeping and reporting requirements.

(i) The owner or operator must submit the following items to the Regional Administrator:

(A) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of paragraphs (f)(1)(i) and (f)(1)(ii) of this section. If the firm is providing only liability coverage through a financial test for a facility or facilities with a permit under § 267, the letter should use the wording in § 267.151(b). If the firm is providing only liability coverage through a financial test for facilities regulated under § 267 and also § 264 or § 265, it should use the letter in § 264.151(g). If the firm is providing liability coverage through a financial test for a facility or facilities with a permit under § 267, and it assures closure costs or any other environmental obligations through a financial test, it must use the letter in § 267.151(a) for the facilities issued a permit under § 267.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section (§ 267.147) within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data

showing that the owner or operator satisfies paragraphs (f)(1)(i) and (ii) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days following the close of the owner or operator's fiscal year. The Regional Administrator may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Regional Administrator of intent to establish alternate financial assurance as

specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) *Guarantee for liability coverage.* (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(3) of this section. The wording of the guarantee must be identical to the wording specified in 40 CFR 264.151(h)(2). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(2) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation

of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of the State in which the guarantor is incorporated, and each State in which a facility covered by the guarantee is located, have submitted a written statement to EPA that a guarantee executed as described in this section and 40 CFR 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) The non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business; and

(B) The Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a guarantee executed as described in this section and 40 CFR 264.151(h)(2) is a legally valid and enforceable obligation in that State.

§ 267.148 Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Regional Administrator by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in §§ 267.143(g) and 267.147 (g) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (§ 264.151(h)).

(b) An owner or operator who fulfills the requirements of § 267.143 or § 267.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee

institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

§ 267.149 [Reserved]

§ 267.150 State assumption of responsibility.

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of § 267.143 or § 267.147 if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees principally in terms of: Certainty of the availability of funds for the required closure care activities or liability coverage; and the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: The facility's EPA Identification Number, name, and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of § 267.143 or § 267.147, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart

by use of both the State's assurance and additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

§ 267.151 Wording of the instruments.

(a) The chief financial officer of an owner or operator of a facility with a standardized permit who uses a financial test to demonstrate financial assurance for that facility must complete a letter as specified in § 267.143(f) of this chapter. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure costs, as specified in [insert "subpart H of 40 CFR part 267" or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having [insert "a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's" or "a ratio of less than 1.50 comparing total liabilities to net worth" or "a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities."]

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[If this firm qualifies on the basis of its bond rating fill in the requested information: "This firm has a rating of its senior unsecured debt of" [insert the bond rating] "from" [insert "Standard and Poor's" or "Moody's"]. Complete Line 1. Total Liabilities below and then skip the remaining questions in the next section and resume completing the form at the section entitled *Obligations Covered by a Financial Test or Corporate Guarantee.*]

[If this firm qualifies for the financial test on the basis of its ratio of liabilities to net worth, or sum of income, depreciation, depletion, and amortization to net worth, please complete the following section.]

*1. Total Liabilities	\$
*2. Net Worth	\$
*3. Net Income	\$
*4. Depreciation	\$
*5. Depletion (if applicable)	\$
*6. Amortization	\$
*7. Sum of Lines 3., 4., 5. & 6	\$

[If the above figures are taken directly from the most recent audited financial statements for this firm insert "The above figures are taken directly from the most recent audited financial statements for this firm." If they are not, insert "The following items are not taken directly from the firms most recent audited financial statements" [insert the numbers of the items and attach an explanation of how they were derived.]

[Complete the following calculations]

8. Line 1. + Line 2. = ...

9. Line 7. + Line 1. = ...

Is Line 8. less than 1.5? Yes ____ No ____

Is Line 9 greater than 0.10? Yes ____ No ____

[If you did not answer Yes to either of these two questions, you cannot use the financial test and need not complete this letter. Instead, you must notify the permitting authority for the facility that you intend to establish alternate financial assurance as specified in 40 CFR 267.143. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the

owner or operator no longer meets the requirements of this section. The owner or operator must also provide alternative financial assurance within 120 days after the end of such fiscal year.]

Obligations Covered by a Financial Test or Corporate Guarantee

[On the following lines list all obligations that are covered by a financial test or a corporate guarantee extended by your firm. You may add additional lines and leave blank entries that do not apply to your situation.]

Hazardous Waste Facility Name and ID	State	Closure	Post-Closure	Corrective Action
		\$	\$	\$
Hazardous Waste Third Party Liability				
				\$
Municipal Waste Facilities	State	Closure	Post-Closure	Corrective Action
		\$	\$	\$
Underground Injection Control	State			Plugging action
				\$
Petroleum Underground Storage Tanks				
PCB Storage Facility Name and ID	State			Closure
				\$
Any financial assurance required under, or as part of an action undertaken under, the	Comprehensive Environmental Response, Compensation, and Liability Act.			
Site name	State	Amount		
		\$		

Any other environmental obligations that are assured through a financial test.

Is Line 16 no less than Line 10? Yes ____ No ____

[You must be able to answer Yes to both these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

[After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility is located. In addition, a signed copy must be sent to every authority who (1) requires a

demonstration through a financial test for each of the other obligations in the letter that are assured through a financial test, or (2) accepts a guarantee for an obligation listed in this letter.]

(b)The chief financial officer of an owner or operator of a facility with a standardized permit who use a financial test to demonstrate financial assurance only for third party liability for that (or other standardized permit) facility(ies) must complete a letter as specified in Section 267.147(f) of this chapter. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for third party liability, as specified in [insert "subpart

Name	Amount
\$	
*10. Total of all amounts	\$
*11. Line 10 + \$10,000,000 =	\$
*12. Total Assets	\$
*13. Intangible Assets	\$
*14. Tangible Assets (Line 12. - Line 13)	\$
*15. Tangible Net Worth (Line 14. - Line 1.)	\$
*16. Assets in the United States	\$
Is Line 15 greater than Line 11? Yes ____ No ____	

H of 40 CFR part 267" or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having tangible net worth of at least \$10 million more than the amount of liability coverage and assets in the United States of at least the amount of liability coverage.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Please complete the following section.]

*1. Total Assets \$ _____
 *2. Intangible Assets \$ _____
 *3. Tangible Assets
 (Line 1 - Line 2) \$ _____
 *4. Total Liabilities \$ _____
 5. Tangible Net Worth
 (Line 3 - Line 4) \$ _____
 *6. Assets in the United
 States \$ _____
 7. Amount of liability
 coverage \$ _____

Is Line 5 At least \$10
 million greater than
 Line 7? Yes _____ No _____

Is Line 6 at least equal
 to Line 7? Yes _____ No _____

[You must be able to answer Yes to both these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

[After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility(ies) is(are) located.]

Subpart I—Use and Management of Containers

§ 267.170 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in containers under a 40 CFR part 270 subpart J standardized permit, except as provided in § 267.1(b).

§ 267.171 What standards apply to the containers?

Standards apply to the condition of the containers, to the compatibility of

waste with the containers, and to the management of the containers.

(a) Condition of containers. If a container holding hazardous waste is not in good condition (for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, you must either:

(1) Transfer the hazardous waste from this container to a container that is in good condition; or

(2) Manage the waste in some other way that complies with the requirements of this part.

(b) Compatibility of waste with containers. To ensure that the ability of the container to contain the waste is not impaired, you must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.

(c) Management of containers. (1) You must always keep a container holding hazardous waste closed during storage, except when you add or remove waste.

(2) You must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

§ 267.172 What are the inspection requirements?

At least weekly, you must inspect areas where you store containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

§ 267.173 What standards apply to the container storage areas?

(a) You must design and operate a containment system for your container storage areas according to the requirements in paragraph (b) of this section, except as otherwise provided by paragraph (c) of this section.

(b) The design and operating requirements for a containment system are:

(1) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

(2) The base must be sloped or the containment system, must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container, whichever is greater. This requirement

does not apply to containers that do not contain free liquids.

(4) You must prevent run-on into the containment system unless the collection system has sufficient excess capacity, in addition to that required in paragraph (b)(3) of this section, to contain the liquid.

(5) You must remove any spilled or leaked waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.

(c) Except as provided in paragraph (d) of this section, you do not need a containment system as defined in paragraph (b) of this section for storage areas that store containers holding only wastes with no free liquids, if:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) You must have a containment system defined by paragraph (b) of this section for storage areas that store containers holding FO20, FO21, FO22, FO23, FO26, and FO27 wastes, even if the wastes do not contain free liquids.

§ 267.174 What special requirements must I meet for ignitable or reactive waste?

You must locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from your facility property line. You must also follow the general requirements for ignitable or reactive wastes that are specified in § 267.17(a).

§ 267.175 What special requirements must I meet for incompatible wastes?

(a) You must not place incompatible wastes, or incompatible wastes and materials (see appendix V to 40 CFR part 264 for examples), in the same container, unless you comply with § 267.17(b).

(b) You must not place hazardous waste in an unwashed container that previously held an incompatible waste or material.

(c) You must separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall, or other device.

§ 267.176 What must I do when I want to stop using the containers?

You must remove all hazardous waste and hazardous waste residues from the

containment system. You must decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste or hazardous waste residues.

§ 267.177 What air emission standards apply?

You must manage all hazardous waste placed in a container according to the requirements of subparts AA, BB, and CC of 40 CFR part 264. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

Subpart J—Tank Systems

§ 267.190 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in above-ground or on-ground tanks under a 40 CFR part 270 subpart J standardized permit, except as provided in § 267.1(b).

(a) You do not have to meet the secondary containment requirements in § 267.195 if your tank systems do not contain free liquids and are situated inside a building with an impermeable floor. You must demonstrate the absence or presence of free liquids in the stored/treated waste, using Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11.

(b) You do not have to meet the secondary containment requirements of § 267.195(a) if your tank system, including sumps, as defined in 40 CFR 260.10, is part of a secondary containment system to collect or contain releases of hazardous wastes.

§ 267.191 What are the required design and construction standards for new tank systems or components?

You must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. You must obtain a written assessment, reviewed and certified by an independent, qualified registered professional engineer, following 40 CFR 270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of

hazardous waste. This assessment must include, at a minimum, the following information:

- (a) Design standard(s) for the construction of tank(s) and/or the ancillary equipment.
- (b) Hazardous characteristics of the waste(s) to be handled.
- (c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:
 - (1) Factors affecting the potential for corrosion, such as:
 - (i) Soil moisture content.
 - (ii) Soil pH.
 - (iii) Soil sulfides level.
 - (iv) Soil resistivity.
 - (v) Structure to soil potential.
 - (vi) Existence of stray electric current.
 - (vii) Existing corrosion-protection measures (for example, coating, cathodic protection).
 - (2) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:
 - (i) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.
 - (ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes) and
 - (iii) Electrical isolation devices such as insulating joints, flanges, etc.
 - (d) Design considerations to ensure that:
 - (1) Tank foundations will maintain the load of a full tank.
 - (2) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of § 267.18(a).
 - (3) Tank systems will withstand the effects of frost heave.

§ 267.192 What handling and inspection procedures must I follow during installation of new tank systems?

(a) You must ensure that you follow proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

- (1) Weld breaks.
- (2) Punctures.
- (3) Scrapes of protective coatings.
- (4) Cracks.
- (5) Corrosion.
- (6) Other structural damage or inadequate construction/installation.
- (b) You must remedy all discrepancies before the tank system is placed in use.

§ 267.193 What testing must I do?

You must test all new tanks and ancillary equipment for tightness before you place them in use. If you find a tank system that is not tight, you must perform all repairs necessary to remedy the leak(s) in the system before you cover, enclose, or place the tank system into use.

§ 267.194 What installation requirements must I follow?

(a) You must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(b) You must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under § 267.191(c), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

(c) You must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in §§ 267.192, 267.193, and paragraphs (a) and (b) of this section. The written statement must attest that the tank system was properly designed and installed and that you made repairs under §§ 267.192 and 267.193. These written statements must also include the certification statement as required in 40 CFR 270.11(d).

§ 267.195 What are the secondary containment requirements?

To prevent the release of hazardous waste or hazardous constituents to the environment, you must provide secondary containment that meets the requirements of this section for all new and existing tank systems.

(a) Secondary containment systems must be:

- (1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(b) To meet the requirements of paragraph (a) of this section, secondary containment systems must be, at a minimum:

(1) Constructed of or lined with materials that are compatible with the wastes(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours.

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. You must remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible, to prevent harm to human health and the environment.

§ 267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?

(a) Secondary containment for tanks must include one or more of the following:

(1) A liner (external to the tank).

(2) A double-walled tank.

(3) An equivalent device; you must maintain documentation of equivalency at the facility.

(b) External liner systems must be:

(1) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

(2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. The additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(3) Free of cracks or gaps.

(4) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (that is, capable of preventing lateral as well as vertical migration of the waste).

(c) Double-walled tanks must be:

(1) Designed as an integral structure (that is, an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(2) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.

(3) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours.

§ 267.197 What are the requirements for ancillary equipment?

You must provide ancillary equipment with secondary containment (for example, trench, jacketing, double-walled piping) that meets the requirements of § 267.195 (a) and (b), except for:

(a) Above ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(d) Pressurized above ground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

§ 267.198 What are the general operating requirements for my tank systems?

(a) You must not place hazardous wastes or treatment reagents in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) You must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include, at a minimum:

(1) Spill prevention controls (for example, check valves, dry disconnect couplings).

(2) Overflow prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank).

(3) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) You must comply with the requirements of § 267.200 if a leak or spill occurs in the tank system.

§ 267.199 What inspection requirements must I meet?

You must comply with the following requirements for scheduling, conducting, and documenting inspections.

(a) Develop and follow a schedule and procedure for inspecting overfill controls.

(b) Inspect at least once each operating day:

(1) Aboveground portions of the tank system to detect corrosion or releases of waste.

(2) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).

(c) Inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) Confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter.

(2) Inspect and/or test all sources of impressed current, as appropriate, at least every other month.

(d) Document, in the operating record of the facility, an inspection of those items in paragraphs (a) through (c) of this section.

§ 267.200 What must I do in case of a leak or a spill?

If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, you must remove the system from service immediately, and you must satisfy the following requirements:

(a) Immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Remove the waste from the tank system or secondary containment system.

(1) If the release was from the tank system, you must, within 24 hours after

detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, you must remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment.

(c) Immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water.

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Report any release to the environment, except as provided in paragraph (d)(1) of this section, to the Regional Administrator within 24 hours of its detection. If you have reported the release pursuant to 40 CFR part 302, that report will satisfy this requirement.

(1) You need not report on a leak or spill of hazardous waste if it is:

(i) Less than or equal to a quantity of one (1) pound; and

(ii) Immediately contained and cleaned up.

(2) Within 30 days of detection of a release to the environment, you must submit a report to the Regional Administrator containing the following information:

(i) The likely route of migration of the release.

(ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate).

(iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, you must submit these data to the Regional Administrator as soon as they become available.

(iv) The proximity to downgradient drinking water, surface water, and populated areas.

(v) A description of response actions taken or planned.

(e) Either close the system or make necessary repairs.

(1) Unless you satisfy the requirements of paragraphs (e)(2) and (3) of this section, you must close the tank system according to § 267.201.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, you may return the system to service as soon as you remove the released waste and make any necessary repairs.

(3) If the cause of the release was a leak from the primary tank system into

the secondary containment system, you must repair the system before returning the tank system to service.

(f) If you have made extensive repairs to a tank system in accordance with paragraph (e) of this section (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), you may not return the tank system to service unless the repair is certified by an independent, qualified, registered, professional engineer in accordance with 40 CFR 270.11(d).

(1) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

(2) You must submit this certification to the Regional Administrator within seven days after returning the tank system to use.

§ 267.201 What must I do when I stop operating the tank system?

When you close a tank system, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in subparts G and H of this part.

§ 267.202 What special requirements must I meet for ignitable or reactive wastes?

(a) You may not place ignitable or reactive waste in tank systems, unless:

(1) You treat, render, or mix the waste before or immediately after placement in the tank system so that:

(i) You comply with § 267.17(b); and

(ii) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of this chapter; or

(2) You store or treat the waste in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) You use the tank system solely for emergencies.

(b) If you store or treat ignitable or reactive waste in a tank, you must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977

or 1981), (incorporated by reference, see 40 CFR 260.11).

§ 267.203 What special requirements must I meet for incompatible wastes?

(a) You may not place incompatible wastes, or incompatible wastes and materials, in the same tank system, unless you comply with § 267.17(b).

(b) You may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless you comply with § 267.17(b).

§ 267.204 What air emission standards apply?

You must manage all hazardous waste placed in a tank following the requirements of subparts AA, BB, and CC of 40 CFR part 264. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

Subparts K through CC [Reserved]

Subpart DD—Containment buildings

§ 267.1100 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in containment buildings under a 40 CFR part 270 subpart J standardized permit, except as provided in § 267.1(b). Storage and/or treatment in your containment building is not land disposal as defined in 40 CFR 268.2 if your unit meets the requirements of §§ 267.1101, 267.1102, and 267.1103.

§ 267.1101 What design and operating standards must my containment building meet?

Your containment building must comply with the design and operating standards in this section. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this section.

(a) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

(b) The floor and containment walls of the unit, including the secondary containment system, if required under § 267.1103, must be designed and

constructed of manmade materials of sufficient strength and thickness to:

(1) Support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit.

(2) Prevent failure due to:

(i) Pressure gradients, settlement, compression, or uplift.

(ii) Physical contact with the hazardous wastes to which they are exposed.

(iii) Climatic conditions.

(iv) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.

(v) Collapse or other failure.

(c) All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.

(d) You must not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(e) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(f) If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(1) They provide an effective barrier against fugitive dust emissions under § 267.1102(d).

(2) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(g) You must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(h) You must obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of §§ 267.1102, 267.1103, and paragraphs (a) through (f) of this section.

§ 267.1102 What other requirements must I meet to prevent releases?

You must use controls and practices to ensure containment of the hazardous waste within the unit, and must, at a minimum:

(a) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier.

(b) Maintain the level of the stored/ treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded.

(c) Take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. You must designate an area to decontaminate equipment, and you must collect and properly manage any rinsate.

(d) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A, Method 22—Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, you must operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) with sound air pollution control practices. You must effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

§ 267.1103 What additional design and operating standards apply if liquids will be in my containment building?

If your containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, you must include:

(a) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).

(b) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building.

(1) The primary barrier must be sloped to drain liquids to the associated collection system; and

(2) You must collect and remove liquids and waste to minimize hydraulic head on the containment system at the earliest practicable time.

(c) A secondary containment system, including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous

wastes and liquids at the earliest practical time.

(1) You may meet the requirements of the leak detection component of the secondary containment system by installing a system that is, at a minimum:

(i) Constructed with a bottom slope of 1 percent or more; and

(ii) Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m²/sec or more.

(2) If you will be conducting treatment in the building, you must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(3) You must construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

§ 267.1104 How may I obtain a waiver from secondary containment requirements?

Notwithstanding any other provision of this subpart, the Regional Administrator may waive requirements for secondary containment for a permitted containment building where:

(a) You demonstrate that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and

(b) Containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

§ 267.1105 What do I do if my containment building contains areas both with and without secondary containment?

For these containment buildings, you must:

(a) Design and operate each area in accordance with the requirements enumerated in §§ 267.1101 through 267.1103.

(b) Take measures to prevent the release of liquids or wet materials into areas without secondary containment.

(c) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

§ 267.1106 What do I do if I detect a release?

Throughout the active life of the containment building, if you detect a condition that could lead to or has caused a release of hazardous waste, you must repair the condition promptly, in accordance with the following procedures.

(a) Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), you must:

(1) Enter a record of the discovery in the facility operating record;

(2) Immediately remove the portion of the containment building affected by the condition from service;

(3) Determine what steps you must take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and

(4) Within 7 days after the discovery of the condition, notify the Regional Administrator of the condition, and within 14 working days, provide a written notice to the Regional Administrator with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(b) The Regional Administrator will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify you of the determination and the underlying rationale in writing.

(c) Upon completing all repairs and cleanup, you must notify the Regional Administrator in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (a)(4) of this section.

§ 267.1107 Can a containment building itself be considered secondary containment?

Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions.

(a) A containment building can serve as an external liner system for a tank, provided it meets the requirements of § 267.196(a).

(b) The containment building must also meet the requirements of § 267.195(a), (b)(1) and (2) to be considered an acceptable secondary containment system for a tank.

§ 267.1108 What must I do when I stop operating the containment building?

When you close a containment building, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in subparts G and H of this part.

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

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

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

Subpart A—General Information

■ 14. Section 270.1 is amended by adding sentences after the second sentence of paragraph (b) introductory text, and by adding paragraphs (b)(1) and (2) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(b) * * * Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part. * * *

(1) The facility generates hazardous waste and then non-thermally treats or stores hazardous waste on-site in tanks, containers, or containment buildings; or

(2) The facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or containment buildings.

* * * * *

■ 15. Section 270.2 is amended by revising the definition for "Permit" and adding a definition for "Standardized permit" in alphabetical order to read as follows:

§ 270.2 Definitions.

* * * * *

Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to

implement the requirements of this part and parts 271 and 124 of this chapter. Permit includes permit by rule (§ 270.60), emergency permit (§ 270.61) and standardized permit (subpart J of this part). Permit does not include RCRA interim status (subpart G of this part), or any permit which has not been the subject of final agency action, such as a draft permit or a proposed permit.

* * * * *

Standardized permit means a RCRA permit issued under part 124, subpart G of this chapter and subpart J of this part authorizing the facility owner or operator to manage hazardous waste. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Director's discretion.

* * * * *

Subpart B—Permit Application

■ 16. Section 270.10 is amended by revising paragraphs (a) and (h) to read as follows:

§ 270.10 General application requirements.

(a) Applying for a permit. Below is information on how to obtain a permit and where to find requirements for specific permits:

(1) If you are covered by RCRA permits by rule (§ 270.60), you need not apply.

(2) If you currently have interim status, you must apply for permits when required by the Director.

(3) If you are required to have a permit (including new applicants and permittees with expiring permits), you must complete, sign, and submit an application to the Director, as described in this section and §§ 270.70 through 270.73.

(4) If you are seeking an emergency permit, the procedures for application, issuance, and administration are found exclusively in § 270.61.

(5) If you are seeking a research, development, and demonstration permit, the procedures for application, issuance, and administration are found exclusively in § 270.65.

(6) If you are seeking a standardized permit, the procedures for application and issuance are found in part 124, subpart G of this chapter and subpart J of this part.

* * * * *

(h) Reapplying for a permit. If you have an effective permit and you want to reapply for a new one, you have two options:

(1) You may submit a new application at least 180 days before the expiration date of the effective permit, unless the Director allows a later date; or

(2) If you intend to be covered by a standardized permit, you may submit a Notice of Intent as described in § 270.51(e)(1) at least 180 days before the expiration date of the effective permit, unless the Director allows a later date. The Director may not allow you to submit applications or Notices of Intent later than the expiration date of the existing permit, except as allowed by § 270.51(e)(2).

Subpart D—Changes to Permits

■ 17. Section 270.40 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 270.40 Transfer of permits.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with § 270.42 or as a routine change with prior approval under 40 CFR 124.213. * * *

■ 18. Section 270.41 is amended by revising the next to last sentence of the introductory paragraph and adding paragraph (b)(3) to read as follows:

§ 270.41 Modification or revocation and reissuance of permits.

* * * If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of § 270.42, or § 270.320 and 40 CFR part 124, subpart G. * * *

(b) * * *

(3) The Director has received notification under 40 CFR 124.202(b) of a facility owner or operator's intent to be covered by a standardized permit.

Subpart E—Expiration and Continuation of Permits

■ 19. Section 270.51 is amended by adding paragraph (e) to read as follows:

§ 270.51 Continuation of expiring permits.

(e) Standardized permits.

(1) The conditions of your expired standardized permit continue until the effective date of your new permit (see 40 CFR 124.15) if all of the following are true:

(i) If EPA is the permit-issuing authority.

(ii) If you submit a timely and complete Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit; and

(iii) If the Director, through no fault on your part, does not issue your permit before your previous permit expires (for example, where it is impractical to make the permit effective by that date because of time or resource constraints).

(2) In some cases, the Director may notify you that you are not eligible for a standardized permit (see 40 CFR 124.206). In those cases, the conditions of your expired permit will continue if you submit the information specified in paragraph (a)(1) of this section (that is, a complete application for a new permit) within 60 days after you receive our notification that you are not eligible for a standardized permit.

Subpart F—Special Forms of Permits

■ 20. Add § 270.67 to subpart F to read as follows:

§ 270.67 RCRA standardized permits for storage and treatment units.

RCRA standardized permits are special forms of permits for TSD owners or operators that:

(a) Generate hazardous waste and then non-thermally treat or store the hazardous waste on-site in tanks, containers, or containment buildings; or

(b) Receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. Standardized permit facility owners or operators are regulated under subpart J of this part, part 124 subpart G of this chapter, and part 267 of this chapter.

■ 21. Subpart J is added to part 270 to read as follows:

Subpart J—RCRA Standardized Permits for Storage and Treatment Units

General Information About Standardized Permits

Sec.

270.250 What is a RCRA standardized permit?

270.255 Who is eligible for a standardized permit?

270.260 What requirements of Part 270 apply to a standardized permit?

Applying for a Standardized Permit

270.270 How do I apply for a standardized permit?

270.275 What information must I submit to the permitting agency to support my standardized permit application?

270.280 What are the certification requirements?

Information That Must Be Kept at Your Facility

270.290 What general types of information must I keep at my facility?

270.300 What container information must I keep at my facility?

270.305 What tank information must I keep at my facility?

270.310 What equipment information must I keep at my facility?

270.315 What air emissions control information must I keep at my facility?

Modifying a Standardized Permit

270.320 How do I modify my RCRA standardized permit?

Subpart J—RCRA Standardized Permits for Storage and Treatment Units

General Information About Standardized Permits

§ 270.250 What is a RCRA standardized permit?

A RCRA standardized permit (RCRA) is a special type of permit that authorizes you to manage hazardous waste. It is issued under 40 CFR part 124, subpart G and subpart J of this part.

§ 270.255 Who is eligible for a standardized permit?

(a) You may be eligible for a standardized permit if:

(1) You generate hazardous waste and then store or non-thermally treat the hazardous waste on-site in containers, tanks, or containment buildings; or

(2) You receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

(3) We will inform you of your eligibility when we make a decision on your permit application.

(b) [Reserved]

§ 270.260 What requirements of part 270 apply to a standardized permit?

The following subparts and sections of this part 270 apply to a standardized permit:

(a) Subpart A—General Information: All sections.

(b) Subpart B—Permit Application: §§ 270.10, 270.11, 270.12, 270.13 and 270.29.

(c) Subpart C—Permit Conditions: All sections.

(d) Subpart D—Changes to Permit: §§ 270.40, 270.41, and 270.43.

(e) Subpart E—Expiration and Continuation of Permits: All sections.

(f) Subpart F—Special Forms of Permits: § 270.67.

(g) Subpart G—Interim Status: All sections.

(h) Subpart H—Remedial Action Plans: Does not apply.

(i) Subpart J—Standardized Permits: All sections.

Applying for a Standardized Permit**§ 270.270 How do I apply for a standardized permit?**

You apply for a standardized permit by following the procedures in 40 CFR part 124, subpart G and this subpart.

§ 270.275 What information must I submit to the permitting agency to support my standardized permit application?

The information in paragraphs (a) through (j) of this section will be the basis of your standardized permit application. You must submit it to the Director when you submit your Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit:

(a) The Part A information described in § 270.13.

(b) A meeting summary and other materials required by 40 CFR 124.31.

(c) Documentation of compliance with the location standards of 40 CFR 267.18 and § 270.14(b)(11).

(d) Information that allows the Director to carry out our obligations under other Federal laws required in § 270.3.

(e) Solid waste management unit information required by § 270.14(d).

(f) A certification meeting the requirements of § 270.280, and an audit of the facility's compliance status with 40 CFR part 267 as required by § 270.280.

(g) A closure plan prepared in accordance with part 267, subpart G.

(h) The most recent closure cost estimate for your facility prepared under § 267.142 and a copy of the documentation required to demonstrate financial assurance under § 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(i) If you manage wastes generated off-site, the waste analysis plan.

(j) If you manage waste generated from off-site, documentation showing that the waste generator and the off-site facility are under the same ownership.

§ 270.280 What are the certification requirements?

You must submit a signed certification based on your audit of your facility's compliance with 40 CFR part 267.

(a) Your certification must read: I certify under penalty of law that:

(1) I have personally examined and am familiar with the report containing the results of an audit conducted of my facility's compliance status with 40 CFR part 267, which supports this certification. Based on my inquiry of those individuals immediately responsible for conducting the audit and

preparing the report, I believe that my (include paragraph (a)(1)(i) and (ii) this section, whichever applies):

(i) My existing facility complies with all applicable requirements of 40 CFR part 267 and will continue to comply until the expiration of the permit; or

(ii) My facility has been designed, and will be constructed and operated to comply with all applicable requirements of 40 CFR part 267, and will continue to comply until expiration of the permit.

(2) I will make all information that I am required to maintain at my facility by §§ 270.290 through 277.315 readily available for review by the permitting agency and the public; and,

(3) I will continue to make all information required by §§ 270.290 through 277.315 available until the permit expires. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

(b) You must sign this certification following the requirements of § 270.11(a)(1) through (3).

(c) This certification must be based upon an audit that you conduct of your facility's compliance status with 40 CFR part 267. A written audit report, signed and certified as accurate by the auditor, must be submitted to the Director with the 40 CFR 124.202(b) Notice of Intent.

Information That Must Be Kept at Your Facility**§ 270.290 What general types of information must I keep at my facility?**

You must keep the following information at your facility:

(a) A general description of the facility.

(b) Chemical and physical analyses of the hazardous waste and hazardous debris handled at the facility. At a minimum, these analyses must contain all the information you must know to treat or store the wastes properly under the requirements of 40 CFR part 267.

(c) A copy of the waste analysis plan required by 40 CFR 267.13(b).

(d) A description of the security procedures and equipment required by 40 CFR 267.14.

(e) A copy of the general inspection schedule required by 40 CFR 267.15(b). You must include in the inspection schedule applicable requirements of 40 CFR 267.174, 267.193, 267.195, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1088.

(f) A justification of any modification of the preparedness and prevention requirements of 40 CFR part 267, subpart C (§§ 267.30 to 267.35).

(g) A copy of the contingency plan required by 40 CFR part 267, subpart D.

(h) A description of procedures, structures, or equipment used at the facility to:

(1) Prevent hazards in unloading operations (for example, use ramps, special forklifts),

(2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, with berms, dikes, trenches),

(3) Prevent contamination of water supplies,

(4) Mitigate effects of equipment failure and power outages,

(5) Prevent undue exposure of personnel to hazardous waste (for example, requiring protective clothing), and

(6) Prevent releases to atmosphere.

(i) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required by 40 CFR 267.17.

(j) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes; describe access road surfacing and load bearing capacity; show traffic control signals).

(k) [Reserved]

(l) An outline of both the introductory and continuing training programs you will use to prepare employees to operate or maintain your facility safely as required by 40 CFR 267.16. A brief description of how training will be designed to meet actual job tasks under 40 CFR 267.16(a)(3) requirements.

(m) A copy of the closure plan required by 40 CFR 267.112. Include, where applicable, as part of the plans, specific requirements in 40 CFR 267.176, 267.201, and 267.1108.

(n) [Reserved]

(o) The most recent closure cost estimate for your facility prepared under 40 CFR 267.142 and a copy of the documentation required to demonstrate financial assurance under 40 CFR 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(p) [Reserved]

(q) Where applicable, a copy of the insurance policy or other documentation that complies with the liability requirements of 40 CFR 267.147. For a new facility, documentation showing the amount of insurance meeting the specification of 40 CFR 267.147(a) that you plan to have in effect before initial receipt of hazardous waste for treatment or storage.

(r) Where appropriate, proof of coverage by a State financial mechanism, as required by 40 CFR 267.149 or 267.150.

(s) A topographic map showing a distance of 1,000 feet around your facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). The map must show elevation contours. The contour interval must show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). If your facility is in a mountainous area, you should use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:

- (1) Map scale and date.
- (2) 100-year flood plain area.
- (3) Surface waters including intermittent streams.
- (4) Surrounding land uses (residential, commercial, agricultural, recreational).
- (5) A wind rose (*i.e.*, prevailing wind-speed and direction).
- (6) Orientation of the map (north arrow).
- (7) Legal boundaries of your facility site.
- (8) Access control (fences, gates).
- (9) Injection and withdrawal wells both on-site and off-site.
- (10) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.).
- (11) Barriers for drainage or flood control.
- (12) Location of operational units within your facility, where hazardous waste is (or will be) treated or stored. (Include equipment cleanup areas.)

§ 270.300 What container information must I keep at my facility?

If you store or treat hazardous waste in containers, you must keep the following information at your facility:

(a) A description of the containment system to demonstrate compliance with the container storage area provisions of 40 CFR 267.173. This description must show the following:

- (1) Basic design parameters, dimensions, and materials of construction.
- (2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.
- (3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with 40 CFR 267.173(c), including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids.

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with 40 CFR 267.174 (location of buffer zone (15m or 50ft) and containers holding ignitable or reactive wastes) and 40 CFR 267.175(c) (location of incompatible wastes in relation to each other), where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with 40 CFR 267.175(a) and (b), and 267.17(b) and (c).

(e) Information on air emission control equipment as required by § 270.315.

§ 270.305 What tank information must I keep at my facility?

If you use tanks to store or treat hazardous waste, you must keep the following information at your facility:

(a) A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under 40 CFR 267.191 and 267.192.

(b) Dimensions and capacity of each tank.

(c) Description of feed systems, safety cutoff, bypass systems, and pressure controls (*e.g.*, vents).

(d) A diagram of piping, instrumentation, and process flow for each tank system.

(e) A description of materials and equipment used to provide external corrosion protection, as required under 40 CFR 267.191.

(f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with 40 CFR 267.192 and 267.194.

(g) Detailed plans and description of how the secondary containment system for each tank system is or will be

designed, constructed, and operated to meet the requirements of 40 CFR 267.195 and 267.196.

(h) [Reserved].

(i) Description of controls and practices to prevent spills and overflows, as required under 40 CFR 267.198.

(j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of 40 CFR 267.202 and 267.203.

(k) Information on air emission control equipment as required by § 270.315.

§ 270.310 What equipment information must I keep at my facility?

If your facility has equipment to which 40 CFR part 264, subpart BB applies, you must keep the following information at your facility:

(a) For each piece of equipment to which 40 CFR part 264 subpart BB applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (*e.g.*, identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (*e.g.*, a pump or a pipeline valve).

(4) Percent by weight of total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (*e.g.*, gas/vapor or liquid).

(6) Method of compliance with the standard (*e.g.*, monthly leak detection and repair, or equipped with dual mechanical seals).

(b) For facilities that cannot install a closed-vent system and control device to comply with 40 CFR part 264, subpart BB on the effective date that the facility becomes subject to the subpart BB provisions, an implementation schedule as specified in 40 CFR 264.1033(a)(2).

(c) Documentation that demonstrates compliance with the equipment standards in 40 CFR 264.1052 and 264.1059. This documentation must contain the records required under 40 CFR 264.1064.

(d) Documentation to demonstrate compliance with 40 CFR 264.1060 must include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by 40 CFR 264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in 40 CFR 260.11) or other engineering texts acceptable to the Director that present basic control device design information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in 40 CFR 264.1035(b)(4)(iii).

(4) A statement you signed and dated certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonable expected to occur.

(5) A statement you signed and dated certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

§ 270.315 What air emissions control information must I keep at my facility?

If you have air emission control equipment subject to 40 CFR part 264,

subpart CC, you must keep the following information at your facility:

(a) Documentation for each floating roof cover installed on a tank subject to 40 CFR 264.1084(d)(1) or (d)(2) that includes information you prepared or the cover manufacturer/vendor provided describing the cover design, and your certification that the cover meets applicable design specifications listed in 40 CFR 264.1084(e)(1) or (f)(1).

(b) Identification of each container area subject to the requirements of 40 CFR part 264, subpart CC and your certification that the requirements of this subpart are met.

(c) Documentation for each enclosure used to control air pollutant emissions from tanks or containers under requirements of 40 CFR 264.1084(d)(5) or 264.1086(e)(1)(ii). You must include records for the most recent set of calculations and measurements you performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(d) [Reserved]

(e) Documentation for each closed-vent system and control device installed under requirements of 40 CFR 264.1087 that includes design and performance information as specified in § 270.24 (c) and (d).

(f) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan must include the following information: monitoring point(s), Monitoring methods for control devices, monitoring frequency, procedures for documenting exceedences, and procedures for mitigating noncompliances.

Modifying a Standardized Permit

§ 270.320 How do I modify my RCRA standardized permit?

You can modify your RCRA standardized permit by following the procedures found in 40 CFR 124.211 through 124.214.

[FR Doc. 05-16300 Filed 9-7-05; 8:45 am]

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[Rules and Regulations]
[Page 57769-57785]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[RCRA-2002-0028; FRL-7980-1]
RIN 2050-AE84

Revision of Wastewater Treatment Exemptions for Hazardous Waste
Mixtures ('`Headworks Exemptions'')

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's action, the Environmental Protection Agency is finalizing the addition of benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewaters are exempted from the definition of hazardous waste under the Resource Conservation and Recovery Act. The scrubber waters derived from the combustion of any of the exempted solvents also are included in the exemption. In addition, the Agency is revising the rule by adding an option to allow generators to directly measure solvent chemical levels at the headworks of the wastewater treatment system to determine whether the wastewater mixture is exempt from the definition of hazardous waste. Finally, the Agency is extending the eligibility for the de minimis exemption to other listed hazardous wastes (beyond discarded commercial chemical products) and to non-manufacturing facilities.

recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: September 19, 2005.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart LL—Oklahoma

■ 2. Section 62.9100 is amended by adding paragraphs (c)(6) to read as follows:

§ 62.9100 Identification of plan.

* * * * *

(b) * * *

* * * * *

(6) Control of air emissions from existing commercial and industrial solid waste incineration units, submitted by the Oklahoma Department of Environmental Quality on June 29, 2005. (OAC 252:100-17, Part 9).

* * * * *

(c) * * *

* * * * *

(6) Commercial and industrial solid waste incineration units.

■ 3. Subpart LL is amended by adding a new undesignated center heading and new § 62.9190 and new § 62.9191 to read as follows:

Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.9190 Identification of sources.

(a) The plan applies to the following existing commercial and industrial solid waste incineration units:

(a) A&A Enterprises, Ardmore, Oklahoma.

(b) Henryetta Pallet Company, Henryetta, Oklahoma.

(c) Oklahoma AAA Pallet Co., Inc., Oklahoma City, Oklahoma.

(d) Simer Pallet Recycling, Inc., Chickasha, Oklahoma.

§ 62.9191 Effective date.

The effective date of this portion of the State's plan applicable to existing commercial and industrial solid waste incineration units is December 5, 2005.

[FR Doc. 05-19838 Filed 10-3-05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[RCRA-2002-0028; FRL-7980-1]

RIN 2050-AE84

Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures ("Headworks Exemptions")

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's action, the Environmental Protection Agency is finalizing the addition of benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewaters are exempted from the definition of hazardous waste under the Resource Conservation and Recovery Act. The scrubber waters derived from the combustion of any of the exempted solvents also are included in the exemption. In addition, the Agency is revising the rule by adding an option to allow generators to directly measure solvent chemical levels at the headworks of the wastewater treatment system to determine whether the wastewater mixture is exempt from the definition of hazardous waste. Finally, the Agency is extending the eligibility for the *de minimis* exemption to other listed hazardous wastes (beyond

discarded commercial chemical products) and to non-manufacturing facilities.

DATES: This final rule is effective on November 3, 2005

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA-2002-0028. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, 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 in EDOCKET or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., 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: Lisa Lauer, Hazardous Waste Identification Division, Office of Solid Waste (5304W), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-308-7418; fax number: 703-308-0514; e-mail address: Lauer.Lisa@epa.gov.

SUPPLEMENTARY INFORMATION:

General Information

Entities potentially affected by this action are generators of industrial hazardous waste, and entities that treat, store, transport and/or dispose of these wastes. The table below is not intended to be exhaustive, but rather provides a guide for readers regarding the types of entities likely to be affected by this action.

LIST OF ECONOMIC SUBSECTORS POTENTIALLY AFFECTED BY THE EXPANSION IN SCOPE OF THE RCRA HAZARDOUS WASTE "HEADWORKS EXEMPTION" FOR INDUSTRIAL WASTEWATER TREATMENT SYSTEMS

Item	Economic subsector or industry identity		Description
	SIC code	NAICS code	
1	02	112	Agricultural production—livestock.
2	20	311	Food & kindred products.
3	22	313	Textile mill products.
4	24	321	Lumber & wood products.
5	25	337	Furniture & fixtures.
6	26	322	Paper & allied products.
7	28	325	Chemicals & allied products.
8	29	324	Petroleum & coal products.
9	30	326	Rubber & miscellaneous plastics products.
10	31	316	Leather & leather products.
11	32	327	Stove, clay, glass & concrete products.

LIST OF ECONOMIC SUBSECTORS POTENTIALLY AFFECTED BY THE EXPANSION IN SCOPE OF THE RCRA HAZARDOUS WASTE "HEADWORKS EXEMPTION" FOR INDUSTRIAL WASTEWATER TREATMENT SYSTEMS—Continued

Item	Economic subsector or industry identity		Description
	SIC code	NAICS code	
12	33	331	Primary metal industries.
13	34	332	Fabricated metal products.
14	35	333	Industrial machinery & equipment.
15	36	334, 335	Electrical & electronic equipment.
16	37	336	Transportation equipment.
17	38	3333, 3345	Instruments & related products.
18	42	493	Motor freight transportation & warehousing.
19	4581	48819, 56172	Airports, flying fields, & airport terminal services.
20	4789	488999	Transportation services nec.
21	49	221	Electric, gas, & sanitary services.
22	50	421	Wholesale trade—durable goods.
23	51	422	Wholesale trade—nondurable goods.
24	5999	453998	Miscellaneous retail.
25	721	8123	Dry-cleaning & industrial laundry services.
26	73	514, 532, 541, 561	Business services.
27	80	621, 622, 623	Health services.
28	87	712	Engineering & management services.
29	8999	54162	Miscellaneous services.
30	91	921	Executive, legislative & general government.
31	95	924, 925	Environmental quality & housing.
32	97	928	National security & international affairs.

Notes:

(a) SIC=1987 Standard Industrial Classification system (U.S. Department of Commerce's traditional code system last updated in 1987).

(b) NAICS=1997 North American Industrial Classification System (U.S. Department of Commerce's new code system as of 1997).

(c) This list is based upon industry codes reported to the USEPA RCRA hazardous waste 1997 "Biennial Reporting System" database by F002/F005 aqueous spent solvent generators which manage such wastes in wastewater treatment systems, supplemented by industry codes which have USEPA Clean Water Act "Categorical Pretreatment Standards" for indirect discharge of industrial wastewaters to POTWs (as of July 2002).

(d) The USEPA Office of Solid Waste matched 1987 2-digit level SIC codes to 1997 NAICS codes using the U.S. Census Bureau website: <http://www.census.gov/epcd/naics/nsic2ndx.htm#S0>. Refer to the Internet Web site <http://www.census.gov/epcd/www/naicstab.htm> for additional information and a cross-walk table for the SIC and NAICS codes systems.

This table lists the types of entities that EPA believes could be affected by this action, based on industrial sectors identified in the "Economics Background Document" in support of this rule. A total of about 3,266 to 10,446 entities are expected to benefit from the revisions to 40 CFR 261.3 in the 32 industrial sectors listed above, but primarily in the chemicals and allied products sector (*i.e.*, SIC code 28, or NAICS code 325). Other entities not listed in the table also could be affected. To determine whether your facility is covered by this action, you should examine 40 CFR part 261 carefully in concert with the final rules found at the end of this **Federal Register** announcement. If you have questions regarding the applicability of the action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

LIST OF ACRONYMS

Acronym	Meaning
ACC	American Chemistry Council.
CAA	Clean Air Act.
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act.
CFR	Code of Federal Regulations.
CWA	Clean Water Act
EPA	Environmental Protection Agency.
FR	Federal Register.
HSWA	Hazardous and Solid Waste Amendments.
HWIR	Hazardous Waste Identification Rule.
LDR	Land Disposal Restrictions.
MACT	Maximum Achievable Control Technology.
NAICS	North American Industrial Classification System.

LIST OF ACRONYMS—Continued

Acronym	Meaning
NPDES	National Pollutant Discharge Elimination System.
NSPS	New Source Performance Standard.
NTTAA	National Technology Transfer and Advancement Act.
OMB	Office of Management and Budget.
POTW	Publicly Owned Treatment Works.
ppm	parts per million.
RCRA	Resource Conservation and Recovery Act.
RFA	Regulatory Flexibility Act.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
SIC	Standard Industrial Classification.

LIST OF ACRONYMS—Continued

Acronym	Meaning
UMRA	Unfunded Mandates Reform Act.
WAP	Waste Analysis Plan.

Outline

The information in this preamble is organized as follows:

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- B. What Is the History of the Headworks Rule?
- C. When Will the Final Rule Become Effective?

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- B. What Revisions Were Proposed for the Headworks Compliance Monitoring Method?
- C. What Scrubber Waters Were Proposed To Be Exempted?
- D. Exempting Leachate Derived-From Solvent Wastes
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 - 3. Sampling and Analysis Plan Issues
 - 4. Allowing Performance-Based Reduction in Sampling Frequency and Changing the Current Compliance Standard
- C. The Exemption of Scrubber Waters Derived-From the Incineration of Listed Wastes
- D. Expansion of the De Minimis Exemption
 - 1. General Issues
 - 2. Clean Water Act Permit Requirement
 - 3. Inclusion of "Unscheduled," "Uncontrollable," "Insignificant," and "Inadvertent" in the Regulatory Definition of De Minimis
 - 4. Removal of "Rinsates From Empty Containers" From the Regulatory Definition of De Minimis
- E. The Potential Exemptions of Leachates Derived-From Solvent Wastes and Leachates Derived-From Other Types of Hazardous Wastes

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VI. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
- I. National Technology Transfer and Advancement Act of 1995
- J. Congressional Review Act

I. Background

A. What Law Authorizes These Rules?

These rules are 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), 42 U.S.C. 6912(a), 6921, 6922, 6924, 6938.

B. What Is the History of the Headworks Rule?

The current wastewater treatment exemptions ("headworks rule") under 40 CFR 261.3(a)(2)(iv)(A)–(G) exempt from the mixture rule spent solvents, commercial chemical products, lab wastes, and certain additional listed wastes which are a minuscule and treatable part of the mix in wastewaters. The "mixture rule" dictates that a solid waste becomes regulated as a hazardous waste if it is mixed with one or more listed hazardous waste (40 CFR 261.3(a)(2)(iv)). The rationale for these exemptions is the risk to the environment would be negligible because wastewater treatment systems are capable of easily and effectively handling small volumes of these organic constituents. After the promulgation of the original headworks rule (46 FR 56582, November 17, 1981), the Agency listed four additional solvents (1,1,2-trichloroethane, benzene, 2-nitropropane, and 2-ethoxyethanol) in the F002 and F005 categories (51 FR 6537, February 25, 1986). However, at the time, the Agency did not determine whether or not to add these solvents to the headworks rule exemptions.

In August 1999, EPA received a request from the American Chemistry Council (ACC, formerly the Chemical Manufacturers Association) to add 1,1,2-trichloroethane, benzene, 2-nitropropane, and 2-ethoxyethanol to the headworks exemption. ACC also

asked the Agency to allow direct monitoring as an alternative method for determining compliance with the headworks rule. Other ACC-requested headworks rule changes included allowing those wastes listed in 40 CFR 261.31 and 261.32 to be added to the *de minimis* exemption and expanding the headworks rule to include certain landfill leachates. EPA included a request for comment in the November 19, 1999, proposed Hazardous Waste Identification Rule (HWIR) (64 FR 63382) on these and other ACC-suggested exemptions to the mixture and derived-from rules. Many of the changes in the April 8, 2003, proposed rule (68 FR 17234) are an outgrowth of ACC's suggested revisions and the public comments that EPA received in response to the discussion of these suggested revisions in the 1999 HWIR proposal.

C. When Will the Final Rule Become Effective?

These final regulations will become effective November 3, 2005.

II. Summary of the Proposed Rule

A. Which Solvents Were Proposed To Be Added to the Headworks Exemption?

On April 8, 2003, we proposed to add to the headworks exemption two of the four solvents that were listed in 1986 (68 FR 17234). Benzene was proposed to be added at the level of 1 part per million (ppm) with these conditions: wastewaters containing benzene are managed in aerated biological waste management units; and, surface impoundments used prior to secondary clarification are lined (40 CFR 261.3(a)(2)(iv)(A)). The addition of these contingent management practices was supported by data from the groundwater pathway human health risk analysis which demonstrated that non-aerated treatment scenarios resulted in exposures above the level of concern for all components of the treatment scenario and that aerated biological treatment scenarios resulted in exposures above the level of concern only when primary clarifier wastewaters were managed in an unlined surface impoundment. (See Risk Assessment to Support the Wastewater Treatment Exemptions (Headworks Exemptions) Proposed Rule, U.S. EPA 2003).

In addition, we proposed to add 2-ethoxyethanol to the headworks exemption at the level of 25 ppm (40 CFR 261.3(a)(2)(iv)(B)). Data from the groundwater pathway human health risk analysis supported this proposed addition of 2-ethoxyethanol at 25 ppm

in the headworks as it posed no significant human health risk at this level. (See Risk Assessment to Support the Wastewater Treatment Exemptions (Headworks Exemptions) Proposed Rule, U.S. EPA 2003).

The Agency did not take any action to add 2-nitropropane and 1,1,2-trichloroethane to the exemption due to the lack of available risk information and the failures in the groundwater pathway human health risk analysis, respectively.

B. What Revisions Were Proposed for the Headworks Compliance Monitoring Method?

The Agency proposed to add an additional approach for facilities to demonstrate compliance with 40 CFR 261.3(a)(2)(iv)(A), (B), (F) and (G) of the wastewater treatment exemptions. The additional method is an option to directly measure solvent chemical levels at the headworks of the wastewater treatment system in lieu of performing mass balance calculations. Direct monitoring will be an option for those facilities subject to Clean Air Act (CAA) regulations that minimize fugitive process or wastewater emissions (e.g., MACT standards under 40 CFR part 61 or 63 or NSPS requirements under 40 CFR part 60). Facilities taking advantage of the proposed direct monitoring approach will be required to report the entire concentration of the chemical in question if any of it was used as a solvent.

The proposed addition of direct monitoring as a headworks compliance monitoring method required the Agency to address a number of implementation issues not associated with the mass balance approach. To ensure facilities utilizing the direct monitoring method will understand where in the wastewater treatment train sampling is to occur, the Agency provided guidance describing the headworks location in the proposal (67 FR 17242, April 8, 2003). This guidance mirrors the language in the 1981 preamble and provides maximum flexibility by accommodating the numerous facility configurations present in the regulated community.

The Agency also proposed that facilities taking advantage of the direct monitoring approach are to develop a site-specific sampling and analysis plan that demonstrates compliance with the weekly average standards set for the appropriate solvent(s). The sampling and analysis plan must include the monitoring point location, the sampling frequency and methodology, and a list of appropriate constituents to be monitored. The Agency proposed that

facilities file a copy of the sampling and analysis plan with the overseeing agency. However, no approval of the plan is required prior to the commencement of the direct monitoring method; nevertheless, the facility must have confirmation of the plan's receipt (e.g., a certified mail return receipt or written confirmation of delivery from a commercial delivery service) by the overseeing agency prior to implementation of the direct monitoring scheme.

C. What Scrubber Waters Were Proposed To Be Exempted?

The Agency proposed to add those scrubber waters derived-from the combustion of spent solvents that are then subsequently sent to a facility's wastewater treatment system to the headworks exemption. The Agency believes that the scrubber waters derived-from combustion of spent solvent wastes will be comparable in expected constituents and concentration levels with spent solvent wastewaters.

D. Exempting Leachate Derived-From Solvent Wastes

The Agency discussed the ACC request to consider adding leachate from landfills that accept only F001-F005 spent solvent wastes to the headworks exemption. Because we lacked sufficient data concerning the variability, the Agency did not propose an exemption but considered the discussion of the issue as an Advanced Notice of Proposed Rulemaking.

E. Exempting Other Types of Leachate

The Agency also discussed and sought comment regarding a possible future addition of leachate from captive, on-site hazardous waste landfills to the headworks exemption. Again, because EPA lacked adequate information to determine if the levels of constituents present in the leachate pose an unacceptable risk, it did not propose an exemption for non-solvent leachate.

F. What Expansions to the De Minimis Exemption Were Proposed?

The Agency proposed to broaden the scope of the *de minimis* exemption (40 CFR 261.3(a)(2)(iv)(D)) in two ways: (1) By expanding the eligibility for the exemption beyond manufacturing facilities to include non-manufacturing sites such as raw material storage terminals and hazardous waste facilities; and, (2) by expanding the types of waste eligible for the exemption to include the F- and K-listed wastes (§§ 261.31 and 261.32). To qualify for the newly expanded portions of the *de minimis* exemption, we also proposed

that either the manufacturing facilities claiming a *de minimis* loss of F- or K-listed wastes or non-manufacturing facilities claiming a *de minimis* loss of waste listed in §§ 261.31 through 261.33 would need to have limits for the Appendix VII and Land Disposal Restrictions (LDR) constituents associated with their wastes included in their Clean Water Act (CWA) permits or that the facilities had to have eliminated the discharge of wastewater altogether.

In addition, the Agency proposed that the words "unscheduled," "uncontrollable," "inadvertent," and "insignificant" be added to the regulatory definition. The reasoning behind the addition of these words was to provide a clearer understanding of what a *de minimis* release is for all the listed wastes.

III. Changes From the Proposed Rule

A. Exemption for Scrubber Waters Derived-From Spent Solvent Combustion

In the April 8, 2003, notice, EPA proposed to include in the exemption under § 261.3(a)(2)(iv)(A) and (B) those scrubber waters derived-from the combustion of spent solvents that then are sent to a facility's wastewater treatment system. However, specific regulatory language for the inclusion of these scrubber waters in the headworks exemption was not included in the proposal. Based on the comments received, the final rule includes such language.

As discussed in the preamble of the proposed rule, scrubber waters derived-from the combustion of spent solvents previously were not considered eligible for the headworks exemption because they are derived from residuals of spent solvents and their release into the wastewater treatment system is not incidental (68 FR 17243, April 8, 2003). However, in the carbamates rule (60 FR 7824-7859, February 9, 1995), the Agency allowed scrubber waters derived-from the incineration of carbamate production wastes to be eligible for the headworks exemption because the scrubber waters would be comparable in the expected constituents and concentration levels with the already-exempted wastewaters. Following the rationale in the carbamates rule, the Agency decided to propose in the April 8, 2003 notice that scrubber waters derived-from spent solvent combustion which are then sent to a facility's wastewater treatment system will be eligible for the headworks exemption under § 261.3(a)(2)(iv)(A) and (B). Similar to the carbamate scrubber waters, the

Agency believes that the scrubber waters derived from such combustion will be comparable in expected constituents and concentration levels with spent solvent wastewaters.

Regulatory language has been included under § 261.3(a)(2)(iv)(A) and (B). The Agency notes the requirement that the scrubber waters must be solely derived from the combustion of the listed spent solvents remains unchanged from the proposal.

B. Facilities Using the De Minimis Exemption Will Not Be Required To List Limits for Appendix VII and LDR Constituents in Their Clean Water Act Permits

The proposed rule contained a new requirement for those facilities taking advantage of the expanded *de minimis* exemption. Under this proposed requirement, a manufacturing facility claiming a *de minimis* loss of F- or K-listed wastes or a non-manufacturing facility claiming any *de minimis* loss of waste listed in §§ 261.31 through 261.33 would have needed limits for the Appendix VII and LDR constituents associated with its wastes included in its CWA permit.

However, commenters noted that permit writers usually do not set specific permit limits for every constituent that may be present in the effluent. In response to this comment, the Agency instead is requiring any facility that would like to claim any part of the expanded exemption to list all expected Appendix VII and LDR constituents in the CWA permit application. Alerting the permit writers of all expected Appendix VII and LDR constituents by listing them in the CWA permit application will allow the permit writers to ensure that the permit is sufficiently protective of human health and the environment. Similarly, facilities that discharge to publicly owned treatment works (POTW) must disclose every Appendix VII and LDR constituent that may be released to the POTW, as this will alert the POTW of any potential chemicals that may pass through or interfere with its operation or cause a permit violation. This notification to the permit writer or control authority must occur before the facility claims the newly expanded portions of the *de minimis* exemption. EPA has promulgated updated regulatory language under § 261.3(a)(2)(iv)(D) in response to these comments.

C. "Unscheduled," "Uncontrollable," and "Insignificant," Will Not Remain in the Regulatory Text of the De Minimis Exemption

In the proposed rule, the words "unscheduled," "uncontrollable," "insignificant" and "inadvertent" were added to the regulatory definition of *de minimis* (§ 261.3(a)(2)(iv)(D)). Numerous commenters were opposed to the addition of these four words and requested that they be removed from the regulatory text because the words would cause confusion to the regulated community and narrow the scope of the exemption. The Agency agrees that these descriptors are not necessary and is removing the words "unscheduled," "uncontrollable," and "insignificant" from the regulatory text of *de minimis*. However, the word "inadvertent" will remain in the regulatory language. The purpose for the addition of "inadvertent" in the regulatory definition of *de minimis* is to reinforce the concept that the losses must not be a result of neglectful or careless facility management. Rather, *de minimis* refers to small losses that occur during normal operating procedures at well-maintained facilities. The Agency believes that it is imperative that this concept be conveyed due to the exemption being expanded to include the F- and K-listed wastes (§ 231.31 and § 231.32), as well as to non-manufacturing facilities. Please see Section IV.D.3. for further discussion regarding the addition of the word "inadvertent" to the regulatory definition.

IV. Summary of Responses to Major Comments

The Agency summarizes below the responses to the most significant comments received in response to the proposal. All comments received by the Agency are addressed in the Response to Comments Background Document that is available in the docket associated with this rulemaking.

A. Addition of Benzene and 2-Ethoxyethanol to the Headworks Exemption

Many commenters supported the addition of benzene and 2-ethoxyethanol as proposed stating that their inclusion in the exemption will add consistency to the current regulatory scheme. Several commenters emphasized that the spent solvents will remain a very small and treatable part of the wastewater mixture. In addition, one commenter stated that the contingent management practices placed on the addition of benzene to the exemption were very reasonable.

While there was strong support for the inclusion of the two solvents, one commenter disagreed with the addition of benzene and 2-ethoxyethanol to the exemption at the current concentration levels of 1 ppm and 25 ppm, respectively. The commenter stated that these levels are not protective of human health and the environment and that the calculated and direct measurement concentrations need to be reduced. In addition, the commenter suggested that the current weekly averaging period be decreased to daily or to some other shorter-term averaging period; however, the commenter did not submit data to support the reduction of the calculated and direct measurement concentrations, nor was data submitted to support a reduction in the averaging period.

The Agency disagrees that the concentration limits of 1 ppm and 25 ppm for benzene and 2-ethoxyethanol, respectively, are not protective. The environmentally conservative risk assessment performed on benzene demonstrated that the 1 ppm standard is protective when groundwater is indirectly exposed to the wastewater treatment sludge and when groundwater is directly exposed to wastewaters and sludge from aerated treatment trains (after secondary clarification). Scenarios from non-aerated systems and primary clarifier sludge from the aerated treatment scenario did result in some risks of concern. As a result, we are requiring that wastewaters containing benzene be managed in an aerated biological treatment unit and that surface impoundments used prior to secondary clarification be lined to be eligible for the exemption. The risk assessment performed on 2-ethoxyethanol demonstrated it does not pose a risk of concern for direct air exposure or for indirect and direct groundwater exposures at the concentration limit of 25 ppm. (See Risk Assessment to Support the Wastewater Treatment Exemptions (Headworks Exemptions) Proposed Rule, U.S. EPA 2003). In regards to the commenter's statement that the weekly average be reduced (*i.e.*, that the compliance standard be changed), decreasing the averaging period from weekly to daily or to some other shorter averaging time addresses a provision in the current rule not identified specifically in the proposal as subject to possible amendment. EPA stated in the proposed rule that it would not respond to comments addressing such provisions (68 FR 17241, April 8, 2003).

One commenter supported the addition of benzene but not the conditional management practices. The commenter requested that we reconsider

our proposed conditions and allow benzene to be discharged into wastewater treatment systems in the same manner that the other solvents listed in § 261.3(a)(2)(iv)(A) are allowed. In the commenter's opinion, the conditional management practices are too restrictive and inflexible for the addition of benzene to the exemption to be of any use to facilities.

EPA disagrees that the exemption for benzene be unrestricted. Due to the exemption being based on the concentration level of benzene entering the wastewater treatment system and not wastewater and/or sludge waste leaving a facility, evaluation of the risks associated with benzene at this level required assuming various treatment methods and determining the risks from managing effluents from each interim point in a given treatment method (for further discussion, please see Risk Assessment to Support the Wastewater Treatment Exemptions (Headworks Exemptions) Proposed Rule, U.S. EPA 2003). Aerated and non-aerated biological treatment, the two methods evaluated during the risk assessment, are understood by EPA to be the treatment methods used by the vast majority of facilities potentially affected by this rule. The conditional requirements on benzene are based directly on the results of the risk assessment for benzene (see above). If a facility using a method other than aerated biological treatment wishes to exempt their wastewater, they can apply for a site-specific delisting for their wastewater under § 260.22.

One commenter requested that we include benzene still bottoms in the headworks exemption. This commenter argued that there is no regulatory relief for facilities recycling benzene in a still since the still bottoms must be managed as a hazardous waste (F005). The commenter stated that if the facility's wastewater treatment system has the capability of treating the impurities that can be found in still bottoms, then the facility should be able to benefit from the exemption as well.

EPA did not consider benzene still bottoms or still bottoms resulting from the distillation of other F-listed solvents within the scope of the proposed headworks rule. Therefore, still bottoms were not included in the risk assessment we performed in support of the addition of the spent solvents to § 261.3(a)(2)(iv)(A) and (B). Due to concerns regarding constituents, such as metals, which can be found in still bottoms, EPA does not believe that it is appropriate to include benzene still bottoms in the wastewater treatment exemption without having performed a

risk assessment. EPA notes that if a facility recycling benzene wishes to exempt their benzene still bottoms, they can apply for a site-specific delisting for their still bottoms under § 260.22.

B. Addition of Direct Monitoring as a Headworks Compliance Monitoring Method

1. General Issues

Most commenters supported the addition of direct monitoring as a compliance option. Several cited the complexity for some sites to perform the mass balance calculations and commended the Agency for proposing to allow direct monitoring at the headworks location as an alternative compliance option. No commenters opposed the addition of direct monitoring, although several commenters did raise a number of issues related to direct monitoring. Separate sections discuss commenters' issues and the Agency's responses regarding the informal definition of headworks, eliminating the requirement to submit the sampling and analysis plan, and allowing performance-based reductions in sampling frequency.

In addition to the issues listed above, many commenters expressed support for the requirement that a facility wanting to use direct monitoring be subject to CAA rules that minimize fugitive emissions. One commenter, however, questioned the eligibility status of those facilities that have adopted voluntary limits or controls as part of a federally enforceable permit. The Agency agrees that those facilities having federally enforceable permits that limit fugitive emissions in the facility prior to the headworks are eligible for the exemption as these federally enforceable permits are equivalent to a facility being subjected to CAA regulations that minimize fugitive emissions. Therefore, regulatory language explicitly allowing those facilities that have adopted limits or controls for fugitive emissions as part of a federally enforceable permit has been added in § 261.3(a)(2)(iv)(A), (B), (F), and (G).

Another commenter expressed confusion about whether the CAA rule had to apply to the entire facility or just to the wastewater treatment unit specifically. The purpose of the requirement is to ensure that volatilization of solvents are minimized, and thereby preventing fugitive emissions from lowering spent solvent concentration levels, prior to the monitoring point at the headworks. EPA considered volatilization from the wastewater treatment unit after the headworks point (such as from the

activated sludge unit or primary clarifier) in the Agency's risk assessment and did not find volatilization to be an unacceptable source of risk as long as the solvent concentrations at the headworks did not exceed the specified levels. Because the intention of the requirement is to minimize volatilization prior to the headworks point and the risk assessment found that volatilization from the wastewater treatment unit did not present an unacceptable risk, it is not necessary for the receiving wastewater treatment unit itself to be subject to CAA regulations. However, EPA stresses that the process streams and wastewater streams that lead up to the headworks point must be subject to CAA regulations, or an enforceable limit federal operating permit, that minimizes fugitive emissions.

One commenter objected to the requirement that, under the direct monitoring alternative, the generator must count the total amount of the chemical in the waste stream, even if some portion of it was from a non-solvent source. In addition, another commenter stated that only allowing the sampling to occur at the headworks location is unnecessarily limiting because the chemical not being used for its solvent purposes will be included in the measured level. They asserted that these requirements are overly conservative and should be modified, suggesting that facilities be allowed to reduce the measured concentration by the fraction known to be from non-solvent sources and that facilities be allowed to sample wastewaters closer to the point of generation. The Agency disagrees. The risk assessment performed by the Agency demonstrated that the 1 ppm and 25 ppm standards were protective for the total amount of the chemicals (benzene and 2-ethoxyethanol, respectively) introduced at the headworks. The source of these chemicals is irrelevant for the purposes of determining risk. If the solvent fraction of the chemical in the waste stream contributed to the total chemical concentration in the wastestream which exceeds the 1 ppm or 25 ppm threshold, then that constituent is posing an unacceptable risk to human health. Therefore, facilities cannot use a hybrid of the results from the mass balance and direct monitoring methods to discount the non-solvent source from the total measured concentration, nor can facilities sample at alternate locations in lieu of sampling at the headworks point. The Agency notes that facilities continue to have the option of using mass balance.

Another issue of concern by a commenter is the possibility of the overseeing agency finding a facility to have exceeded the exemption levels on the basis of a compliance method different than the one the facility chose to use (e.g., the facility using mass balance and the agency using sampling). The overseeing agency will not be bound to use the same compliance method chosen by the facility; however, the procedures utilized by the overseeing agency when investigating a potential violation will be comprehensive enough to determine if the facility has exceeded the exemption levels before being found in violation.

Lastly, a commenter requested that we clarify our intent with regards to allowing facilities to alternate between the two compliance methods or to use a combination of the two methods to demonstrate compliance. Facilities will have the option to alternate between the two methods or to concurrently use both methods and report the result of either method. However, as discussed above, facilities cannot use a hybrid of the two methods to demonstrate compliance (e.g., apply the solvent percentage to measured concentrations to discount the non-solvent use). EPA encourages facilities to notify the overseeing agency via the sampling and analysis plan that alternating between the compliance methods may occur. EPA also encourages facilities to provide examples of when a facility may switch from one method to the other. EPA notes that facilities may switch monitoring methods even if their submitted sampling and analysis plan did not discuss examples of when such an occurrence would happen.

2. The Informal Headworks Description

Several commenters supported the Agency's approach of not proposing a formal regulatory definition for the term "headworks," but rather providing guidance on what it considers to be the "headworks" location. In the preamble to the proposed rule, EPA stated that for purposes of this rule, "headworks can include a central catch basin for industrial wastewaters, a pump station outfall, equalization tank, or some other main wastewater collection area that exists in which transport of process wastewaters stops and chemical or biological treatment begins" (68 FR 17242). The Agency did solicit comments on this non-regulatory description. Supporters for the informal description stated that the description of the term "headworks" in the preamble to the proposal is flexible enough to accommodate a myriad of different facilities within the regulated

community. In addition, commenters agreed that creating a regulatory definition for "headworks" would result in the loss of this flexibility.

However, one commenter believed that confusion might result from EPA's headworks description because it assumes that no pretreatment is occurring prior to the wastewaters' arrival at the headworks. The commenter explained that pretreatment frequently occurs upstream to the headworks location, and typically there is no one central location where all wastewaters come together prior to pretreatment. Therefore, the headworks location should be the point where the exemption is claimed regardless of whether or not pretreatment has occurred. The commenter also stated that the definition of headworks should be codified; however, as an alternative to incorporating the definition into the regulatory code, the commenter suggested that clarification of the location be provided in the preamble of the final rule.

First, EPA disagrees with the commenter's statement that a definition of headworks should be codified. The Agency believes that it would be difficult to develop a regulatory definition of the term "headworks" that could apply at all or even most facilities given the varied nature of facility configurations. The guidance approach to identifying the headworks location accommodates a range of facility configurations, thereby providing maximum flexibility. However, EPA does agree that the in-process pretreatment of wastewaters prior to their arrival at the headworks location occurs and is allowable under this provision. Therefore, EPA is modifying its guidance regarding the informal description of the term "headworks" so that the headworks location can now be described as the point at which final combination of raw or pre-treated process wastewater streams typically takes place.

3. Sampling and Analysis Plan Issues

Many supporters of the direct monitoring option commented that it was too burdensome to submit the sampling and analysis plan and to obtain confirmation of its receipt before direct monitoring can begin. One commenter, who misunderstood the proposed requirement, objected to explicit approval having to be obtained by the overseeing agency prior to starting direct monitoring. However, the Agency is not requiring that the facility obtain explicit approval from their overseeing agency prior to the start of direct monitoring. The facility simply is

required to obtain confirmation of receipt (e.g., a certified mail return receipt or written confirmation of delivery from a commercial delivery service) prior to starting direct monitoring.

The Agency disagrees that submittal of the sampling and analysis plan is overly burdensome. Submittal of the sampling and analysis plan will provide notification to the overseeing agency that a change in compliance methodology is planned. This notification is a one-time event, unless there is a change in the facility's operations that causes a change in monitoring that renders the SAP obsolete. The majority of the burden in this requirement is the preparation of the sampling and analysis plan, and no commenter objected to developing the sampling and analysis plan, correctly recognizing that it is the foundation for any rigorous monitoring program.

Several commenters asserted that requiring the facility to submit their sampling and analysis plan ran counter to EPA's recently proposed RCRA Burden Reduction Initiative (67 FR 2518, Jan. 17, 2002). In addition, commenters noted that in 1997, the Agency specifically eliminated the requirement that generators managing and treating prohibited waste in tanks, containers and containment buildings under 40 CFR 262.34 submit sampling and analysis plans to its overseeing Agency under 268.7(a)(5). These commenters also pointed out that neither the chlorinated aliphatics final rule (65 FR 67068) nor the paint production proposed rule (66 FR 10060) required facilities to submit their sampling and analysis plans to the overseeing agency, instead allowing the facilities to keep their plans on-site.

EPA believes that it is inappropriate to compare the proposed chlorinated aliphatics rule¹ (64 FR 46476; August 25, 1999) and the proposed paints rule² to the headworks rule. While it is true that the proposed chlorinated aliphatics rule and the proposed paint production rule required sampling and analysis plans to be developed but not submitted, there are two significant differences between these listing rules and the headworks exemption. First, the testing required under the two listing rules is on currently non-hazardous waste to document that the waste

¹ The provision in the proposed chlorinated aliphatics rule which stated that facilities must develop but do not need to submit their sampling and analysis plan was never finalized.

² The Agency notes that while the paints rule has been finalized, no wastestreams were listed. Therefore, any provisions involving sampling and analysis plans were not finalized.

should continue to be out of the hazardous waste regulatory system. In contrast, the testing required under the headworks rule is on currently hazardous waste to determine whether or not it can safely exit the hazardous waste regulatory system. The Agency has generally taken a different approach for determining whether a waste is hazardous, as opposed to demonstrating that hazardous waste in fact is not hazardous. Second, direct monitoring is not a requirement to qualify for the headworks exemption; it is an option. If the facility determines that submitting the sampling and analysis plan is too burdensome, then the facility can opt not to use the direct monitoring method to demonstrate compliance but can continue to use the mass balance approach.

EPA also disagrees that submitting the sampling and analysis plan is contradictory to the proposed RCRA Burden Reduction Initiative (67 FR 2518, Jan. 17, 2002) and the removal in 1997 of the LDR requirement to submit the facility's sampling and analysis plan. The purpose of the proposed burden reduction rule is to eliminate reports that are found to be duplicative or not used by state or regional agencies to protect human health and the environment. In today's rule, submitting the sampling and analysis plan serves as a notification to the overseeing agency that the facility will be using direct monitoring to demonstrate compliance with the headworks exemption. The sampling and analysis plan also will provide important information on key sampling parameters that the facility intends to use. EPA notes that the facility has a wide latitude to design the sampling and analysis plan, and the facility initially will set the conditions with which they intend to comply. As the sampling and analysis plan is not duplicative of any other requirement and serves as notification to the overseeing agency, EPA believes retaining the requirement to submit the sampling and analysis plan is reasonable and consistent with the proposed burden reduction rule.

In addition, while it is true that in 1997 EPA removed the requirement of submitting waste analysis plans for generators managing and treating prohibited waste in tanks, containers and containment buildings, the purpose of removing this requirement was to streamline the LDR process (60 FR 43678, August 22, 1995). This streamlining was in response to the Burden Reduction Initiative set forth in the President's report on "Reinventing Environmental Regulations," March 16, 1995. EPA stated that due to the growth

of the LDR program and the regulated community's better understanding of the program, it was unnecessary to maintain all of the reporting and recordkeeping requirements. Thus, certain LDR paperwork requirements were eliminated to reduce the regulatory burden (61 FR 2363, January 25, 1996). EPA notes several key differences between the headworks rule and the LDR Phase IV rule. First, while the headworks exemption is not a new exemption, the addition of direct monitoring as a compliance method is a new option. Second, submitting the sampling and analysis plan is not a requirement to qualify for the exemption; it is a requirement for the use of the direct monitoring option. Therefore, EPA is requiring submittal of sampling and analysis plans to provide the overseeing agency the opportunity to ensure that facilities are utilizing the newly instituted compliance method properly.

Two commenters requested further clarification regarding the rejection of the sampling and analysis plan. One commenter stated that if a sampling and analysis plan is submitted in good faith, but only exhibits minor flaws, then that facility should be able to continue to use the direct monitoring method while the minor inadequacies are being addressed. The other commenter requested more explanation regarding the actions that need to be taken in order for a facility to restart direct monitoring if the sampling and analysis plan is rejected.

The Agency notes that the parameters of the sampling and analysis plan must enable the facility to accurately calculate the weekly average concentration, and the plan must include the monitoring point location, the sampling frequency and methodology, and a list of the constituents to be monitored. Therefore, the Agency maintains that if the sampling and analysis plan is rejected for major deficiencies (e.g., fails to include the above information or does not enable the facility to accurately calculate the weekly average) or if the facility is found not to be following the plan, then the facility can no longer use the direct monitoring option until the bases for rejection are corrected. Even if the overseeing agency does reject the sampling and analysis plan, the facility continues to have the option to demonstrate compliance using the mass balance method, while the facility is addressing the sampling and analysis plan issues. The Agency does support the continued use of direct monitoring while deficiencies are being corrected if the sampling and analysis plan is submitted in good faith and the

deficiencies are minor. However, it is left to the discretion of the overseeing agency to determine the severity of the deficiencies and whether or not direct monitoring may continue while the facility addresses such minor deficiencies.

It is the facility's responsibility to determine from the overseeing agency the reason for the rejection and the steps that need to be taken to rectify the insufficiencies. The overseeing agency will determine whether the facility is to resubmit the entire sampling and analysis plan or just the amended sections once the facility corrects the bases for the rejection. Once the facility has received confirmation that the overseeing agency no longer has concerns with the amended sections of the plan, the facility may begin using the direct monitoring option.

4. Allowing Performance-Based Reduction in Sampling Frequency and Changing the Current Compliance Standard

Several commenters offered detailed suggestions of how the proposed site-specific sampling and analysis plan could establish a sampling schedule that would allow a reduced sampling frequency once compliance with the 1 ppm and 25 ppm thresholds was established. The commenters stated that this approach would be analogous to those taken historically in RCRA Waste Analysis Plans (WAP) and in CWA NPDES permits.

The Agency is interested in the possibility of allowing a facility's sampling and analysis plan to include a provision to reduce sampling frequency based on performance as long as the current compliance standards under 261.3(a)(2)(iv)(A) and (B) are maintained and the facility's provisions for reduced sampling frequency are thoroughly discussed in the plan. However, EPA would first need to propose the specific requirements of such a provision in order to allow for adequate notice and comment.

In addition, a number of commenters suggested that EPA increase the length of the current compliance period in order to reduce the costs associated with direct monitoring. The commenters' suggestion to increase the averaging period from weekly to monthly (i.e., the compliance period) addresses a provision in the current rule not specifically identified in the proposal as subject to possible amendment. EPA stated in the proposed rule that it would not respond to comments addressing such provisions (68 FR 17241, April 8, 2003).

C. The Exemption of Scrubber Waters Derived-From the Incineration of Listed Wastes

Numerous commenters supported the proposed addition of scrubber waters derived-from the incineration of F-listed solvents to the headworks exemption. Several supporters stated that the rationales used by EPA to advocate the addition of these scrubber waters are both accurate and justifiable. However, many commenters were concerned over the Agency reinterpreting the current regulatory language and requested that the exemption be incorporated into the regulatory text. Even though specific regulatory text for this provision was not proposed, we expressly stated in the preamble that the "Agency is proposing that scrubber waters derived from the combustion of spent solvents and sent to a facility's wastewater treatment system qualify for the exemption under 40 CFR 261.3(a)(2)(iv)(A) and (B)" (68 FR 17243; April 8, 2003). Nevertheless, based on the rational set forth in the preamble to the proposal, EPA is promulgating regulatory text to implement the proposed addition to the headworks exemption.

Many commenters stated that limiting the exemption to only scrubber waters derived-from the incineration of F-listed solvents was too narrow in scope and that the exemption as proposed would not be of much benefit to the regulated community. For the exemption to be useful, commenters requested that the exemption also apply to scrubber waters derived-from the incineration of other F-, K-, P-, and U-listed wastes. The commenters claimed that the rationales used to exempt the scrubber waters derived-from the F-listed solvents and to exempt the *de minimis* quantities of P- and U-listed wastes could be used to support the exemption of the scrubber waters derived-from the incineration of other listed wastes in the headworks exemption. As an alternative, some commenters stated that the other F-, K-, P-, and U-listed wastes in the scrubber waters are analogous to the *de minimis* quantities of the same chemicals. Therefore, the rationale used to exempt the release of *de minimis* quantities of these listed wastes can be applied to justify the addition of these scrubber waters into the *de minimis* exemption (§ 261.3(a)(2)(iv)(D)).

The Agency disagrees that scrubber waters derived-from the incineration of other listed wastes should be included in the headworks exemption. Scrubber waters derived-from the incineration of F-listed solvents are eligible for the exemption because these scrubber waters would be comparable in

expected constituents and concentration levels with the already exempted F-listed solvents (§ 261.3(a)(2)(iv)(A) & (B)). This rationale cannot be applied universally to the scrubber waters derived-from the incineration of the other listed wastes because not all of these listed wastes are currently exempted in § 261.3(a)(2)(iv)(A) & (B). Therefore, if the listed wastes themselves are not exempt, then the scrubber waters derived-from their incineration cannot be exempt using this rationale.

The Agency also will not be including scrubber waters derived-from the incineration of U-, P-, K- and other F-listed wastes in the *de minimis* exemption (§ 261.3(a)(2)(iv)(D)). EPA's proposal discussed expanding the *de minimis* exemption to facilities other than manufacturing facilities and discussed expanding the type of wastes that could qualify for the exemption. The proposal did not discuss expanding the *de minimis* exemption to systematic discharges of small amounts of waste to a wastewater treatment system. Since originally adopted in 1981, the *de minimis* exemption has removed from regulation small amounts of listed wastes that are inadvertently and often unavoidably lost under normal material handling operations at well-maintained facilities. The systematic release of scrubber waters into the wastewater treatment system advocated by some of the commenters would neither be inadvertent or unavoidable as the scrubber water is a segregated wastewater stream at its point of generation. Allowing systematic releases to come within the *de minimis* exemption would be a fundamental change in how the *de minimis* exemption operates and arguably would require additional notice and comment to adopt.

D. Expansion of the De Minimis Exemption

1. General Issues

All who commented on the proposed *de minimis* expansion generally supported it, but many commenters raised specific issues. Separate sections discuss commenters' issues and the Agency's responses regarding the CWA permit requirement, the inclusion of "unscheduled," "uncontrollable," "insignificant" and "inadvertent" in the regulatory language and the removal of "rinsates from empty container" from the regulatory language.

In addition to the issues listed above, one commenter stated that they were interpreting the *de minimis* exemption expansions to include facilities that

have eliminated the discharge of wastewaters using permitted Class I injection wells. The Agency agrees with this interpretation. As explained in the preamble of the original headworks rule, the exemptions not only apply to wastewaters that are managed in wastewater treatment systems whose discharges are subject to regulation under Section 402 or 307(b) of the CWA, but also apply to "those facilities (known as "zero dischargers") that have eliminated the discharge of wastewater as a result of, or by exceeding, NPDES or pretreatment program requirements" (46 FR 56584, November 17, 1981). These wastewater management requirements remain unchanged by the amendments to the final headworks rule.

In addition, EPA continues to believe that underground injection wells can meet the headworks' definition of zero discharge if the injection well is being used for the purposes of complying with a NPDES permit, other applicable effluent guideline, or pretreatment program requirements. See discussion in Third Third Rule (55 FR 22672, June 1, 1990). Wastewaters disposed of via injection well usually are not considered discharges under the CWA. However, if underground injection of wastewaters occurs for reasons other than to comply with a NPDES permit, other applicable effluent guideline or pretreatment program requirements, then those wastewaters are not eligible for the wastewater treatment (headworks) exemptions (in 40 CFR 261.3(a)(2)(iv)).

2. Clean Water Act Permit Requirement

The Agency proposed that for manufacturing facilities claiming a *de minimis* loss of F- or K-listed wastes or non-manufacturing facilities claiming a *de minimis* loss of wastes listed in §§ 261.31 through 261.33, the CWA permit must include limits for the Appendix VII hazardous constituents and the LDR constituents associated with the listed wastes. Many commenters objected to this proposed requirement. Several of these commenters argued that it usually is not the permit writer's practice to set specific permit limits for every constituent that may be present in the facility's effluent. Rather, they argued that listing the waste streams or constituents of concern in the CWA permit application will provide the permit writer or control authority with the necessary information to decide whether or not a specified level or method of treatment is necessary in the permit for the various constituents.

The rationale for requiring a facility's CWA permit to contain limits for Appendix VII and LDR constituents associated with the specific wastes was due to the *de minimis* eligibility being expanded to include F- and K-listed wastes. At the time of the proposal, the Agency wanted to ensure that the releases of F- and K-listed wastes would be minimized so that these wastes would not have a significant effect upon wastewater treatment systems, the quality of effluent discharges, solid wastes generated, occupational safety and health, and human health and the environment (67 FR 17244, April 8, 2003). However, the Agency recognizes that it usually is not the permit writer's practice to set specific permit limits for every constituent that may be present in a facility's effluent. For instance, some constituents are controlled through the use of limits on conventional pollutants (such as biochemical oxygen demand, total suspended solids, or pH), or through limits on other bulk parameters (such as chemical oxygen demand or total organic carbon), while other constituents may require limitations on whole effluent toxicity or special monitoring procedures to be performed, or may be present at such low levels that no permit limit is necessary. Therefore, we agree with the commenters that it is sufficiently protective for direct discharging facilities to list all expected Appendix VII and LDR constituents in their CWA permit application (or for indirect dischargers to POTWs, in their submission to their control authority) and to rely on the permit writer's (or control authority's) judgment to determine if specific permit limits are needed. Further, as discussed in the preamble of the proposed rule, the toxicity characteristics and CERCLA's reportable quantities will remain as additional protective mechanisms (68 FR 17244). Therefore, in the final rule, facilities only will be required to list all Appendix VII and LDR constituents in the CWA permit application or POTW submission which will allow the permit writer or control authority to determine if specific permit limits are needed. In addition, facilities will be required to keep a copy of the CWA permit application or POTW submission on-site as an alert to inspectors that the permit writer or control authority was notified of the possible *de minimis* releases of constituents of concern. Finally, the Agency notes that alerting the permit writer or control authority must occur before the facility claims the newly expanded portions of the *de minimis* exemption.

In addition, several commenters stated that facilities that discharge to POTWs should be allowed to take advantage of the exemption, and if allowed, they should not be required to have pretreatment limits for each constituent that may be released. Further, the POTW's CWA permit should not be required to have specific limits for each of the constituents managed at the indirect discharger's facility.

Indirect dischargers are eligible for the *de minimis* exemption if the POTW they discharge to have valid CWA permits that include an approved pretreatment program as a condition of the POTW's permit. As discussed above, the rationale for requiring all constituents to have pretreatment limits was to ensure the protection of human health and the environment and to minimize the incentive to "dispose of" F- and K-listed wastes into the wastewater treatment system. However, EPA believes indirect dischargers can qualify for the *de minimis* exemption using mechanisms other than requiring pretreatment limits for each constituent potentially released and still be protective of human health and the environment. The disclosure of each Appendix VII and LDR constituent that may be released to the POTW by the indirect discharger will sufficiently protect human health and the environment by alerting the POTW of any potential chemicals that may pass through or interfere with its operation or cause a permit violation of the POTW's discharge permit. The control authority (i.e., POTW, state, or EPA Region) can determine if specific pretreatment limits are necessary once all potential Appendix VII and LDR constituents are disclosed. In addition, as with the direct dischargers, POTWs do not need to have specific limits listed for each constituent in the indirect discharger's permit (or control mechanism) but must have received a list of all Appendix VII and LDR constituents from the indirect discharger in order for the discharger to use the exemption.

3. Inclusion of "Unscheduled," "Uncontrollable," "Insignificant," and "Inadvertent" in the Regulatory Definition of De Minimis

Commenters also objected to the proposed addition of the words "unscheduled," "uncontrollable," "insignificant," and "inadvertent" which were used to describe *de minimis* releases to a wastewater treatment system (§ 261.3(a)(2)(iv)(D)). Commenters expressed concern that EPA did not adequately announce or explain these qualifiers and that the

qualifiers would cause confusion to the regulated community as well as narrow the scope of the exemption.

Because the expansion of the *de minimis* exemption includes the F- and K-listed wastes for which there is no economic incentive to prevent their loss into the wastestream, the Agency believed that it was necessary to reaffirm its understanding of what is meant by a *de minimis* release. However, EPA has been persuaded by commenters that the intended meanings of "unscheduled" and "uncontrollable" can be misinterpreted and that they should not be included in this final rule. EPA also recognizes the redundancy of including "insignificant" in the regulatory definition of *de minimis*. Therefore, in today's final rule, "insignificant" also will not be included in the regulatory language. However, EPA disagrees that facilities will be confused over the meaning of "inadvertent." The inclusion of "inadvertent" in the regulatory definition of *de minimis* reinforces that these losses, no matter if a F-, K-, P- or U-listed waste, must be minor and must result from normal operating procedures at well-maintained facilities.

The commenters also state that EPA failed to explain how these words would effect the current interpretation of the *de minimis* exemption. Regarding the remaining additional term "inadvertent," it is not the Agency's intent to alter the interpretation of the exemption. It is clearly illustrated in the preamble of the original rule that the *de minimis* exemption was intended for minor losses resulting from normal operating procedures, such as when small amounts of raw material are lost in various unloading or material transfer operations, or when small losses occur as a result from purgings and relief valve discharges. In addition, the original preamble states that it was not the Agency's intention for the exemption to include losses from normal operating procedures occurring at facilities that use neglectful or careless management practices. In fact, the preamble states that the Agency will use its listing authority to list the wastewaters from those facilities whose neglectful or careless management practices cause such high losses of § 261.33 hazardous wastes (46 FR 56586, November 17, 1981). Therefore, "inadvertent" is not altering the interpretation of *de minimis* but is reinforcing the Agency's original intent that the exemption apply only to those minor losses resulting from normal operating procedures at well-maintained facilities. The Agency believes that it is imperative to reinforce that the minor

losses of waste must be inadvertent because the expanded exemption includes listed wastes that are not commercial chemical products. As is discussed in the 1981 preamble, facilities have an economical incentive to minimize the loss of commercial chemical products during normal operating procedures. Id. This economic incentive does not exist for the F- and K-listed wastes being added to the *de minimis* exemption. Therefore, it is imperative that there is an understanding that any large intentional losses of these wastes will not be considered as *de minimis* and accordingly, will not be exempted under § 261.3(a)(2)(iv)(D).

Commenters stated that the inclusion of the four new terms in the regulatory language would narrow the scope of the exemption. However, the Agency disagrees that the inclusion of the remaining term "inadvertent" in the regulatory language will narrow the scope of the exemption. Our use of the term "inadvertent" implies that the *de minimis* loss must not be a result of neglect or carelessness. As stated in the 1981 preamble, small losses of listed wastes do occur during normal operating procedures at well-maintained facilities because it is exceedingly expensive to prevent such losses. In addition, EPA recognized that the segregation and separate management of these losses would also be exceedingly expensive as well as unnecessary because wastewater treatment systems would be capable of efficiently treating these small quantities of listed wastes. Id. Our inclusion of the word "inadvertent" in the regulatory language is not intended to alter the original scope of the exemption, as these small losses that are occurring during normal operating procedures at well-maintained facilities will remain in the exemption. Inclusion of the term "inadvertent" only reinforces that losses, which result from mismanagement, neglectfulness or carelessness during normal operating procedures, are not (and have never been) included in the exemption.

The commenters also suggest that "inadvertent" is not consistent with the examples provided in the existing regulatory language, as the examples describe losses that are "predictable," not "inadvertent." As acknowledged in the 1981 preamble, well-maintained facilities will have predictable losses that can be prevented but only at a considerable cost. Id. The Agency recognizes these "predictable" losses as "inadvertent" as long as they are occurring during normal operating procedures at a facility that is not

managed in a neglectful or careless manner.

Finally, some commenters suggested applying the qualifying terms "unscheduled," "uncontrollable," "insignificant," and "inadvertent" to only F- and K-listed wastes. As we have decided not to include the first three of those terms in the final rule, we will address the comment with respect to the remaining term "inadvertent." We disagree with the comments requesting the qualifiers apply to only F- and K-listed wastes. The universe of the *de minimis* exemption is being expanded to include both the listed wastes in § 261.31 and § 261.32 and non-manufacturing facilities. Therefore, it is imperative that those facilities that do not have a history with the exemption have a clear understanding of what a *de minimis* release is for all the listed wastes.

4. Removal of "Rinsates From Empty Containers" From the Regulatory Definition of De Minimis

Two commenters raise what they believe is an inconsistency between two existing regulatory provisions. The commenters believe that the phrase "rinsates from empty containers" in 40 CFR 261.3(a)(2)(iv)(D) conflicts with language found in 40 CFR 261.7, which excludes "residues of hazardous waste in empty containers" from regulation under part 261. As argued by the commenters, "rinsates from empty containers" are "residues of hazardous waste in empty containers," and since "residues of hazardous waste in empty containers" are not considered hazardous wastes, it is inconsistent for EPA to retain the "rinsates from empty containers" phrase in the *de minimis* regulatory language. Because the *de minimis* regulatory language is being amended to include the new expansions to the exemption, the commenters claim that the Agency now has the opportunity to fix the apparently inconsistent language.

EPA notes that this comment raises an issue that is outside the scope of the proposed rulemaking. As stated in the preamble, the Agency made clear that it would not respond to any comments addressing any provisions of the headworks rule not specifically identified as subject to possible amendment (68 FR 17233, April 8, 2003).

However, EPA would like to take this opportunity to clarify how the existing "empty container" exemption operates. Under 40 CFR 261.7, a container can contain a small amount of non-acute hazardous waste and still be considered "empty" for the purpose of hazardous

waste regulation. (40 CFR 261.7 includes very specific definitions on how much waste can remain in an "empty container.") The waste remaining in this "empty" container is not subject to hazardous waste regulation (including the mixture rule).

However, even though rinse water from an "empty" container may often times be non-hazardous, 40 CFR 261.7 does not directly exempt rinse water from Subtitle C regulation. Specifically, rinse water is not a waste "remaining in" an "empty" container. Indeed, while 40 CFR 261.7 clearly exempts residue remaining in an "empty" container from Subtitle C regulation, the Agency has made it clear that when the residue is removed from an "empty" container, the residue is subject to full regulation under Subtitle C if the removal or subsequent management of the residue generates a new hazardous waste that exhibits any of the characteristics identified in Part 261, Subpart C (see 45 FR 78529, November 25, 1980, where it states "[C]ontainer cleaning facilities which handle only 'empty' containers are not currently subject to regulation unless they generate a waste that meets one of the characteristics in Subpart D."). (See also April 12, 2004 letter from Robert Springer, Director, Office of Solid Waste to Casey Coles, Hogan and Hartson, LLP).

Finally, it also should be noted that if the rinsing agent includes a solvent (or other chemical) that would be a listed hazardous waste when discarded, then the rinsate from an "empty" container would be considered a listed hazardous waste. This is not due to the nature of the waste being rinsed from the "empty" container, but rather, because of the nature of the rinsing agent. In this scenario, the rinsate still may be eligible for the exemptions from the mixture rule found in 40 CFR 261.3(a)(2)(iv) (i.e., headworks exemptions) if it meets the conditions of those exemptions (e.g., solvent levels at the headworks below those in 40 CFR 261.3(a)(2)(iv)(A) and (B)).

E. The Potential Exemptions of Leachates Derived-From Solvent Wastes and Leachates Derived-From Other Types of Hazardous Wastes

Commenters generally supported potential exemptions of solvent waste and non-solvent waste leachates and urged EPA to continue developing a future proposal addressing such exemptions. One commenter stated that exempting such leachates would provide facilities flexibility in waste management that currently is not available to them. The commenter also added that if exempted, leachates could

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Part II

Environmental Protection Agency

40 CFR Parts 9, 63, 260 et al.

National Emission Standards for Hazardous Air Pollutants: Final
Standards for Hazardous Air Pollutants for Hazardous Waste Combustors
(Phase I Final Replacement Standards and Phase II); Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 63, 260, 264, 265, 266, 270 and 271

[FRL-7971-8]
RIN 2050-AE01

National Emission Standards for Hazardous Air Pollutants: Final
Standards for Hazardous Air Pollutants for Hazardous Waste Combustors
(Phase I Final Replacement Standards and Phase II)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes national emission standards (NESHAP) for

hazardous air pollutants for hazardous waste combustors (HWCs): hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, industrial/commercial/institutional boilers and process heaters, and hydrochloric acid production furnaces. EPA has identified HWCs as major sources of hazardous air pollutant (HAP) emissions. These standards implement section 112(d) of the Clean Air Act (CAA) by requiring hazardous waste combustors to meet HAP emission standards reflecting the performance of the maximum achievable control technology (MACT).

The HAP emitted by HWCs include arsenic, beryllium, cadmium, chromium, dioxins and furans, hydrogen chloride and chlorine gas, lead, manganese, and mercury. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation to the lung, skin, and mucus membranes, effects on the central nervous system, kidney damage, and cancer. The adverse health effects associated with exposure to these specific HAP are further described in the preamble. For many HAP, these findings have only been shown with concentrations higher than those typically in the ambient air.

This action also presents our decision regarding the February 28, 2002 petition for rulemaking submitted by the Cement Kiln Recycling Coalition, relating to EPA's implementation of the so-called omnibus permitting authority under section 3005(c) of the Resource Conservation and Recovery Act (RCRA). That section requires that each permit issued under RCRA contain such terms and conditions as permit writers determine to be necessary to protect human health and the environment. In that petition, the Cement Kiln Recycling Coalition requested that we repeal the existing site-specific risk assessment policy and technical guidance for hazardous waste combustors and that we promulgate the policy and guidance as rules in accordance with the Administrative Procedure Act if we continue to believe that site-specific risk assessments may be necessary.

under § 63.1216, you must establish 12-hour rolling average limits for the total feedrate of semivolatile and low volatile metals in all feedstreams as the average of the test run averages.

(iii) *Cement kilns under § 63.1220*—(A) When complying with the emission standards under §§ 63.1220(a)(3)(i), (a)(4)(i), (b)(3)(i), and (b)(4)(i), you must establish 12-hour rolling average feedrate limits for semivolatile and low volatile metals as the thermal concentration of semivolatile metals or low volatile metals in all hazardous waste feedstreams. You must calculate hazardous waste thermal concentrations for semivolatile metals and low volatile metals for each run as the total mass feedrate of semivolatile metals or low volatile metals for all hazardous waste feedstreams divided by the total heat input rate for all hazardous waste feedstreams. The 12-hour rolling average feedrate limits for semivolatile metals and low volatile metals are the average of the hazardous waste thermal concentrations for the runs.

(B) When complying with the emission standards under §§ 63.1220(a)(3)(ii), (a)(4)(ii), (b)(3)(ii), and (b)(4)(ii), you must establish 12-hour rolling average limits for the total feedrate of semivolatile and low volatile metals in all feedstreams as the average of the test run averages.

(iv) *Lightweight aggregate kilns under § 63.1221*—(A) When complying with the emission standards under §§ 63.1221(a)(3)(i), (a)(4)(i), (b)(3)(i), and (b)(4)(i), you must establish 12-hour rolling average feedrate limits for semivolatile and low volatile metals as the thermal concentration of semivolatile metals or low volatile metals in all hazardous waste feedstreams as specified in paragraphs (n)(2)(iii)(A) of this section.

(B) When complying with the emission standards under §§ 63.1221(a)(3)(ii), (a)(4)(ii), (b)(3)(ii), and (b)(4)(ii), you must establish 12-hour rolling average limits for the total feedrate of semivolatile and low volatile metals in all feedstreams as the average of the test run averages.

(v) *Liquid fuel boilers under § 63.1217*. (A) *Semivolatile metals*. You must establish a rolling average limit for the semivolatile metal feedrate as follows on an averaging period not to exceed an annual rolling average.

(1) *System removal efficiency*. You must calculate a semivolatile metal system removal efficiency for each test run and calculate the average system removal efficiency of the test run averages. If emissions exceed the semivolatile metal emission standard during the comprehensive performance

test, it is not a violation because the averaging period for the semivolatile metal emission standard is one year and compliance is based on compliance with the semivolatile metal feedrate limit that has an averaging period not to exceed an annual rolling average.

(2) *Boilers that feed hazardous waste with a heating value of 10,000 Btu/lb or greater*. You must calculate the semivolatile metal feedrate limit as the semivolatile metal emission standard divided by [1 – System Removal Efficiency].

(i) The feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of semivolatile metals in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler.

(ii) You must comply with the hazardous waste semivolatile metal thermal concentration limit by determining the feedrate of semivolatile metal in all hazardous waste feedstreams (lb/hr) and the hazardous waste thermal feedrate (MM Btu/hr) at least once a minute to calculate a 60-minute average thermal emission concentration as [hazardous waste semivolatile metal feedrate (lb/hr) / hazardous waste thermal feedrate (MM Btu/hr)].

(iii) You must calculate a rolling average hazardous waste semivolatile metal thermal concentration that is updated each hour.

(iv) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. You must calculate rolling averages thereafter as the average of the available one-minute values until enough one-minute values are available to calculate the rolling average period you select. At that time and thereafter, you update the rolling average feedrate each hour with a 60-minute average feedrate.

(3) *Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb*. (i) You must calculate the semivolatile metal feedrate limit as the semivolatile metal emission standard divided by [1 – System Removal Efficiency].

(ii) The feedrate limit is expressed as a mass concentration per unit volume of stack gas ($\mu\text{g}/\text{dscm}$) and is converted to a mass feedrate (lb/hr) by multiplying it by the average stack gas flowrate (dscm/hr) of the test run averages.

(iii) You must comply with the feedrate limit by determining the semivolatile metal feedrate (lb/hr) at

least once a minute to calculate a 60-minute average feedrate.

(iv) You must update the rolling average feedrate each hour with this 60-minute feedrate measurement.

(v) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. You must calculate rolling averages thereafter as the average of the available one-minute values until enough one-minute values are available to calculate the rolling average period you select. At that time and thereafter, you update the rolling average feedrate each hour with a 60-minute average feedrate.

(B) *Chromium*. (1) *Boilers that feed hazardous waste with a heating value of 10,000 Btu/lb or greater*. (i) The feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of chromium in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler.

(ii) You must comply with the hazardous waste chromium thermal concentration limit by determining the feedrate of chromium in all hazardous waste feedstreams (lb/hr) and the hazardous waste thermal feedrate (MM Btu/hr) at least once a minute to calculate a 60-minute average thermal emission concentration as [hazardous waste chromium feedrate (lb/hr) / hazardous waste thermal feedrate (MM Btu/hr)]. You must update the rolling average feedrate each hour with this 60-minute average feedrate measurement.

(2) *Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb*. You must establish a 12-hour rolling average limit for the total feedrate (lb/hr) of chromium in all feedstreams as the average of the test run averages. You must update the rolling average feedrate each hour with a 60-minute average feedrate measurement.

(vi) *LVM limits for pumpable wastes*. You must establish separate feedrate limits for low volatile metals in pumpable feedstreams using the procedures prescribed above for total low volatile metals. Dual feedrate limits for both pumpable and total feedstreams are not required, however, if you base the total feedrate limit solely on the feedrate of pumpable feedstreams.

(vii) *Extrapolation of feedrate levels*. In lieu of establishing feedrate limits as specified in paragraphs (l)(1)(i) through (iii) of this section, you may request as part of the performance test plan under §§ 63.7(b) and (c) and §§ 63.1207(e) and (f) to use the semivolatile metal and low

volatile metal feedrates and associated emission rates during the comprehensive performance test to extrapolate to higher allowable feedrate limits and emission rates. The extrapolation methodology will be reviewed and approved, as warranted, by the Administrator. The review will consider in particular whether:

(A) Performance test metal feedrates are appropriate (*i.e.*, whether feedrates are at least at normal levels; depending on the heterogeneity of the waste, whether some level of spiking would be appropriate; and whether the physical form and species of spiked material is appropriate); and

(B) Whether the extrapolated feedrates you request are warranted considering historical metal feedrate data.

* * * * *

(c) *Hydrogen chloride and chlorine gas.* * * *

(1) *Feedrate of total chlorine and chloride.* (i) *Incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, and hydrochloric acid production furnaces.* You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and

inorganic) in all feedstreams as the average of the test run averages.

(ii) *Liquid fuel boilers.* (A) *Boilers that feed hazardous waste with a heating value not less than 10,000 Btu/lb.* (1)

The feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of chlorine (organic and inorganic) in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler.

(2) You must establish a 12-hour rolling average feedrate limit as the average of the test run averages.

(3) You must comply with the feedrate limit by determining the mass feedrate of hazardous waste feedstreams (lb/hr) at least once a minute and by knowing the chlorine (organic and inorganic) content and heating value (million Btu/lb) of hazardous waste feedstreams at all times to calculate a 60-minute average feedrate measurement as [hazardous waste chlorine feedrate (lb/hr) / hazardous waste thermal feedrate (million Btu/hr)]. You must update the rolling average feedrate each hour with this 60-minute average feedrate measurement.

(B) *Boilers that feed hazardous waste with a heating value less than 10,000*

Btu/lb. You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and inorganic) in all feedstreams as the average of the test run averages. You must update the rolling average feedrate each hour with a 60-minute average feedrate measurement.

* * * * *

(r) *Averaging periods.* The averaging periods specified in this section for operating parameters are not-to-exceed averaging periods. You may elect to use shorter averaging periods. For example, you may elect to use a 1-hour rolling average rather than the 12-hour rolling average specified in paragraph (l)(1)(i) of this section for mercury.

■ 12. Section 63.1210 is amended by:

- a. Revising the table in paragraph (a)(1) and the table in paragraph (a)(2).
- b. Redesignating paragraph (b) as (d).
- c. Adding new paragraph (b).
- d. Adding new paragraph (c).

The revisions and additions read as follows:

§ 63.1210 What are the notification requirements?

- (a) * * *
- (1) * * *

Reference	Notification
63.9(b)	Initial notifications that you are subject to Subpart EEE of this Part.
63.9(d)	Notification that you are subject to special compliance requirements.
63.9(j)	Notification and documentation of any change in information already provided under § 63.9.
63.1206(b)(5)(i)	Notification of changes in design, operation, or maintenance.
63.1206(c)(7)(ii)(C)	Notification of excessive bag leak detection system exceedances.
63.1207(e), 63.9(e) 63.9(g)(1) and (3)	Notification of performance test and continuous monitoring system evaluation, including the performance test plan and CMS performance evaluation plan. ¹
63.1210(b)	Notification of intent to comply.
63.1210(d), 63.1207(j), 63.1207(k), 63.1207(l), 63.9(h), 63.10(d)(2), 63.10(e)(2)	Notification of compliance, including results of performance tests and continuous monitoring system performance evaluations.

¹ You may also be required on a case-by-case basis to submit a feedstream analysis plan under § 63.1209(c)(3).

(2) * * *

Reference	Notification, request, petition, or application 6
63.9(i)	You may request an adjustment to time periods or postmark deadlines for submittal and review of required information.
63.10(e)(3)(ii)	You may request to reduce the frequency of excess emissions and CMS performance reports.
63.10(f)	You may request to waive recordkeeping or reporting requirements.
63.1204(d)(2)(iii), 63.1220(d)(2)(iii)	Notification that you elect to comply with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(iii), 63.1220(e)(2)(iii)	Notification that you elect to comply with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(4), 63.1213, 63.6(i), 63.9(c)	You may request an extension of the compliance date for up to one year.
63.1206(b)(5)(i)(C)	You may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting after making a change in the design or operation that could affect compliance with emission standards and prior to submitting a revised Notification of Compliance.
63.1206(b)(8)(iii)(B)	If you elect to conduct particulate matter CEMS correlation testing and wish to have federal particulate matter and opacity standards and associated operating limits waived during the testing, you must notify the Administrator by submitting the correlation test plan for review and approval.
63.1206(b)(8)(v)	You may request approval to have the particulate matter and opacity standards and associated operating limits and conditions waived for more than 96 hours for a correlation test.

Reference	Notification, request, petition, or application 6
63.1206(b)(9)	Owners and operators of lightweight aggregate kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrogen chloride/chlorine gas under certain conditions.
63.1206(b)(10)	Owners and operators of cement kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrogen chloride/chlorine gas under certain conditions.
63.1206(b)(14)	Owners and operators of incinerators may elect to comply with an alternative to the particulate matter standard.
63.1206(b)(15)	Owners and operators of cement and lightweight aggregate kilns may request to comply with the alternative to the interim standards for mercury.
63.1206(c)(2)(ii)(C)	You may request to make changes to the startup, shutdown, and malfunction plan.
63.1206(c)(5)(i)(C)	You may request an alternative means of control to provide control of combustion system leaks.
63.1206(c)(5)(i)(D)	You may request other techniques to prevent fugitive emissions without use of instantaneous pressure limits.
63.1207(c)(2)	You may request to base initial compliance on data in lieu of a comprehensive performance test.
63.1207(d)(3)	You may request more than 60 days to complete a performance test if additional time is needed for reasons beyond your control.
63.1207(e)(3), 63.7(h)	You may request a time extension if the Administrator fails to approve or deny your test plan.
63.1207(h)(2)	You may request to waive current operating parameter limits during pretesting for more than 720 hours.
63.1207(f)(1)(ii)(D)	You may request a reduced hazardous waste feedstream analysis for organic hazardous air pollutants if the reduced analysis continues to be representative of organic hazardous air pollutants in your hazardous waste feedstreams.
63.1207(g)(2)(v)	You may request to operate under a wider operating range for a parameter during confirmatory performance testing.
63.1207(i)	You may request up to a one-year time extension for conducting a performance test (other than the initial comprehensive performance test) to consolidate testing with other state or federally-required testing.
63.1207(j)(4)	You may request more than 90 days to submit a Notification of Compliance after completing a performance test if additional time is needed for reasons beyond your control.
63.1207(l)(3)	After failure of a performance test, you may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting.
63.1209(a)(5), 63.8(f)	You may request: (1) Approval of alternative monitoring methods for compliance with standards that are monitored with a CEMS; and (2) approval to use a CEMS in lieu of operating parameter limits.
63.1209(g)(1)	You may request approval of: (1) Alternatives to operating parameter monitoring requirements, except for standards that you must monitor with a continuous emission monitoring system (CEMS) and except for requests to use a CEMS in lieu of operating parameter limits; or (2) a waiver of an operating parameter limit.
63.1209(l)(1)	You may request to extrapolate mercury feedrate limits.
63.1209(n)(2)	You may request to extrapolate semivolatile and low volatile metal feedrate limits.
63.1211(d)	You may request to use data compression techniques to record data on a less frequent basis than required by § 63.1209.

(b) *Notification of intent to comply (NIC)*. These procedures apply to sources that have not previously complied with the requirements of paragraph (b) of this section, and to sources that previously complied with the NIC requirements of § 63.1210, which were in effect prior to October 11, 2000, that must make a technology change requiring a Class 1 permit modification to meet the standards of §§ 63.1219, 63.1220, and 63.1221.

(1) You must prepare a Notification of Intent to Comply that includes all of the following information:

(i) General information:

(A) The name and address of the owner/operator and the source;

(B) Whether the source is a major or an area source;

(C) Waste minimization and emission control technique(s) being considered;

(D) Emission monitoring technique(s) you are considering;

(E) Waste minimization and emission control technique(s) effectiveness;

(F) A description of the evaluation criteria used or to be used to select waste minimization and/or emission control technique(s); and

(G) A general description of how you intend to comply with the emission standards of this subpart.

(ii) As applicable to each source, information on key activities and estimated dates for these activities that will bring the source into compliance with emission control requirements of this subpart. You must include all of the following key activities and dates in your NIC:

(A) The dates by which you anticipate you will develop engineering designs for emission control systems or process changes for emissions;

(B) The date by which you anticipate you will commit internal or external

resources for installing emission control systems or making process changes for emission control, or the date by which you will issue orders for the purchase of component parts to accomplish emission control or process changes.

(C) The date by which you anticipate you will submit construction applications;

(D) The date by which you anticipate you will initiate on-site construction, installation of emission control equipment, or process change;

(E) The date by which you anticipate you will complete on-site construction, installation of emission control equipment, or process change; and

(F) The date by which you anticipate you will achieve final compliance. The individual dates and milestones listed in paragraphs (b)(1)(ii)(A) through (F) of this section as part of the NIC are not requirements and therefore are not

enforceable deadlines; the requirements of paragraphs (b)(1)(ii)(A) through (F) of this section must be included as part of the NIC only to inform the public of how you intend to comply with the emission standards of this subpart.

(iii) A summary of the public meeting required under paragraph (c) of this section;

(iv) If you intend to cease burning hazardous waste prior to or on the compliance date, the requirements of paragraphs (b)(1)(ii) and (b)(1)(iii) of this section do not apply. You must include in your NIC a schedule of key dates for the steps to be taken to stop hazardous waste activity at your combustion unit. Key dates include the date for submittal of RCRA closure documents required under subpart G, part 264 or subpart G, part 265 of this chapter.

(2) You must make a draft of the NIC available for public review no later than 30 days prior to the public meeting required under paragraph (c)(1) of this section or no later than 9 months after the effective date of the rule if you intend to cease burning hazardous waste prior to or on the compliance date.

(3) You must submit the final NIC to the Administrator no later than one year following the effective date of the emission standards of this subpart.

(c) *NIC public meeting and notice.* (1) Prior to the submission of the NIC to the permitting agency, and no later than 10 months after the effective date of the emission standards of this subpart, you must hold at least one informal meeting with the public to discuss anticipated activities described in the draft NIC for achieving compliance with the emission

standards of this subpart. You must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses;

(2) You must submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b)(1) of this section, and copies of any written comments or materials submitted at the meeting, to the Administrator as part of the final NIC, in accordance with paragraph (b)(1)(iii) of this section;

(3) You must provide public notice of the NIC meeting at least 30 days prior to the meeting and you must maintain, and provide to the Administrator upon request, documentation of the notice. You must provide public notice in all of the following forms:

(i) *Newspaper advertisement.* You must publish a notice in a newspaper of general circulation in the county or equivalent jurisdiction of your facility. In addition, you must publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdiction where such publication would be necessary to inform the affected public. You must publish the notice as a display advertisement.

(ii) *Visible and accessible sign.* You must post a notice on a clearly marked sign at or near the source. If you place the sign on the site of the hazardous waste combustor, the sign must be large enough to be readable from the nearest spot where the public would pass by the site.

(iii) *Broadcast media announcement.* You must broadcast a notice at least

once on at least one local radio station or television station.

(iv) *Notice to the facility mailing list.* You must provide a copy of the notice to the facility mailing list in accordance with § 124.10(c)(1)(ix) of this chapter.

(4) You must include all of the following in the notices required under paragraph (c)(3) of this section:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the source and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the source location;

(iv) A statement encouraging people to contact the source at least 72 hours before the meeting if they need special access to participate in the meeting;

(v) A statement describing how the draft NIC (and final NIC, if requested) can be obtained; and

(vi) The name, address, and telephone number of a contact person for the NIC.

(5) The requirements of this paragraph do not apply to sources that intend to cease burning hazardous waste prior to or on the compliance date.

■ 13. Section 63.1211 is amended by:

■ a. Revising the table in paragraph (b).

■ b. Revising paragraph (c)(1).

The revisions read as follows:

§ 63.1211 What are the recordkeeping and reporting requirements?

* * * * *

(b) * * *

Reference	Document, Data, or Information
63.1200, 63.10(b) and (c)	General. Information required to document and maintain compliance with the regulations of Subpart EEE, including data recorded by continuous monitoring systems (CMS), and copies of all notifications, reports, plans, and other documents submitted to the Administrator.
63.1204(d)(1)(ii), 63.1220(d)(1)(ii)	Documentation of mode of operation changes for cement kilns with in-line raw mills.
63.1204(d)(2)(ii), 63.1220(d)(2)(ii)	Documentation of compliance with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(ii), 63.1220(e)(2)(ii)	Documentation of compliance with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(1)(ii)	If you elect to comply with all applicable requirements and standards promulgated under authority of the Clean Air Act, including Sections 112 and 129, in lieu of the requirements of Subpart EEE when not burning hazardous waste, you must document in the operating record that you are in compliance with those requirements.
63.1206(b)(5)(ii)	Documentation that a change will not adversely affect compliance with the emission standards or operating requirements.
63.1206(b)(11)	Calculation of hazardous waste residence time.
63.1206(c)(2)	Startup, shutdown, and malfunction plan.
63.1206(c)(2)(v)(A)	Documentation of your investigation and evaluation of excessive exceedances during malfunctions.
63.1206(c)(3)(v)	Corrective measures for any automatic waste feed cutoff that results in an exceedance of an emission standard or operating parameter limit.
63.1206(c)(3)(vii)	Documentation and results of the automatic waste feed cutoff operability testing.
63.1206(c)(4)(ii)	Emergency safety vent operating plan.
63.1206(c)(4)(iii)	Corrective measures for any emergency safety vent opening.
63.1206(c)(5)(ii)	Method used for control of combustion system leaks.
63.1206(c)(6)	Operator training and certification program.
63.1206(c)(7)(i)(D)	Operation and maintenance plan.
63.1209(c)(2)	Feedstream analysis plan.

Reference	Document, Data, or Information
63.1209(k)(6)(iii), 63.1209(k)(7)(ii), 63.1209(k)(9)(ii), 63.1209(o)(4)(iii).	Documentation that a substitute activated carbon, dioxin/furan formation reaction inhibitor, or dry scrubber sorbent will provide the same level of control as the original material.
63.1209(k)(7)(i)(C)	Results of carbon bed performance monitoring.
63.1209(q)	Documentation of changes in modes of operation.
63.1211(c)	Documentation of compliance.

(c) * * *

(1) By the compliance date, you must develop and include in the operating record a Documentation of Compliance. You are not subject to this requirement, however, if you submit a Notification of Compliance under § 63.1207(j) prior to the compliance date. Upon inclusion of the Documentation of Compliance in the operating record, hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns regulated under the interim standards of §§ 63.1203, 63.1204, and 63.1205 are no longer subject to compliance with the previously applicable Notification of Compliance.

* * * * *

■ 14. Section 63.1212 is added to subpart EEE to read as follows:

§ 63.1212 What are the other requirements pertaining to the NIC?

(a) *Certification of intent to comply.* The Notice of Intent to Comply (NIC) must contain the following certification signed and dated by a responsible official as defined under § 63.2 of this chapter: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) *New units.* Any source that files a RCRA permit application or permit modification request for construction of a hazardous waste combustion unit after October 12, 2005 must:

(1) Prepare a draft NIC according to § 63.1210(b) and make it available to the public upon issuance of the notice of NIC public meeting per § 63.1210(c)(3);

(2) Prepare a draft comprehensive performance test plan pursuant to the requirements of § 63.1207 and make it available for public review upon issuance of the notice of NIC public meeting;

(3) Provide notice to the public of a pre-application meeting pursuant to § 124.30 or notice to the public of a permit modification request pursuant to § 270.42 and;

(4) Hold an informal public meeting 30 days following notice of NIC public meeting and notice of the pre-application meeting or notice of the permit modification request.

(c) *Information Repository specific to new combustion units.* (1) Any source that files a RCRA permit application or modification request for construction of a new hazardous waste combustion unit after October 12, 2005 may be required to establish an information repository if deemed appropriate.

(2) The Administrator may assess the need, on a case-by-case basis for an information repository. When assessing the need for a repository, the Administrator shall consider the level of public interest, the presence of an existing repository, and any information available via the New Source Review and Title V permit processes. If the Administrator determines a need for a repository, then the Administrator shall notify the facility that it must establish and maintain an information repository.

(3) The information repository shall contain all documents, reports, data, and information deemed necessary by the Administrator. The Administrator shall have the discretion to limit the contents of the repository.

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

(5) The Administrator shall require the source to provide a written notice about the information repository to all individuals on the source mailing list.

(6) The source shall be responsible for maintaining and updating the repository with appropriate information throughout a period specified by the Administrator. The Administrator may close the repository at his or her discretion based on the considerations in paragraph (c)(2) of this section.

■ 15. Section 63.1214 is amended by revising paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) to read as follows:

§ 63.1214 Implementation and enforcement.

* * * * *

(c) * * *

(1) Approval of alternatives to requirements in §§ 63.1200, 63.1203, 63.1204, 63.1205, 63.1206(a), 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221.

(2) Approval of major alternatives to test methods under §§ 63.7(e)(2)(ii) and (f), 63.1208(b), and 63.1209(a)(1), as defined under § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under §§ 63.8(f) and 63.1209(a)(5), as defined under § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under §§ 63.10(f) and 63.1211(a) through (c), as defined under § 63.90, and as required in this subpart.

■ 16. Section § 63.1215 is added to subpart EEE to read as follows:

§ 63.1215 What are the health-based compliance alternatives for total chlorine?

(a) *General.* (1) *Overview.* You may establish and comply with health-based compliance alternatives for total chlorine under the procedures prescribed in this section for your hazardous waste combustors other than hydrochloric acid production furnaces. You may comply with these health-based compliance alternatives in lieu of the emission standards for total chlorine provided under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. To identify and comply with the limits, you must:

(i) Identify a total chlorine emission concentration (ppmv) expressed as chloride (Cl⁻) equivalent for each on-site hazardous waste combustor. You may select total chlorine emission concentrations as you choose to demonstrate eligibility for the risk-based limits under this section, except as provided by paragraph (b)(4) of this section;

(ii) Apportion the total chlorine emission concentration between HCl and Cl₂ according to paragraph (b)(6)(i) of this section, and calculate HCl and Cl₂ emission rates (lb/hr) using the gas flowrate and other parameters from the most recent regulatory compliance test.

(iii) Calculate the annual average HCl-equivalent emission rate as prescribed in paragraph (b)(2) of this section.

(iv) Perform an eligibility demonstration to determine if your HCl-equivalent emission rate meets the national exposure standard and thus is below the annual average HCl-equivalent emission rate limit, as prescribed by paragraph (c) of this section;

(v) Submit your eligibility demonstration for review and approval, as prescribed by paragraph (e) of this section, which must include information to ensure that the 1-hour average HCl-equivalent emission rate limit is not exceeded, as prescribed by paragraph (d) of this section;

(vi) Demonstrate compliance with the annual average HCl-equivalent emission rate limit during the comprehensive performance test, as prescribed by the testing and monitoring requirements under paragraph (e) of this section;

(vii) Comply with compliance monitoring requirements, including establishing feedrate limits on total chlorine and chloride, and operating parameter limits on emission control equipment, as prescribed by paragraph (f) of this section; and

(viii) Comply with the requirements for changes, as prescribed by paragraph (h) of this section.

(2) **Definitions.** In addition to the definitions under § 63.1201, the following definitions apply to this section:

1-Hour Average HCl-Equivalent Emission Rate means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using 1-hour RELs as the health risk metric for acute exposure.

1-Hour Average HCl-Equivalent Emission Rate Limit means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using 1-hour RELs as the health risk metric for acute exposure and which ensures that maximum 1-hour average ambient concentrations of HCl-equivalents do not exceed a Hazard Index of 1.0, rounded to the nearest tenths decimal place (0.1), at an off-site receptor location.

Acute Reference Exposure Level (aREL) means health thresholds below which there would be no adverse health effects for greater than once in a lifetime exposures of one hour. ARELs are developed by the California Office of Health Hazard Assessment and are available at http://www.oehha.ca.gov/air/acute_rels/acuterel.html.

Annual Average HCl-Equivalent Emission Rate means the HCl-equivalent emission rate (lb/hr) determined by

equating the toxicity of chlorine to HCl using RfCs as the health risk metric for long-term exposure.

Annual Average HCl-Equivalent Emission Rate Limit means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using RfCs as the health risk metric for long-term exposure and which ensures that maximum annual average ambient concentrations of HCl equivalents do not exceed a Hazard Index of 1.0, rounded to the nearest tenths decimal place (0.1), at an off-site receptor location.

Hazard Index (HI) means the sum of more than one Hazard Quotient for multiple substances and/or multiple exposure pathways. In this section, the Hazard Index is the sum of the Hazard Quotients for HCl and chlorine.

Hazard Quotient (HQ) means the ratio of the predicted media concentration of a pollutant to the media concentration at which no adverse effects are expected. For chronic inhalation exposures, the HQ is calculated under this section as the air concentration divided by the RfC. For acute inhalation exposures, the HQ is calculated under this section as the air concentration divided by the aREL.

Look-up table analysis means a risk screening analysis based on comparing the HCl-equivalent emission rate from the affected source to the appropriate HCl-equivalent emission rate limit specified in Tables 1 through 4 of this section.

Reference Concentration (RfC) means an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

(b) **HCl-equivalent emission rates.** (1) You must express total chlorine emission rates for each hazardous waste combustor as HCl-equivalent emission rates.

(2) **Annual average rates.** You must calculate annual average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

$$ER_{TW} = ER_{HCl} + ER_{Cl_2} \times (RfC_{HCl}/RfC_{Cl_2})$$

Where:

ER_{LTw} is the annual average HCl toxicity-weighted emission rate (HCl-equivalent emission rate) considering long-term exposures, lb/hr

ER_{HCl} is the emission rate of HCl in lbs/hr

ER_{Cl_2} is the emission rate of chlorine in lbs/hr

RfC_{HCl} is the reference concentration of HCl

RfC_{Cl_2} is the reference concentration of chlorine

(3) **1-hour average rates.** You must calculate 1-hour average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

$$ER_{STW} = ER_{HCl} + ER_{Cl_2} \times (aREL_{HCl}/aREL_{Cl_2})$$

Where:

ER_{STW} is the 1-hour average HCl toxicity-weighted emission rate (HCl-equivalent emission rate) considering 1-hour (short-term) exposures, lb/hr

ER_{HCl} is the emission rate of HCl in lbs/hr

ER_{Cl_2} is the emission rate of chlorine in lbs/hr

$aREL_{HCl}$ is the 1-hour Reference Exposure Level of HCl

$aREL_{Cl_2}$ is the 1-hour Reference Exposure Level of chlorine

(4) You must use the RfC values for hydrogen chloride and chlorine found at <http://epa.gov/ttn/atw/toxsource/summary.html>.

(5) You must use the aREL values for hydrogen chloride and chlorine found at http://www.oehha.ca.gov/air/acute_rels/acuterel.html.

(6) **Cl₂/HCl ratios**—(i) **Ratio for calculating annual average HCl-equivalent emission rates.** (A) To calculate the annual average HCl-equivalent emission rate (lb/hr) for each combustor, you must apportion the total chlorine emission concentration (ppmv chloride (Cl⁻) equivalent) between HCl and chlorine according to the historical average Cl₂/HCl volumetric ratio for all regulatory compliance tests.

(B) You must calculate HCl and Cl₂ emission rates (lb/hr) using the apportioned emission concentrations and the gas flowrate and other parameters from the most recent regulatory compliance test.

(C) You must calculate the annual average HCl-equivalent emission rate using these HCl and Cl₂ emission rates and the equation in paragraph (b)(2) of this section.

(ii) **Ratio for calculating 1-hour average HCl-equivalent emission rates.**

(A) To calculate the 1-hour average HCl-equivalent emission rate for each combustor as a criterion for you to determine under paragraph (d) of this section if an hourly rolling average feedrate limit on total chlorine and chloride may be waived, you must apportion the total chlorine emission concentration (ppmv chloride (Cl⁻) equivalent) between HCl and chlorine

according to the historical highest Cl_2/HCl volumetric ratio for all regulatory compliance tests.

(B) You must calculate HCl and Cl_2 emission rates (lb/hr) using the apportioned emission concentrations and the gas flowrate and other parameters from the most recent regulatory compliance test.

(C) You must calculate the 1-hour average HCl -equivalent emission rate using the HCl and Cl_2 emission rates and the equation in paragraph (b)(3) of this section.

(iii) *Ratios for new sources.* (A) You must use engineering information to estimate the Cl_2/HCl volumetric ratio for a new source for the initial eligibility demonstration.

(B) You must use the Cl_2/HCl volumetric ratio demonstrated during the initial comprehensive performance test to demonstrate in the Notification of Compliance that your HCl -equivalent emission rate does not exceed your HCl -equivalent emission rate limit.

(C) When approving the test plan for the initial comprehensive performance test, the permitting authority will establish a periodic testing requirement, such as every 3 months for 1 year, to establish a record of representative Cl_2/HCl volumetric ratios.

(1) You must revise your HCl -equivalent emission rates and HCl -equivalent emission rate limits after each such test using the procedures prescribed in paragraphs (b)(6)(i) and (ii) of this section.

(2) If you no longer are eligible for the health-based compliance alternative, you must notify the permitting authority immediately and either:

(i) Submit a revised eligibility demonstration requesting lower HCl -equivalent emission rate limits, establishing lower HCl -equivalent emission rates, and establishing by downward extrapolation lower feedrate limits for total chlorine and chloride; or

(ii) Request a compliance schedule of up to three years to demonstrate compliance with the emission standards under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221.

(iv) *Unrepresentative or inadequate historical Cl_2/HCl volumetric ratios.* (A) If you believe that the Cl_2/HCl volumetric ratio for one or more historical regulatory compliance tests is not representative of the current ratio, you may request that the permitting authority allow you to screen those ratios from the analysis of historical ratios.

(B) If the permitting authority believes that too few historical ratios are available to calculate a representative average ratio or establish a maximum

ratio, the permitting authority may require you to conduct periodic testing to establish representative ratios.

(v) *Updating Cl_2/HCl ratios.* You must include the Cl_2/HCl volumetric ratio demonstrated during each performance test in your data base of historical Cl_2/HCl ratios to update the ratios you establish under paragraphs (b)(6)(i) and (ii) of this section for subsequent calculations of the annual average and 1-hour average HCl -equivalent emission rates.

(7) *Emission rates are capped.* The hydrogen chloride and chlorine emission rates you use to calculate the HCl -equivalent emission rate limit for incinerators, cement kilns, and lightweight aggregate kilns must not result in total chlorine emission concentrations exceeding:

(i) For incinerators that were existing sources on April 19, 1996: 77 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen;

(ii) For incinerators that are new or reconstructed sources after April 19, 1996: 21 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen;

(iii) For cement kilns that were existing sources on April 19, 1996: 130 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen;

(iv) For cement kilns that are new or reconstructed sources after April 19, 1996: 86 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen;

(v) For lightweight aggregate kilns that were existing sources on April 19, 1996: 600 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen;

(vi) For lightweight aggregate kilns that are new or reconstructed sources after April 19, 1996: 600 parts per million by volume, combined emissions, expressed as chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen.

(c) *Eligibility demonstration—(1)*

General. (i) You must perform an eligibility demonstration to determine whether the total chlorine emission rates you select for each on-site hazardous waste combustor meet the national exposure standards using either a look-up table analysis prescribed by paragraph (c)(3) of this section, or a site-specific compliance demonstration

prescribed by paragraph (c)(4) of this section.

(ii) You must also determine in your eligibility demonstration whether each combustor may exceed the 1-hour HCl -equivalent emission rate limit absent an hourly rolling average limit on the feedrate of total chlorine and chloride, as provided by paragraph (d) of this section.

(2) *Definition of eligibility.* (i) Eligibility for the risk-based total chlorine standard is determined by comparing the annual average HCl -equivalent emission rate for the total chlorine emission rate you select for each combustor to the annual average HCl -equivalent emission rate limit.

(ii) The annual average HCl -equivalent emission rate limit ensures that the Hazard Index for chronic exposure from HCl and chlorine emissions from all on-site hazardous waste combustors is less than or equal to 1.0, rounded to the nearest tenths decimal place (0.1), for the actual individual most exposed to the facility's emissions, considering off-site locations where people reside and where people congregate for work, school, or recreation.

(iii) Your facility is eligible for the health-based compliance alternative for total chlorine if either:

(A) The annual average HCl -equivalent emission rate for each on-site hazardous waste combustor is below the appropriate value in the look-up table determined under paragraph (c)(3) of this section; or

(B) The annual average HCl -equivalent emission rate for each on-site hazardous waste combustor is below the annual average HCl -equivalent emission rate limit you calculate based on a site-specific compliance demonstration under paragraph (c)(4) of this section.

(3) *Look-up table analysis.* Look-up tables for the eligibility demonstration are provided as Tables 1 and 2 to this section.

(i) Table 1 presents annual average HCl -equivalent emission rate limits for sources located in flat terrain. For purposes of this analysis, flat terrain is terrain that rises to a level not exceeding one half the stack height within a distance of 50 stack heights.

(ii) Table 2 presents annual average HCl -equivalent emission rate limits for sources located in simple elevated terrain. For purposes of this analysis, simple elevated terrain is terrain that rises to a level exceeding one half the stack height, but that does not exceed the stack height, within a distance of 50 stack heights.

(iii) To determine the annual average HCl -equivalent emission rate limit for a

source from the look-up table, you must use the stack height and stack diameter for your hazardous waste combustors and the distance between the stack and the property boundary.

(iv) If any of these values for stack height, stack diameter, and distance to

nearest property boundary do not match the exact values in the look-up table, you must use the next lowest table value.

(v) *Adjusted HCl-equivalent emission rate limit for multiple on-site combustors.* (A) If you have more than

one hazardous waste combustor on site, the sum across all hazardous waste combustors of the ratio of the adjusted HCl-equivalent emission rate limit to the HCl-equivalent emission rate limit provided by Tables 1 or 2 cannot exceed 1.0, according to the following equation:

$$\sum_{i=1}^n \frac{\text{HCl-Equivalent Emission Rate Limit Adjusted}_i}{\text{HCl-Equivalent Emission Rate Limit Table}_i} \leq 1.0$$

Where:

i = number of on-site hazardous waste combustors;

HCl-Equivalent Emission Rate Limit Adjusted_i means the apportioned, allowable HCl-equivalent emission rate limit for combustor i, and HCl-Equivalent Emission Rate Limit Table_i means the HCl-equivalent emission rate limit from Table 1 or 2 to § 63.1215 for combustor i.

(B) The adjusted HCl-equivalent emission rate limit becomes the HCl-equivalent emission rate limit.

(4) *Site-specific compliance demonstration.* (i) You may use any scientifically-accepted peer-reviewed risk assessment methodology for your site-specific compliance demonstration to calculate an annual average HCl-equivalent emission rate limit for each on-site hazardous waste combustor. An example of one approach for performing the demonstration for air toxics can be found in the EPA's "Air Toxics Risk Assessment Reference Library, Volume 2, Site-Specific Risk Assessment Technical Resource Document," which may be obtained through the EPA's Air Toxics Web site at http://www.epa.gov/ttn/fera/risk_atra_main.html.

(ii) The annual average HCl-equivalent emission rate limit is the HCl-equivalent emission rate that ensures that the Hazard Index associated with maximum annual average exposures is not greater than 1.0 rounded to the nearest tenths decimal place (0.1).

(iii) To determine the annual average HCl-equivalent emission rate limit, your site-specific compliance demonstration must, at a minimum:

(A) Estimate long-term inhalation exposures through the estimation of annual or multi-year average ambient concentrations;

(B) Estimate the inhalation exposure for the actual individual most exposed to the facility's emissions from hazardous waste combustors, considering off-site locations where people reside and where people congregate for work, school, or recreation;

(C) Use site-specific, quality-assured data wherever possible;

(D) Use health-protective default assumptions wherever site-specific data are not available, and;

(E) Contain adequate documentation of the data and methods used for the assessment so that it is transparent and can be reproduced by an experienced risk assessor and emissions measurement expert.

(iv) Your site-specific compliance demonstration need not:

(A) Assume any attenuation of exposure concentrations due to the penetration of outdoor pollutants into indoor exposure areas;

(B) Assume any reaction or deposition of the emitted pollutants during transport from the emission point to the point of exposure.

(d) *Assurance that the 1-hour HCl-equivalent emission rate limit will not be exceeded.* To ensure that the 1-hour HCl-equivalent emission rate limit will not be exceeded when complying with the annual average HCl-equivalent emission rate limit, you must establish a 1-hour average HCl-equivalent emission rate for each combustor, establish a 1-hour average HCl-equivalent emission rate limit for each combustor, and consider site-specific factors including prescribed criteria to determine if the 1-hour average HCl-equivalent emission rate limit may be exceeded absent an hourly rolling average limit on the feedrate of total chlorine and chloride. If the 1-hour average HCl-equivalent emission rate limit may be exceeded, you must establish an hourly rolling average feedrate limit on total chlorine as provided by paragraph (f)(3) of this section.

(1) *1-hour average HCl-equivalent emission rate.* You must calculate the 1-hour average HCl-equivalent emission rate from the total chlorine emission concentration you select for each source as prescribed in paragraph (b)(6)(ii)(C) of this section.

(2) *1-hour average HCl-equivalent emission rate limit.* You must establish the 1-hour average HCl-equivalent

emission rate limit for each affected source using either a look-up table analysis or site-specific analysis:

(i) *Look-up table analysis.* Look-up tables are provided for 1-hour average HCl-equivalent emission rate limits as Table 3 and Table 4 to this section. Table 3 provides limits for facilities located in flat terrain. Table 4 provides limits for facilities located in simple elevated terrain. You must use the Tables to establish 1-hour average HCl-equivalent emission rate limits as prescribed in paragraphs (c)(3)(iii) through (c)(3)(v) of this section for annual average HCl-equivalent emission rate limits.

(ii) *Site-specific analysis.* The 1-hour average HCl-equivalent emission rate limit is the HCl-equivalent emission rate that ensures that the Hazard Index associated with maximum 1-hour average exposures is not greater than 1.0 rounded to the nearest tenths decimal place (0.1). You must follow the risk assessment procedures under paragraph (c)(4) of this section to estimate short-term inhalation exposures through the estimation of maximum 1-hour average ambient concentrations.

(3) *Criteria for determining whether the 1-hour HCl-equivalent emission rate may be exceeded absent an hourly rolling average limit on the feedrate of total chlorine and chloride.* An hourly rolling average feedrate limit on total chlorine and chloride is waived if you determine considering the criteria listed below that the long-term feedrate limit (and averaging period) established under paragraph (c)(4)(i) of this section will also ensure that the 1-hour average HCl-equivalent emission rate will not exceed the 1-hour average HCl-equivalent emission rate limit you calculate for each combustor.

(i) The ratio of the 1-hour average HCl-equivalent emission rate based on the total chlorine emission rate you select for each hazardous waste combustor to the 1-hour average HCl-equivalent emission rate limit for the combustor; and

(ii) The potential for the source to vary total chlorine and chloride

feedrates substantially over the averaging period for the feedrate limit established under paragraph (c)(4)(i) of this section.

(e) *Review and approval of eligibility demonstrations*—(1) *Content of the eligibility demonstration*—(i) *General*. The eligibility demonstration must include the following information, at a minimum:

(A) Identification of each hazardous waste combustor combustion gas emission point (e.g., generally, the flue gas stack);

(B) The maximum and average capacity at which each combustor will operate, and the maximum rated capacity for each combustor, using the metric of stack gas volume (under both actual and standard conditions) emitted per unit of time, as well as any other metric that is appropriate for the combustor (e.g., million Btu/hr heat input for boilers; tons of dry raw material feed/hour for cement kilns);

(C) Stack parameters for each combustor, including, but not limited to stack height, stack diameter, stack gas temperature, and stack gas exit velocity;

(D) Plot plan showing all stack emission points, nearby residences and property boundary line;

(E) Identification of any stack gas control devices used to reduce emissions from each combustor;

(F) Identification of the RfC values used to calculate annual average HCl-equivalent emission rates and the aREL values used to calculate 1-hour average HCl-equivalent emission rates;

(G) Calculations used to determine the annual average and 1-hour average HCl-equivalent emission rates and rate limits, including calculation of the Cl_2/HCl ratios as prescribed by paragraph (b)(6) of this section;

(ii) *Additional content to implement the annual average HCl-equivalent emission rate limit*. You must include the following in your eligibility demonstration to implement the annual average HCl-equivalent emission rate limit:

(A) For incinerators, cement kilns, and lightweight aggregate kilns, calculations to confirm that the annual average HCl-equivalent emission rate that you calculate from the total chlorine emission rate you select for each combustor does not exceed the limits provided by paragraph (b)(7) of this section;

(B) Comparison of the annual average HCl-equivalent emission rate limit for each combustor to the annual average HCl-equivalent emission rate for the total chlorine emission rate you select for each combustor;

(C) The annual average HCl-equivalent emission rate limit for each hazardous waste combustor, and the limits on operating parameters required under paragraph (g)(1) of this section;

(D) Determination of the long-term chlorine feedrate limit, including the total chlorine system removal efficiency for sources that establish an (up to) annual rolling average feedrate limit under paragraph (g)(2)(ii) of this section;

(iii) *Additional content to implement the 1-hour average HCl-equivalent emission rate limit*. You must include the following in your eligibility demonstration to implement the 1-hour average HCl-equivalent emission rate limit:

(A) Determination of whether the combustor may exceed the 1-hour HCl-equivalent emission rate limit absent an hourly rolling average chlorine feedrate limit, including:

(1) Determination of the 1-hour average HCl-equivalent emission rate from the total chlorine emission rate you select for the combustor;

(2) Determination of the 1-hour average HCl-equivalent emission rate limit using either look-up Tables 3 and 4 to this section or site-specific risk analysis;

(3) Determination of the ratio of the 1-hour average HCl-equivalent emission rate to the 1-hour average HCl-equivalent emission rate limit for the combustor; and

(4) The potential for the source to vary total chlorine and chloride feedrates substantially over the averaging period for the long-term feedrate limit established under paragraphs (g)(2)(i) and (g)(2)(ii) of this section; and

(B) Determination of the hourly rolling average chlorine feedrate limit, including the total chlorine system removal efficiency.

(iv) *Additional content of a look-up table demonstration*. If you use the look-up table analysis to establish HCl-equivalent emission rate limits, your eligibility demonstration must also contain, at a minimum, the following:

(A) Documentation that the facility is located in either flat or simple elevated terrain; and

(B) For facilities with more than one on-site hazardous waste combustor, documentation that the sum of the ratios for all such combustors of the HCl-equivalent emission rate to the HCl-equivalent emission rate limit does not exceed 1.0.

(v) *Additional content of a site-specific compliance demonstration*. If you use a site-specific compliance demonstration, your eligibility demonstration must also contain, at a minimum, the following information to

support your determination of the annual average HCl-equivalent emission rate limit for each combustor:

(A) Identification of the risk assessment methodology used;

(B) Documentation of the fate and transport model used;

(C) Documentation of the fate and transport model inputs, including the stack parameters listed in paragraph (d)(1)(i)(C) of this section converted to the dimensions required for the model;

(D) As applicable:

(1) Meteorological data;

(2) Building, land use, and terrain data;

(3) Receptor locations and population data, including areas where people congregate for work, school, or recreation; and

(4) Other facility-specific parameters input into the model;

(E) Documentation of the fate and transport model outputs; and

(F) Documentation of any exposure assessment and risk characterization calculations.

(2) *Review and approval*—(i) *Existing sources*. (A) If you operate an existing source, you must submit the eligibility demonstration to your permitting authority for review and approval not later than 12 months prior to the compliance date. You must also submit a separate copy of the eligibility demonstration to: U.S. EPA, Risk and Exposure Assessment Group, Emission Standards Division (C404-01), Attn: Group Leader, Research Triangle Park, North Carolina 27711, electronic mail address REAG@epa.gov.

(B) Your permitting authority should notify you of approval or intent to disapprove your eligibility demonstration within 6 months after receipt of the original demonstration, and within 3 months after receipt of any supplemental information that you submit. A notice of intent to disapprove your eligibility demonstration, whether before or after the compliance date, will identify incomplete or inaccurate information or noncompliance with prescribed procedures and specify how much time you will have to submit additional information or to achieve the MACT standards for total chlorine under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. If your eligibility demonstration is disapproved, the permitting authority may extend the compliance date of the total chlorine standards to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the MACT total chlorine standards.

(C) If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may nonetheless begin complying, on the compliance date, with the HCl-equivalent emission rate limits you present in your eligibility demonstration.

(D) If your permitting authority issues a notice of intent to disapprove your eligibility demonstration after the compliance date, the authority will identify the basis for that notice and specify how much time you will have to submit additional information or to comply with the MACT standards for total chlorine under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. The permitting authority may extend the compliance date of the total chlorine standards to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the MACT standards for total chlorine.

(ii) *New or reconstructed sources.* (A) *General.* The procedures for review and approval of eligibility demonstrations applicable to existing sources under paragraph (e)(2)(i) of this section also apply to new or reconstructed sources, except that the date you must submit the eligibility demonstration is as prescribed in this paragraph (e)(2)(ii).

(B) If you operate a new or reconstructed source that starts up before April 12, 2007, or a solid fuel boiler or liquid fuel boiler that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before April 12, 2007, you must either:

(1) Comply with the final total chlorine emission standards under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221, by October 12, 2005, or upon startup, whichever is later, except for a standard that is more stringent than the standard proposed on April 20, 2004 for your source. If a final standard is more stringent than the proposed standard, you may comply with the proposed standard until October 14, 2008, after which you must comply with the final standard; or

(2) Submit an eligibility demonstration for review and approval under this section by April 12, 2006, and comply with the HCl-equivalent emission rate limits and operating requirements you establish in the eligibility demonstration.

(C) If you operate a new or reconstructed source that starts up on or after April 12, 2007, or a solid fuel boiler or liquid fuel boiler that is an area

source that increases its emissions or its potential to emit such that it becomes a major source of HAP on or after April 12, 2007, you must either:

(1) Comply with the final total chlorine emission standards under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221 upon startup. If the final standard is more stringent than the standard proposed for your source on April 20, 2004, however, and if you start operations before October 14, 2008, you may comply with the proposed standard until October 14, 2008, after which you must comply with the final standard; or

(2) Submit an eligibility demonstration for review and approval under this section 12 months prior to startup.

(f) *Testing requirements.*—(1) *General.* You must comply with the requirements for comprehensive performance testing under § 63.1207.

(2) *System removal efficiency.* (i) You must calculate the total chlorine removal efficiency of the combustor during each run of the comprehensive performance test.

(ii) You must calculate the average system removal efficiency as the average of the test run averages.

(iii) If your source does not control emissions of total chlorine, you must assume zero system removal efficiency.

(3) *Annual average HCl-equivalent emission rate limit.* If emissions during the comprehensive performance test exceed the annual average HCl-equivalent emission rate limit, eligibility for emission limits under this section is not affected. This emission rate limit is an annual average limit even though compliance is based on a 12-hour or (up to) an annual rolling average feedrate limit on total chlorine and chloride because the feedrate limit is also used for compliance assurance for the semivolatile metal emission standard

(4) *1-hour average HCl-equivalent emission rate limit.* Total chlorine emissions during each run of the comprehensive performance test cannot exceed the 1-hour average HCl-equivalent emission rate limit.

(5) *Test methods.* (i) If you operate a cement kiln or a combustor equipped with a dry acid gas scrubber, you must use EPA Method 320/321 or ASTM D 6735–01, or an equivalent method, to measure hydrogen chloride, and the back-half (caustic impingers) of Method 26/26A, or an equivalent method, to measure chlorine gas.

(ii) *Bromine and sulfur considerations.* If you operate an incinerator, boiler, or lightweight aggregate kiln and your feedstreams contain bromine or sulfur during the

comprehensive performance test at levels specified under paragraph (e)(2)(ii)(B) of this section, you must use EPA Method 320/321 or ASTM D 6735–01, or an equivalent method, to measure hydrogen chloride, and Method 26/26A, or an equivalent method, to measure chlorine and hydrogen chloride, and determine your chlorine emissions as follows:

(A) You must determine your chlorine emissions to be the higher of the value measured by Method 26/26A, or an equivalent method, or the value calculated by difference between the combined hydrogen chloride and chlorine levels measured by Method 26/26A, or an equivalent method, and the hydrogen chloride measurement from EPA Method 320/321 or ASTM D 6735–01, or an equivalent method.

(B) The procedures under paragraph (f)(2)(ii) of this section for determining hydrogen chloride and chlorine emissions apply if you feed bromine or sulfur during the performance test at the levels specified in this paragraph (f)(5)(ii)(B):

(1) If the bromine/chlorine ratio in feedstreams is greater than 5 percent by mass; or

(2) If the sulfur/chlorine ratio in feedstreams is greater than 50 percent by mass.

(g) *Monitoring requirements.* (1) *General.* You must establish and comply with limits on the same operating parameters that apply to sources complying with the MACT standard for total chlorine under § 63.1209(o), except that feedrate limits on total chlorine and chloride must be established according to paragraphs (g)(2) and (g)(3) of this section:

(2) *Feedrate limit to ensure compliance with the annual average HCl-equivalent emission rate limit.* (i) For sources subject to the feedrate limit for total chlorine and chloride under § 63.1209(n)(4) to ensure compliance with the semivolatile metals standard:

(A) The feedrate limit (and averaging period) for total chlorine and chloride to ensure compliance with the annual average HCl-equivalent emission rate limit is the same as required by § 63.1209(n)(4), except as provided by paragraph (g)(2)(i)(B) of this section.

(B) The numerical value of the total chlorine and chloride feedrate limit (*i.e.*, not considering the averaging period) you establish under § 63.1209(n)(4) must not exceed the value you calculate as the annual average HCl-equivalent emission rate limit (lb/hr) divided by [1 – system removal efficiency], where the system removal efficiency is calculated as prescribed by paragraph (f)(2) of this section.

(ii) For sources exempt from the feedrate limit for total chlorine and chloride under § 63.1209(n)(4) because they comply with § 63.1207(m)(2), the feedrate limit for total chlorine and chloride to ensure compliance with the annual average HCl-equivalent emission rate must be established as follows:

(A) You must establish an average period for the feedrate limit that does not exceed an annual rolling average;

(B) The numerical value of the total chlorine and chloride feedrate limit (*i.e.*, not considering the averaging period) must not exceed the value you calculate as the annual average HCl-equivalent emission rate limit (lb/hr) divided by [1 – system removal efficiency], where the system removal efficiency is calculated as prescribed by paragraph (f)(2) of this section.

(C) You must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. You must calculate rolling averages thereafter as the average of the available one-minute values until enough one-minute values are available to calculate the rolling average period you select. At that time and thereafter, you update the rolling average feedrate each hour with a 60-minute average feedrate.

(3) *Feedrate limit to ensure compliance with the 1-hour average HCl-equivalent emission rate limit.* (i) You must establish an hourly rolling average feedrate limit on total chlorine and chloride to ensure compliance with the 1-hour average HCl-equivalent emission rate limit unless you determine that the hourly rolling average feedrate limit is waived under paragraph (d) of this section.

(ii) You must calculate the hourly rolling average feedrate limit for total chlorine and chloride as the 1-hour average HCl-equivalent emission rate limit (lb/hr) divided by [1 – system removal efficiency], where the system removal efficiency is calculated as

prescribed by paragraph (f)(2)(ii) of this section.

(h) *Changes—(1) Changes over which you have control.* (i) *Changes that would affect the HCl-equivalent emission rate limit.* (A) If you plan to change the design, operation, or maintenance of the facility in a manner than would decrease the annual average or 1-hour average HCl-equivalent emission rate limit, you must submit to the permitting authority prior to the change a revised eligibility demonstration documenting the lower emission rate limits and calculations of reduced total chlorine and chloride feedrate limits.

(B) If you plan to change the design, operation, or maintenance of the facility in a manner than would increase the annual average or 1-hour average HCl-equivalent emission rate limit, and you elect to increase your total chlorine and chloride feedrate limits. You must also submit to the permitting authority prior to the change a revised eligibility demonstration documenting the increased emission rate limits and calculations of the increased feedrate limits prior to the change.

(ii) *Changes that could affect system removal efficiency.* (A) If you plan to change the design, operation, or maintenance of the combustor in a manner than could decrease the system removal efficiency, you are subject to the requirements of § 63.1206(b)(5) for conducting a performance test to reestablish the combustor's system removal efficiency and you must submit a revised eligibility demonstration documenting the lower system removal efficiency and the reduced feedrate limits on total chlorine and chloride.

(B) If you plan to change the design, operation, or maintenance of the combustor in a manner than could increase the system removal efficiency, and you elect to document the increased system removal efficiency to establish higher feedrate limits on total chlorine and chloride, you are subject to the requirements of § 63.1206(b)(5) for

conducting a performance test to reestablish the combustor's system removal efficiency. You must also submit to the permitting authority a revised eligibility demonstration documenting the higher system removal efficiency and the increased feedrate limits on total chlorine and chloride.

(2) *Changes over which you do not have control that may decrease the HCl-equivalent emission rate limits.* These requirements apply if you use a site-specific risk assessment under paragraph (c)(4) of this section to demonstrate eligibility for the health-based limits.

(i) *Proactive review.* You must review the documentation you use in your eligibility demonstration every five years from the date of the comprehensive performance test and submit for review and approval with the comprehensive performance test plan either a certification that the information used in your eligibility demonstration has not changed in a manner that would decrease the annual average or 1-hour average HCl-equivalent emission rate limit, or a revised eligibility demonstration.

(ii) *Reactive review.* If in the interim between your comprehensive performance tests you have reason to know of changes that would decrease the annual average or 1-hour average HCl-equivalent emission rate limit, you must submit a revised eligibility demonstration as soon as practicable but not more frequently than annually.

(iii) *Compliance schedule.* If you determine that you cannot demonstrate compliance with a lower annual average HCl-equivalent emission rate limit during the comprehensive performance test because you need additional time to complete changes to the design or operation of the source, you may request that the permitting authority grant you additional time to make those changes as quickly as practicable.

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Table 1 of §63.1215: Annual Average HCl-Equivalent Emission Rate Limits (lb/hr)—Flat Terrain

Distance to property boundary (m)												
Stack Diameter = 0.3 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	3.7E+01	4.9E+01	7.3E+01	9.1E+01	1.0E+02	2.3E+02	4.1E+02	5.7E+02	6.1E+02	1.0E+03	1.8E+03	2.9E+03
10	1.0E+02	1.0E+02	1.1E+02	1.5E+02	2.1E+02	2.7E+02	4.8E+02	5.7E+02	6.5E+02	1.1E+03	1.8E+03	3.2E+03
20	2.3E+02	2.3E+02	2.3E+02	2.3E+02	2.7E+02	3.7E+02	5.8E+02	7.4E+02	1.0E+03	1.8E+03	2.9E+03	5.2E+03
30	4.1E+02	4.1E+02	4.1E+02	4.2E+02	4.7E+02	6.0E+02	9.5E+02	1.3E+03	1.8E+03	3.3E+03	4.8E+03	7.9E+03
50	1.2E+03	1.2E+03	1.2E+03	1.2E+03	1.3E+03	1.5E+03	2.0E+03	2.8E+03	3.8E+03	7.1E+03	1.0E+04	1.6E+04
Stack Diameter = 0.5 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	6.5E+01	9.3E+01	1.4E+02	1.0E+02	3.0E+02	4.4E+02	7.2E+02	9.2E+02	1.3E+03	1.5E+03	2.0E+03	3.4E+03
10	1.4E+02	1.4E+02	1.6E+02	2.1E+02	3.9E+02	5.4E+02	8.3E+02	1.0E+03	1.3E+03	1.7E+03	2.3E+03	3.8E+03
20	3.7E+02	3.7E+02	3.7E+02	3.9E+02	4.8E+02	6.5E+02	9.5E+02	1.0E+03	1.3E+03	2.2E+03	3.2E+03	5.5E+03
30	5.5E+02	5.5E+02	5.5E+02	5.5E+02	5.9E+02	8.7E+02	1.0E+03	1.4E+03	1.9E+03	3.4E+03	4.9E+03	8.1E+03
50	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.5E+03	2.1E+03	2.8E+03	3.9E+03	7.2E+03	1.0E+04	1.6E+04
Stack Diameter = 1.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	3.2E+02	3.6E+02	4.0E+02	5.4E+02	9.8E+02	1.3E+03	1.8E+03	2.3E+03	2.8E+03	4.5E+03	5.3E+03	8.5E+03
20	5.9E+02	5.9E+02	5.9E+02	6.1E+02	9.8E+02	1.3E+03	1.8E+03	2.3E+03	2.8E+03	4.5E+03	5.3E+03	7.5E+03
30	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.2E+03	1.3E+03	1.8E+03	2.3E+03	2.8E+03	4.5E+03	5.3E+03	9.3E+03
50	1.8E+03	1.8E+03	1.8E+03	1.8E+03	1.8E+03	1.8E+03	2.3E+03	3.1E+03	4.2E+03	7.7E+03	1.1E+04	1.7E+04
70	7.4E+03	7.4E+03	7.4E+03	7.4E+03	7.4E+03	7.4E+03	8.0E+03	1.0E+04	1.4E+04	2.1E+04	2.7E+04	4.0E+04
Stack Diameter = 1.5 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	4.1E+02	5.3E+02	6.4E+02	7.9E+02	1.3E+03	2.1E+03	2.7E+03	3.6E+03	4.8E+03	7.8E+03	9.1E+03	1.1E+04
20	7.0E+02	7.8E+02	7.8E+02	7.9E+02	1.3E+03	2.1E+03	2.7E+03	3.6E+03	4.8E+03	7.8E+03	9.1E+03	1.2E+04
30	1.3E+03	1.3E+03	1.3E+03	1.3E+03	1.6E+03	2.1E+03	2.7E+03	3.6E+03	4.8E+03	7.8E+03	9.1E+03	1.2E+04
50	2.3E+03	2.3E+03	2.3E+03	2.3E+03	2.3E+03	2.3E+03	2.7E+03	3.6E+03	4.8E+03	7.8E+03	9.1E+03	1.2E+04
70	1.0E+04	1.0E+04	1.0E+04	1.0E+04	1.0E+04	1.0E+04	1.1E+04	1.4E+04	1.8E+04	3.0E+04	4.0E+04	5.8E+04
Stack Diameter = 2.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	5.0E+02	6.3E+02	7.7E+02	9.8E+02	1.7E+03	2.8E+03	3.3E+03	4.4E+03	5.9E+03	1.0E+04	1.4E+04	1.8E+04
20	9.3E+02	9.3E+02	9.4E+02	1.0E+03	1.7E+03	2.8E+03	3.3E+03	4.4E+03	5.9E+03	1.0E+04	1.4E+04	1.8E+04
30	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.9E+03	2.8E+03	3.3E+03	4.4E+03	5.9E+03	1.0E+04	1.4E+04	1.8E+04
50	2.8E+03	2.8E+03	2.8E+03	2.8E+03	2.9E+03	2.9E+03	3.3E+03	4.4E+03	5.9E+03	1.0E+04	1.4E+04	1.8E+04
70	1.4E+04	1.4E+04	1.4E+04	1.4E+04	1.4E+04	1.4E+04	1.4E+04	1.8E+04	2.3E+04	3.4E+04	4.5E+04	6.4E+04
100	3.0E+04	3.0E+04	3.0E+04	3.0E+04	3.0E+04	3.0E+04	3.0E+04	3.0E+04	3.5E+04	5.2E+04	6.8E+04	8.2E+04
Stack Diameter = 3.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	6.5E+02	6.9E+02	7.7E+02	9.8E+02	2.2E+03	3.4E+03	5.8E+03	7.4E+03	9.8E+03	1.3E+04	1.8E+04	2.5E+04
20	1.6E+03	1.6E+03	1.7E+03	2.0E+03	2.5E+03	3.7E+03	5.8E+03	7.4E+03	9.8E+03	1.3E+04	1.8E+04	2.5E+04
30	2.0E+03	2.0E+03	2.0E+03	2.0E+03	2.5E+03	3.7E+03	5.8E+03	7.4E+03	9.8E+03	1.3E+04	1.8E+04	2.5E+04
50	4.2E+03	4.2E+03	4.2E+03	4.2E+03	4.4E+03	5.1E+03	5.8E+03	7.4E+03	9.8E+03	1.3E+04	1.8E+04	2.5E+04
70	2.3E+04	2.3E+04	2.3E+04	2.3E+04	2.3E+04	2.4E+04	2.4E+04	2.9E+04	3.8E+04	4.1E+04	5.0E+04	7.0E+04
100	3.5E+04	3.5E+04	3.5E+04	3.5E+04	3.5E+04	3.5E+04	3.5E+04	3.5E+04	3.8E+04	5.2E+04	7.5E+04	8.7E+04
Stack Diameter = 4.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	2.5E+03	2.5E+03	2.5E+03	2.5E+03	3.4E+03	5.8E+03	8.1E+03	1.1E+04	1.4E+04	2.2E+04	2.8E+04	4.3E+04
20	5.1E+03	5.1E+03	5.1E+03	5.1E+03	5.3E+03	6.2E+03	8.1E+03	1.1E+04	1.4E+04	2.2E+04	2.8E+04	4.3E+04
30	2.8E+04	2.8E+04	2.8E+04	2.8E+04	2.8E+04	2.8E+04	2.8E+04	3.5E+04	4.8E+04	5.0E+04	5.7E+04	7.7E+04
50	5.7E+04	5.7E+04	5.7E+04	5.7E+04	5.7E+04	5.7E+04	5.7E+04	5.7E+04	5.8E+04	8.0E+04	9.3E+04	1.1E+05

Table 2 of §63.1215: Annual Average HCl-Equivalent Emission Rate Limits (lbs/hr)—Simple Elevated Terrain

Distance to property boundary (m)												
Stack Diameter = 0.3 m												
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	1.3E+01	1.8E+01	2.5E+01	3.7E+01	6.4E+01	8.9E+01	1.4E+02	2.0E+02	3.1E+02	7.7E+02	1.3E+03	2.6E+03
10	3.8E+01	3.8E+01	4.4E+01	6.1E+01	6.4E+01	8.9E+01	1.4E+02	2.0E+02	3.1E+02	7.7E+02	1.3E+03	2.6E+03
20	1.1E+02	1.1E+02	1.1E+02	1.2E+02	1.2E+02	1.5E+02	2.3E+02	3.4E+02	5.2E+02	1.2E+03	2.0E+03	3.9E+03
30	2.4E+02	2.4E+02	2.4E+02	2.4E+02	2.7E+02	3.5E+02	4.2E+02	5.2E+02	7.0E+02	1.5E+03	2.6E+03	4.9E+03
50	7.7E+02	7.7E+02	7.7E+02	7.7E+02	7.7E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	2.0E+03	3.4E+03	6.5E+03
Stack Diameter = 0.5 m												
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	1.8E+01	2.6E+01	3.5E+01	5.6E+01	1.4E+02	1.6E+02	2.3E+02	3.4E+02	5.2E+02	9.6E+02	1.5E+03	2.8E+03
10	5.3E+01	5.3E+01	6.1E+01	8.5E+01	1.4E+02	1.6E+02	2.3E+02	3.4E+02	5.2E+02	9.6E+02	1.5E+03	2.8E+03
20	1.5E+02	1.5E+02	1.5E+02	1.5E+02	1.5E+02	1.6E+02	2.3E+02	3.4E+02	5.2E+02	1.2E+03	2.0E+03	3.9E+03
30	2.9E+02	2.9E+02	2.9E+02	2.9E+02	2.9E+02	3.5E+02	4.2E+02	5.2E+02	8.1E+02	1.7E+03	2.8E+03	5.2E+03
50	8.0E+02	8.0E+02	8.0E+02	8.0E+02	8.0E+02	8.8E+02	1.2E+03	1.2E+03	1.2E+03	2.3E+03	3.7E+03	6.9E+03
Stack Diameter = 1.0 m												
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	9.7E+01	9.7E+01	1.1E+02	1.7E+02	3.7E+02	3.7E+02	4.2E+02	5.5E+02	7.5E+02	1.5E+03	2.3E+03	4.1E+03
20	2.7E+02	2.7E+02	2.7E+02	3.0E+02	3.7E+02	3.7E+02	4.2E+02	5.5E+02	7.5E+02	1.5E+03	2.3E+03	4.1E+03
30	4.3E+02	4.3E+02	4.3E+02	4.3E+02	4.3E+02	4.3E+02	4.3E+02	5.5E+02	8.1E+02	1.7E+03	2.8E+03	5.2E+03
50	9.5E+02	9.5E+02	9.5E+02	9.5E+02	9.5E+02	9.5E+02	1.2E+03	1.4E+03	1.6E+03	3.1E+03	4.8E+03	8.3E+03
70	4.0E+03	4.0E+03	4.0E+03	4.0E+03	4.0E+03	4.0E+03	4.0E+03	4.1E+03	4.1E+03	4.1E+03	5.8E+03	9.8E+03
Stack Diameter = 1.5 m												
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	2.0E+02	2.0E+02	2.3E+02	3.4E+02	5.1E+02	6.0E+02	6.0E+02	6.6E+02	9.3E+02	1.9E+03	3.0E+03	5.4E+03
20	3.5E+02	3.5E+02	3.5E+02	3.9E+02	5.1E+02	6.0E+02	6.0E+02	6.6E+02	9.3E+02	1.9E+03	3.0E+03	5.4E+03
30	6.0E+02	6.0E+02	6.0E+02	6.0E+02	6.0E+02	6.0E+02	6.0E+02	6.6E+02	9.3E+02	1.9E+03	3.0E+03	5.4E+03
50	1.1E+03	1.1E+03	1.1E+03	1.1E+03	1.1E+03	1.1E+03	1.2E+03	1.4E+03	1.6E+03	3.1E+03	4.8E+03	8.3E+03
70	5.1E+03	5.1E+03	5.1E+03	5.1E+03	5.1E+03	5.1E+03	5.1E+03	5.1E+03	5.1E+03	6.2E+03	7.8E+03	1.2E+04
Stack Diameter = 2.0 m												
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	2.6E+02	2.6E+02	3.0E+02	4.2E+02	6.3E+02	9.2E+02	9.2E+02	1.0E+03	1.4E+03	2.5E+03	3.7E+03	6.3E+03
20	4.2E+02	4.2E+02	4.2E+02	4.7E+02	6.3E+02	9.2E+02	9.2E+02	1.0E+03	1.4E+03	2.5E+03	3.7E+03	6.3E+03
30	8.4E+02	8.4E+02	8.4E+02	8.4E+02	9.2E+02	9.2E+02	9.2E+02	1.0E+03	1.4E+03	2.5E+03	3.7E+03	6.3E+03
50	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.5E+03	1.6E+03	3.1E+03	4.8E+03	8.3E+03
70	5.9E+03	5.9E+03	5.9E+03	5.9E+03	5.9E+03	5.9E+03	5.9E+03	5.9E+03	5.9E+03	7.0E+03	1.0E+04	1.5E+04
100	8.2E+03	8.2E+03	8.2E+03	8.2E+03	8.2E+03	8.2E+03	8.2E+03	8.2E+03	8.2E+03	8.2E+03	1.1E+04	1.7E+04
Stack Diameter = 3.0 m												
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	3.3E+02	3.4E+02	3.9E+02	5.5E+02	1.1E+03	1.7E+03	1.7E+03	1.7E+03	1.7E+03	3.3E+03	5.0E+03	8.6E+03
20	6.5E+02	6.5E+02	6.5E+02	7.6E+02	1.1E+03	1.7E+03	1.7E+03	1.7E+03	1.7E+03	3.3E+03	5.0E+03	8.6E+03
30	1.1E+03	1.1E+03	1.1E+03	1.1E+03	1.1E+03	1.7E+03	1.7E+03	1.7E+03	1.7E+03	3.3E+03	5.0E+03	8.6E+03
50	1.7E+03	1.7E+03	1.7E+03	1.7E+03	1.7E+03	1.7E+03	1.7E+03	1.7E+03	1.7E+03	3.3E+03	5.0E+03	8.6E+03
70	8.0E+03	8.0E+03	8.0E+03	8.0E+03	8.0E+03	8.0E+03	8.0E+03	8.0E+03	8.0E+03	8.5E+03	1.2E+04	1.9E+04
100	1.3E+04	1.3E+04	1.3E+04	1.3E+04	1.3E+04	1.3E+04	1.3E+04	1.3E+04	1.3E+04	1.3E+04	1.9E+04	2.4E+04
Stack Diameter = 4.0 m												
Stack height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	1.3E+03	1.3E+03	1.3E+03	1.3E+03	1.5E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	4.0E+03	6.0E+03	9.8E+03
20	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	4.0E+03	6.0E+03	9.8E+03
30	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	4.0E+03	6.0E+03	9.8E+03
50	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	4.0E+03	6.0E+03	9.8E+03
70	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	4.0E+03	6.0E+03	9.8E+03
100	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	2.1E+03	4.0E+03	6.0E+03	9.8E+03

Table 3 of §63.1215: 1-Hour Average HCl-Equivalent Emission Rates (lb/hr)—Flat Terrain

Distance to property boundary (m)

Stack Diameter = 0.3 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	3.9E+00	5.1E+00	7.6E+00	9.0E+00	1.0E+01	2.4E+01	4.3E+01	5.3E+01	6.2E+01	1.1E+02	1.7E+02	3.1E+02
10	9.7E+00	9.8E+00	1.1E+01	1.4E+01	2.0E+01	2.8E+01	4.6E+01	5.3E+01	6.2E+01	1.1E+02	1.7E+02	3.1E+02
20	2.2E+01	2.2E+01	2.2E+01	2.2E+01	2.5E+01	3.5E+01	5.3E+01	7.0E+01	9.5E+01	1.8E+02	2.8E+02	4.8E+02
30	3.8E+01	3.8E+01	3.8E+01	4.0E+01	4.4E+01	5.7E+01	9.0E+01	1.2E+02	1.7E+02	3.1E+02	4.5E+02	7.5E+02
50	1.2E+02	1.2E+02	1.2E+02	1.2E+02	1.2E+02	1.4E+02	1.8E+02	2.6E+02	3.6E+02	6.7E+02	9.7E+02	1.5E+03
Stack Diameter = 0.5 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	6.9E+00	9.0E+00	1.5E+01	1.8E+01	3.2E+01	4.6E+01	7.5E+01	9.7E+01	1.2E+02	1.6E+02	2.1E+02	3.6E+02
10	1.3E+01	1.4E+01	1.5E+01	2.0E+01	3.7E+01	5.1E+01	7.9E+01	9.7E+01	1.2E+02	1.6E+02	2.2E+02	3.6E+02
20	3.5E+01	3.5E+01	3.5E+01	3.6E+01	4.6E+01	6.2E+01	8.1E+01	9.7E+01	1.2E+02	2.1E+02	3.0E+02	5.2E+02
30	5.2E+01	5.2E+01	5.2E+01	5.2E+01	5.3E+01	6.4E+01	9.8E+01	1.3E+02	1.8E+02	3.2E+02	4.7E+02	7.7E+02
50	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.4E+02	2.0E+02	2.7E+02	3.7E+02	6.8E+02	9.7E+02	1.5E+03
Stack Diameter = 1.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	3.0E+01	3.4E+01	3.8E+01	5.1E+01	9.0E+01	1.2E+02	1.7E+02	2.2E+02	2.7E+02	4.3E+02	5.0E+02	6.1E+02
20	5.8E+01	5.8E+01	5.8E+01	5.8E+01	9.0E+01	1.2E+02	1.7E+02	2.2E+02	2.7E+02	4.3E+02	5.0E+02	7.1E+02
30	9.6E+01	9.6E+01	9.6E+01	9.6E+01	1.1E+02	1.2E+02	1.7E+02	2.2E+02	2.7E+02	4.3E+02	5.0E+02	8.8E+02
50	1.7E+02	1.7E+02	1.7E+02	1.7E+02	1.7E+02	1.7E+02	2.2E+02	2.9E+02	4.0E+02	7.3E+02	1.0E+03	1.6E+03
70	7.0E+02	7.0E+02	7.0E+02	7.0E+02	7.0E+02	7.0E+02	7.6E+02	9.9E+02	1.3E+03	2.0E+03	2.6E+03	3.8E+03
Stack Diameter = 1.5 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	3.9E+01	5.0E+01	6.1E+01	7.5E+01	1.2E+02	2.0E+02	2.5E+02	3.4E+02	4.6E+02	7.2E+02	8.6E+02	1.0E+03
20	7.1E+01	7.1E+01	7.2E+01	7.5E+01	1.2E+02	2.0E+02	2.5E+02	3.4E+02	4.6E+02	7.2E+02	8.6E+02	1.1E+03
30	1.2E+02	1.2E+02	1.2E+02	1.2E+02	1.5E+02	2.0E+02	2.5E+02	3.4E+02	4.6E+02	7.2E+02	8.6E+02	1.1E+03
50	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.5E+02	3.4E+02	4.6E+02	8.1E+02	1.1E+03	1.7E+03
70	9.6E+02	9.6E+02	9.6E+02	9.6E+02	9.6E+02	9.6E+02	1.0E+03	1.3E+03	1.7E+03	2.9E+03	3.8E+03	5.5E+03
Stack Diameter = 2.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	4.7E+01	6.0E+01	7.3E+01	9.2E+01	1.7E+02	2.6E+02	3.2E+02	4.2E+02	5.6E+02	9.7E+02	1.3E+03	1.5E+03
20	8.8E+01	8.8E+01	8.8E+01	9.4E+01	1.7E+02	2.6E+02	3.2E+02	4.2E+02	5.6E+02	9.7E+02	1.3E+03	1.7E+03
30	1.5E+02	1.5E+02	1.5E+02	1.5E+02	1.8E+02	2.6E+02	3.2E+02	4.2E+02	5.6E+02	9.7E+02	1.3E+03	1.7E+03
50	2.7E+02	2.7E+02	2.7E+02	2.7E+02	2.7E+02	2.7E+02	3.2E+02	4.2E+02	5.6E+02	9.7E+02	1.3E+03	1.9E+03
70	1.3E+03	1.3E+03	1.3E+03	1.3E+03	1.3E+03	1.3E+03	1.4E+03	1.7E+03	2.2E+03	3.2E+03	4.1E+03	5.9E+03
100	2.8E+03	2.8E+03	2.8E+03	2.8E+03	2.8E+03	2.8E+03	2.8E+03	2.8E+03	3.3E+03	5.0E+03	6.5E+03	7.7E+03
Stack Diameter = 3.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	6.2E+01	6.5E+01	7.3E+01	9.2E+01	2.1E+02	3.3E+02	5.1E+02	7.0E+02	9.3E+02	1.2E+03	1.5E+03	1.5E+03
20	1.5E+02	1.5E+02	1.6E+02	1.9E+02	2.4E+02	3.5E+02	5.3E+02	7.0E+02	9.3E+02	1.4E+03	2.0E+03	2.8E+03
30	1.9E+02	1.9E+02	1.9E+02	1.9E+02	2.4E+02	3.5E+02	5.3E+02	7.0E+02	9.3E+02	1.6E+03	2.1E+03	2.8E+03
50	4.0E+02	4.0E+02	4.0E+02	4.0E+02	4.2E+02	4.8E+02	5.3E+02	7.0E+02	9.3E+02	1.6E+03	2.1E+03	2.8E+03
70	2.2E+03	2.2E+03	2.2E+03	2.2E+03	2.2E+03	2.3E+03	2.3E+03	2.8E+03	3.4E+03	3.9E+03	4.7E+03	6.6E+03
100	3.3E+03	3.3E+03	3.3E+03	3.3E+03	3.3E+03	3.3E+03	3.3E+03	3.3E+03	3.7E+03	6.0E+03	7.1E+03	8.2E+03
Stack Diameter = 4.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	2.3E+02	2.3E+02	2.3E+02	2.4E+02	3.2E+02	5.3E+02	7.7E+02	1.0E+03	1.3E+03	2.1E+03	2.6E+03	4.1E+03
20	4.8E+02	4.8E+02	4.8E+02	4.8E+02	5.0E+02	5.8E+02	7.7E+02	1.0E+03	1.3E+03	2.3E+03	3.0E+03	4.2E+03
30	2.4E+03	2.4E+03	2.4E+03	2.4E+03	2.5E+03	2.8E+03	3.2E+03	4.3E+03	4.5E+03	4.7E+03	5.4E+03	7.2E+03
50	5.4E+03	5.4E+03	5.4E+03	5.4E+03	5.4E+03	5.4E+03	5.4E+03	5.4E+03	5.5E+03	8.1E+03	8.8E+03	1.0E+04

Table 4 of § 63.1215: 1-Hour Average HCl-Equivalent Emission Rate Limits (lb/hr)—Simple Elevated Terrain

Distance to property boundary (m)												
Stack Diameter = 0.3 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	1.4E+00	1.9E+00	2.6E+00	3.8E+00	6.8E+00	9.4E+00	1.5E+01	2.1E+01	3.3E+01	6.1E+01	1.4E+02	2.7E+02
10	4.0E+00	4.0E+00	4.9E+00	6.4E+00	6.8E+00	9.4E+00	1.5E+01	2.1E+01	3.3E+01	6.1E+01	1.4E+02	2.7E+02
20	1.1E+01	1.1E+01	1.1E+01	1.1E+01	1.2E+01	1.5E+01	2.4E+01	3.5E+01	5.4E+01	1.3E+02	2.1E+02	4.0E+02
30	2.3E+01	2.3E+01	2.3E+01	2.3E+01	2.5E+01	3.3E+01	4.4E+01	5.5E+01	7.3E+01	1.6E+02	2.7E+02	5.2E+02
50	7.3E+01	7.3E+01	7.3E+01	7.3E+01	7.3E+01	8.3E+01	9.0E+01	9.0E+01	9.0E+01	2.1E+02	3.5E+02	6.8E+02
Stack Diameter = 0.5 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
5	1.9E+00	2.7E+00	3.7E+00	5.9E+00	1.4E+01	1.7E+01	2.4E+01	3.5E+01	5.4E+01	1.0E+02	1.6E+02	3.0E+02
10	5.6E+00	5.8E+00	6.4E+00	8.9E+00	1.4E+01	1.7E+01	2.4E+01	3.5E+01	5.4E+01	1.0E+02	1.6E+02	3.0E+02
20	1.6E+01	1.8E+01	1.8E+01	1.6E+01	1.6E+01	1.7E+01	2.4E+01	3.5E+01	5.4E+01	1.3E+02	2.1E+02	4.0E+02
30	2.7E+01	2.7E+01	2.7E+01	2.7E+01	2.7E+01	3.3E+01	4.4E+01	5.5E+01	8.5E+01	1.8E+02	2.9E+02	5.5E+02
50	7.6E+01	7.6E+01	7.6E+01	7.6E+01	7.6E+01	8.3E+01	1.1E+02	1.3E+02	1.3E+02	2.4E+02	3.9E+02	7.2E+02
Stack Diameter = 1.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	1.0E+01	1.0E+01	1.2E+01	1.7E+01	3.9E+01	3.9E+01	4.5E+01	5.8E+01	7.9E+01	1.6E+02	2.4E+02	4.4E+02
20	2.6E+01	2.8E+01	2.8E+01	2.8E+01	3.9E+01	3.9E+01	4.5E+01	5.8E+01	7.9E+01	1.6E+02	2.4E+02	4.4E+02
30	4.2E+01	4.2E+01	4.2E+01	4.2E+01	4.2E+01	4.2E+01	4.5E+01	5.8E+01	8.5E+01	1.8E+02	2.9E+02	5.5E+02
50	8.9E+01	8.9E+01	8.9E+01	8.9E+01	8.9E+01	8.9E+01	1.1E+02	1.4E+02	1.7E+02	3.3E+02	5.0E+02	8.7E+02
70	3.8E+02	3.8E+02	3.8E+02	3.8E+02	3.8E+02	3.8E+02	3.8E+02	4.0E+02	4.1E+02	4.3E+02	6.1E+02	1.0E+03
Stack Diameter = 1.5 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	2.1E+01	2.1E+01	2.5E+01	3.6E+01	5.4E+01	6.3E+01	6.3E+01	6.9E+01	9.8E+01	2.0E+02	3.2E+02	5.7E+02
20	3.3E+01	3.3E+01	3.3E+01	3.7E+01	5.4E+01	6.3E+01	6.3E+01	6.9E+01	9.8E+01	2.0E+02	3.2E+02	5.7E+02
30	6.3E+01	6.3E+01	6.3E+01	6.3E+01	6.3E+01	6.3E+01	6.3E+01	6.9E+01	9.8E+01	2.0E+02	3.2E+02	5.7E+02
50	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.2E+02	1.4E+02	1.7E+02	3.3E+02	5.0E+02	8.7E+02
70	4.8E+02	4.8E+02	4.8E+02	4.8E+02	4.8E+02	4.8E+02	4.8E+02	4.8E+02	4.8E+02	6.5E+02	8.2E+02	1.3E+03
Stack Diameter = 2.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	2.7E+01	2.7E+01	3.2E+01	4.4E+01	6.6E+01	9.7E+01	9.7E+01	9.7E+01	1.1E+02	2.6E+02	3.9E+02	6.6E+02
20	4.0E+01	4.0E+01	4.0E+01	4.4E+01	6.6E+01	9.7E+01	9.7E+01	9.7E+01	1.1E+02	2.6E+02	3.9E+02	6.6E+02
30	7.9E+01	7.9E+01	7.9E+01	7.9E+01	9.1E+01	9.7E+01	9.7E+01	9.7E+01	1.1E+02	2.6E+02	3.9E+02	6.6E+02
50	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.3E+02	1.4E+02	1.7E+02	3.3E+02	5.0E+02	8.7E+02
70	5.6E+02	5.6E+02	5.6E+02	5.6E+02	5.6E+02	5.6E+02	5.6E+02	5.6E+02	5.6E+02	7.3E+02	1.1E+03	1.5E+03
100	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	8.6E+02	1.2E+03	1.7E+03
Stack Diameter = 3.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	3.5E+01	3.5E+01	4.1E+01	5.8E+01	1.2E+02	1.6E+02	1.6E+02	1.8E+02	1.8E+02	3.5E+02	5.2E+02	9.0E+02
20	6.2E+01	6.2E+01	6.2E+01	7.2E+01	1.2E+02	1.6E+02	1.6E+02	1.8E+02	1.8E+02	3.5E+02	5.2E+02	9.0E+02
30	1.0E+02	1.0E+02	1.0E+02	1.0E+02	1.2E+02	1.6E+02	1.6E+02	1.8E+02	1.8E+02	3.5E+02	5.2E+02	9.0E+02
50	1.8E+02	1.8E+02	1.8E+02	1.8E+02	1.8E+02	1.8E+02	1.8E+02	1.8E+02	1.8E+02	3.5E+02	5.2E+02	9.0E+02
70	7.5E+02	7.5E+02	7.5E+02	7.5E+02	7.5E+02	7.5E+02	7.5E+02	7.5E+02	7.5E+02	8.9E+02	1.3E+03	2.0E+03
100	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	1.4E+03	2.0E+03	2.6E+03
Stack Diameter = 4.0 m												
Stack Height (m)	30	50	70	100	200	300	500	700	1000	2000	3000	5000
10	1.2E+02	1.2E+02	1.2E+02	1.2E+02	1.4E+02	2.0E+02	2.2E+02	2.2E+02	2.2E+02	4.2E+02	6.3E+02	1.0E+03
20	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	2.2E+02	4.2E+02	6.3E+02	1.0E+03
30	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.0E+03	1.1E+03	1.6E+03	2.4E+03
50	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	1.6E+03	2.3E+03	3.6E+03

■ 17. Section 63.1216 and an undesignated center heading are added to subpart EEE to read as follows:

Emissions Standards and Operating Limits for Solid Fuel Boilers, Liquid Fuel Boilers, and Hydrochloric Acid Production Furnaces

§ 63.1216 What are the standards for solid fuel boilers that burn hazardous waste?

(a) Emission limits for existing sources. You must not discharge or

cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans, either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (a)(5) of this section;

(2) Mercury in excess of 11 µg/dscm corrected to 7 percent oxygen;

(3) For cadmium and lead combined, except for an area source as defined under § 63.2, emissions in excess of 180 µg/dscm, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium combined, except for an area source as defined under § 63.2, emissions in excess of 380 µg/dscm, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If

you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) For hydrogen chloride and chlorine combined, except for an area source as defined under § 63.2, emissions in excess of 440 parts per million by volume, expressed as a chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 68 mg/dscm corrected to 7 percent oxygen.

(b) *Emission limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans, either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (b)(5) of this section;

(2) Mercury in excess of 11 µg/dscm corrected to 7 percent oxygen;

(3) For cadmium and lead combined, except for an area source as defined under § 63.2, emissions in excess of 180 µg/dscm, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium combined, except for an area source as defined under § 63.2, emissions in excess of 190 µg/dscm, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by

§ 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) For hydrogen chloride and chlorine combined, except for an area source as defined under § 63.2, emissions in excess of 73 parts per million by volume, expressed as a chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 34 mg/dscm corrected to 7 percent oxygen.

(c) *Destruction and removal efficiency (DRE) standard.* (1) 99.99% DRE. Except as provided in paragraph (c)(2) of this section, you must achieve a DRE of 99.99% for each principle organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation: $\text{DRE} = [1 - (W_{\text{out}} + W_{\text{in}})] \times 100\%$

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) 99.9999% DRE. If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a DRE of 99.9999% for each POHC that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituents (POHCs).* (i) You must treat the POHCs in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (c)(2) of this section.

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

(d) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least three significant figures, you may round the resultant emission levels to two significant figures to document compliance.

(e) *Alternative to the particulate matter standard.* (1) *General.* In lieu of complying with the particulate matter standards of this section, you may elect to comply with the following alternative metal emission control requirement:

(2) *Alternative metal emission control requirements for existing solid fuel boilers.* (i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 180 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 380 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(3) *Alternative metal emission control requirements for new solid fuel boilers.*

(i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 180 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 190 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(4) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (e)(2) and (e)(3) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic,

beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(f) *Elective standards for area sources.* Area sources as defined under § 63.2 are subject to the standards for cadmium and lead, the standards for arsenic, beryllium, and chromium, the standards for hydrogen chloride and chlorine, and the standards for particulate matter under this section if they elect under § 266.100(b)(3) of this chapter to comply with those standards in lieu of the standards under 40 CFR 266.105, 266.106, and 266.107 to control those pollutants.

■ 18. Section 63.1217 is added to read as follows:

§ 63.1217 What are the standards for liquid fuel boilers that burn hazardous waste?

(a) *Emission limits for existing sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1)(i) Dioxins and furans in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, for liquid fuel boilers equipped with a dry air pollution control system; or

(ii) Either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (a)(5) of this section for sources not equipped with a dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this emission limit;

(2) For mercury, except as provided for in paragraph (a)(2)(iii) of this section:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 19 µg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value 10,000 Btu/lb or greater, emissions in excess of 4.2×10^{-5} lbs mercury attributable to the hazardous waste per million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(iii) The boiler operated by Diversified Scientific Services, Inc. with EPA identification number TND982109142, and which burns radioactive waste mixed with hazardous waste, must comply with the mercury emission standard under § 63.1219(a)(2);

(3) For cadmium and lead combined, except for an area source as defined under § 63.2,

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 150 µg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 8.2×10^{-5} lbs combined cadmium and lead emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(4) For chromium, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 370 µg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 1.3×10^{-4} lbs chromium emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) For hydrogen chloride and chlorine, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 31 parts per million by volume, combined emissions, expressed as a chloride (Cl⁻)

equivalent, dry basis and corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 5.08×10^{-2} lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 80 mg/dscm corrected to 7 percent oxygen.

(b) *Emission limits for new sources.*

You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1)(i) Dioxins and furans in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, for liquid fuel boilers equipped with a dry air pollution control system; or

(ii) Either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (b)(5) of this section for sources not equipped with a dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this emission limit;

(2) For mercury:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 6.8 µg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 1.2×10^{-6} lbs mercury emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(3) For cadmium and lead combined, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 78 µg/dscm, corrected to 7 percent oxygen, on an (not-to-exceed) annual averaging period;

(ii) When you burn hazardous waste with an as-fired heating value greater than or equal to 10,000 Btu/lb, emissions in excess of 6.2×10^{-6} lbs combined cadmium and lead emissions attributable to the hazardous waste per

million Btu heat input from the hazardous waste on an (not-to-exceed) annual averaging period;

(4) For chromium, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 12 µg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 1.4×10^{-5} lbs chromium emissions attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) For hydrogen chloride and chlorine, except for an area source as defined under § 63.2:

(i) When you burn hazardous waste with an as-fired heating value less than 10,000 Btu/lb, emissions in excess of 31 parts per million by volume, combined emissions, expressed as a chloride (Cl⁻) equivalent, dry basis and corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 5.08×10^{-2} lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 20 mg/dscm corrected to 7 percent oxygen.

(c) *Destruction and removal efficiency (DRE) standard.* (1) 99.99% DRE. Except as provided in paragraph (c)(2) of this section, you must achieve a DRE of 99.99% for each principle organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation: $DRE = [1 - (W_{out} \div W_{in})] \times 100\%$

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) 99.9999% DRE. If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a DRE of 99.9999% for each POHC that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituents (POHCs).* (i) You must treat the POHCs in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (c)(2) of this section.

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

(d) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least three significant figures, you may round the resultant emission levels to two significant figures to document compliance.

(e) *Alternative to the particulate matter standard.* (1) *General.* In lieu of complying with the particulate matter standards of this section, you may elect to comply with the following alternative metal emission control requirement:

(2) *Alternative metal emission control requirements for existing liquid fuel boilers.* (i) When you burn hazardous waste with a heating value less than 10,000 Btu/lb:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium, combined, in excess of 150 µg/dscm, corrected to 7 percent oxygen; and

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel, combined, in excess of 370 µg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with a heating value of 10,000 Btu/lb or greater:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain in excess of 8.2×10^{-5} lbs combined emissions of cadmium, lead, and selenium attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain either in excess of 1.3×10^{-4} lbs combined emissions of antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(3) *Alternative metal emission control requirements for new liquid fuel boilers.*

(i) When you burn hazardous waste with a heating value less than 10,000 Btu/lb:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium, combined, in excess of 78 µg/dscm, corrected to 7 percent oxygen; and

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel, combined, in excess of 12 µg/dscm, corrected to 7 percent oxygen;

(ii) When you burn hazardous waste with a heating value greater than or equal to 10,000 Btu/lb:

(A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain in excess of 6.2×10^{-6} lbs combined emissions of cadmium, lead, and selenium attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

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

atmosphere that contain either in excess of 1.4×10^{-5} lbs combined emissions of antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(4) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (e)(2) and (e)(3) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(f) *Elective standards for area sources.* Area sources as defined under § 63.2 are subject to the standards for cadmium and lead, the standards for chromium, the standards for hydrogen chloride and chlorine, and the standards for particulate matter under this section if they elect under § 266.100(b)(3) of this chapter to comply with those standards in lieu of the standards under 40 CFR 266.105, 266.106, and 266.107 to control those pollutants.

■ 19. Section 63.1218 is added to read as follows:

§ 63.1218 What are the standards for hydrochloric acid production furnaces that burn hazardous waste?

(a) *Emission limits for existing sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans, either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (a)(5) of this section;

(2) For mercury, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (a)(6) of this section;

(3) For lead and cadmium, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (a)(6) of this section;

(4) For arsenic, beryllium, and chromium, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (a)(6) of this section;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous

emissions monitoring system), dry basis and corrected to

7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) For hydrogen chloride and chlorine gas, either:

(i) Emission in excess of 150 parts per million by volume, combined emissions, expressed as a chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen; or

(ii) Emissions greater than the levels that would be emitted if the source is achieving a system removal efficiency (SRE) of less than 99.923 percent for total chlorine and chloride fed to the combustor. You must calculate SRE from the following equation:

$$\text{SRE} = [1 - (\text{Cl}_{\text{out}} / \text{Cl}_{\text{in}})] \times 100\%$$

Where:

Cl_{in} = mass feedrate of total chlorine or chloride in all feedstreams, reported as chloride; and

Cl_{out} = mass emission rate of hydrogen chloride and chlorine gas, reported as chloride, in exhaust emissions prior to release to the atmosphere.

(7) For particulate matter, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (a)(6) of this section.

(b) *Emission limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans, either carbon monoxide or hydrocarbon emissions in excess of the limits provided by paragraph (b)(5) of this section;

(2) For mercury, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (b)(6) of this section;

(3) For lead and cadmium, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (b)(6) of this section;

(4) For arsenic, beryllium, and chromium, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas emissions in excess of the levels provided by paragraph (b)(6) of this section;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) For hydrogen chloride and chlorine gas, either:

(i) Emission in excess of 25 parts per million by volume, combined emissions, expressed as a chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen; or

(ii) Emissions greater than the levels that would be emitted if the source is achieving a system removal efficiency (SRE) of less than 99.987 percent for total chlorine and chloride fed to the combustor. You must calculate SRE from the following equation:

$$\text{SRE} = [1 - (\text{Cl}_{\text{out}} / \text{Cl}_{\text{in}})] \times 100\%$$

Where:

Cl_{in} = mass feedrate of total chlorine or chloride in all feedstreams, reported as chloride; and

Cl_{out} = mass emission rate of hydrogen chloride and chlorine gas, reported as chloride, in exhaust emissions prior to release to the atmosphere.

(7) For particulate matter, except for an area source as defined under § 63.2, hydrogen chloride and chlorine gas

emissions in excess of the levels provided by paragraph (b)(6) of this section.

(c) *Destruction and removal efficiency (DRE) standard.* (1) 99.99% DRE. Except as provided in paragraph (c)(2) of this section, you must achieve a DRE of 99.99% for each principle organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation: $DRE = [1 - (W_{out} / W_{in})] \times 100\%$

Where:

Win = mass feedrate of one POHC in a waste feedstream; and

Wout = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) 99.9999% DRE. If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a DRE of 99.9999% for each POHC that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituents (POHCs).* (i) You must treat the POHCs in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (c)(2) of this section.

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

(d) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least three significant figures, you may round the resultant emission levels to two significant figures to document compliance.

(e) *Elective standards for area sources.* Area sources as defined under § 63.2 are subject to the standards for

cadmium and lead, the standards for arsenic, beryllium, and chromium, the standards for hydrogen chloride and chlorine, and the standards for particulate matter under this section if they elect under § 266.100(b)(3) of this chapter to comply with those standards in lieu of the standards under 40 CFR 266.105, 266.106, and 266.107 to control those pollutants.

■ 20. Section 63.1219 and a new undesignated center heading are added to subpart EEE to read as follows:

Replacement Emissions Standards and Operating Limits for Incinerators, Cement Kilns, and Lightweight Aggregate Kilns

§ 63.1219 What are the replacement standards for hazardous waste incinerators?

(a) *Emission limits for existing sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1) For dioxins and furans:

(i) For incinerators equipped with either a waste heat boiler or dry air pollution control system, either:

(A) Emissions in excess of 0.20 ng TEQ/dscm, corrected to 7 percent oxygen; or

(B) Emissions in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, provided that the combustion gas temperature at the inlet to the initial particulate matter control device is 400°F or lower based on the average of the test run average temperatures. (For purposes of compliance, operation of a wet particulate matter control device is presumed to meet the 400°F or lower requirement);

(ii) Emissions in excess of 0.40 ng TEQ/dscm, corrected to 7 percent oxygen, for incinerators not equipped with either a waste heat boiler or dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this standard;

(2) Mercury in excess of 130 µg/dscm, corrected to 7 percent oxygen;

(3) Cadmium and lead in excess of 230 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 92 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrogen chloride and chlorine gas (total chlorine) in excess of 32 parts per million by volume, combined emissions, expressed as a chloride (Cl⁻) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) Except as provided by paragraph (e) of this section, particulate matter in excess of 0.013 gr/dscf corrected to 7 percent oxygen.

(b) *Emission limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(1)(i) Dioxins and furans in excess of 0.11 ng TEQ/dscm corrected to 7 percent oxygen for incinerators equipped with either a waste heat boiler or dry air pollution control system; or

(ii) Dioxins and furans in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen for sources not equipped with either a waste heat boiler or dry air pollution control system;

(iii) A source equipped with a wet air pollution control system followed by a dry air pollution control system is not considered to be a dry air pollution control system, and a source equipped with a dry air pollution control system followed by a wet air pollution control system is considered to be a dry air pollution control system for purposes of this standard;

(2) Mercury in excess of 8.1 µg/dscm, corrected to 7 percent oxygen;

(3) Cadmium and lead in excess of 10 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 23 µg/dscm, combined

emissions, corrected to 7 percent oxygen;

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrogen chloride and chlorine gas in excess of 21 parts per million by volume, combined emissions, expressed as a chloride ($\text{Cl}^{(-)}$) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) Except as provided by paragraph (e) of this section, particulate matter in excess of 0.0015 gr/dscf, corrected to 7 percent oxygen.

(c) *Destruction and removal efficiency (DRE) standard.* (1) 99.99% DRE. Except as provided in paragraph (c)(2) of this section, you must achieve a destruction and removal efficiency (DRE) of 99.99% for each principle organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation:

$$\text{DRE} = [1 - (W_{\text{out}} / W_{\text{in}})] \times 100\%$$

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) 99.9999% DRE. If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a DRE of 99.9999% for each POHC that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and

hexachlorodibenzo-*p*-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituent (POHC).* (i) You must treat each POHC in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (c)(2) of this section.

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

(d) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least three significant figures, you may round the resultant emission levels to two significant figures to document compliance.

(e) *Alternative to the particulate matter standard.* (1) *General.* In lieu of complying with the particulate matter standards of this section, you may elect to comply with the following alternative metal emission control requirement:

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

(i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 230 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt, manganese, and nickel in excess of 92 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(3) *Alternative metal emission control requirements for new incinerators.* (i) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain cadmium, lead, and selenium in excess of 10 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(ii) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain antimony, arsenic, beryllium, chromium, cobalt,

manganese, and nickel in excess of 23 µg/dscm, combined emissions, corrected to 7 percent oxygen.

(4) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (e)(2) and (e)(3) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

■ 21. Section 63.1220 is added to subpart EEE to read as follows:

§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?

(a) *Emission and hazardous waste feed limits for existing sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere or feed hazardous waste that contain:

(1) For dioxins and furans, either:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Emissions in excess of 0.40 ng TEQ/dscm corrected to 7 percent oxygen provided that the combustion gas temperature at the inlet to the initial dry particulate matter control device is 400 °F or lower based on the average of the test run average temperatures;

(2) For mercury, both:

(i) An average as-fired concentration of mercury in all hazardous waste feedstreams in excess of 3.0 parts per million by weight; and

(ii) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen; or

(iii) A hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

(3) For cadmium and lead, both:

(i) Emissions in excess of 7.6×10^{-4} lbs combined emissions of cadmium and lead attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 330 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium, both:

(i) Emissions in excess of 2.1×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 56 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) *Carbon monoxide and hydrocarbons.* (i) For kilns equipped with a by-pass duct or midkiln gas sampling system, either:

(A) Carbon monoxide in the by-pass duct or mid-kiln gas sampling system in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(i)(B) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons in the by-pass duct or mid-kiln gas sampling system do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

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

(ii) For kilns not equipped with a by-pass duct or midkiln gas sampling system, either:

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

(B) Carbon monoxide in the main stack in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii)(A) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons in the main stack do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring

system), dry basis, corrected to 7 percent oxygen, and reported as propane.

(6) Hydrogen chloride and chlorine gas in excess of 120 parts per million by volume, combined emissions, expressed as a chloride (Cl^-) equivalent, dry basis, corrected to 7 percent oxygen; and

(7) For particulate matter, both:

(i) Emissions in excess of 0.028 gr/dscf corrected to 7 percent oxygen; and

(ii) Opacity greater than 20 percent, unless your source is equipped with a bag leak detection system under § 63.1206(c)(8) or a particulate matter detection system under § 63.1206(c)(9).

(b) *Emission and hazardous waste feed limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere or feed hazardous waste that contain:

(1) For dioxins and furans, either:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Emissions in excess of 0.40 ng TEQ/dscm corrected to 7 percent oxygen provided that the combustion gas temperature at the inlet to the initial dry particulate matter control device is 400 °F or lower based on the average of the test run average temperatures;

(2) For mercury, both:

(i) An average as-fired concentration of mercury in all hazardous waste feedstreams in excess of 1.9 parts per million by weight; and

(ii) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen; or

(iii) A hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

(3) For cadmium and lead, both:

(i) Emissions in excess of 6.2×10^{-5} lbs combined emissions of cadmium and lead attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 180 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium, both:

(i) Emissions in excess of 1.5×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 54 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) *Carbon monoxide and*

hydrocarbons. (i) For kilns equipped with a by-pass duct or midkiln gas sampling system, carbon monoxide and hydrocarbons emissions are limited in both the bypass duct or midkiln gas

sampling system and the main stack as follows:

(A) Emissions in the by-pass or midkiln gas sampling system are limited to either:

(1) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(i)(A)(2) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

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

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

(ii) For kilns not equipped with a by-pass duct or midkiln gas sampling system, hydrocarbons and carbon monoxide are limited in the main stack to either:

(A) Hydrocarbons not exceeding 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(B)(1) Carbon monoxide not exceeding 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen; and

(2) Hydrocarbons not exceeding 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous

monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7); and

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

(6) Hydrogen chloride and chlorine gas in excess of 86 parts per million by volume, combined emissions, expressed as a chloride (Cl^-) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) For particulate matter, both:

(i) Emissions in excess of 0.0023 gr/dscf corrected to 7 percent oxygen; and

(ii) Opacity greater than 20 percent, unless your source is equipped with a bag leak detection system under § 63.1206(c)(8) or a particulate matter detection system under § 63.1206(c)(9).

(c) *Destruction and removal efficiency (DRE) standard.* (1) 99.99% DRE. Except as provided in paragraph (c)(2) of this section, you must achieve a destruction and removal efficiency (DRE) of 99.99% for each principle organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation:

$$\text{DRE} = [1 - (W_{\text{out}} / W_{\text{in}})] \times 100\%$$

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) 99.9999% DRE. If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a DRE of 99.9999% for each POHC that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituent (POHC).* (i) You must treat each POHC in the waste feed that you

specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (c)(2) of this section.

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

(d) *Cement kilns with in-line kiln raw mills.* (1) *General.* (i) You must conduct performance testing when the raw mill is on-line and when the mill is off-line to demonstrate compliance with the emission standards, and you must establish separate operating parameter limits under § 63.1209 for each mode of operation, except as provided by paragraphs (d)(1)(iv) and (d)(1)(v) of this section.

(ii) You must document in the operating record each time you change from one mode of operation to the alternate mode and begin complying with the operating parameter limits for that alternate mode of operation.

(iii) You must calculate rolling averages for operating parameter limits as provided by § 63.1209(q)(2).

(iv) If your in-line kiln raw mill has dual stacks, you may assume that the dioxin/furan emission levels in the by-pass stack and the operating parameter limits determined during performance testing of the by-pass stack when the raw mill is off-line are the same as when the mill is on-line.

(v) In lieu of conducting a performance test to demonstrate compliance with the dioxin/furan emission standards for the mode of operation when the raw mill is on-line, you may specify in the performance test workplan and Notification of Compliance the same operating parameter limits required under § 63.1209(k) for the mode of operation when the raw mill is on-line as you establish during performance testing for the mode of operation when the raw mill is off-line.

(2) *Emissions averaging.* You may comply with the mercury, semivolatile metal, low volatile metal, and hydrogen chloride/chlorine gas emission standards on a time-weighted average basis under the following procedures:

(i) *Averaging methodology.* You must calculate the time-weighted average emission concentration with the following equation:

$$C_{\text{total}} = \{C_{\text{mill-off}} \times (T_{\text{mill-off}} / (T_{\text{mill-off}} + T_{\text{mill-on}}))\} + \{C_{\text{mill-on}} \times (T_{\text{mill-on}} / (T_{\text{mill-off}} + T_{\text{mill-on}}))\}$$

Where:

C_{total} = time-weighted average concentration of a regulated constituent considering both raw mill on time and off time;

$C_{\text{mill-off}}$ = average performance test concentration of regulated constituent with the raw mill off-line;

$C_{\text{mill-on}}$ = average performance test concentration of regulated constituent with the raw mill on-line;

$T_{\text{mill-off}}$ = time when kiln gases are not routed through the raw mill; and

$T_{\text{mill-on}}$ = time when kiln gases are routed through the raw mill.

(ii) *Compliance.* (A) If you use this emission averaging provision, you must document in the operating record compliance with the emission standards on an annual basis by using the equation provided by paragraph (d)(2) of this section.

(B) Compliance is based on one-year block averages beginning on the day you submit the initial notification of compliance.

(iii) *Notification.* (A) If you elect to document compliance with one or more emission standards using this emission averaging provision, you must notify the Administrator in the initial comprehensive performance test plan submitted under § 63.1207(e).

(B) You must include historical raw mill operation data in the performance test plan to estimate future raw mill down-time and document in the performance test plan that estimated emissions and estimated raw mill down-time will not result in an exceedance of an emission standard on an annual basis.

(C) You must document in the notification of compliance submitted under § 63.1207(j) that an emission standard will not be exceeded based on the documented emissions from the performance test and predicted raw mill down-time.

(e) *Preheater or preheater/precalciner kilns with dual stacks.* (1) *General.* You must conduct performance testing on each stack to demonstrate compliance with the emission standards, and you must establish operating parameter limits under § 63.1209 for each stack, except as provided by paragraph (d)(1)(iv) of this section for dioxin/furan emissions testing and operating parameter limits for the by-pass stack of in-line raw mills.

(2) *Emissions averaging.* You may comply with the mercury, semivolatile metal, low volatile metal, and hydrogen

chloride/chlorine gas emission standards specified in this section on a gas flowrate-weighted average basis under the following procedures:

(i) *Averaging methodology.* You must calculate the gas flowrate-weighted average emission concentration using the following equation:

$$C_{\text{tot}} = \{C_{\text{main}} \times (Q_{\text{main}} / (Q_{\text{main}} + Q_{\text{bypass}}))\} + \{C_{\text{bypass}} \times (Q_{\text{bypass}} / (Q_{\text{main}} + Q_{\text{bypass}}))\}$$

Where:

C_{tot} = gas flowrate-weighted average concentration of the regulated constituent;

C_{main} = average performance test concentration demonstrated in the main stack;

C_{bypass} = average performance test concentration demonstrated in the bypass stack;

Q_{main} = volumetric flowrate of main stack effluent gas; and

Q_{bypass} = volumetric flowrate of bypass effluent gas.

(ii) *Compliance.* (A) You must demonstrate compliance with the emission standard(s) using the emission concentrations determined from the performance tests and the equation provided by paragraph (e)(1) of this section; and

(B) You must develop operating parameter limits for bypass stack and main stack flowrates that ensure the emission concentrations calculated with the equation in paragraph (e)(1) of this section do not exceed the emission standards on a 12-hour rolling average basis. You must include these flowrate limits in the Notification of Compliance.

(iii) *Notification.* If you elect to document compliance under this emissions averaging provision, you must:

(A) Notify the Administrator in the initial comprehensive performance test plan submitted under § 63.1207(e). The performance test plan must include, at a minimum, information describing the flowrate limits established under paragraph (e)(2)(ii)(B) of this section; and

(B) Document in the Notification of Compliance submitted under § 63.1207(j) the demonstrated gas flowrate-weighted average emissions that you calculate with the equation provided by paragraph (e)(2) of this section.

(f) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least three significant figures, you may round the resultant emission levels to two significant figures to document compliance.

(g) [Reserved].

(h) When you comply with the particulate matter requirements of paragraphs (a)(7) or (b)(7) of this section, you are exempt from the New Source Performance Standard for particulate matter and opacity under § 60.60 of this chapter.

■ 22. Section 63.1221 is added to subpart EEE to read as follows:

§ 63.1221 What are the replacement standards for hazardous waste burning lightweight aggregate kilns?

(a) *Emission and hazardous waste feed limits for existing sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere or feed hazardous waste that contain:

(1) For dioxins and furans, either:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Rapid quench of the combustion gas temperature at the exit of the (last) combustion chamber (or exit of any waste heat recovery system that immediately follows the last combustion chamber) to 400°F or lower based on the average of the test run average temperatures. You must also notify in writing the RCRA authority that you are complying with this option;

(2) For mercury, either:

(i) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen; or

(ii) A hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

(3) For cadmium and lead, both:

(i) Emissions in excess of 3.0×10^{-4} lbs combined emissions of cadmium and lead attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 250 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium, both:

(i) In excess of 9.5×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(ii) Emissions in excess of 110 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) *Carbon monoxide and*

hydrocarbons. (i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard

under paragraph (a)(5)(ii) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 20 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrogen chloride and chlorine gas in excess of 600 parts per million by volume, combined emissions, expressed as a chloride (Cl⁻) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter emissions in excess of 0.025 gr/dscf, corrected to 7 percent oxygen.

(b) *Emission and hazardous waste feed limits for new sources.* You must not discharge or cause combustion gases to be emitted into the atmosphere or feed hazardous waste that contain:

(1) For dioxins and furans, either:

(i) Emissions in excess of 0.20 ng TEQ/dscm corrected to 7 percent oxygen; or

(ii) Rapid quench of the combustion gas temperature at the exit of the (last) combustion chamber (or exit of any waste heat recovery system that immediately follows the last combustion chamber) to 400°F or lower based on the average of the test run average temperatures. You must also notify in writing the RCRA authority that you are complying with this option;

(2) For mercury, either:

(i) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen; or

(ii) A hazardous waste feedrate corresponding to a maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

(3) For cadmium and lead, both:

(i) Emissions in excess of 3.7×10^{-5} lbs combined emissions of cadmium and lead attributable to the hazardous waste per million Btu heat input from the hazardous waste; and

(ii) Emissions in excess of 43 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) For arsenic, beryllium, and chromium, both:

(i) In excess of 3.3×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(ii) Emissions in excess of 110 µg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) *Carbon monoxide and hydrocarbons.* (i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(ii) Hydrocarbons in excess of 20 parts per million by volume, over an hourly rolling average, dry basis, corrected to 7 percent oxygen, and reported as propane;

(6) Hydrogen chloride and chlorine gas in excess of 600 parts per million by volume, combined emissions, expressed as a chloride (Cl⁻) equivalent, dry basis and corrected to 7 percent oxygen; and

(7) Particulate matter emissions in excess of 0.0098 gr/dscf corrected to 7 percent oxygen.

(c) *Destruction and removal efficiency (DRE) standard.* (1) *99.99% DRE.* Except as provided in paragraph (c)(2) of this section, you must achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated under paragraph (c)(3) of this section. You must calculate DRE for each POHC from the following equation:

$$DRE = [1 - (W_{out} / W_{in})] \times 100\%$$

Where:

W_{in} = mass feedrate of one POHC in a waste feedstream; and

W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) *99.9999% DRE.* If you burn the dioxin-listed hazardous wastes F020, F021, F022, F023, F026, or F027 (see § 261.31 of this chapter), you must achieve a destruction and removal efficiency (DRE) of 99.9999% for each POHC that you designate under paragraph (c)(3) of this section. You must demonstrate this DRE performance on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-dioxins and

dibenzofurans. You must use the equation in paragraph (c)(1) of this section to calculate DRE for each POHC. In addition, you must notify the Administrator of your intent to burn hazardous wastes F020, F021, F022, F023, F026, or F027.

(3) *Principal organic hazardous constituents (POHCs).* (i) You must treat each POHC in the waste feed that you specify under paragraph (c)(3)(ii) of this section to the extent required by paragraphs (c)(1) and (c)(2) of this section.

(ii) You must specify one or more POHCs that are representative of the most difficult to destroy organic compounds in your hazardous waste feedstream. You must base this specification on the degree of difficulty of incineration of the organic constituents in the hazardous waste and on their concentration or mass in the hazardous waste feed, considering the results of hazardous waste analyses or other data and information.

(d) *Significant figures.* The emission limits provided by paragraphs (a) and (b) of this section are presented with two significant figures. Although you must perform intermediate calculations using at least three significant figures, you may round the resultant emission levels to two significant figures to document compliance.

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.

■ 2. Section 260.11 is amended by

■ a. Revising the first sentence in paragraph (a).

■ b. Revising paragraph (c)(1).

The revisions and additions read as follows:

§ 260.11 References.

(a) When used in parts 260 through 268 of this chapter, the following publications are incorporated by reference. * * *

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(c) * * *

(1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 264.1035 and 265.1035.

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

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

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6927, 6928(h), and 6974.

■ 2. Section 264.340 is amended by revising the first sentence of paragraph (b)(1) and adding paragraph (b)(5) to read as follows:

§ 264.340 Applicability.

* * * * *

(b) * * * (1) Except as provided by paragraphs (b)(2) through (b)(5) of this section, the standards of this part do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.

* * *

* * * * *

(5) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of §§ 63.1206(b)(14) and 63.1219(e) of this chapter.

* * * * *

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

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

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

■ 2. Section 265.340 is amended by revising paragraph (b)(1) to read as follows:

§ 265.340 Applicability.

* * * * *

(b) * * * (1) Except as provided by paragraphs (b)(2) and (b)(3) of this section, the standards of this part no longer apply when an owner or operator

demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 1. 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.

■ 2. Section 266.100 is amended by revising the first sentence of paragraph (b)(1) and adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 266.100 Applicability.

(b) * * * (1) Except as provided by paragraphs (b)(2), (b)(3), and (b)(4) of this section, the standards of this part do not apply to a new hazardous waste boiler or industrial furnace unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste boiler or industrial furnace unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.

* * *

(3) If you own or operate a boiler or hydrochloric acid production furnace that is an area source under § 63.2 of this chapter and you elect not to comply with the emission standards under §§ 63.1216, 63.1217, and 63.1218 of this chapter for particulate matter, semivolatile and low volatile metals, and total chlorine, you also remain subject to:

(i) Section 266.105—Standards to control particulate matter;

(ii) Section 266.106—Standards to control metals emissions, except for mercury; and

(ii) Section 266.107—Standards to control hydrogen chloride and chlorine gas.

(4) The particulate matter standard of § 266.105 remains in effect for boilers that elect to comply with the alternative to the particulate matter standard under §§ 63.1216(e) and 63.1217(e) of this chapter.

* * *

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

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

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

■ 2. Section 270.6 is revised to read as follows:

§ 270.6 References.

(a) When used in part 270 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800:

(1) “APTI Course 415: Control of Gaseous Emissions,” EPA Publication EPA–450/2–81–005, December 1981, IBR approved for §§ 270.24 and 270.25.

(2) [Reserved].

■ 3. Section 270.10 is amended by adding paragraph (l) to read as follows:

§ 270.10 General application requirements.

* * *

(l) If the Director concludes, based on one or more of the factors listed in paragraph (l)(1) of this section that

compliance with the standards of 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the Director shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The Director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required.

(1) The Director shall base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(ii) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(iii) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);

(iv) Identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(v) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(vi) Volume and types of wastes, for example wastes containing highly toxic constituents;

(vii) Other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(viii) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(ix) Such other factors as may be appropriate.

(2) [Reserved]

■ 4. Section 270.19 is amended by revising paragraph (e) to read as follows:

§ 270.19 Specific part B Information requirements for incinerators.

(e) When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

■ 5. Section 270.22 is amended by revising the introductory text to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply. The requirements of this section do apply, however, if the Director determines certain provisions are

necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if you are an area source and elect to comply with the §§ 266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

■ 6. Section 270.24 is amended by revising paragraph (d)(3) to read as follows:

§ 270.24 Specific part B information requirements for process vents.

(d) ***
(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 270.6) or other engineering texts acceptable to the Regional Administrator that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

■ 7. Section 270.25 is amended by revising paragraph (e)(3) to read as follows:

§ 270.25 Specific part B information requirements for equipment.

(e) ***
(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 270.6) or other engineering texts acceptable to the Regional Administrator that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

■ 8. Section 270.32 is amended by adding paragraph (b)(3) to read as follows:

§ 270.32 Establishing permit conditions.

(b) ***
(3) If, as the result of an assessment(s) or other information, the Administrator or Director determines that conditions are necessary in addition to those required under 40 CFR parts 63, subpart EEE, 264 or 266 to ensure protection of human health and the environment, he shall include those terms and conditions in a RCRA permit for a hazardous waste combustion unit.

■ 9. Section 270.42 is amended by:
■ a. Revising paragraph (j)(1).
■ b. Redesignating paragraph (j)(2) as (j)(3).
■ c. Adding new paragraph (j)(2).
■ d. Adding new paragraph (k); and
■ e. Adding a new entry 10 in numerical order in the table under section L of Appendix I.

The revisions and additions read as follows:

§ 270.42 Permit modification at the request of the permittee.

(j) ***
(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000. (See 40 CFR part 63 §§ 63.1200–63.1499 revised as of July 1, 2000) in order to request a permit modification under this section for the purpose of technology changes needed to meet the standards under 40 CFR 63.1203, 63.1204, and 63.1205.
(2) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210(b) and 63.1212(a) before a permit modification can be requested under this section for the purpose of technology changes needed to meet the 40 CFR 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards promulgated on October 12, 2005.

(k) *Waiver of RCRA permit conditions in support of transition to the part 63 MACT standards.* (1) You may request to have specific RCRA operating and emissions limits waived by submitting a Class 1 permit modification request under Appendix I of this section, section L(10). You must:

(i) Identify the specific RCRA permit operating and emissions limits which you are requesting to waive;
(ii) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the RCRA permit and MACT compliance; and

(iii) Discuss how the revised provisions will be sufficiently protective.

(iv) The Director shall approve or deny the request within 30 days of receipt of the request. The Director may, as his or her discretion, extend this 30 day deadline one time for up to 30 days by notifying the facility owner or operator.

(2) To request this modification in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR 63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Administrator) you must:

(i) Submit your modification request to the Director at the same time you submit your test plans to the Administrator; and

(ii) The Director may elect to approve or deny the request contingent upon approval of the test plans.

* * * * *

Appendix I to § 270.42—Classification of Permit Modification

Modifications	Class
10. Changes to RCRA permit provisions needed to support transition to 40 CFR part 63 (Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(k) are followed..	11

¹ Class 1 modifications requiring prior Agency approval.

* * * * *

■ 10. Section 270.62 is amended by revising the introductory text to read as follows:

§ 270.62 Hazardous waste incinerator permits.

When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

* * * * *

■ 11. Section 270.66 is amended by revising the introductory text to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement kiln, lightweight aggregate kiln,

solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to RCRA permit requirements after October 12, 2005 or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply. The requirements of this section do apply, however, if the Director determines certain provisions are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if you are an area source and elect to comply with the §§ 266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

* * * * *

■ 12. Section 270.235 is amended by:

■ a. Revising the section heading and paragraphs (a)(1) introductory text and (a)(2) introductory text.

■ b. Revising paragraphs (b)(1) introductory text and (b)(2).

■ c. Adding new paragraph (c).

The revisions read as follows:

* * * * *

§ 270.235 Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events.

(a) * * * (1) *Revisions to permit conditions after documenting compliance with MACT.* The owner or operator of a RCRA-permitted incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the Director address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to §§ 264.340(b) and 266.100(b) of this chapter:

* * * * *

(2) *Addressing permit conditions upon permit reissuance.* The owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the Administrator a Notification of Compliance documenting compliance with the standards of part 63, subpart EEE, of this chapter may request in the application to reissue the permit for the combustion unit that the Director control emissions from startup,

shutdown, and malfunction events under any of the following options:

* * * * *

(b) * * * (1) *Interim status operations.* In compliance with §§ 265.340 and 266.100(b), the owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of part 265 or 266 of this chapter may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance documenting compliance with the standards of part 63, subpart EEE, of this chapter.

* * * * *

(2) *Operations under a subsequent RCRA permit.* When an owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel

boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of parts 265 or 266 of this chapter submits a RCRA permit application, the owner or operator may request that the Director control emissions from startup, shutdown, and malfunction events under any of the options provided by paragraphs (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section.

(c) *New units.* Hazardous waste incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that become subject to RCRA permit requirements after October 12, 2005 must control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:

(1) Comply with the requirements specified in § 63.1206(c)(2) of this chapter; or

(2) Request to include in the RCRA permit, conditions that ensure emissions of toxic compounds are

minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan and design. The director will specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

■ 2. 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
Oct. 12, 2005	Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.	[Insert FR page numbers]	Oct. 12, 2005.

[FR Doc. 05-18824 Filed 10-11-05; 8:45 am]

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[Federal Register: April 4, 2006 (Volume 71, Number 64)]
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Part II

Environmental Protection Agency

40 CFR Parts 260, 261 et al.

Resource Conservation and Recovery Act Burden Reduction Initiative;
Final Rule

[[Page 16862]]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 266, 268, 270, and 271

[RCRA-2001-0039: FRL-8047-3]
RIN 2050-AE50

Resource Conservation and Recovery Act Burden Reduction
Initiative

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA), in accordance with the goals of the Paperwork Reduction Act (PRA), is promulgating changes to the regulatory requirements of the Resource Conservation and

Recovery Act (RCRA) hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. EPA has estimated that the total annual hour savings under the final rule ranges from 22,000 hours to 37,500 hours per year. The total annual cost savings under the final rule ranges from approximately \$2 million to \$3 million. This rulemaking will streamline our information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained.



Federal Register

**Tuesday,
April 4, 2006**

Part II

Environmental Protection Agency

40 CFR Parts 260, 261 et al.

**Resource Conservation and Recovery Act
Burden Reduction Initiative; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 266, 268, 270, and 271

[RCRA-2001-0039; FRL-8047-3]

RIN 2050-AE50

Resource Conservation and Recovery Act Burden Reduction Initiative

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA), in accordance with the goals of the Paperwork Reduction Act (PRA), is promulgating changes to the regulatory requirements of the Resource Conservation and Recovery Act (RCRA) hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. EPA has estimated that the total annual hour savings under the final rule ranges from 22,000 hours to 37,500 hours per year. The total annual cost savings under the final rule ranges from approximately \$2 million to \$3 million. This rulemaking will streamline our information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained.

DATES: This final rule is effective on May 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-RCRA-1999-0031. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., 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., NW., Washington, DC. This Docket Facility 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:

Elaine Eby, Waste Minimization Branch,

Hazardous Waste Minimization and Management Division, Office of Solid Waste (5302W), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8449, fax number: (703) 308-8443, e-mail address: ebey.elaine@epa.gov.

SUPPLEMENTARY INFORMATION:

General Information

A. Does This Action Apply to Me?

This rule applies to entities regulated under the Resource Conservation and Recovery Act, including manufacturing, transportation, utilities, the waste treatment industry, and the mineral processing industry. This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility, company, or business is regulated by this action, you should carefully examine 40 CFR parts 260 through 273. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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 - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
 - I. National Technology Transfer and Advancement Act of 1995
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act
- VIII. Regulatory Language

I. Statutory Authority

The U.S. Environmental Protection Agency (EPA) regulates the generation and management of hazardous waste under 40 CFR parts 260 through 273 using the authority of the Resource Conservation and Recovery Act of 1976

(RCRA), as amended, 42 U.S.C. 6901 *et seq.*

II. Background, Purpose, and Summary of Today's Action

As part of its hazardous waste regulations, EPA has established recordkeeping and reporting requirements that allow the Agency to enforce and ensure compliance with these regulations. In the Paperwork Reduction Act (PRA) 44 U.S.C. 3501, *et seq.*, Congress directs all federal agencies to become more responsible and publicly accountable for reducing the burden of federal paperwork on the public. "Burden" is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency (44 U.S.C. 3502(2))¹

Over the past five years, EPA has continued to assess and evaluate the need for the many recordkeeping and reporting requirements found in the RCRA hazardous waste program. In the course of this effort, we have identified numerous opportunities to eliminate or streamline RCRA requirements, while continuing to fulfill our mission of protecting human health and the environment.

Today's final rule changes a number of the regulatory requirements found in 40 CFR parts 260 through 271. These changes will bring about burden reductions to both the regulated community and the regulators and is a direct result of our consultations with a number of state experts on potential burden reduction ideas, as well as public input through two Notices of Data Availability and a Proposed Rulemaking.¹

The regulatory changes contained in the Burden Reduction final rule will have no practical impact on the many protections that EPA has established over the years for human health and the environment. At the same time, this rule strives to relieve stakeholders of the burden of nonessential paperwork. The final rule clarifies certain requirements and eliminates or simplifies other requirements. We have eliminated paperwork requirements if they entail information that is obscure, inconsequential, or infrequently submitted to or used by regulators. Note, however, that the final rule does not curtail the right of regulatory agencies to request any information desired. Waste handlers must continue to keep on-site

records of their waste management activities and make them available to regulators when requested. As such, the rule does not limit regulators' or the public's ability to learn what is happening at a facility.

To effectively present the large number of regulatory changes we are finalizing, we have divided these changes into ten categories or groups of changes; they are: (1) The amount of time records must be kept; (2) certification by a professional engineer; (3) option to follow the Integrated Contingency Plan Guidance; (4) option to follow the Occupational Safety and Health Administration (OSHA) regulations for emergency training; (5) clarifications and elimination of obsolete regulatory language; (6) elimination of selected recordkeeping and reporting requirements; (7) decreased self-inspection frequency for selected hazardous waste management units; (8) selected changes to the requirements for record retention and submittal of records; (9) changes to the requirements for document submittal; and (10) reduced frequency for report submittals. A summary of the major components of the final rule is presented in Table 1.

The preamble discussion follows the set of categories presented above (see also Table 1, "Summary of the Major Components and a Description of the Regulatory Changes Being Promulgated in Today's Burden Reduction Final Rule"). Within each category, we present the changes we are promulgating, along with a discussion of the comments received and our resolution of the major issues or concerns. At the conclusion of each section, we present comparative tables showing both the current regulatory requirement and the new requirement for the affected group, *i.e.*, generators; permitted hazardous waste treatment, storage, and disposal facilities; and interim status treatment, storage, and disposal facilities. Interim status regulations at 40 CFR Part 265 provide for the continued operation of an existing facility that meets certain conditions until final administrative disposition of the owner and operator permit application is made. Regulations for permit applications are found in 40 CFR part 270 and general standards for permitted facilities are found in 40 CFR part 264.

¹ The Notices of Data Availability were published in the *Federal Register* on June 18, 1999 (64 FR

32859) and October 29, 2003 (68 FR 61662). The

Proposed Rulemaking was published in the *Federal Register* on January 17, 2002 (67 FR 2518).

TABLE 1.—SUMMARY OF THE MAJOR COMPONENTS AND A DESCRIPTION OF THE REGULATORY CHANGES BEING PROMULGATED IN TODAY'S BURDEN REDUCTION FINAL RULE

Regulatory change	Description of regulatory change
The amount of time records must be kept	Many of the recordkeeping requirements for treatment, storage and disposal facilities (TSDFs) mandate record retention for the life of the facility. In this final rule, we have reduced the length of time waste handlers must retain certain records on site to three years or five years for hazardous waste combustion units (e.g., operating record requirements at 40 CFR 264.73 and 265.73). We have also increased the record retention time for a selected number of documents for interim status facilities in cases where the notification requirement has been eliminated.
Certification by a professional engineer	Numerous regulations require generators and TSDFs to obtain an independent, qualified, registered, professional engineer's certification, as specified. We have changed certain RCRA certification requirements by taking out the terms "independent" and "registered."
Option to follow the Integrated Contingency Plan Guidance	Large Quantity Generators (LQGs) and TSDFs must have contingency plans to minimize hazards to human health and the environment from fires, explosions, or any unplanned release of hazardous waste to the environment. We have modified our RCRA regulations to indicate that these waste handlers may consider developing one comprehensive contingency plan based on the Integrated Contingency Guidance. This guidance provides a mechanism for consolidating the multiple contingency plans that waste handlers have to prepare to comply with various government regulations.
Option to follow Occupational Safety and Health Administration (OSHA) regulations for emergency training.	LQGs and TSDFs must train their employees in emergency procedures. We have modified the RCRA regulations to allow waste handlers to have the option of complying with either the RCRA or OSHA requirements for emergency response procedures.
Clarifications and elimination of obsolete regulatory language	We are modifying specified regulatory language by and eliminating obsolete terms and/or rewording language to make it clearer. We are also providing regulatory clarifications to several LDR requirements.
Elimination of selected recordkeeping and reporting requirements	We have eliminated certain recordkeeping and reporting requirements in the RCRA regulations in order to eliminate submission of duplicative information and/or reporting unnecessary burden to waste handlers.
Decreased inspection frequency for hazardous waste management units.	Under many RCRA inspection requirements, we specify a frequency at which waste handlers must inspect their frequency for facility and equipment. We have reduced the self-inspection frequency for hazardous waste tank systems from daily to weekly, under certain conditions. In addition, EPA is allowing facilities in the National Performance Track Program to reduce their inspection frequencies, under certain conditions, up to monthly, on a case-by-case basis, for tank systems, containers, containment buildings, and areas subject to spills.
Selected changes to the requirements for record retention and submittal of records.	We are modifying certain requirements under which waste handlers must keep records on-site and submit these same records to EPA. We are specifying certain records that waste handlers need to keep only on-site.
Changes to the requirements for document submittal	We have eliminated several requirements to reduce the number of documents that are submitted to the Agency document for review.
Reduced frequency for report submittal	We have reduced the submittal frequency of certain documents (e.g., from semi-annual to annual).

III. What Burden Reduction Changes Are We Making?

A. Changes to the Amount of Time Records Must Be Kept

As a precautionary measure in promulgating the hazardous waste requirements in 1980, we mandated the retention of many kinds of records until facility closure, resulting in a tremendous volume of stored paperwork. Our experience in implementing the RCRA program has shown that this retention time is excessive, and a priority item for reduction.

1. We Are Reducing the Retention Time for Certain Information Kept in a Facility's Operating Record

We are changing a number of the operating record requirements under §§ 264.73 and 265.73 to reduce the record retention time to three years. Among other things, we are modifying the retention time limit for records on waste analyses; certain monitoring, testing and analytical data; waste determinations; selected certifications; and notifications.

We believe that these changes establish a more reasonable record

retention time than the requirement to keep this information until closure of the facility.² The three-year record retention period is sufficient to enable regulators to monitor industry compliance and take enforcement actions as needed. In any event,

² Record retention times for all Agency programs vary, but in numerous instances have retention times shorter than the life of the facility. For example, the National Primary Drinking Water Regulations require records retention times of one, five, and twelve years (depending on the record). The National Emission Standards for Hazardous Air Pollutants, Subpart FF—National Emission Standards for Benzene Waste Operations requires a two-year records retention time.

§§ 264.74(b) and 265.74(b) require the retention period of any records to be extended automatically during the course of any unresolved enforcement action regarding the facility, or as requested by the Administrator.

We are not modifying the retention limit for records that contain the following information: (1) Description and quantity of each hazardous waste received and what was done with it; (2) location of each hazardous waste; (3) closure estimates; or (4) quantities of waste placed in land disposal units under an extension to the effective date of any land disposal restriction. The retention of this information is necessary to ensure protection of human health and the environment through the life of the facility, and until closure of the facility.

We believe that these changes will not affect the government's or the public's ability to know what is happening at a hazardous waste facility because a basic set of compliance information will still be available in the facility's records. The Agency will have access to the facility's operating record, which will contain many of the documents previously submitted to the Agency. Although the public does not generally have access to the facility's operating record, the Agency Director can require permitted facilities to establish and maintain a publicly accessible information repository at any time (see § 270.30 (m)). Similarly, facilities that are applying for permits may be required to establish and maintain an information repository. (See 124.33.)

In today's rule, we are also amending the regulatory language proposed for maintaining these records. In the proposed rule, we used the language, "maintain for three years after entry into the operating record." A commenter pointed out that some records, such as laboratory analytical results, stand alone in the laboratory records and are not actually "entered into the operating record." We recognize that this is an important distinction and are changing the regulatory language from the proposal to say "maintain for three years" instead of "maintain for three years after entry into the operating record." Also, a commenter pointed out that since monitoring and ground-water clean up is a multi-year or multi-decade task, these records should be kept until closure of the facilities. We agree, and are changing § 264.73(b)(6) and § 265.73(b)(6) accordingly.

We also received comments stating that we should not reduce our record retention requirements, because any particular record might be useful at some future point. This could be said of

any requirement. In the Paperwork Reduction Act, Congress instructed us to set a higher standard for imposing an information collection requirement. We believe that information must have a demonstrable value. Based on our experience, we believe that we have identified those records that have the greatest potential impact on the protection of human health and the environment. Such records must be maintained until closure of the facility.

We also received questions in response to the proposed rule asking whether facilities must keep existing records, once generated and stored, until the date that was initially established for their disposal, even though we are changing that date with this rule. It would be burdensome for facilities to have two different sets of recordkeeping requirements, and difficult for EPA and the states to enforce a phase-out of recordkeeping. Therefore, we believe it is appropriate to maintain consistency and retain records until the date established by today's rule (or if the date is unchanged by this rule, to the original date (i.e., until closure of the facility)). Therefore, facilities may dispose of existing records consistent with today's rule, once the retention date established by today's rule becomes effective.

2. We Are Increasing the Retention Time for Certain Information Kept in an Interim Status Facility's Operating Record

In response to comments received, EPA is amending § 265.73(b)(6) and creating a new § 265.73(b)(15) to require retention in the operating record until closure of the facility, the ground-water quality assessment plans required under § 265.90 and § 265.93(d)(2), and ground-water quality assessment reports required under § 265.93(d)(5). Under today's rule, these plans are no longer required to be submitted to the Regional Administrator. Accordingly, EPA has decided that, in order to ensure protection of health and the environment, these records need to be available and, therefore, has amended the regulation to require that the information be maintained in the operating record until closure of the facility. EPA believes today's changes would result in no more burden to facility owners or operators for storage, since it is likely that any report submitted to the Agency would also be kept on-site by the facility. In other words, there would be no increase in burden over what is already being done.

3. We Are Establishing a Five-Year Record Retention Time for Information Kept on the Operation of Incinerators, Boilers, and Industrial Furnaces

Owners and/or operators of boilers and industrial furnaces (BIFs) are subject to compliance-related recordkeeping regulations. For example, BIFs must conduct emission tests to demonstrate compliance with the RCRA emission standards (such as certification of compliance tests), performance tests for their continuous emissions monitors, and retain these test reports on-site until closure of the facility. As a result of the emissions tests, BIFs also establish enforceable operating limits that must be achieved on a daily basis (such as hourly rolling average feed rate limits). BIFs are also required to record the daily operating data in their operating record for compliance purposes and make them available for inspection.

In the October 29, 2003 NODA (68 FR 61662), we solicited comment on amending the current record retention requirement for incinerator monitoring, testing and analytical data, from "for the life of the facility" to three years. We took this action because we had overlooked incinerators in the original proposal and maintain that their record retention requirements should be consistent with those for BIFs. This change for incinerators was supported by a majority of the commenters; however, some pointed out that the recordkeeping requirements for incinerators and BIFs should be consistent with those that the Agency promulgated on October 12, 2005 (70 FR 59402) for incinerators and the majority of BIFs under the Clean Air Act (CAA).³

We agree with these commenters and have decided for reasons of consistency with the CAA requirements, to finalize a five year record retention time for incinerators and BIFs. We are also promulgating the five year record retention time for BIFs (such as sulfur recovery furnaces) that will not be subject to the recently promulgated MACT standards.

One commenter that opposed any change to the record retention time stated that incinerators should keep all their data points for the life of the facility. The commenter asserted that the only information that a state inspector has to use during a violation are the data on the incinerator's parametric monitoring. They argued

³ The Clean Air Act requires the Agency to develop rules to reduce Hazardous Air Pollutant emissions. The rules require the application of strict air emission controls based on performance of best technologies, the overall approach usually being referred to as maximum achievable control technology, or MACT.

that, in no case, should record retention be reduced if there are outstanding enforcement, non-compliance or legal issues pending.

For reasons cited earlier, we believe that modifying the record retention period for incinerators and BIFs to five years is appropriate. Regarding the commenter's point that records should be retained if there is an outstanding enforcement, non-compliance or legal

action pending, the regulations already provide for this and nothing in today's rule would amend this provision. See §§ 264.74 and 265.74 which state:

The record retention period for all records required under this part is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Administrator.

The following tables show the new retention times by facility for selected

records. We have also included the recordkeeping requirements found in: (1) Section 264.73, Operating record; (2) Section 264.347, Monitoring and inspections; (3) Section 265.73, Operating record; (4) Section 266.102(e)(10), Permit standards for burners; and (5) Section 266.103(d) and (k), Interim status standards for burners.

TABLE 2.—REVISED RECORD RETENTION TIMES FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Record summary	Current retention time
		New retention time as amended by the burden reduction rule
264.73(b)(1)	Description and quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage or disposal at the facility.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(2)	The location of each hazardous waste within the facility and the quantity at each location.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(3)	Records and results of waste analyses and waste determinations.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(4)	Summary reports and details of all incidents that require implementing the contingency plan.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(5)	Records and results of inspections	Maintain for three years. No change in requirement.
264.73(b)(6)	Monitoring, testing, or analytical data corrective action	Maintain until closure of the facility. Maintain for three years, except for records and results pertaining to ground-water monitoring and cleanup, which must be maintained until closure of the facility.
264.73(b)(7)	For off-site facilities, notices to generators as specified in § 264.12(b).	Maintain until closure of the facility. Maintain for three years.
264.73(b)(8)	All closure cost estimates for disposal facilities, all post-closure cost estimates.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(9)	Waste minimization certification	Maintain until closure of the facility. Maintain for three years.
264.73(b)(10)	Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(11)	For off-site treatment facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(12)	For on-site treatment facility, notices and certifications	Maintain until closure of the facility. Maintain for three years.
264.73(b)(13)	For off-site land disposal facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(14)	For on-site land disposal facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(15)	For off-site storage facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(16)	For on-site storage facility, notices and certifications	Maintain until closure of the facility. Maintain for three years.
264.73(b)(17)	Records required under § 264.1(j)(13)	Maintain until closure of the facility. Maintain for three years.
264.73(b)(18)	Monitoring, testing or analytical data where required by § 264.347.	Maintain until closure of the facility. Maintain for five years.
264.73(b)(19)	Certification as required by § 264.196(f)	No specified requirement.
264.347(d)	For incinerators: monitoring and inspection data	Maintain until closure of the facility. Maintain for five years.
266.102(e)(10)	For burners: recordkeeping	Maintain until closure of the facility. Maintain for five years.

TABLE 3.—REVISED RECORD RETENTION TIMES FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Summary record	Current retention time
		New retention time as amended by the burden reduction rule
265.73(b)(1)	Description and quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage or disposal at the facility.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(2)	The location of each hazardous waste within the facility and the quantity at each location.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(3)	Records and results of waste analyses and waste determinations.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(4)	Summary reports and details of all incidents that require implementing the contingency plan.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(5)	Records and results of inspections	Maintain for three years. No change in regulatory requirement.
265.73(b)(6)	Monitoring, testing, or analytical data and corrective action.	Maintain until closure of the facility. Maintain for three years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills which must be maintained until closure of the facility.
265.73(b)(7)	All closure cost estimates for disposal facilities, all post-closure cost estimates.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(8)	Records of the quantities and date of placement for each shipment of the hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(9)	For off-site treatment facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(10)	For on-site treatment facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(11)	For off-site land disposal facility, notices and certifications from the generator.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(12)	For on-site land disposal facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(13)	For off-site storage facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(14)	For on-site storage facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(15)	Monitoring, testing, or analytical data, and corrective action where required by §§ 265.90, 265.93(d)(2), and 265.93(d)(5) of this part and certifications as required by § 265.196(f).	Maintain until closure of the facility. No change in regulatory requirement.
266.103(d)	<i>Periodic Recertifications.</i> The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.	Every three years. Every five years.
266.103(k)	Interim status standards for burners: record-keeping.	Maintain until closure of the facility. Maintain for five years.

B. Changes to the Professional Engineer Certification Requirements

Throughout the RCRA regulations, there are various requirements for the services of an independent, qualified, registered, professional engineer to certify the effectiveness of the design and operation of various hazardous waste management units. We proposed

to add Certified Hazardous Materials Managers (CHMMs) as professionals qualified to make selected certifications. This proposed change was a result of comments received on our June 18, 1999 NODA (64 FR 32859). In response to this proposal, the Agency received significant comment, primarily requesting that we expand the category of persons allowed to provide the

various certifications. Commenters argued that we were being arbitrary in proposing to allow only two professional disciplines (i.e., CHMMs and professional engineers) to certify hazardous waste management operations. Conversely, professional engineers strongly opposed the proposed change in the regulatory requirements. They suggested that

CHMMs were not qualified to certify the design, construction, and structural integrity of hazardous waste management units.

In addition, numerous states opposed the change on the grounds that their state laws allow only licensed engineers to make these certifications. State comments also pointed out that state licensing boards can investigate complaints of negligence or incompetence, on the part of professional engineers, and may impose fines and other disciplinary actions such as cease-and-desist orders or license revocation. According to commenters, similar controls do not exist for other professions. This personal liability of the professional engineer is one of the reasons why state commenters supported the idea that RCRA certifications should only be done by licensed professional engineers.

Other commenters suggested that, rather than deciding which professions are qualified to make certifications, we should establish an environmental professional performance standard based on membership in a recognized professional organization. In response to these comments, we solicited comment in our October 29, 2003 NODA to allow professionals accredited by organizations meeting the American Society for Testing and Materials (ASTM) E1929-98, Standard Practice for the Assessment of Certification Programs for Environmental Engineers: Accreditation Criteria to conduct a limited number of certifications, including: (1) Section 264.573(a)(4)(ii)(g), Drip Pads, Design and operating requirements; (2) Section 265.443(a)(4)(ii)(g), Drip Pads, Design and operating requirements; (3) Section 264.574(a), Drip Pads, Inspections; (4) Section 265.444(a), Drip Pads, Inspections; and (5) Section 266.111(e)(2), Boilers and Industrial Furnaces, Direct transfer equipment—requirements prior to meeting secondary containment requirements.⁴

Comments to the change described in the NODA were mixed. Some commenters supported this change in qualifications for selected certifications, while a number of states and professional organizations still strongly opposed allowing anyone other than a professional engineer to perform these certifications. While the Agency believes that added flexibility to the RCRA regulations is a goal worth

pursuing, in this case, we are persuaded by the arguments presented by states with regard to these certifications and are not going forward with these changes at this time. Certifications for drip pads involve certifying engineering designs, drawings, plans and other engineering details, involving structural and hydraulic and other functions. As such, we believe that while there may be professionals other than professional engineers qualified to make these certifications, it is imperative that the goals of human health and the environmental protection are maintained. In reviewing the comments, we are not convinced that all environmental professionals certified by the ASTM standard would be qualified to perform these engineering evaluations. To this end, we are not going forward with allowing the changes to the drip pad certification requirements that would allow environmental professionals recognized by a certification program that is compliant with ASTM E-1929-98 Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria.

Although the Agency was not persuaded that ASTM board certified environmental professionals, including CHMMs, should be allowed to make the required RCRA certifications that were the subject of this rulemaking, the Agency wants to make it clear that facilities are still permitted to utilize qualified professionals who may not be professional engineers in performing the analyses that underlie these certifications. Facilities can potentially lower their costs by utilizing the flexibility to employ others as part of the certification requirement. For example, as part of the closure and post closure requirements, some CHMMs may be qualified to make certain determinations associated with these certifications to determine whether operations at the site will minimize hazards.

The Agency is sympathetic to the large number of comments by the CHMMs and other environmental professionals about unnecessary restrictions in the marketplace. However, EPA is retaining the professional engineering certification, in part, to allay state concerns about the need to monitor and control the activities of personnel that are now subject to state licensure control. Given, however, additional experience by the Agency with the utilization of other

environmental professionals, EPA may re-examine this issue in the future.⁵

1. We Are Removing the "Independent" and "Registered" Requirements for Selected Certifications

Some commenters to the proposed rule suggested that we change the certification requirements by amending the qualifications required for the certification from "independent, qualified, registered, professional engineer" to "qualified professional engineer." That is, the commenters suggested it was not necessary for the professional engineer to be independent or registered. Commenters argued that the term "qualified professional engineer" retains the most important components of the requirement: (1) That the engineer be *qualified* to perform the task; and (2) that she or he be a professional engineer (following a code of ethics and the potential of losing his/her license for negligence).

In the October 29, 2003 NODA (68 FR 61662), EPA also solicited comment on changing the qualifications for who can certify the design, operation and closure of specific hazardous waste management units from "independent, qualified, registered, professional engineer" to "qualified professional engineer." We solicited comment on eliminating the requirement that the certifier be "independent," reasoning that we could rely on the professional standards of the certifier to ensure accurate certifications. This could potentially save expenses for companies with in-house engineers, since they would not have to hire outside consultants. State commenters strongly argued that the word "independent" should be retained because an independent review and certification avoids any potential of conflict of interest. Commenters stated that an employee of a facility would more likely have a biased approach to review and certification, and that state agencies would have less confidence in the accuracy and quality of review and

⁴ After publication of the October 29, 2003 NODA, (see 68 FR 61662), EPA determined that the certification required by § 266.111(e)(2) had to be made by August 21, 1992. As such the Agency is not pursuing a change to this requirement in today's rulemaking, obviously because the date has passed.

⁵ For example, in the All Appropriate Inquiries (AAI) rule published on November 1, 2005, (70 CFR 66070) EPA sets standards for CERCLA liability protection by establishing criteria that prospective property owners must use in the inquiries they conduct into the previous ownership, uses, and environmental conditions of a property prior to acquiring the property. The AAI rule differs from the RCRA burden reduction rule in that AAI does not in any way require the environmental professional to render any judgment or opinion regarding RCRA or CERCLA compliance or liability. AAI requirements include research activities and a site investigation similar to a Phase I environmental site assessment. It does not include compliance evaluation or an assessment of engineering or technical requirements (which may inherently require the expertise of an engineer or geologist).

certification. Furthermore, the commenters argued that the public would have reduced confidence in the accuracy and meaning of the engineering review and certification if it was conducted by an employee of the facility. The public would more likely suspect a conflict of interest and demand a more rigorous review by state agencies. Commenters also noted that a similar change, regarding whether to retain the term "independent" for professional engineers certifying closure, was proposed by EPA on March 19, 1985 (50 FR 11074). After receiving public comment, a final rule was issued on May 2, 1986 with the term "independent" retained. In the preamble to the May 2, 1986 final rule, we stated that, because certification of final closure is the final step in the closure process and triggers the release of the owner or operator from financial responsibility requirements for closure and third party liability coverage requirements, we believed that the certification should be made by a person who is least subject to pressures to certify to the adequacy of a closure that, in fact, is not in accordance with the approved closure plan. Commenters also noted that in the October 9, 1991 **Federal Register**, EPA addressed concerns regarding proposed language that would have allowed a "qualified party" to perform closure and post closure certification. In that FR notice, we stated on page 51103:

The Agency agrees with commenters that objective closure and post-closure certifications are essential for avoiding any potential conflicts of interest and ensuring protection of human health and the environment and that more specific requirements concerning the qualification of the certifying party are necessary to ensure the adequacy of the certification. We, therefore, are requiring in this final rule that certifications be obtained from independent, registered, professional engineers (i.e., registered professional engineers not in the employ of the owner or operator), consistent with requirements under subtitle C and other federally mandated certification programs (e.g., Clean Water Act grants).

Upon further analysis and reflection, we have decided to delete the independent qualification for certification made by a professional engineer. EPA continues to believe that this proposed modification retains the most important requirements: That the engineer is *qualified* to perform the task and is a professional engineer (i.e., licensed to practice engineering under the title Professional Engineer.) We believe that a professional engineer, regardless of whether he/she is independent is able to give fair and technical review because of the

programs established by the state licensing boards. It is not clear to us that an in-house engineer faces a greater economic temptation than an independent engineer seeking to cultivate an ongoing relationship with a client. This is a central mission of state licensing boards. If certifications are provided when the facts do not warrant certification, the professional engineer is subject to penalties, including the loss of license and the possibility of fines. Furthermore, we are convinced that the change to the certification requirements will allow facilities to reduce burden without compromising environmental safety by using in-house expertise. Professional engineers employed by a facility are more familiar with its own particular situation and are in a position to provide more on-site review and oversight of the activity being certified.

We also solicited comment on removing the term "registered," explaining that based on our understanding of the term "registered" (one who is licensed by a state) the terms "registered," "licensed" and "professional" mean the same thing in the case of certifying the design, operation and closure of hazardous waste management units. Thus, using the terms "registered" and "professional" when defining the qualification of an engineer, in this context, is redundant. While the majority of the comments supported the change, agreeing that the term "registered" appears to be redundant and could be removed, several commenters were opposed to making the change. These commenters argued that the word "registered" is necessary to prevent confusion in the field, particularly among generators, that a license or registration is required. The Agency is unconvinced by this argument and maintains that the use of "registered" and "professional" as qualifications for engineers making these certifications is redundant and should be simplified.

As a final matter, we unintentionally failed to identify eight additional certification requirements that are part of this regulatory change, i.e., each contains one or a combination of the terms: independent, registered and/or professional when describing the qualifications of the engineer. These certifications include: (1) Section 264.193(h)(4)(i)(2), Tank Systems, Containment and detection of releases; (2) Section 265.193(h)(5)(i)(2), Tank Systems, Containment and detection of releases; (3) Section 264.554(c)(2), Staging Piles; (4) Section 264.1101(c)(2), Containment Buildings, Design and operating standards; (5) Section

265.1101(c)(2), Containment Buildings, Design and operating standards; (6) Section 270.14(a), Permit Application, Content of part B. General requirements; (7) Section 270.17(d) Permit Application, Specific part B information requirements for surface impoundments; and (8) Section 270.26(c)(15), Permit Application, Special part B information requirements for drip pads. EPA believes today's changes provide consistency to the certification requirements, i.e., removing the terms independent and registered. As such, we are finalizing these eight additional certification changes.

2. We Are Also Changing the Closure and Post-Closure Certification Requirements

In the October 29, 2003 NODA (68 FR 61662), we also solicited comment on amending the qualifications for selected closure and post-closure certifications to "qualified professional engineer." These certifications included: (1) Section 264.115, Closure and Post-Closure, Certification of closure; (2) Section 265.115, Closure and Post-Closure, Certification of closure; (3) Section 264.120, Closure and Post-Closure, Certification of completion of post-closure care; (4) Section 265.120, Closure and Post-Closure, Certification of completion of post-closure care; and (5) Section 264.280(b), Land Treatment, Closure and post-closure care.

During the development of today's final rule, we discovered that we incorrectly stated the required qualifications for engineers providing the closure and post-closure certifications, and we failed to identify one additional certification, § 265.280(e) Land Treatment, Closure and post-closure care, and six cross-reference citations to the original closure and post-closure certifications. These cross-references are: (1) Section 264.143(i), Financial Assurance for Closure, Release of the owner or operator from the requirements of this section; (2) Section 265.143(h), Financial Assurance for Closure, Release of the owner or operator from the requirements of this section; (3) Section 264.145(i), Financial Assurance for Post-Closure, Release of the owner or operator from the requirements of this section; (4) Section 265.145(h), Financial Assurance for Post-Closure, Release of the owner or operator from the requirements of this section; (5) Section 264.147(e), Liability Requirements, Period of coverage; and (6) Section 265.147(e), Liability Requirements, Period of coverage.

We incorrectly stated, in both the proposed rule and the October 29, 2003

NODA (68 FR 61662), the regulatory requirements for these certifications. In both these notices, we stated that the regulatory language for closure and post-closure certifications require an "independent, qualified, registered, professional engineer" to make the certifications. This is incorrect. The regulatory language for these certifications does not include the word "qualified;" the certifications language states that the certification must be made by an "independent, registered, professional engineer." Hence our proposed regulatory change to

"qualified professional engineer" for these certifications was inaccurate and inconsistent with our other proposed certification requirements. In our view, this error was minor and does not change our position regarding the redundancy of using both "registered" and "professional," when defining the necessary certification qualifications. This error also does not change our position that all certifications should be conducted by a "qualified professional engineer" i.e., one that is qualified to perform the task and is a professional engineer (licensed/registered by the

state and following a code of ethics and the potential of losing his/her license for negligence). As such, we are today amending all the closure and post-closure certification requirements to require qualified professional engineers to certify closure and post-closure.

Tables 4 and 5 identify the certifications that we are amending in today's rule for permitted and interim status treatment, storage and disposal facilities as needing a qualified (as in "qualified to perform the task") professional engineer.⁶

TABLE 4.—PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES NEEDING RCRA CERTIFICATIONS BY A QUALIFIED PROFESSIONAL ENGINEER

CFR section	New RCRA certification requirement (i.e., dropping "registered")
264.115	Closure and Post-Closure. Certification of closure.
264.120	Closure and Post-Closure. Certification of completion of post-closure care.
264.143(i)	Financial Assurance for Closure. Release of the owner or operator from the requirements of this section.
264.145(i)	Financial Assurance for Post-Closure. Release of the owner or operator from the requirements of this section.
264.147(e)	Liability Requirements. Period of coverage.
264.191(a), (b)(5)(ii)	Tank Systems. Assessment of existing tank system's integrity.
264.192(a), (b)	Tank Systems. Design and installation of new tank systems or components.
264.193(h)(4)(i)(2)	Tank Systems. Containment and detection of releases.
264.196(f)	Tank systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.
264.280(b)	Land Treatment. Closure and post closure care.
264.554(c)(2)	Staging Piles.
264.571(a),(b),(c)	Drip Pads. Assessment of existing drip pad integrity.
264.573(a)(4)(ii)	Drip Pads. Design and Operating Requirements.
264.573(g)	Drip Pads. Design and Operating Requirements.
264.574(a)	Drip Pads. Inspections.
264.1101(c)(2)	Containment Buildings. Design and operating standards.
270.14(a)	Permit Application. Content of part B. General requirements.
270.16(a)	Permit Application. Specific part B information requirements for tank systems.
270.26(c)(15)	Permit Application. Specific part B information requirements for drip pads.

TABLE 5.—INTERIM STATUS TREATMENT, STORAGE AND DISPOSAL FACILITIES NEEDING RCRA CERTIFICATIONS BY A QUALIFIED PROFESSIONAL ENGINEER

CFR section	New RCRA certification requirement (i.e., dropping "registered")
265.115	Closure and Post-Closure. Certification of closure.
265.120	Closure and Post-Closure. Certification of completion of post-closure care.
265.143(h)	Financial Assurance for Closure. Release of the owner or operator from the requirements of this section.
265.145(h)	Financial Assurance for Post-Closure. Release of the owner or operator from the requirements of this section.
265.147(e)	Liability Requirements. Period of coverage.
265.191(a), (b)(5)(ii)	Tank Systems. Assessment of existing tank system's integrity.
265.192(a), (b)	Tank Systems. Design and installation of new tank systems or components.
265.193(h)(5)(i)(2)	Tank Systems. Containment and detection of releases.
265.196(f)	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.
265.280(e)	Land Treatment. Closure and post closure care.
265.441(a), (b),(c)	Drip Pads. Assessment of existing drip pad integrity.
265.443(a)(4)(ii)	Drip Pads. Design and Operating Requirements.
265.443(g)	Drip Pads. Design and Operating Requirements.
265.444(a)	Drip Pads. Inspections.
265.1101(c)(2)	Containment Buildings. Design and operating standards.
270.14(a)	Permit Application. Content of part B. General requirements.
270.16(a)	Permit Application. Specific part B information requirements for tank systems.
270.26(c)(15)	Permit Application. Special part B information requirements for drip pads.

⁶ In §§ 264.192(b) and 265.192(b), certifications may also be done by an independent, qualified

installation inspector. Similarly, in § 264.280(b), this certification may be done by an independent,

qualified soil scientist, in lieu of a qualified professional engineer.

C. Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities Have an Option of Following the Integrated Contingency Plan Guidance

We are amending §§ 264.52(b) and 265.52(b) of the RCRA regulations to provide owners and operators of hazardous waste treatment, storage, and disposal facilities the option of developing one contingency plan. EPA recommends that the plan be based on the integrated contingency plan guidance.⁷ This guidance provides an excellent set of considerations for consolidating the multiple contingency plans that facilities have to prepare to comply with various government regulations. The use of a single plan per facility will eliminate the confusion for facilities that must decide which of the contingency plans is applicable to a particular emergency. In addition, a single plan will provide "first responders" (e.g., firemen) with a mechanism for complying with multiple regulatory requirements. The adoption of a standard plan should ease the burden of coordination with local emergency planning committees.

Today's rule clarifies our regulations (see §§ 264.52 and 265.52) by specifically authorizing combined plans, as well as clarifying that when modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

D. Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities Have an Option To Follow the RCRA or the Occupational Safety and Health Administration (OSHA) Standards for Emergency Response Training

We are revising §§ 264.16 and 265.16 to eliminate redundant emergency response training requirements under OSHA and RCRA regulations while still ensuring protectiveness.

EPA and the Occupational Safety and Health Administration (OSHA) have both promulgated regulations addressing worker activities and training at hazardous waste management facilities. While EPA's

hazardous waste regulations focus on facility operations, worker training, OSHA focuses on worker safety. Both agencies require worker training.

While we were conducting our own review of potential overlaps between EPA and OSHA regulations, the Government Accountability Office^{*} published in October 2000 a study on the issue. GAO suggested that the overlap in emergency training requirements diminishes the efficiency of the facility and creates unnecessary compliance costs. The GAO study pointed out that OSHA's regulations have specific training requirements for RCRA-permitted facilities to teach hazardous waste workers how to respond to emergencies under 29 CFR 1910.120(p). With the support of the GAO findings, EPA proposed to eliminate the RCRA emergency response training requirements in favor of the OSHA requirements.

While we received comments in support of the proposal, other commenters expressed particular concern that two of the RCRA emergency response training requirements are not covered in OSHA's requirements. (1) understanding key parameters for automatic waste feed cut-off systems; and (2) how to respond to ground-water contamination incidents. These commenters believe that the deletion of these two requirements would endanger the environment and human health in the area of RCRA facilities, in that adhering only to the OSHA requirements would mean that workers would not be trained in these areas.

This, however, is not EPA's intention. The final rule has been written to ensure that RCRA facilities are not required to provide separate training. We also note that facilities exempted from RCRA emergency response training would still have to comply with §§ 264.16(a)(1) and 265.16(a)(1), which state: "Facility personnel must successfully complete a program of classroom instruction or on-the-job-training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part."

OSHA's 29 CFR 1910.120 regulations require that employees understand and be able to perform the standard operating procedures that are part of their daily work. OSHA's 29 CFR 1910.38 Emergency Action Plan requirements include mandated training in procedures to be followed by employees who operate critical plant operations (such as responding to

ground-water contamination incidents) during a spill or other emergency.

Other commenters opposed the proposal because OSHA's 29 CFR 1910 requirements are not as comprehensive as the RCRA requirements regarding the universe of facilities. Specifically, they stated that OSHA's regulations are not required for all hazardous waste generators (e.g., conditionally exempt small quantity generators under § 261.5 and small quantity generators under § 262.34) and certain treatment, storage, disposal facilities (e.g., municipal, state and federal owned and operated facilities.) We agree, and facilities not subject to OSHA training requirements would have to comply with the RCRA training requirements.

To ensure that all facilities are covered and that there are no gaps in the emergency response training requirements, we are providing flexibility by allowing facilities to eliminate redundant emergency response training requirements under RCRA and OSHA requirements (as opposed to the proposed rule's approach of requiring facilities to follow only the OSHA regulations). For example, if a facility can meet all of the RCRA emergency response training requirements through an OSHA training course, we would consider the facility in compliance with the regulation. On the other hand, if a facility cannot meet the emergency response training requirements through an OSHA training course, then it would be incumbent upon that facility to address any gaps (for example, if OSHA did not include automatic waste feed cut-off training, there would not be a problem as long as appropriate training occurs, such as combustor staff receives this training as part of its RCRA training.) Facilities not subject to OSHA training requirements would have to comply with the RCRA training requirements. We believe that this is a reasonable accommodation for all facilities.

Generators and owners/operators of treatment, storage, and disposal facilities should work with the appropriate permitting and/or enforcement authority to ensure that the approach they take in developing an emergency response training program is in compliance with the requirements of §§ 264.16 and 265.16.

⁷ In 1996, EPA, in conjunction with the Department of Transportation, the Department of the Interior, and the Department of Labor, issued the Integrated Contingency Plan Guidance. This guidance provides a mechanism for consolidating the multiple contingency plans that facilities have to prepare to comply with various government regulations. Owners and operators of hazardous waste facilities can develop one contingency plan based on this Guidance. The Integrated Contingency Plan can be found at 61 FR 28641, June 5, 1996 or on the Internet at <http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/serc-lepc-publications.htm>.

^{*} Formerly the United States General Accounting Office.

E. We Are Clarifying Selected Requirements Under RCRA's Land Disposal Restrictions and Eliminating Obsolete Regulatory Language

1. We Are Clarifying the Regulatory Language on the Land Disposal Restrictions Generator Waste Determination

We proposed eliminating § 268.7(a)(1) that requires, among other things, that generators conduct a waste determination for purposes of complying with the Land Disposal Restrictions (LDRs). Section 268.7(a)(1) requires generators to determine if hazardous waste must be treated prior to land disposal. This determination can be made either through testing or using the generator's knowledge of the waste's properties and constituents. We suggested that a combination of two other requirements provided the same safeguards as § 268.7(a)(1), making it redundant. First, a determination of whether a waste is hazardous is required by 40 CFR 262.11, which says that generators of solid waste must determine whether a waste is hazardous. Second, § 264.13(a)(1) requires treatment, storage, and disposal facilities (TSDFs) to perform a general waste analysis to determine "all of the information which must be known to treat, store, or dispose of the waste in accordance with this Part and Part 268 of this chapter". We suggested that these other determinations are sufficient to assure that a waste is properly characterized for achieving compliance with the LDRs.

Some commenters supported deleting this waste analysis requirement, stating, generally, that they supported the Agency's efforts to reduce redundant testing requirements. We agree with these comments with respect to reducing redundant testing requirements and are adding a cross reference in § 268.7(a)(1) to § 262.11, in order to clarify that these two generator waste analysis functions can be performed concurrently, thus avoiding redundant waste analysis.

Commenters who opposed deleting the generator LDR waste analysis requirement, however, were persuasive in their argument that the deletion of § 268.7(a)(1) would not really result in burden reduction. Rather, it would merely shift the burden from the generator to the TSDF. While TSDFs have a separate LDR waste analysis

requirement under § 264.13(a)(1), they often rely—at least in part—on determinations or information provided by the generator.

Commenters further asserted that if TSDFs have to assume full responsibility for the LDR waste analysis requirement, it would be more expensive overall, because generators can use their knowledge of the waste in determining how LDRs apply to a waste, while the TSDF would not have that background and would have to perform much more extensive waste analysis.

We agree with these comments, and have determined that we need to maintain the LDR generator waste analysis requirement of § 268.7(a)(1). Thus, today's rule, rather than eliminating paragraph § 268.7(a)(1), amends paragraph § 268.7(a)(1), to avoid duplication and clarify that the two generator waste analysis functions can be performed concurrently. However, in order to provide maximum flexibility to generators, we also are clarifying that if a generator does not want to determine, based on waste analysis or knowledge of the waste, whether the waste must be treated, he may assume that he is subject to the full array of LDR requirements. The generator then must send the waste to a RCRA-permitted hazardous waste treatment facility where the treatment facility must make the determination when the waste has met the treatment standards of LDR (possibly even upon receipt as generated.) A conforming change is also being made to the notification in § 268.7(a)(2) for such cases.

2. We Are Clarifying the Regulatory Language on the Land Disposal Restrictions Characteristic Waste Determination Requirement

We proposed to eliminate the separate waste analysis requirement (§ 268.9(a)) for generators of characteristic hazardous wastes under the land disposal restrictions, in order to parallel the proposed changes to § 268.7(a)(1) that are discussed above.

Some commenters supported deleting this waste analysis requirement, stating, generally, that they supported the Agency's efforts to reduce redundant testing requirements. We agree with these comments with respect to reducing redundant testing requirements and are adding a cross reference in § 268.9(a) to § 262.11, in order to clarify that these two generator waste analysis functions can be

performed concurrently, thus avoiding redundant waste analysis.

Commenters who opposed deleting the generator LDR waste analysis requirement, however, were persuasive in their argument that the deletion of § 268.9(a) would not really result in burden reduction. Rather, it would merely shift the burden from the generator to the TSDF. While TSDFs have a separate LDR waste analysis requirement under § 264.13(a)(1), they often rely—at least in part—on determinations or information provided by the generator. Commenters further asserted that if TSDFs have to assume full responsibility for the LDR waste analysis requirement, it would be more expensive overall, because generators can use their knowledge of the waste in determining how LDRs apply to a waste, while the TSDF would not have that background and would have to perform much more extensive waste analysis. We agree with these comments, and have determined that we need to maintain the LDR generator waste analysis requirement of § 268.9(a). Thus, today's rule, rather than eliminating paragraph § 268.9(a), amends paragraph § 268.9(a), to avoid duplication and clarify that the two generator waste analysis functions can be performed concurrently.

3. We Are Removing Obsolete Regulatory Language

We are deleting seventeen RCRA requirements because they are no longer applicable or have an expiration date that has passed. Except as noted below, we received no negative comments on these proposed changes.

In the proposed rule, we suggested amending §§ 264.193(a) and 265.193(a), arguing that the language was obsolete. However, the proposal inadvertently deleted paragraphs (1) and (5) of §§ 264.193(a) and 265.193(a). These paragraphs specify what tanks are required to have secondary containment, and in the case of tanks managing newly regulated waste, how soon secondary containment must be provided. We are correcting this mistake by finalizing the deletion of only §§ 264.193 (a)(2),(3), and (4) and 265.193(a)(2), (3), and (4) and clarifying the requirements in §§ 264.193(a)(5) and 265.193(a)(5). Tables 6, 7, and 8 summarize the changes being finalized today.

TABLE 6.—REGULATORY CLARIFICATION BEING MADE FOR LAND DISPOSAL RESTRICTIONS TESTING, TRACKING, AND RECORDKEEPING REQUIREMENTS FOR GENERATORS, TREATERS, AND DISPOSAL FACILITIES

CFR section	Current regulatory language
	New regulatory language as amended by the Burden Reduction Rule
268.7(a)(1)	(a) Requirements for generators: (1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, § 268.45, or § 268.49. This determination can be made in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods of Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as referenced in § 260.11 of this chapter, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contamination with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this part in addition to any applicable requirements in this section. (a) Requirements for generators: (1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, § 268.45, or § 268.49. This determination can be made concurrently with the hazardous waste determination required in § 262.11 of this chapter, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods of Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, incorporated by reference (see § 260.11 of this chapter), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of § 264.13 of this chapter and § 268.7(b) of this part.) In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this part in addition to any applicable requirements in this section.
268.7(a)(2)	If the waste or contaminated soil does not meet the treatment standards: With the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in 268.7(a)(4). No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file. If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in 268.7(a)(4). (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.") No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.
268.9(a)	(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (Part 261, Subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (Part 261, Subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

TABLE 6.—REGULATORY CLARIFICATION BEING MADE FOR LAND DISPOSAL RESTRICTIONS TESTING, TRACKING, AND RECORDKEEPING REQUIREMENTS FOR GENERATORS, TREATERS, AND DISPOSAL FACILITIES—Continued

CFR section	Current regulatory language
	New regulatory language as amended by the Burden Reduction Rule
	(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. This determination may be made concurrently with the hazardous waste determination required in § 262.11 of this chapter. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (Part 261, Subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (Part 261, Subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

TABLE 7.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language
		New regulatory requirement as amended by the Burden Reduction Rule
264.193(a)(2)	Tank Systems: Containment and detection of releases.	For all existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987. Section 264.193(a)(2) is being deleted.
264.193(a)(3)	Tank Systems: Containment and detection of releases.	For those existing tank systems of known and documented age, within two years after January 12, 1987 or when the tank system has reached 15 years of age, whichever comes later. Section 264.193(a)(3) is being deleted.
264.193(a)(4)	Tank Systems: Containment and detection of releases.	For those existing tank systems for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later. Section 264.193(a)(4) is being deleted.
264.251(c)	Waste Piles: Design and operating requirements.	The owner or operator of each new waste pile unit on which construction operating commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in section 260.10 under "existing facility". The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.
264.314(a)	Land fills: Special requirements for bulk and containerized liquids.	Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985. Section 264.314(a) is being deleted.
264.314(b)	Landfills: Special requirements for bulk and containerized liquids.	Effective May 8, 1995, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.
264.314(f)	Land Fills: Special requirements for bulk and containerized liquids.	Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that: The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:
264.1100	Containment Buildings. Applicability.	The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. These provisions will become effective on February 18, 1993, although owner or operator may notify the Regional Administrator of his intent to be bound by this subpart at an earlier time. The owner or operator is not subject to the definition of land disposal in RCRA § 3004(k) provided that the unit: The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA § 3004(k) provided that the unit:

TABLE 7.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language
		New regulatory requirement as amended by the Burden Reduction Rule
264.1101(c)(2)	Containment Buildings. Design and Operating Standards.	Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. Obtain and keep on-site a certification by a qualified professional engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

TABLE 8.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language
		New regulatory requirement as amended by the Burden Reduction Rule
265.193(a)(2)	Tank Systems: Containment and detection of releases.	For all existing tank systems used to and store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987. Section 265.193(a)(2) is being deleted.
265.193(a)(3)	Tank Systems: Containment and detection of releases.	For those existing tank systems of known and documentable age, within two years after January 12, 1987, or when the tank system has reached 15 years of age, whichever comes later. Section 265.193(a)(3) is being deleted.
265.193(a)(4)	Tank Systems: Containment and detection of releases.	For those existing tank systems for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later. Section 265.193(a)(4) is being deleted.
265.314(a)	Land Fills: Special requirements for bulk and containerized liquids.	Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985. Section 265.314(a) is being deleted.
265.314(b)	Land Fills: Special requirements for bulk and containerized liquids.	Effective May 8, 1995, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.
265.314(g)	Land Fills: Special requirements for bulk and containerized liquids.	Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that: The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:
265.1100	Containment Buildings. Applicability.	The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under §265.1101 of this subpart. These provisions will become effective on February 18, 1993, although owner or operator may notify the Regional Administrator of his intent to be bound by this subpart at an earlier time. The owner or operator is not subject to the definition of land disposal in RCRA §3004(k) provided that the unit: The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under §265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA §3004(k) provided that the unit:
265.1101(c)(2)	Containment Buildings. Design and Operating Standards.	Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. Obtain and keep on-site a certification by a qualified professional engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

TABLE 8.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language
		New regulatory requirement as amended by the Burden Reduction Rule
265.221(a)	Surface Impoundments: Design and operating requirements.	The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with § 264.221(c), unless exempted under § 264.221 (d), (e), or (f) of this chapter. "Construction commences" is as defined in § 260.10 under "existing facility". The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of an existing surface impoundment unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with § 264.221(c), unless exempted under § 264.221(d), (e), or (f) of this chapter.
265.301(a)	Land Fills: Design and operating requirements.	The owner or operator of each new and operating landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with § 264.301 (d), (e), or (f) of this chapter. "Construction commences" is as defined in § 260.10 under "existing facility." The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal system, in accordance with § 264.301 (d), (e), or (f) of this chapter.

F. We Are Eliminating Selected Recordkeeping and Reporting Requirements That We Believe Provide Duplicative Information to EPA

1. We Are Eliminating the Requirement for Facilities To Notify That They Are in Compliance After a Release

We received comments that both supported and opposed the elimination of the notifications required by §§ 264.56(i) and 265.56(i). These notifications require the facility owner or operator to notify the Regional Administrator and appropriate state and local authorities after an emergency action has taken place, and that the facility is in compliance with §§ 264.56(h) and 265.56(h), respectively. Sections 264.56(h) and 265.56(h) require the facility emergency coordinator to ensure that no wastes that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed, and that emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed. Several commenters generally supported the elimination of these notification provisions. Other commenters were opposed to eliminating these provisions because they thought that it was prudent for the

regulatory agency to receive notification that a facility was ready to again manage hazardous waste after emergency measures were implemented and releases were cleaned up.

We have decided to finalize the elimination of this notification provision. The Regional Administrator and appropriate state and local authorities will still be getting a report 15 days after the emergency incident (as required in §§ 264.56(j) and 265.56(j)). This report will specify the details of the incident that required implementation of the contingency plan. In most cases, the incident is likely to be relatively minor, and operations may even be ready for resumption with the 15 days. The actions to be taken (*i.e.*, not handling incompatible waste and cleaning emergency equipment) are straightforward and it is not clear what value a simple notification would add. On the other hand, in major incidents the state would likely send personnel on-site and would be in a position to ensure that an appropriate response was taken before operations resumed. Therefore, we have decided to eliminate this notification requirement.

2. We Are Eliminating the Requirement for Facilities To Notify of Their Intent To Burn F020, F021, F022, F023, F026, and F027 Wastes

We proposed to eliminate the notification of intent to burn hazardous dioxin/furan wastes listed as F020, F021, F022, F023, F026 and F027. We viewed this as an unnecessary requirement because the facility is already permitted to burn these wastes, and there are already regulatory standards governing how the waste is burned.

Commenters generally supported our proposed change. Therefore, we are removing the notification requirement.

We inadvertently proposed to remove the entire paragraph (a)(2) of § 264.343. We are merely removing the last sentence that referred to the notification of intent to burn listed dioxin/furan wastes.

3. We Are Eliminating the Requirement for Facilities To Notify if They Employ or Discontinue Use of the Alternative Valve Standard

The regulations in Subpart BB of RCRA deal with air emission standards for equipment leaks. They apply to owners and operators of facilities that treat, store, or dispose of hazardous waste with equipment that contains or

contacts hazardous waste with organic concentrations of at least 10 percent by weight. We proposed to eliminate the requirement for submitting notifications to the Regional Administrator with regard to the implementation of the alternative standards for valves in gas/vapor service or in light liquid service. Under the current regulations in §§ 264.1061(b)(1), (d) and 265.1061(b)(1) and (d), if an owner or operator decides to either: (1) Implement the alternative standard or (2) discontinue the use of the alternative standard, a written notification must be sent to the Regional Administrator. In the proposed rule, we stated that these notifications were an unnecessary requirement because §§ 264.1061(b)(2) and 265.1061(b)(2) require performance tests to be conducted (upon designation, annually, and as requested by the Regional Administrator) and their results kept on site once a decision is made to use the alternative valve standard. Several commenters disagreed with our position and suggested that facilities need to notify regulators when they elect to use alternative standards. Commenters further stated that without knowledge of the specification that facilities are using,

regulators may not be able to effectively administer the standards and that this information may be required for regulators to address various permitting, compliance and enforcement actions at the facility. We remain unconvinced that these notifications are an essential element in our regulatory compliance regime. While we understand the commenters concerns, we believe that sufficient information and data will be available to the regulatory authority to monitor compliance with an alternative standard without these notifications.

4. We Are Eliminating the Requirement for Facilities To Notify if They Are Using Alternative Valve Work Practices

We proposed to eliminate the requirement to submit a notification to the Regional Administrator before implementing one of the alternative work practices specified in §§ 264.1062(b)(2) and (3) and 265.1062(b)(2) and (3). Under the current regulations, an owner or operator may elect to comply with one of two alternative work practices specified in the regulations. These alternatives are: (1) After two consecutive quarterly leak detection periods with the percentage of valves

leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods (*i.e.*, monitor for leaks once every six months) for the valves; or (2) after five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods (*i.e.*, monitor for leaks once every year) for the valves.

The majority of the commenters agreed with the proposal. One commenter, however, argued that some technical review by the Agency should be warranted to approve this alternative standard. Upon review of the comment, we are unconvinced that the implementation of this alternative work practice needs technical review or oversight by the regulated authority. The alternative work practices described in the regulations are straightforward and the results of the leak detection periods will be maintained in the facility files as required under the recordkeeping requirements found in § 264.1064. Therefore, we are eliminating the need for these notifications.

TABLE 9.—RECORDKEEPING AND REPORTING REQUIREMENTS BEING DELETED FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL, FACILITIES

CFR section	Regulatory requirement
Deletion to 264.56	Contingency Plan and Emergency Procedures. Emergency Procedures.
264.56(i)	Notify Regional Administrator that facility is in compliance with § 265.56(h) (which requires that no waste that may be incompatible with the released material will be treated, stored, or disposed until cleanup is completed, and emergency equipment is made ready for use again) before resuming operations.
Deletion to 264.343	Incinerators. Performance standards.
264.343(a)(2)	Submit notification of intent to burn hazardous wastes F020, F021, F022, F023, F026, and F027.
Deletions to 264.1061	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
264.1061(b)(1)	Submit notification to implement the alternative valve standard.
264.1061(d)	Submit notification to discontinue the alternative valve standard.
Deletion to 264.1062	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service; skip period leak detection and repair.
264.1062(a)(2)	Submit notification to implement alternative work practices for valves.

TABLE 10.—RECORDKEEPING AND REPORTING REQUIREMENTS BEING DELETED FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement
Deletion to 265.56	Contingency Plan and Emergency Procedures. Emergency Procedures.
265.56(i)	Notify Regional Administrator that facility is in compliance with § 265.56(h) (which requires that no waste that may be incompatible with the released material will be treated, stored, or disposed until cleanup is completed, and emergency equipment is made ready for use again) before resuming operations.
Deletions to 265.1061	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
265.1061(b)(1)	Submit notification to implement the alternative valve standard.
265.1061(d)	Submit notification to discontinue the alternative valve standard.
Deletion to 265.1062	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service; skip period leak detection and repair.
265.1062(a)(2)	Submit notification to implement alternative work practices for valves.

G. We Are Permitting Decreased Inspection Frequency for Certain Hazardous Waste Management Units

RCRA regulations require generators and treatment, storage and disposal facilities to self-inspect their facilities to ensure that they are in compliance. The regulations include both facility-wide and unit- and equipment-specific inspection standards. Some of RCRA's regulations specify the inspection frequency.

Self-inspections are a vital component of an effective regulatory system. We recognize however, that the frequency of inspections has been a concern, and that in most cases (particularly where alternative approaches are employed) facilities are able to carry out formal inspections less frequently without sacrificing human health and environmental protection.

The Agency proposed a reduction in tank self-inspection frequency from daily to weekly for large quantity generator tanks and treatment, storage and disposal facilities. We also solicited comment on allowing further reduced inspection frequencies, on a case-by-case basis (as approved by the Regional Administrator or the state Director, as the context requires, or an authorized representative), for containers, containment buildings, and tanks. However, this proposal required that these inspections occur at least monthly. In proposing these changes, we suggested that decreased inspection frequencies should be based on factors such as: (1) A demonstrated commitment by facility management to sound environmental practices; (2) achievement of good management practices over the history of the facility—that is, having a record of sustained compliance with environmental laws and permit requirements; (3) a demonstrated commitment to continued environmental improvement; (4) a demonstrated commitment to public outreach and performance reporting; (5) the installation of automatic monitoring devices at the facility; and (6) the risk posed by the waste managed in the unit.

Many commenters supported the change from a daily to weekly inspection frequency for tanks. Commenters pointed out that the integrity and safety of hazardous waste tanks would not be compromised by reducing the daily inspection requirement to a weekly frequency. Several other commenters pointed out that hazardous waste storage tanks, which have secondary containment, are even more protectively designed than process tanks which handle the same

chemicals. Other commenters, however, did not support any decrease in inspection frequency because of concerns that if inspection frequencies were decreased, the amount of time between a leak and its discovery would increase.

With regard to extending even further the inspection frequency, to at least once each month on a case-by-case basis, we received comments from the states expressing concern over the added administrative burden in implementing case-by-case changes to inspection frequencies.

Based on the comments from the proposed rule, we reconsidered whether to make case-by-case reduced inspections available to all generators because of the burden it might impose on authorized states to evaluate compliance with the criteria. In the October 29, 2003 NODA (68 FR 61662), we proposed reduced inspection frequencies, granted on a case-by-case basis, only for members of the National Environmental Performance Track Program, stating that, at a minimum, we believe that providing relief is appropriate for companies that are demonstrated "good performers."⁹

In the NODA, we also clarified that the reduced inspection frequency for tanks was intended to apply not just to the tanks, but to the complete tank systems, which include piping, pumps, valves and other associated equipment, also known as ancillary equipment (see §§ 264.193(f) and 265.193(f)). We also asked for comment on expanding the change to include tanks, not only at large quantity generator sites, but small quantity generator sites as well (see § 265.201(c)). Furthermore, we solicited comment on extending the reduced inspection frequencies, granted on a case-by-case basis, to areas subject to spills (see §§ 264.15(b)(4) and 265.15(b)(4)). We solicited comment on whether to grant this relief only to members of the National Environmental Performance Track Program in that we believe the risk from this change would be minimal at facilities that have met

⁹ The National Environmental Performance Track Program is a voluntary EPA program that recognizes and rewards private and public facilities that demonstrate strong environmental performance beyond current requirements. The program is based on the premise that government should complement its existing programs and regulations with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing cost and spurring innovation. For more information and a closer look at the activities and accomplishments of Performance Track members to date, as well as member's goals for future achievements, please refer to the program Web site at <http://www.epa.gov/performance-track>.

the requirements to be accepted into this program.

1. We Are Establishing Weekly Inspections for Certain Hazardous Waste Tank Systems at Permitted and Interim Status Facilities and at Large Quantity Generator Sites

We are changing the self-inspection frequencies for tank systems from daily to weekly at permitted and interim status treatment, storage and disposal facilities, as well as for large quantity generator (LQG) tank systems that are operated under certain conditions. Changing inspections for small quantity generator (SQG) tanks is discussed in section III.G.2 of this preamble. Tank system, as defined in § 260.10, means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system. The requirements for permitted, interim status, and LQG tank systems appear in §§ 264 and 265, subpart J. Daily inspections enable tank systems, subject to subpart J, to comply with the §§ 264.193(c) and 265.193(c) requirements to detect leaks and spills within 24 hours.

Our rule reduces inspections for: (1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and (2) the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). Reduced inspections will be allowed when either of two conditions are met: (1) Tank owners and operators employ leak detection equipment; or (2) in the absence of leak detection equipment, tank owners and operators employ established workplace practices that ensure that when any leaks or spills occur, they will be promptly identified, and promptly remediated. Owners and operators choosing one of these options to reduce inspection frequencies should document the option selected in their operating record. If the option selected is "established workplace practices," the owner and/or operator should document those practices in the facility's operating record.

Leak detection equipment must meet the respective requirements of §§ 264.193(c)(3) and 265.193(c)(3). It should be designed to alert facility personnel promptly to the presence of any leaks or spills (e.g., alarm systems) so that emergency and/or remedial action can be taken. (The existing subpart J tank regulations require secondary containment systems to be

designed and operated to detect releases within 24 hours.) Leak detection systems were described in the proposed rule (67 FR 2527). But, while subpart J requires releases to be detected within 24 hours, the regulations do not specify the method of leak detection systems that must be used. For example, some facilities use daily visual inspections as a method of leak detection for their aboveground tanks, which is an acceptable practice. However, under the current tank system regulations, absent daily visual inspections, leak detection equipment that promptly notifies facility personnel of leaks or spills, must be used.

In the absence of leak detection equipment, established workplace practices must ensure that when any leaks or spills occur, they will be promptly identified and promptly remediated in compliance with §§ 264.193(c)(3) and (4) and 265.193(c)(3) and (4). When we say "established workplace practices," we mean practices that are documented and that describe how the facility is operated. (An example of established workplace practices could be the presence of an Environmental Management System that includes plans and practices to ensure that any releases are promptly identified, contained, and cleaned up.) Established workplace practices will most likely be put in place in situations, like that described by a state commenter, where aboveground tanks without leak detection exist and daily visual monitoring is the most common method of leak detection used. In cases such as these, lacking leak detection equipment, owners or operators would need to use workplace practices to identify releases, if they choose to reduce their inspection frequency.

A number of commenters noted that reducing inspection frequencies of §§ 264.195 and 265.195 should only be done if secondary containment is equipped with leak detection that notifies response personnel if releases occur. We partially agree with the commenters; however, as noted earlier, the rule also allows the facility operator to institute work practices to ensure prompt detection of a release. For example, if the tank system is in an area frequented by employees, where releases will be immediately obvious, all employees might be trained to watch for releases and report them. In other situations, an employee might be assigned to check secondary containment on a daily basis without conducting a full tank system "inspection."

We received several comments from industry that the current daily inspection requirements are a large burden for the regulated community, and that weekly inspections would provide welcome relief. One commenter noted that the majority of printers that have tanks for collecting hazardous waste have small tanks and they are generally located indoors. Any release from the tank would be detected almost immediately and the extension of mandatory inspection frequency would greatly reduce the administrative burden associated with using these types of collection tanks. In this case, the facility might not have leak detection equipment, but standard work practices might require all employees to notify appropriate facility personnel if they observe a release from the tanks. Given the nature of the facility described by the commenter, this would likely constitute a work practice sufficient to ensure prompt detection of a release. Conversely, we also received other industry comments suggesting that while they liked the flexibility of the reduced inspections, they offered that they probably would not reduce their own inspection frequency.

A state commenter argued that a basic principle of RCRA is prevention, including preventing a major release from a waste management unit and that the proposed rule appears primarily guided by a desire to project an image of providing a "burden reduction" for the regulated community, while disregarding prevention mechanisms. The commenter further stated that the chance of a release occurring and going undetected is greatly increased by allowing for weekly inspections of tank systems. The commenter believes the current requirement for daily inspections of tank systems provides a reasonable means to detect and minimize release of hazardous waste in a timely manner and the commenter further stated that the requirement for daily inspection of tank systems has not been a significant burden on the regulated community. We question this commenter's conclusion. By requiring owners and operators who wish to change the self-inspection frequencies for tanks, to use either leak detection or work place practices, we believe it is unlikely that releases from tanks will go undetected. The use of either leak detection systems or established workplace practices should assure that releases are promptly detected, and that the appropriate personnel are notified so that releases can be stopped and cleaned up. According to § 264.196, upon detection of a leak, either through

the leak detection system or visual observation, the owner or operator of the tank system must immediately stop the flow of hazardous waste, determine and rectify the cause of the leak, remove the waste, and contain releases to the environment.

It is important to note that we are not changing the existing requirement, found in § 264.195(a)(2) and § 265.195(a)(3), that data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) must be inspected at least once each operating day to ensure that the tank system is being operated according to its design. We believe that this requirement is necessary in order to ensure compliance with § 264.193(c) and § 265.193(c), which require the detection of leaks and spills within 24 hours. In addition, keeping this requirement supports the new reduced inspection requirements that we are putting in place today, by providing further information about any releases that may occur.

As a final matter, several commenters to the proposed rule suggested changing the inspection frequencies for ancillary equipment, specifically citing §§ 264.193(f) and 265.193(f). (These requirements specify that ancillary equipment must have secondary containment, except in four instances, each involving daily visual inspections for leaks.) While most commenters provided little information to support making the change, one commenter did argue that if the proposed changes to §§ 264.195 and 265.195 were finalized, the existing provisions in §§ 264.193(f) and 265.193(f), if not also changed, would be inconsistent.

As background, the October 29, 2003 NODA requested comment on expanding the proposed rule to include ancillary equipment at LQG and SQG sites. The NODA referenced the regulations at §§ 264.193(f) and 265.193(f), suggesting making the change would be consistent with our intent, as discussed in the proposed rule. Because today's rule changes the inspection frequencies for tank systems provided with secondary containment, where leak detection equipment or workplace practices are used, as discussed previously, any ancillary equipment associated with such tank systems would, therefore, be eligible for reduced inspections.

We considered allowing ancillary equipment without secondary containment, as described at §§ 264.193(f)(1)–(4) and 265.193(f)(1)–(4), to be visually inspected weekly instead of daily. While most of the commenters supported this change,

upon further analysis we now conclude that expanding the rule to include ancillary equipment without secondary containment is not consistent with how the final rule addresses reduced inspection frequency for tank systems. The proposed rule discussed reducing inspection frequencies for tanks and tank systems because of, among other reasons, the presence of secondary containment. Allowing ancillary equipment without secondary containment to change from daily visual inspections to weekly visual inspections would not be consistent with our approach. We are including regulatory language in §§ 264.194(d) and 265.195(c) to say that ancillary equipment that is not provided with secondary containment, as described in §§ 264.193(f)(1)–(4), must be inspected at least once each operating day.

We would like to note that there are instances where tanks and tanks systems are located within buildings, and where the building itself provides secondary containment. In cases where ancillary equipment is located inside a building that has been determined to provide secondary containment, and either leak detection systems or established workplace practices exist to identify leaks and spills, then the regulatory criteria are met and that ancillary equipment may be inspected weekly. For example, in a case where ancillary equipment inside a building does not have double walls or leak detection, this ancillary equipment would still be eligible for weekly inspections if the building serves as secondary containment, and if the area is frequented by employees whereby releases will be immediately obvious and the employees will promptly identify and remediate leaks and spills.

In cases involving buildings serving as secondary containment, authorized states necessarily have the ultimate authority to make the determination that secondary containment requirements are met (taking into account all relevant site-specific considerations).

2. We Are Establishing Weekly Inspections for SQG Hazardous Waste Tank Systems With Secondary Containment

While the previous discussion addressed changes in the inspection frequency for certain tank systems at permitted and interim status facilities, and LQG sites, today's rule also changes the inspection frequency for certain tank systems at SQG sites. The requirements

for SQG tanks are found in 40 CFR 265.201(b).¹⁰

Under the current regulations, generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must inspect at least once each operating day, if applicable; (1) discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems); (2) data gathered from monitoring equipment (e.g., pressure and temperature gauges); and (3) the level of waste in the tank. In addition, at least weekly, generators must also inspect: (1) The construction materials of the tank to detect corrosion or leaking of fixtures or seams; and (2) the construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

While § 265.201 does not require SQGs to be equipped with secondary containment, nor leak detection, under today's rule, SQG tank system owners and operators who wish to reduce their inspection frequency may do so if these tank systems are provided with secondary containment with either leak detection equipment or established workplace practices that ensure prompt detection of releases, as described above for other tank systems. Owners and operators choosing one of these options to reduce inspection frequencies should document the option selected in their operating record. If the option selected is "established workplace practices," the owner and/or operator should document those practices in the facility's operating record.

In the proposal, we received comments suggesting that we expand the proposed reduction in tank self-inspection frequency to include tanks located at small quantity generator sites (see § 265.201(c)) and ancillary

equipment (see § 265.193(f)¹¹). This change would affect only three of the five SQG inspection requirements: for discharge control equipment (§ 265.201(c)(1)); data gathered from monitoring equipment (§ 265.201(c)(2)); and monitoring the level of waste in the tank (§ 265.201(c)(3)), since the last two inspection requirements (§§ 265.201(c)(4) and (c)(5)) are already done on a weekly basis. We stated in the NODA that changing these inspection frequencies would be consistent with our intent to establish weekly inspections for all tank systems.

One state commenter argued that tanks can and frequently do fail abruptly and with little or no warning, losing most or all of their contents in a very short period of time and if the rule were promulgated as proposed, it might be a week or longer before leaks of any size were discovered and remediation begun. The commenter further reasoned that for those tanks without secondary containment (e.g., SQGs), waiting such a long time for remediation efforts may lead to extensive environmental damage. We acknowledge the commenter's concerns and support the rapid remediation of leaks; we believe that the controls we are promulgating today will adequately prevent such an occurrence, even for SQGs.

One commenter did state that, although he did not object to allowing small quantity generators reduced tank inspection frequencies, he noted that reducing inspection frequencies will not provide any additional reduction in the recordkeeping/reporting burden for small quantity generators who are not subject to §§ 264.15 and 265.15 and are not required to maintain a schedule or a record of inspections. We agree that § 265.201 does not require SQGs to record inspections. Burden reduction would come from the time saved (person-hours) from reduced inspections.

Several states were not in favor of reduced inspection frequency for small quantity generators. One commenter stated that EPA has not provided any data that suggest that the reduced frequency of tank inspections is as protective as the intent of the current standard which as stated in 51 FR 25454, July 14, 1986 is to " * * * enable the detection of releases or potential

¹⁰ The requirements for SQG tanks were finalized on March 24, 1986 (51 FR 10146), and with the July 14, 1986 final tank regulations (51 FR 25422), codified at § 265.201. Discussion in the March 1986 rule explains how the SQG requirements were developed, as distinct from the requirements for tanks at LQG sites. The rule states: "Congress anticipated reducing administrative requirements, such as reporting and recordkeeping, as a means to reduce impacts on the 100–1000 kg/mo generators. Thus, EPA proposed to relieve these generators of some Part 262 standards that are administrative in nature, while retaining all existing technical standards. The relief was only provided to generators who accumulate on-site for the statutorily prescribed periods, because, given that the amount of waste accumulated would necessarily be limited, the relative risk from releases of such waste would be less than that from the unlimited amounts of waste accumulated by off-site facilities." (51 FR 10149).

¹¹ While the Agency solicited comment on reducing the inspection frequency for ancillary equipment for SQGs, the referenced regulation, § 265.193(f) does not apply to tank systems at SQG sites, only the requirements found in § 265.201(c) apply to SQG tank systems. Therefore, the Agency is not pursuing changes to § 265.193(f) that would affect SQGs. As discussed above, the regulatory changes we are making today apply to SQG tank systems, which include ancillary equipment.

releases at the earliest possible time." Another commenter further argued that reduced tank inspection frequency should not be afforded to small quantity generators unless their tank systems are upgraded to meet additional standards and that currently SQGs only have to inspect their tank systems for proper operations controls daily. SQGs are not required to do any type of additional leak detection, except for the weekly requirements already in place. Since SQGs are not required to provide secondary containment, the operating day inspections assist in protecting from a release or potential release. Other commenters argued that if SQGs wish to receive this reduced inspection frequency, they should comply with the same secondary containment requirements as large quantity generators and install an automated leak detection equipment that alerts a person designated to respond. We agree, in part, with the commenters. SQG tanks historically have less stringent requirements than LQGs, permitted, and interim status tanks. But, while existing SQG tanks are not required to have secondary containment, in order to enjoy reduced inspection frequencies under today's rule, tanks must have secondary containment with leak detection, or have secondary containment and workplace practices in use that promptly identify leaks and spills.

3. We Are Allowing Members of the National Environmental Performance Track Program To Apply for an Adjustment to the Frequency of Inspections for Certain Hazardous Waste Units and Areas

In addition to allowing a change in the inspection frequency for selected tank systems, we also proposed to allow on a case-by-case basis, less frequent self-inspections for tank systems, container storage areas, and containment buildings. Under our current regulations, container storage areas and containment buildings must be inspected weekly. (See §§ 264.174, 265.174, 264.1101(c)(4), and 265.1101(c)(4).)

Based on comments received on the proposal, we reconsidered whether to make such a change available to all generators because of the burden it would impose on authorized states to evaluate compliance with the criteria. As stated in the October 29, 2003 NODA (68 FR 61662), we believe that providing relief is appropriate for companies that are demonstrated "good performers" and we solicited comment on limiting this provision to member companies of the National Environmental

Performance Track Program, as well as extending reduced inspection frequencies, granted on a case-by-case basis, to areas subject to spills (see § 264.15(b)(4)).

In today's rule we are finalizing this provision—the ability to file a case-by-case application for further reduced self-inspection frequencies—to facilities that are members of the National Environmental Performance Track Program. Performance Track member facilities are provided the opportunity to reduce self-inspections of tank systems, containers, containment buildings, and areas subject to spills to a frequency of at least once each month.

Performance Track members must apply to the regulatory agency for approval before implementing a reduced inspection frequency schedule.¹² The Performance Track facility must submit an application to the regulatory authority identifying itself as a member of the National Environmental Performance Track Program and request a reduction in self inspection frequency. For those members that are also permitted treatment, storage and disposal facilities, the application must be in the form of a Class 1 permit modification with prior approval. The Performance Track member facility must request reduced inspections, for no less than once each month, for any of the waste management units identified in today's rule (including tank systems, containers, containment buildings, and areas subject to spills). (Only one application per Performance Track member facility is required.) After the application is received, the Director has 60 days to approve or deny the application, in writing. The Director also may choose to extend this 60 day deadline, if more time is needed to review the application (e.g., in the case where an on-site inspection is needed or a more in-depth analysis of the application is warranted.) If the application is approved, the notification will identify the management units

¹² In the proposed rule (67 FR at 2527), the Agency made reference to a commenter's suggestion that inspection frequency changes should be self-implementing. The example given by the commenter outlined an option where an inspection schedule should be deemed approved if EPA does not specifically deny the request in writing within 30 days. At that time, we stated that one of our principle objectives for this burden reduction change, was to ensure that the regulatory agencies made the decision to decrease inspection frequencies and as such, we were not considering self-implementing alternatives. While we still maintain that regulatory agencies should make these decisions on a case-by-case basis, upon further consideration, we believe it is also important to streamline the application process by establishing a timetable for application/permit modification review.

approved for reduced frequency of inspections, as well as the time interval between inspections (at a minimum of one inspection each month.) This notice must be placed in the facility's operating record.

The Performance Track member facility should consider the application approved after 60 days if the Director does not: (1) Deny the application, in writing; or (2) notify, in writing, the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in their application and keep a copy of the application in the facility's operating record.

It is expected that Performance Track facilities would have an EMS providing sufficient oversight to prevent and detect leaks and spills. In addition, facilities that applied for Performance Track would have conducted an Environmental Management System (EMS) Independent Assessment.¹³ The assessment must determine whether the facility regularly monitors and measures its key operations that can have a significant impact on the environment, and records this information. Therefore, through the use of EMSs and workplace practices, we would expect Performance Track facilities to be able to prevent and detect leaks and spills. Providing Performance Track member facilities with the option for reduced inspection frequencies does not mean we are reducing the requirements for the owner or operator to detect leaks and spills; providing reduced inspection for Performance Track member facilities acknowledges that these facilities have established controls and procedures to prevent releases and to respond promptly if and when they occur. The Agency believes it is important to recognize the difference in the need for oversight of facilities that are top environmental performers which have developed comprehensive environmental management systems and who have a track record of effective self-oversight.

Any Performance Track member facility that discontinues its membership in Performance Track or is terminated from the program must immediately notify the Director, in writing of its change in status (i.e., they are no longer a Performance Track member facility). These facilities must revert back to the "non-Performance

¹³ For more information on the Independent Assessment Criteria for EMSs, see http://www.epa.gov/performance-track/ind_assessment.htm.

Track member" inspection frequency within seven calendar days. The facility must place in their operating record a dated copy of this notification. In cases where the Performance Track member is a permitted TSDF, the Agency is requiring that the permit modification to allow the reduced inspection frequency contain a "sunset" clause, in case the facility's membership in Performance Track ends. If written without a "sunset" clause, an approved permit modification allowing a reduced inspection frequency could otherwise "shield" the facility from violation if it ceases to be a Performance Track member. Therefore, we are requiring that the Class 1 modification request contain specific language stating that the reduced frequency is for as long as the facility remains a Performance Track member. The language must say that if the facility ceases to be a Performance Track member facility, it must revert to the "non-Performance Track" inspection frequency within seven calendar days after membership in Performance Track ends.

Sections a. through d. below discuss in more detail the Agency's basis for decisions on inspection frequency for areas subject to spills, containers, tank systems, and containment buildings at Performance Track member facilities.

a. Performance Track: Reduced Inspection Frequency for Areas Subject to Spills. The general inspection requirements of §§ 264.15 and 265.14, require that areas subject to spills, such as loading and unloading areas, must be inspected daily, while in use. These inspections are to identify malfunctions and deterioration, operator errors, and discharges which may be causing—or be leading to—(1) a release of hazardous waste constituents to the environment, or (2) a threat to human health. In response to a comment in the 2002 proposal, the October 29, 2003 NODA (68 FR 61662) considered reducing inspection frequencies, granted on a case-by-case basis, for areas subject to spills. We also solicited comment on whether to grant this relief only to Performance Track member facilities, stating that the risk from this change is minimal at facilities that have met the requirements to be accepted into the Performance Track Program. We received two comments on this issue; one commenter supported the proposal, and one did not. The commenter that opposed the proposal provided no explanation or justification for its position. The supporting commenter stated that activities that may cause spills "usually allow for the spills to be easily detected and quickly cleaned up.

More frequent inspections are unlikely to result in quicker spill detection."

In general, we do not believe that such a change to the regulation is appropriate for all facilities, for the reasons laid out above. However, we believe the risk from this change is minimal at facilities that have met the requirements to be accepted into the National Environmental Performance Track Program. Therefore, we have decided to extend inspection frequencies for no less than once each month, at areas subject to spills, but only for facilities that are members of the National Environmental Performance Track Program that have received prior approval from the regulatory agency.

b. Performance Track: Reduced Inspection Frequency for Containers.

Sections 264.174 and 265.174 require owners or operators to inspect, at least weekly, areas where containers holding hazardous waste are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. We proposed to allow case-by-case decreased inspection frequencies for containers.

The October 29, 2003 NODA (68 FR 61662) addressed comments received on the 2002 proposal. Based on the comments from the proposal, the NODA reconsidered whether to make case-by-case reduced self-inspections available to all generators because of the burden it might impose on authorized states to evaluate compliance with the criteria. That is, making such a change available to all generators would likely impose a substantial burden on the states or EPA in order to evaluate whether an applicant facility met the criteria. Such a burden is clearly in opposition to the intent of today's rule. Finally, the Agency stated clearly that "at a minimum, we believe that providing relief is appropriate for companies that are demonstrated good performers." (68 FR 61665.)

The Agency received comments on this issue that supported the application of this provision to Performance Track members. Other comments stated that this provision should be made available to all facilities with a demonstrated record of good compliance, with some type of demonstrated top performance, or by meeting the proposed criteria.

The Agency considered all comments received on this issue and has decided to finalize a reduced self-inspection requirement to §§ 264.174 and 265.174 available only to members of the National Environmental Performance Track Program. The reason for this decision is that case-by-case

determinations for all hazardous waste facilities would significantly increase the burden associated with providing this benefit to all facilities. Performance Track member facilities may apply to their regulatory agency for a reduction in self-inspection frequency, for no less than once each month, for containers and for areas where containers holding hazardous waste are stored.

c. Performance Track: Reduced Inspection Frequency for Tank Systems. Today, we are changing the self-inspection frequencies for tank systems from daily to no less than once each month for tank systems, granted on a case-by-case basis, for members of the National Environmental Performance Track Program when operating under certain conditions.¹⁴ This includes Performance Track member facilities that are either permitted TSDFs, interim status TSDFs, large quantity generators (LQGs), and/or small quantity generators (SQGs).

Today's rule allows Performance Track member facilities to apply to the regulatory agency for reduced tank system self-inspection frequency, of no less than once each month when either of two conditions are met: (1) When tank owners and operators employ leak detection equipment, or (2) when in the absence of leak detection equipment, owners and operators of tank systems employ workplace practices that ensure that when any leaks or spills occur, they will be promptly identified and remediated. Performance Track member facilities choosing one of these options to reduce inspection frequencies, should identify the option selected as part of its application to the regulatory agency.

Small quantity generator (SQG) tank systems are subject to separate requirements, found in 40 CFR 265.201. Today's rulemaking also allows National Environmental Performance Track members to apply to the regulatory agency for reduced self-inspection frequencies for SQG tank systems under § 265.201(b) when they meet either one of the two conditions described above.

d. Performance Track: Reduced Inspection Frequency for Containment

¹⁴ As previously discussed, we intended to include a broad applicability for tank systems in our proposed rule; however, the proposal did not clearly address the point. We clarified in the October 29, 2003 NODA (68 FR 61662) that the proposal was meant to apply not just to the tanks, but to the complete tank systems (i.e., ancillary equipment). Complete tank systems were defined as including piping, pumps, valves and other associated equipment. Commenters were generally supportive of this change. Therefore, we are applying this provision to complete tank systems, except to ancillary equipment without secondary containment as described at §§ 264.193(f)(1)–(4) and 265.193(f)(1)–(4).

Buildings. We proposed to allow case-by-case decreased inspection frequencies for containment buildings. As stated generally above, the intent was to offer this provision only to the safest and best performing facilities. In

the October 29, 2003 NODA (68 FR 61662), we solicited comment on whether to limit the reduced inspection frequency for containment buildings to member facilities of the National Environmental Performance Track

Program. Again, for the same reasons stated above, we decided to limit §§ 264.1101 and 265.1101 to Performance Track member facilities.

TABLE 11.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT PERMITTED HAZARDOUS WASTE FACILITIES

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
260.10	Hazardous Waste Management System: Definitions.	No regulatory definition currently exists. Performance Track member facility means a facility which has been accepted by EPA for membership in the National Environmental Performance Track Program and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.
264.15(b)(4)	General Facility Standards: General Inspection Requirements.	The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that may inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable.
264.15(b)(5)	General Facility Standards: General Inspection Requirements.	No regulatory language currently exists. Performance Track member facilities that choose to reduce their inspection frequency must: (i) Submit a request for a Class I permit modification with prior approval to the Director. The modification request must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. The modification request must also specify, in writing, that the reduced inspection frequency will apply for as long as the facility is a Performance Track member facility, and that within seven calendar days of ceasing to be a Performance Track member, the facility will revert to the non-Performance Track inspection frequency. Inspections must be conducted at least once each month. (ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the request is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) deny the application; or (2) notify the Performance Track member facility of an extension to the 60 day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its request for a Class I permit modification and keep a copy of the application in the facility's operating record. (iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in the operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.
264.174	Use and Management of Containers: Inspections.	At least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers, and for deterioration of containers and the containment system caused by corrosion or other factors.

TABLE 11.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT PERMITTED HAZARDOUS WASTE FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
264.195	Tank Systems: Inspections	At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures described in § 264.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused corrosion or other factors. (b) The owner or operator must inspect at least once each operating day: (1) Above ground portions of the tank system, if any to detect corrosion or releases of waste; (2) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). [Note: Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.] (b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; (c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day: (1) Above ground portions of the tank system, if any to detect corrosion or releases of waste; (2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). (d) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility. (e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5). (f) Ancillary equipment that is not provided with secondary containment, as described in § 264.193(f)(1)–(4), must be inspected at least once each operating day. [Note: Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.]
264.1101(c)(4)	Containment Buildings: Design and Operating Standards.	Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. Inspect and record in the facility's operating record, at least once every seven days, except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5) of this part.

TABLE 12.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT INTERIM STATUS FACILITIES

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
260.10	Hazardous Waste Management System: Definitions.	No regulatory definition currently exists. Performance Track member facility means a facility that has been accepted by EPA for membership in the National Environmental Performance Track Program and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.
265.15(b)(4)	General Facility Standards: General Inspection Requirements.	The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058 and 265.1084 through 265.1090 of this part, where applicable. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058 and 265.1084 through 265.1090 of this part, where applicable.
265.15(b)(5)	General Facility Standards: General Inspection Requirements..	No regulatory language currently exists. Performance Track member facilities that choose to reduce their inspection frequency must: (i) Submit an application to the Director. The application must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. Inspections must be conducted at least once each month. (ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the application is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) deny the application; or (2) notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and keep a copy of the application in the facility's operating record. (iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in the operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.
265.174	Use and Management of Containers: Inspections.	The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. At least weekly, the owner or operator must inspect areas where containers are stored, except Performance Track member facilities, that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.
265.195	Tank Systems: Inspections.	(a) The owner or operator must inspect, where present, at least once each operating day: (1) Overflow/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (2) Above ground portions of the tank system, if any to detect corrosion or releases of waste; (3) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

TABLE 12.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT INTERIM STATUS FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
265.1101(c)(4)	Containment Buildings: Design and Operating Standards.	(4) The construction materials and the area immediately surrounding the externally accessible portion of the tanks system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). Note: Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release. (a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design. (b) Except as noted under paragraph (c) of this section, the owner or operator must inspect at least once each operating day: (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). (c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (b)(1)–(3) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility. (d) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5). (e) Ancillary equipment that is not provided with secondary containment, as described in § 265.193(f)(1)–(4), must be inspected at least once each operating day. Note: Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release. Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. Inspect and record in the facility's operating record, at least once every seven days, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

TABLE 13.—DECREASED INSPECTION FREQUENCIES FOR SMALL QUANTITY GENERATOR HAZARDOUS WASTE MANAGEMENT UNITS

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
265.201(c)	Tank Systems: Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks.	(c) Generators of between 100 and 1,000 kg/mo of hazardous waste in tanks must inspect, where present: (1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order; (2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day, to ensure that the tank is being operated according to its design;

TABLE 13.—DECREASED INSPECTION FREQUENCIES FOR SMALL QUANTITY GENERATOR HAZARDOUS WASTE MANAGEMENT UNITS—Continued

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
		(3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3); (4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and (5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). (c) Except as noted in paragraph (d) of this section, generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks must inspect, where present: (1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order; (2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day, to ensure that the tank is being operated according to its design; (3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3); (4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and (5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). (d) Generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (c)(1)–(5) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility. (e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

H. We Are Making Selected Changes to the Requirements for Record Retention and Submittal of Records

EPA is modifying certain requirements for hazardous waste handlers who keep records on site and submit these same records to EPA. We will now require waste handlers only to keep these selected records on site.

EPA believes that many of the various notices required do not add much in protection and some are simply redundant. We believe that reporting to EPA on the majority of the day-to-day functions of a facility does not need to occur. Because a basic set of compliance information will still be kept in the facility's operating record, we believe the regulatory agency has an ample opportunity for effective oversight.

1. We Are Removing the Requirement To Submit a One-Time Notification for Recycled Wood Wastewaters and Spent Wood-Preserving Solutions and Clarifying an Unintentional Elimination Made in the Proposal

Currently under 40 CFR 261.4(a)(9), spent wood preserving solutions and wastewaters from wood preserving processes are excluded from classification as a solid waste if they are reclaimed and reused for their original intended purpose, and if five conditions specified in subparagraphs (iii)(A) through (iii)(E) are met. Paragraph (E) required that the plant owner or operator submit a one-time notification that the plant intends to claim the exclusion.¹⁵ Paragraph (E) also requires

¹⁵ The four other conditions found in 40 CFR 261.4(a)(9)(iii)(A)–(D) are: (A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose; (B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both; (C) Any unit used to manage wastewaters and/

the owner or operator to maintain a copy of the notification on-site for no less than three years. Finally, paragraph (E) explains that the exclusion applies only so long as the plant meets all of the conditions, and sets forth procedures for what to do to retain the exclusion if the facility goes out of compliance with a condition.

The proposed rule (see 67 FR 2521) was to reduce the burden on wood preservers/treaters by eliminating the requirement to submit the one-time notification. The proposal stated that the requirement is unnecessary and has limited use for regulators. However, the change to the regulations specified in the regulatory text of the proposal unintentionally eliminated the entire paragraph (E) of 40 CFR 261.4(a)(9),(iii)

or spent wood preserving solutions prior to reuse can be visually or otherwise be determined to prevent such releases; and (D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standard in part 265, subpart W of this chapter, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste.

thus eliminating the one-time notification requirement and also eliminating the two other requirements in that paragraph: (1) The requirement to maintain the notification on-site for three years, and (2) the implementation discussion for compliance with the conditions.

Three state commenters did not agree with the proposal. These commenters argued that the notification is useful for identifying facilities that are claiming the exclusion, identifying potential problems before they occur, allowing the regulating agency to verify compliance, and workload planning. Several state commenters, however, agreed with the proposal to eliminate the requirement to submit the notification. Based on their comments, these commenters appeared to understand that only the requirement to submit the one-time notification was proposed for elimination. None mentioned the requirement to retain the notification on-site or the compliance implementation procedures.

While we understand the concern of some of the commenters, we still do not believe that arguments put forth were sufficient to change the proposed approach. We believe that the submittal of this notification is unnecessary because the facilities are engaged in limited activities to return materials to their intended use in the wood treating industry. Many comparable activities occur without notification, including direct reuse of the same material. These activities will occur at generator sites subject to EPA or state inspection (and in some case at treatment, storage, and disposal facilities), so EPA or the state will have an opportunity to review the activity. Note that in the final change to the regulatory text, we are only eliminating the requirement to submit the one-time notification; we are not eliminating the requirement to keep the document on-site, or the discussion of compliance implementation procedures.

2. We Are Eliminating the Requirement for Interim Status Facilities To Submit Specific Ground-Water Monitoring Plans and Ground-Water Assessment Reports

In today's final rule, we are reducing some of the burden on interim status facilities by eliminating the need to submit specific ground-water monitoring plans and ground-water assessment reports to the Regional Administrator. These reports include: (1) Plans for an alternative ground-water monitoring system under § 265.90(d)(1) that are implemented when the owner or operator assumes (or knows) that ground-water monitoring of indicator

parameters in accordance with §§ 265.91 and 265.92 would show statistically significant increases when evaluated under § 265.93(b); (2) records of the analyses and evaluations specified in the plan under § 265.93(d)(2); and (3) ground-water quality assessment reports required under § 265.93(d)(5). These plans are not being eliminated, but are to be placed in the facility's operating record until closure of the facility. We consider today's changes to be a common sense approach to reducing burden at regulated facilities without compromising environmental protection.

Numerous states objected to these proposed changes to the interim status reporting and recordkeeping requirements, asserting that the regulatory agency should continue to receive a copy of these reports to assess the effectiveness and appropriateness of the ground-water monitoring system. Other states asserted that EPA's approach places an undue burden on the regulatory authority and makes it difficult for states to fully evaluate ground water across the state.

We believe that self-implementing ground-water monitoring plans for interim status facilities can be protective of human health and the environment; we disagree with the assertion that our rationale places a burden on the regulating authority. These reports must be kept in the facility's operating record until closure of the facility and will be available for inspection when the state or EPA visits the facility. Nothing in today's rulemaking prevents the regulating authority from requesting reports from interim status facilities for ground-water quality assessment or indicator parameter concentrations.

EPA is retaining many requirements for interim status facilities. For example, we are not changing the ground-water reporting requirements of §§ 265.93(c)(1), (d)(1), (e) and (f) and 265.94(a)(2)(i), (ii) and (iii), that deal with submitting notifications of increased indicator parameter concentrations and the development and submittal of: (1) Ground-water quality assessment reports; (2) preparation and submittal of quarterly reports on drinking water suitability parameters; indicator parameter concentrations and evaluations; and (3) ground-water surface elevations. Stakeholders have convinced us of the importance of this information. Without the knowledge of the status of the facility ground-water monitoring system, it may be difficult for regulators to conduct effective inspections, address compliance issues, and address

enforcement issues regarding the ground water at interim status facilities.

3. We Are Eliminating the Requirement for Interim Status Surface Impoundments, Waste Piles, and Landfills To Submit a Response Action Plan

Response action plans are generated by the owner or operator of a specified hazardous waste management unit (e.g., surface impoundment, waste pile, and/or landfill), and document actions to be taken if the action leakage rate in the unit's leak detection system has been exceeded.¹⁶ These actions are listed in §§ 265.223, 265.259 and 265.303.¹⁷ The Agency proposed eliminating the need to submit to the Regional Administrator response action plans for interim status surface impoundments, waste piles, and landfills. We are eliminating the submission of the response action plan to the Regional Administrator. The facility must still prepare and retain these plans on-site.

Several state commenters agreed with the proposal; however, several others did not. One commenter argued that a release from a land-based unit is a significant noncompliance and could pose serious impacts to the people and the environment, and it is important for the facility to have a clear plan in advance to respond to releases. Because of the importance of controlling these releases, it is appropriate for the response action plan to be submitted to EPA or the state permit agency. While we agree with the commenter that any release from a land-based unit is a serious matter, and that controlling these releases is of the utmost importance, we are not convinced that these plans need to be submitted to the regulatory agency. EPA is retaining all requirements to submit notices to the regulatory authority when an action leakage rate is exceeded (see §§ 265.224(b)(2) and (6); 265.259(b)(2) and (6); and 265.303(b)(2) and (6)); we

¹⁶ The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate must include an adequate margin of safety to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

¹⁷ In the CFR there are two sections identified as § 265.223, the first titled "Containment system" and the second titled "Response actions". In today's rule we are redesignating § 265.223 titled "Response actions" as § 265.224.

believe that the need to submit the response action plan which merely reiterates these requirements is an overly burdensome requirement that can be removed.

4. We Are Eliminating the Requirement for Facilities To Submit a Tank System Certification of Completion of Major Repairs

We are amending the requirement for submitting to the Regional Administrator a certification of completion of major repairs to a tank system by an independent, qualified, professional engineer. This certification need only be kept on-site in the operating record through the intended life of the system. This change will eliminate the submission of duplicative information to the regulatory authority. Sections 264.196(d) and 265.196(d) already require that certain notifications be submitted that include descriptions of response actions taken or planned.

Several commenters did not support the proposed change, noting that submission of the certification helps to ensure that the regulatory authority is made aware of any potentially significant repairs that were conducted. One commenter argued that the elimination of these notices or notations in the operating record will adversely affect oversight. Another commenter argued that, while supportive of the proposed change, the certification of major repairs must be kept with the facility record, and be available for review by regulatory inspectors. We believe that information provided by the certification of major repairs is already provided through the notification mechanisms described in §§ 264.196(d) and 265.196(d), which require notification when releases occur, and a description of response actions taken or planned. While we are not eliminating the certification, we are requiring the certification be kept on site in the operating record, and we are requiring the certification be signed by a qualified professional engineer.

5. We Are Eliminating the Requirement for a Recycler To Submit a Notification and Certification

Under 40 CFR 268.7(b)(3), a treatment facility must send a one-time notice to the receiving land disposal facility with the initial shipment of waste or contaminated soil. Also, in § 268.7(b)(4), the treatment facility must submit a one-time certification with the initial shipment of waste or contaminated soil to the land disposal facility.

Under § 268.7(b)(6), however, if the wastes are recyclable materials used in a manner constituting disposal, the

owner or operator of the treatment facility (i.e., the recycler) is not required to send the one-time (b)(3) notice to the receiving facility. For each shipment, however, the owner or operator of the treatment facility (i.e., recycler) must submit a (b)(4) certification and a notice with the information listed in (b)(3) to the Regional Administrator. These notifications and certifications are to assure and document that treatment standards are being met. The preamble to the proposed rule described a proposal that would reduce burden on the regulated industry by eliminating the requirement to send the notifications and certifications to EPA, and instead require that the treatment facility (i.e., recycler) place these documents in its on-site files.

Five commenters, including three states, agreed that notifying the regulatory agency is not necessary as long as the information is maintained at the facility. Only one commenter did not support the elimination of the requirement. This commenter argued that it is important to track hazardous wastes used in the manufacture of fertilizers because it believes there are problems with compliance in this industry. It believes that notification to the regulatory agency allows such tracking. We, however, do not agree with this commenter, for the reasons presented below.

Based on the majority of comments received, we are amending § 268.7(b)(6) to eliminate the requirement to submit notifications and certifications to EPA, and instead require that the information be placed in the treating/recycling facility's on-site files. All but one commenter confirmed that maintaining these records on-site provides sufficient documentation of waste treatment in these cases. We also point out that regulating agencies have a great deal of information about these facilities already since, in most cases, they would be permitted facilities. Retaining these notices on-site does not eliminate the regulating agency's knowledge of the existence of the facility. We also note that if a state has concerns about compliance in a particular use constituting disposal industry in their state, they may choose to be more stringent than the federal program, and choose to retain these notifications.

It should be noted that the preamble to the proposal incorrectly indicated that the current regulations only require one-time notifications and certifications for these materials. This is not accurate. As discussed earlier, the existing regulations actually require that certifications and notifications be sent to the regulating agency with each

shipment. One commenter suggested that we change the requirement so that these notifications and certifications are only required to be prepared once and maintained in the facility's records, unless there are changes to the treatment process. The commenter pointed out that it would greatly reduce the burden for the facility if they were only required to prepare these documents once, and then again any time the treatment process changes. We agree with this commenter's point. As long as these notifications and certifications are required to be maintained in the facility's files and be available for inspection, there is no reason for the facility to prepare and maintain multiple copies for each shipment. The information will be available for inspection at all times. Whereas the proposal did address the burden of sending notifications and certifications to the regulatory agency, it did not address the burden associated with the requirement to send those documents with each waste shipment. This final rule corrects that omission. Thus, this final rule only requires facilities (i.e., recyclers) to prepare and maintain notifications and certifications with the initial shipment of waste, and then to prepare new documentation only if the waste, the treatment process, or the receiving facility changes.

6. We Are Eliminating the Requirement to Submit an LDR Notification and Certification

Under § 268.9(d), once a characteristic waste is treated so it is no longer characteristic, a one-time notification and certification of this fact have to be placed in the generator's or treater's files, and also sent to EPA or the authorized state. We proposed to eliminate the requirement to submit the notification to EPA or the authorized state (the notification and certification would continue to be required to be kept in the facility's files).

Almost all commenters supported the proposal to delete the one-time requirement that the § 268.9(d) notification and certification be sent to EPA or the authorized state. This is because the notification and the certification must be placed in the on-site files and would thus be available for inspection. However, a few commenters opposed the deletion of these submittals, stating that this information is valuable. While we agree that the information is valuable, we do not believe that submitting these documents to the regulatory agency is necessary to protect human health and the environment. For a number of years, other LDR notifications and

certifications have not been required to be submitted to the regulatory agency, but are available for inspection in the

facility's on-site files. Therefore, we believe that this system of recordkeeping is sufficient and are

deleting the notification and certification submission requirement as proposed.

TABLE 14.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
264.196(f)	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.	Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Regional Administrator within seven days after returning the tank system to use. Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified professional engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.¹⁸

¹⁸ The reader is referred to Section III. B. of today's preamble for a discussion of the change from "independent, qualified, registered, professional" to "qualified professional engineer".

TABLE 15.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
265.90(d)(1)	Ground-Water Monitoring. Applicability.	Within one year after the effective date of these regulations, submit to the Regional Administrator a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system. Within one year after the effective date of these regulations, develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system. This plan is to be placed in the facility's operating record and maintained until closure of the facility.
265.90(d)(3)	Ground-Water Monitoring. Applicability.	Prepare and submit a written report in accordance with § 265.93(d)(5). Prepare a report in accordance with § 265.93(d)(5) and place it in the facility's operating record and maintain until closure of the facility.
265.93(d)(2)	Ground-Water Monitoring. Preparation, evaluation, and response.	Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop and submit to the Regional Administrator a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. This plan must be placed in the facility operating record and be maintained until closure of the facility.
265.93(d)(5)	Ground-Water Monitoring. Preparation, evaluation, and response.	The owner or operator must make his first determination under paragraph (d)(4) of this section, as soon as technically feasible, and, within 15 days after that determination, submit to the Regional Administrator a written report containing an assessment of the ground-water quality. The owner or operator must make his first determination under paragraph (d)(4) of this section as soon as technically feasible, and prepare a report containing an assessment of the ground-water quality. This report must be placed in the facility operating record and be maintained until closure of the facility.

TABLE 15.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
265.196(f)	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.	Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Regional Administrator within seven days after returning the tank system to use. Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified professional engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record until closure of the facility.¹⁹
265.223(a)	Surface Impoundments. Response actions.	The owner or operator of surface impoundment units subject to § 265.221(a) must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under § 265.222. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section. (Now § 265.224(a)) The owner or operator of surface impoundment units subject to § 265.221(a) must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.
265.259(a)	Waste Piles. Response actions	The owner or operator of waste pile units subject to § 265.254 must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under § 265.255. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the action specified in paragraph (b) of this section. The owner or operator of waste pile units subject to § 265.254 must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.
265.303(a)	Landfills. Response actions	The owner or operator of landfill units subject to § 265.301(a) must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under § 265.302. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the action specified in paragraph (b) of this section. The owner or operator of landfill units subject to § 265.301(a) must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

¹⁹ The reader is referred to today's preamble for a discussion of the change from "independent, qualified, registered, professional engineer" to "qualified professional engineer." We are also requiring that this certification be retained in the operating record until closure of the facility.

TABLE 16.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR HAZARDOUS WASTE GENERATORS

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
261.4(a)(9)(iii)(E)	General. Exclusions. Materials which are not solid wastes.	Prior to operating pursuant to this exclusion, the plant owner or operator submits to the appropriate Regional Administrator or state Director a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving wastewater and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Regional Administrator or state Director for reinstatement. The Regional Administrator or state Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur. Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Regional Administrator or state Director for reinstatement. The Regional Administrator or state Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.
268.7(b)(6)	Land Disposal Restrictions. Testing, tracking, and record-keeping requirements for generators, treaters, and disposal facilities.	Where the wastes are recyclable materials used in a manner constituting disposal subject to the and provisions of § 268.20(b) regarding requirements for treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) is not required to notify the receiving facility, pursuant to paragraph (b)(3) of this section. With each shipment of such wastes, the owner or operator of the recycling facility must submit a certification described in paragraph (b)(4) of this section, and a notice which includes the information listed in paragraph (b)(3) of this section (except the manifest number) to the Regional Administrator, or his delegated representative. The recycling facility also must keep records of the name and location of each entity receiving the hazardous waste-derived product. Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 266.20(b)²⁰ of this chapter regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on-site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.
268.9(d)	Land Disposal Restrictions. Special rules regarding wastes that exhibit a characteristic.	Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generators or treaters files and sent to the EPA region or authorized state. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31. Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

²⁰ In the previous regulatory language, the citation referred to § 268.20(b), however, this was an error. In today's rule, we are correcting this error by referring to the correct citation which is § 266.20(b).

I. We Are Making Selected Changes to the Requirements for Document Submittal

1. We Are Streamlining the Procedure for Obtaining a Variance From Classification as a Solid Waste

A regulatory agency may grant a variance from classification as a solid waste for materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated. The regulation lists eight criteria that are to be used in determining if the request for a variance is to be granted. One of the criteria is a requirement to demonstrate the prevalence of the practice on an industry-wide basis.

The proposed rule described a proposal to eliminate the requirement that applicants for this variance submit information on the prevalence of the practice on an industry-wide basis. The Agency found that this information was less important in making the decision than the other factors and could be difficult for a facility to provide.

Four commenters agreed with the proposal to eliminate the requirement. One pointed out the difficulty of obtaining such information, particularly in the batch and specialty chemical industry. Three states also supported eliminating the requirement. Three other commenters opposed eliminating the requirement, arguing that the information is important in determining whether the reclamation process is an essential part of the production process.

While the Agency believes that this information can be useful in some cases, we also believe that such industry-wide information about these practices is not critical in demonstrating or determining that reclamation is an essential part of production. We believe that a successful demonstration can be made without this information. We also acknowledge that this information may be very difficult, and in some cases, impossible for one company to obtain. We are, therefore, eliminating the requirement in § 260.31(b)(2) that applicants provide industry-wide information.

2. We Are Streamlining the Requirements for Treatability Study Reports for Testing Facilities

Treatability studies are studies at laboratories and testing facilities in which hazardous waste is tested to evaluate the effectiveness of a treatment process. (See definition in 40 CFR 260.) Facilities conducting treatability studies are excluded from the standard hazardous waste management requirements if they comply with certain requirements described in

§ 261.4(f). Paragraph (9) requires the facility to submit to the regulatory agency an annual report that includes: (1) An estimate of the number of studies and the amount of waste expected to be used in treatability studies during the current year; and (2) information on the treatability studies conducted during the previous year.

We proposed to reduce burden by eliminating the requirement to submit an estimate of the number of treatability studies and amount of waste expected to be used in treatability studies in the upcoming year. The proposal explained that the requirement is duplicative because the same information is submitted in the annual report at a later date. However, the change to the regulations specified in the regulatory text of the proposal unintentionally eliminated the entire paragraph (9) of § 261.4(f), thus proposing to eliminate both the requirement to submit estimates for the current year, as well as information for the previous year.

The majority of commenters (seven) supported elimination of the estimates. They did so with the apparent understanding that only the requirement to provide estimates for the coming year was to be eliminated, and that the requirement to submit information for the previous year would remain in place. Most agreed with the proposal to eliminate the estimates based on the rationale in the preamble that the information would be provided at a later date. Two commenters did point out that eliminating all of § 261.4(f)(9) also eliminates the requirement for providing any report, including the submittal of information from the previous year.

We agree with commenters that the estimate of upcoming activities are unnecessary since the same information will be provided later in the annual report, and the information provided on past activities will be more accurate than estimates of the future. We are, therefore, eliminating the requirement in § 261.4(f)(9) to submit estimates of the number of studies and the amount of waste to be used in treatability studies for the current year, but are retaining the requirement for preparing and submitting an annual report providing information for the previous year.

3. We Are Streamlining the Requirements for Ground-Water Monitoring

As previously discussed in the October 29, 2003 NODA (68 FR 61662), hazardous waste treatment, storage, and disposal facilities must implement ground-water monitoring as a condition

for receiving a RCRA permit. EPA requires a phased approach to ground-water monitoring (detection monitoring, compliance monitoring, corrective action). Ground-water monitoring systems must consist of a sufficient number of wells, properly located and constructed, and capable of ensuring that the ground-water impacts of a treatment, storage, or disposal unit can be determined. Sampling and analysis procedures must also be capable of determining both background quality of ground water and quality at the point of compliance.

If hazardous constituents are detected in ground water, more detailed monitoring may be required. In this case, a facility would need additional wells, sampling, and analysis to determine the extent and rate of contaminant migration, to determine if the ground-water protection standard is violated, and to indicate the need for, or effectiveness of, corrective action.

Detection monitoring is the first phase of ground-water monitoring, and is designed to detect a change in ground-water quality in wells surrounding a regulated unit. A potential release from the unit, or impacts from activities up gradient of the unit, may cause this change. For detection monitoring, ground-water monitoring wells are installed up-gradient of the unit and at the point of compliance. Facilities then monitor for each indicator parameter or hazardous constituent specified in the permit.

Compliance monitoring occurs when hazardous waste constituents are detected down-gradient of the unit. The permitting authority will establish hazardous constituent standards for facilities undergoing compliance monitoring.

The third phase of ground-water monitoring, corrective action, is required when hazardous constituents exceed the ground-water protection standards at the point of compliance. Once this has occurred, the owner or operator must remedy the situation by removing the hazardous constituents or treating them in place.

We are modifying the § 264.99(g) requirement that facilities performing compliance monitoring conduct an annual 40 CFR Part 264 Appendix IX (the ground-water monitoring chemical list) analysis of all monitoring wells. We are allowing, on a case-by-case basis, as authorized by a permit authority, sampling from a subset of the wells. Appendix IX analyses are costly at large facilities, and analyzing all wells does not necessarily contribute to protection of human health and the environment. This is especially the case if there are

multiple units and wells at a facility, and only one unit shows signs of contamination.

In addition, monitoring for constituents that are not likely to be found at a site is wasteful and does not increase the protection of monitoring programs. We, therefore, are also modifying § 264.98(g)(2) to give the Regional Administrator discretion on a case-by-case basis to allow sampling for a subset of the Appendix IX constituents. While this change was proposed for § 264.98(c), upon re-evaluation, we decided it is more appropriate to amend § 264.98(g)(2) and leave § 264.98(c) unchanged. Decisions on what constituents must be sampled will be based on the regulatory agencies' judgment of what amount of sampling supports the protection of human health and the environment, as well as the level of knowledge of what contaminants could be present at a site. As a commenter pointed out, this subsection prior to today did not require

that all samples must be analyzed for every chemical parameter and hazardous constituent listed in Appendix IX. Today's rule eliminates ambiguity by specifically confirming that sampling for a site-specific subset of constituents is allowable.

Based on a comment we received, we also are revising § 264.98(d) to allow for alternative sampling procedures as provided in § 264.97(g)(2). Under § 264.98(d), a facility must collect at least four samples from each well at least semi-annually. This provision has resulted in sites being required to sample four times within a single monitoring event, despite the contradiction with § 264.97(g)(2) which allows for an alternate sampling procedure. To reduce some of the burden related to this sampling and reporting, we are removing the last sentence from § 264.98(d) (requiring a facility to collect at least four samples from each well at least semi-annually). We are also eliminating the last

sentence in § 264.99(f) (requiring a facility to collect at least four samples from each well at least semi-annually). These changes will prevent § 264.98(d) and § 264.99(f) from unintentionally trumping the flexibility granted by § 264.97(g)(2).

Finally, based on another comment received, we are also changing the re-sampling requirements in § 264.98(g)(3) and § 264.99(g) from "may resample within one month" to "may resample within one month or at an alternative site-specific time frame approved by the Administrator." This change allows for sampling to be based on site-specific hydrogeologic conditions. It also can be burdensome for facilities to resample wells within 30 days, because this time frame can allow, in some circumstances, insufficient time to evaluate the original data set, perform quality assurance evaluations, and re-mobilize the sampling team.

TABLE 17.—CHANGES TO THE REQUIREMENTS FOR DOCUMENT SUBMITTAL FOR VARIANCES FROM CLASSIFICATION AS A SOLID WASTE AND FOR TESTING FACILITIES REGARDING TREATABILITY STUDY REPORTS

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
260.31(b)(2)	Rulemaking Petitions. Standards and criteria for variances from classification as a solid waste.	The prevalence of the practice on an industry-wide basis.
261.4(f)(9)	General. Exclusions. Samples undergoing treatability studies at laboratories and testing facilities.	Section 260.31(b)(2) has been deleted from the regulatory text. The facility prepares and submits a report to the Regional Administrator, or state Director (if located in an authorized state), by March 15 of each year that estimates the number of studies at studies and the amount of waste laboratories and expected to be used in treatability testing studies during the current year, and facilities. includes the following information for the previous calendar year: The facility prepares and submits a report to the Regional Administrator, or state Director (if located in an authorized state), by March 15 of each year, that includes the following information for the previous calendar year:

TABLE 18.—CHANGES TO THE REQUIREMENTS FOR DOCUMENT SUBMITTAL FOR PERMITTED TREATMENT, STORAGE AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
264.98(d)	Releases from Solid Waste Management Units. Detection monitoring program.	The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (a) of this section in accordance with § 264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during detection monitoring. The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit conditions under paragraph (a) of this section in accordance with § 264.97(g).
264.98(g)(2)	Releases from Solid Waste Management Units. Detection monitoring program.	Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix IX of part 264 are present, and if so, in what concentration.

TABLE 18.—CHANGES TO THE REQUIREMENTS FOR DOCUMENT SUBMITTAL FOR PERMITTED TREATMENT, STORAGE AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
264.98(g)(3)	Releases from Solid Waste Management Units. Detection monitoring program.	Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix IX of part 264 are present, and if so, in what concentration. However, the Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents. For any appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to paragraph (g)(2) of this section, the hazardous constituents found during this initial appendix IX analysis will form the basis for compliance monitoring. For any appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Administrator and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial appendix IX analysis will form the basis for compliance monitoring.
264.99(f)	Releases from Solid Waste Management Units. Compliance monitoring program.	The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during the compliance period of the facility. The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g).
264.99(g)	Releases from Solid Waste Management Units. Compliance monitoring program.	The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in appendix IX of part 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so at what concentrations, pursuant to procedures in § 264.98(f). If the owner or operator finds appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis and add them to the monitoring list. Annually, the owner or operator must determine whether additional hazardous constituents from appendix IX of this 264, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). To accomplish this, the owner or operator must consult with the Regional Administrator to determine on a case-by-case basis: (1) Which sample collection event during the year will involve enhanced sampling; (2) the number of monitoring wells at the compliance point to undergo enhanced sampling; (3) the number of samples to be collected from each of these monitoring wells; and, (4) the specific constituents from Appendix IX of this 264 for which these samples must be analyzed. If the enhanced sampling event indicates that appendix IX constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Regional Administrator, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

J. We Are Making Selected Changes to the Requirements for Semi-Annual Reports to Annual Reports

1. We Are Changing the Requirement for a Semi-Annual Report Detailing the Effectiveness of the Corrective Action Program

Section 264.100(g) requires the owner or operator of a permitted facility to report in writing to the Regional Administrator on the effectiveness of the corrective action program. These reports must be submitted semi-annually. We are now requiring an annual report instead of a semi-annual report. While this change was not in the proposed rule, it was identified in the comments received and was discussed in the October 29, 2003 NODA (68 FR 61668). It is a change that conforms to

the change we are making to § 264.113(e)(5) and was supported by a majority of the commenters.

2. We Are Changing the Requirement for a Semi-Annual Report Describing the Progress of the Corrective Action Program

We proposed lengthening the reporting frequency for corrective action effectiveness reports required by §§ 264.113(e)(5) and 265.113(e)(5). These reports are currently required to be submitted semi-annually and include a description of the progress of the corrective action program, all ground-water monitoring data, and an evaluation of the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action. We received comments, mainly from the

states, on this proposed regulatory change. Several states suggested giving the regulatory agency the flexibility of establishing report submittals on a case-by-case basis. Other states suggested the reports be submitted at least annually. Still another state suggested that the semi-annual submittal of reports is preferred because it allows the state to identify inadequate monitoring systems earlier, which in turn, could save the facilities needless ground-water monitoring expenses.

After reviewing the comments submitted, we have decided to promulgate the changes as proposed. Ground-water cleanup is generally a multi-year effort. Thus, we believe that annual submittal of these reports will not jeopardize the protection of human health and the environment.

TABLE 19.—REDUCED FREQUENCY FOR SUBMITTAL OF REPORTS FOR PERMITTED TREATMENT, STORAGE AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
264.100(g)	Releases from Solid Waste Management Units. Corrective action program.	The owner or operator must report in writing to the Regional Administrator on the effectiveness of the corrective action program. The owner or operator must submit these reports semi-annually. The owner or operator must report in writing to the Regional Administrator on the effectiveness of the corrective action program. The owner or operator must submit these reports annually.
264.113(e)(5)	Closure and Post-Closure. Closure; time allowed for closure.	During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action. During the period of corrective action, the owner or operator shall provide annual reports to the Regional Administrator describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

TABLE 20.—REDUCED FREQUENCY FOR SUBMITTAL OF REPORTS FOR INTERIM STATUS TREATMENT, STORAGE AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language
		New regulatory language as amended by the Burden Reduction Rule
265.113(e)(5)	Closure and Post-Closure. Closure; time allowed for closure.	During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action. During the period of corrective action, the owner or operator shall provide annual reports to the Regional Administrator describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

IV. What Regulatory Requirements Will Remain in the CFR?

Commenters opposed a number of the burden reduction changes that we either proposed or noticed in our October 29,

2003 NODA. After thorough analysis of the comments, and in consultation with state representatives, we have decided (at least for the present time) to retain these regulatory requirements. Stakeholders persuaded us that these

changes could delete important recordkeeping and reporting requirements that were necessary in order to protect human health and the environment. Stakeholders, particularly the states, also provided arguments as to

the importance of retaining their oversight role when dealing with leaks and spills of hazardous waste. Table 21—Regulatory Requirements That Will Remain in the CFR, identifies those

proposed regulatory sections that we are not promulgating in today's rule.

For information on what commenters said regarding particular provisions and the Agency's response, the reader is

referred to the following document, Response to Comments Background Document that can be found in the rulemaking docket.

TABLE 21.—REGULATORY REQUIREMENTS THAT WILL REMAIN IN THE CFR

CFR section	Regulatory requirement
261.38	Lists of Hazardous Wastes. Comparable/syngas fuel exclusion.
261.38(c)(1)(i)(A)	Submit a one-time comparable/syngas fuel notice to the permitting agency.
264/5.16	General Facility Standards. Personnel training.
264/5.16(d)(1)	Record the job title.
264/5.16(d)(2)	Record job description.
264/5.16(d)(3)	Record type and amount of training employees will be provided.
264.90	Releases From Solid Waste Management Units. Applicability.
264.90(a)(2)	Comply with the requirements of 264.101 with exceptions for surface impoundments, waste piles, land treatment unit, or landfills.
264/5.98	Releases From Solid Waste Management Units. Detection monitoring program.
264.98(c)	Conduct and maintain ground-water monitoring.
264.98(g)(1)	Prepare and submit a notification of contamination.
264.98(g)(5)(ii)	Prepare and submit an engineering feasibility plan for corrective action.
264.98(g)(6)(i)–(ii)	Prepare and submit a notification of intent to make a demonstration.
264.99	Releases From Solid Waste Management Units. Compliance monitoring program.
264.99(h)(1)	Prepare and submit a notification of exceeded concentration limits.
264.99(i)(1)–(2)	Prepare and submit a notification of intent to make a demonstration.
264/5.174	Use and Management of Containers. Inspections.
264/5.174	Inspect containers weekly.
264/5.193	Tank Systems. Leak detection systems for tanks.
264.193(c)(3)	Demonstration.
264.193 (c)(4)	Demonstration.
264/5.193(e)(3)(iii)	Demonstrate to EPA that technology and site conditions do not allow detection of release within 24 hours.
264/5.193(g)	Variance from leak detection systems for tanks.
264/5.193(h)	Variance from leak detection systems for tanks.
264.196	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-to use tank systems.
264.196(d)(1)	Notify EPA of release.
264.196(d)(2)	Notify EPA of release.
264.196(d)(3)	Submit report describing release.
264/5.223	Surface Impoundments. Response actions.
264/5.223(b)(1)	Notify EPA in writing if flow rate exceeds Action Leakage Rate for any sump within 7 days.
264/5.223(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
264/5.223(b)(6)	Compile and submit information to EPA each month the Action Leakage Rate is exceeded.
264.253	Waste Piles. Response actions.
264.253(b)(1)	Notify EPA in writing of the exceedence within 7 days of the determination.
264.253(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determining leakage.
264.253(b)(6)	Compile and submit information to the EPA each month that the Action Leakage Rate is exceeded.
264.278	Land Treatment. Unsaturated zone monitoring.
264.278(g)(1)	Prepare and submit a notice of statistically significant increases in hazardous constituents below treatment zone.
264.278(h)(1)–(2)	Prepare and submit a notice of intent to make a demonstration that other sources or error led to increases below treatment zone.
264.304	Landfills. Response actions.
264.304(b)(1)	Notify EPA if Action Leakage Rate is exceeded within 7 days of determination.
264.304(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
264.304(b)(6)	Submit information to EPA each month the Action Leakage Rate is exceeded.
264.573	Drip Pads. Design and operating standards.
264.573(m)(1)(iv)	Notify EPA in writing of release.
264.573(m)(2)	Regional Administrator will make a determination and will notify owner/operator of the determination.
264.573(m)(3)	Notify EPA and certify completion of repairs.
264.1036	Air Emission Standards for Process Vents. Reporting requirements.
264.1036(a)	Notify EPA semi-annually of exceedences.
264.1065	Air Emission Standards for Equipment Leaks. Reporting requirements.
264.1065(a)	Notify EPA semi-annually of exceedences.
264/5.1101	Containment Buildings. Design and operating standards.
265.1101(c)(2)	Certify by qualified professional engineer.
264/5.1101(c)(3)(i)(D)	Notify EPA in writing of release.
264/5.1101(c)(3)(ii)–(iii)	Notify EPA and verify in writing that the cleanup and repairs have been completed after a release.
264/5.1101(c)(4)	Inspection frequency.
265.1(b)	Purpose, scope, and applicability.
265.93	Ground-Water Monitoring. Preparation, evaluation, and response.
265.93(c)(1)	Notify of increased indicator parameter concentrations.
265.93(d)(1)	Notify of increased indicator parameter concentrations.
265.93(e)	Any ground-water assessment to satisfy the requirements of § 265.93(d)(4) which is initiated prior to final closure must be completed and reported in accordance with § 265.93(d)(5).

TABLE 21.—REGULATORY REQUIREMENTS THAT WILL REMAIN IN THE CFR—Continued

CFR section	Regulatory requirement
265.93(f)	Evaluate data and if § 265.91(a) are not satisfied, immediately modify the number, location, or depth of the monitoring wells.
265.94	Ground-Water Monitoring. Recordkeeping and reporting.
265.94(a)(2)(i)	Prepare and submit a quarterly report of concentrations of values of the drinking water suitability parameters.
265.94(a)(2)(ii)	Prepare and submit a report on indicator parameter concentrations and evaluations.
265.94(a)(2)(iii)	Prepare and submit a report on ground-water surface elevations.
265.94(b)(2)	Prepare and submit a report on the results of the ground-water quality assessment program.
265.259	Waste Piles. Response actions.
265.259(b)(1)	Notify EPA in writing within 7 days of determination.
265.259(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
265.259(b)(6)	Submit information to EPA each month that the Action Leakage Rate is exceeded.
265.276	Land Treatment. Food-chain crops.
265.276(a)	Submit notification for food-chain crops at land treatment facility.
265.303	Landfills. Response actions.
265.303(b)(1)	Notify EPA if Action Leakage Rate is exceeded within 7 days of determination.
265.303(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
265.303(b)(6)	Submit information to EPA each month the Action Leakage Rate is exceeded.
265.443	Drip Pads. Design and operating requirements.
265.443(m)(1)(iv)(2)	Notify EPA of release and provide written notice of procedures and schedule for cleanup.
265.443(m)(2)	Regional Administrator will make a determination and notify the owner/operator of the determination.
265.443(m)(3)	Notify Regional Administrator and certify completion of repairs.
266.103	Hazardous Waste Burned in Boilers and Industrial Furnaces. Interim status standards for burners.
266.103(b)(2)(ii)(D)	Certification of pre-compliance.
268.7	Land Disposal Restrictions. General. Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.
268.7(a)(6)	Requirement to keep in the facility's files all supporting data and waste analysis data for "knowledge of the waste" determinations and for testing determinations.
268.7(d)(1)	Requirement to submit to the regulatory authority one-time notifications that hazardous debris is excluded from the definition of hazardous waste.
270.17(d)	Permit Application. Specific part B information requirements for surface impoundments.

V. We Will Implement This Rule Via the Class I Permit Modification Process Without Prior Approval

Several comments on the proposed rule pointed out that implementing many of the changes in the proposal would require a Class 2 Permit modification for facilities with permits (see the following Web site for information about Permit modifications: <http://www.epa.gov/epaoswer/hotline/training/perm.pdf>). Obtaining a Class 2 Permit modification requires a substantial effort on the part of a regulated facility, which is contrary to the intent of today's rule. We believe the changes in this rule will provide no significant risk to human health or the environment, and thus, we prefer that these changes become effective as quickly as possible so that the paperwork reduction benefits from the rule can be realized.

Therefore, in our October 29, 2003 NODA, we requested comment on allowing permitted facilities to use the Class 1 permit modification procedure, with prior Agency approval, to implement the changes arising from this rulemaking. We also requested comment on whether the Class 1 permit modifications should be without prior Agency approval.

States represented by the Association of State and Territorial Solid Waste

Management Officials (ASTSWMO) requested that we use the Class 1 permit modification procedure with prior Agency approval. They expressed an interest in retaining oversight in the implementation of our burden reductions. After weighing this interest against the interest in achieving savings as soon as possible, we have decided in favor of not delaying the benefits of this rule. This is based on our judgment that, in general, the risks associated with these changes are negligible. We will allow the changes in today's rule to be implemented as Class 1 permit modifications without prior approval, except for a permit modification for reduced inspection frequency for Performance Track member facilities which will be implemented as a Class 1 permit modification with prior approval. To implement this approach, we are adding regulatory language and an entry to the permit modification classification table in Appendix I to 270.42, denoting modifications pursuant to the burden reduction rule. However, we wish to point out that, unless state law prevents it, states can be more stringent than the EPA rules if there are specific concerns with the consequences of these changes in any state. All states also can use the omnibus authority of RCRA Section 3005(c) for specific facilities where they believe there is risk

due to site-specific circumstances not identified in our rulemaking process. This will allow states to retain oversight where they choose to do so.

VI. How Will Today's Regulatory Changes Be Administered and Enforced in the States?

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR Part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal

requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states 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). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Authorization of States for Today's Rule

Today's rule affects many aspects of the RCRA program and is promulgated pursuant to both HSWA and non-HSWA statutory authority. Today's rule amends a number of provisions in the RCRA regulations which were promulgated pursuant to HSWA. These provisions include, among others, the land disposal restrictions and the regulation of air emissions from hazardous waste facilities, which were promulgated pursuant to authority in sections 3004(m) and (o) respectively, of RCRA. Therefore, 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.

Other sections of today's rule are being promulgated pursuant to non-HSWA authority. All of the HSWA and non-HSWA requirements in today's rulemaking are equivalent to, or less stringent than, the existing provisions in the Federal regulations which they would amend. Authorized states are required to modify their program only

when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent or reduce the scope of the Federal program, states are not required to modify their program. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the Federal program. Therefore, states are not required to adopt and seek authorization for this rulemaking. EPA will implement this rulemaking only in those states which are not authorized for the RCRA program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that is amended today.

Nevertheless, this rule will provide significant benefits to EPA, states, and the regulated community, without compromising human health or environmental protection. Because this rulemaking will not become effective in authorized states until they have adopted and are authorized for it, we strongly encourage states to amend their programs and seek authorization for today's rule. EPA will try to act promptly on any such requests for authorization.

VII. Statutory and Executive Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is significant and therefore subject to OMB review and 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 a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Although this rule clarifies inconsistencies in the regulations and decreases burden, it is still considered a significant regulatory action under the

terms of Executive Order 12866 since it addresses one of the President's priorities of reducing burden.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule is promulgating changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden certain requirements impose on the States, EPA, and the regulated community. EPA estimates that the reporting and recordkeeping hour burden reduction for this rule ranges from 22,000 hours to 37,500 hours. EPA also estimates that the reporting and recordkeeping cost burden reduction for this rule ranges from approximately \$2 million to \$3 million. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR parts 260, 261, 264, 265, 266, 268, 270, and 271, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The burden reduction resulting from this rulemaking will affect the following seven existing Information Collection Requests (ICRs): OMB control number 2050-0033, Facility Groundwater Monitoring Requirements, EPA ICR number 0959.12; OMB control number 2050-0035, Hazardous Waste Generator Standards, EPA ICR number 0820.09; OMB control number 2050-0050, Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types, EPA ICR number 1572.06; OMB control number 2050-0053, Identification, Listing and Rulemaking Petitions, EPA ICR number 1189.14; OMB control number 2050-0073, Boilers and Industrial Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements and Part B Permit Application and Modifications Requirements, EPA ICR number 1361.10; OMB control number 2050-0085, Land Disposal Restrictions, EPA ICR number 1442.18; OMB control number 2050-0120, General Hazardous Waste Facility Standards, EPA ICR number 1571.07. A copy of these OMB approved Information Collection Requests (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or 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 in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of the final rule on small entities, a "small entity" is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations 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 final rule on small entities, I certify that this action will not have a significant economic 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 economic effect on all of the small entities subject to the rule.

The final rule is specifically intended to reduce, not increase, the paperwork and related burdens of the RCRA hazardous waste program. For businesses in general, including all small businesses, the regulatory changes will reduce the labor time and other costs of preparing, keeping records of, and submitting reports to the Agency. The final rule, for example, reduces the frequency by which businesses must conduct specified recordkeeping and reporting activities (e.g., decreased inspection frequency for hazardous waste tanks from daily to weekly). It also eliminates certain recordkeeping and reporting requirements altogether, i.e., in cases where the documents are little used by the public or regulators. In addition, the rule eliminates redundancies between the RCRA regulations and other regulatory programs (e.g., RCRA and OSHA requirements for personnel training), thereby streamlining facilities' compliance activities. Finally, the rule provides increased flexibility in how waste handlers may comply with the regulations (e.g., establishment of decreased inspection frequencies for facilities in the National Performance Track Program). We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 must prepare a written statement for rules with Federal mandates that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by 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 EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final

rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments; enabling officials of affected small governments to provide meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates; and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule does not contain a federal mandate that may result in expenditures of \$100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector, in any one year. In addition, the rule contains no regulatory requirements for small governments. Thus, the final rule is not subject to the requirements of Sections 202, 203, and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 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." As defined in Executive Order 13132, "policies that have Federalism implications" include regulations, legislative comments or proposed legislation, and other policy statements or actions 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.

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

The final rule does not have federalism implications. It will not have

substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it will not impose any requirements on states or any other level of government. As explained above, the final rule eliminates or relaxes many of the paperwork requirements in the regulations. Because these changes are equivalent to or less stringent than the existing federal program, states will not be required to adopt and seek authorization for them. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 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." As defined in Executive Order 13175, "policies that have Tribal implications" include regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, 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.

The final rule does not have tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175. As explained above, the final rule eliminates or relaxes many of the paperwork requirements in the regulations. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 applies to any rule that may: (1) Be "economically significant" under Executive Order 12866 (i.e., a rulemaking that has an annual effect on the economy of \$100 million or more or would 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), and (2) concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the final rule is not subject to Executive Order 13045 because it is not an "economically significant" rule as defined by Executive Order 12866. EPA also expects the rule does not have a disproportionate effect on children's health. The basic reason for this finding is that the rule modifies or eliminates paperwork requirements that were deemed unnecessary or infrequently used by regulators. However, the rule preserves the technical requirements underlying these paperwork requirements. In addition, regulators continue to have access to all facility paperwork held on site, should the need arise.

In addition, EPA has reduced the inspection frequency of tank systems from each operating day to at least weekly, provided that the tank systems have full secondary containment with leak detection equipment or established workplace practices that will alert facility personnel. SQG tank systems are required to have secondary containment with leak detection equipment or established workplace practices to adopt the weekly inspections.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires EPA to prepare and submit a Statement of Energy Effects to OMB for those matters identified as significant energy actions. As defined in Executive Order 13211, a "significant energy action" is any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that: (1) Is a significant regulatory action under Executive Order 12866 or any successor order and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by OMB as a significant energy action.

The final rule does not involve the supply, distribution, or use of energy.

Thus, Executive Order 13211 does not apply to this rule.

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, 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) that are developed or adopted by voluntary consensus standards bodies. The NTTAA also directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Under Executive Order 12898, as well as through EPA's April 1995 "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agency Report" and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the U.S. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

EPA has considered the impacts of the final rule on low-income populations and minority populations and concluded that there are no disproportionately high impacts under the rule. The basic reason for this finding is that the rule modifies or eliminates paperwork requirements that were deemed unnecessary or infrequently used by regulators. However, the rule preserves the technical requirements underlying these paperwork requirements. In addition, regulators continue to have access to all facility paperwork held on site, should the need arise.

In addition, EPA has reduced the inspection frequency of tank systems from each operating day to at least weekly, provided that the tank systems have full secondary containment with leak detection equipment or workplace practices that will alert facility personnel.

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 May 4, 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

Excluded hazardous waste, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

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

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: March 15, 2006.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is 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.

Subpart B—Definitions

■ 2. Section 260.10 is amended by adding in alphabetical order the definition of "Performance Track member facility" to read as follows:

§ 260.10 Definitions.

* * * * *

Performance Track member facility means a facility that has been accepted by EPA for membership in the National Environmental Performance Track Program and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.

* * * * *

Subpart C—Rulemaking Petitions

§ 260.31 [Amended]

■ 3. Section 260.31 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 4. 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

■ 5. Section 261.4 is amended by revising paragraphs (a)(9)(iii)(E) and (f)(9) introductory text to read as follows:

§ 261.4 Exclusions.

- (a) * * *
- (9) * * *
- (iii) * * *

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Regional Administrator or state Director for reinstatement. The Regional Administrator or state Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

* * * * *

- (f) * * *

(9) The facility prepares and submits a report to the Regional Administrator, or state Director (if located in an authorized state), by March 15 of each year, that includes the following information for the previous calendar year:

* * * * *

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

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

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

Subpart B—General Facility Standards

■ 7. Section 264.15 is amended by revising paragraph (b)(4) (the comment to paragraph (b)(4) is unchanged), and adding paragraph (b)(5) to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable.

* * * * *

(5) Performance Track member facilities that choose to reduce their inspection frequency must:

(i) Submit a request for a Class I permit modification with prior approval to the Director. The modification request must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. The modification request must also specify, in writing, that the reduced inspection frequency will apply for as long as the facility is a Performance Track member facility, and that within seven calendar days of ceasing to be a Performance Track member, the facility will revert to the non-Performance Track inspection frequency. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the request is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: deny the application; or notify the Performance Track member facility

of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its request for a Class 1 permit modification and keep a copy of the application in the facility's operating record.

(iii) Any Performance Track member facility that discontinues their membership or is terminated from the program must immediately notify the Director of their change in status. The facility must place in its operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.

* * * * *

■ 8. Section 264.16 is amended by adding new paragraph (a)(4) to read as follows:

§ 264.16 Personnel training.

(a)(1) * * *

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

* * * * *

Subpart D—Contingency Plan and Emergency Procedures

■ 9. Section 264.52 is amended by revising paragraph (b) to read as follows:

§ 264.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

* * * * *

§ 264.56 [Amended]

■ 10. Section 264.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 11. Section 264.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2) (the comment to (b)(2) remains unchanged), (b)(6), (b)(8), and (b)(10), and by adding paragraphs (b)(18) and (b)(19) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by appendix I of this part. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility.

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252–264.254, 264.276, 264.278, 264.280, 264.302–264.304, 264.309, 264.602, 264.1034(c)–264.1034(f), 264.1035, 264.1063(d)–264.1063(i), 264.1064, and 264.1082 through 264.1090 of this part. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup which must be maintained in the operating record until closure of the facility.

* * * * *

(8) All closure cost estimates under § 264.142, and for disposal facilities, all post-closure cost estimates under § 264.144 of this part. This information must be maintained in the operating record until closure of the facility.

* * * * *

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, a petition pursuant to § 268.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. This information must be maintained in the operating record until closure of the facility.

(18) Monitoring, testing or analytical data where required by § 264.347 must be maintained in the operating record for five years.

(19) Certifications as required by § 264.196(f) must be maintained in the operating record until closure of the facility.

Subpart F—Releases From Solid Waste Management Units

■ 12. Section 264.98 is amended by revising paragraphs (d), (g)(2), and (g)(3) to read as follows:

§ 264.98 Detection monitoring program.

(d) The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit conditions under paragraph (a) of this section in accordance with § 264.97(g).

(g) * * *
(2) Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix IX of this part are present, and if so, in what concentration. However, the Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents.

(3) For any appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Administrator and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or

operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial appendix IX analysis will form the basis for compliance monitoring.

■ 13. Section 264.99 is amended by revising paragraphs (f) and (g) to read as follows:

§ 264.99 Compliance monitoring program.

(f) The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g).

(g) Annually, the owner or operator must determine whether additional hazardous constituents from Appendix IX of this part, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). To accomplish this, the owner or operator must consult with the Regional Administrator to determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from Appendix IX of this part for which these samples must be analyzed. If the enhanced sampling event indicates that Appendix IX constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Regional Administrator, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

■ 14. Section 264.100 is amended by revising paragraph (g) to read as follows:

§ 264.100 Corrective action program.

(g) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the corrective action program. The owner or operator must submit these reports annually.

Subpart G—Closure and Post-Closure

■ 15. Section 264.113 is amended by revising paragraph (e)(5) to read as follows:

§ 264.113 Closure; time allowed for closure.

(e) * * *
(5) During the period of corrective action, the owner or operator shall provide annual reports to the Regional Administrator describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

■ 16. Section 264.115 is revised to read as follows:

§ 264.115 Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for closure under § 264.143(i).

■ 17. Section 264.120 is revised to read as follows:

§ 264.120 Certification of completion of post-closure care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with

the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).

Subpart H—Financial Requirements

■ 18. Section 264.143 is amended by revising paragraph (i) to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

■ 19. Section 264.145 is amended by revising paragraph (i) to read as follows:

§ 264.145 Financial assurance for post-closure care.

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Regional Administrator will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

■ 20. Section 264.147 is amended by revising paragraph (e) to read as follows:

§ 264.147 Liability requirements.

* * * * *

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

* * * * *

Subpart I—Use and Management of Containers

■ 21. Section 264.174 is revised to read as follows:

§ 264.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures identified in § 264.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. [Comment: See §§ 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.]

Subpart J—Tank Systems

■ 22. Section 264.191 is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

§ 264.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 264.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with § 270.11(d) of this chapter, that attests to the tank system's integrity by January 12, 1988.

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter, that addresses cracks, leaks, corrosion, and erosion.

* * * * *

■ 23. Section 264.192 is amended by revising paragraph (a) introductory text and paragraph (b) introductory text to read as follows:

§ 264.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain and submit to the Regional Administrator, at time of submittal of part B information, a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with § 270.11(d) of this chapter, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Regional Administrator to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified, installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tanks systems or components, must inspect the system for the presence of any of the following items:

* * * * *

■ 24. Section 264.193 is amended by:
 ■ a. Removing paragraphs (a)(2) through (a)(4);
 ■ b. Redesignating (a)(5) as (a)(2);
 ■ c. Revising paragraphs (a)(1), newly designated (a)(2), and (i)(2) to read as follows:

§ 264.193 Containment and detection of releases.

(a) * * *

(1) For all new and existing tank systems or components, prior to their being put into service.

(2) For tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

* * * * *

(h) * * *

(i) * * *

(2) For other than non-enterable underground tanks, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or develop a schedule and procedure for an assessment of the overall condition of the tank system by a qualified Professional Engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

* * * * *

■ 25. Section 264.195 is amended by:

■ a. Revising paragraph (b) (the note to paragraph (b) is unchanged);

■ b. Redesignating existing paragraphs (c) and (d), as paragraphs (g) and (h), respectively;

■ c. Adding new paragraphs (c) through (f), to read as follows:

§ 264.195 Inspections.

* * * * *

(b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

* * * * *

(c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day:

(1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

(2) The construction materials and the area immediately surrounding the

externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).

(f) Ancillary equipment that is not provided with secondary containment, as described in § 264.193(f)(1) through (4), must be inspected at least once each operating day.

* * * * *

■ 26. Section 264.196 is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(f) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.

* * * * *

Subpart L—Waste Piles

■ 27. Section 264.251 is amended by revising the introductory text to paragraph (c) to read as follows:

§ 264.251 Design and operating requirements.

* * * * *

(c) The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.

* * * * *

Subpart M—Land Treatment

■ 28. Section 264.280 is amended by revising paragraph (b) to read as follows:

§ 264.280 Closure and post-closure care.

* * * * *

(b) For the purpose of complying with § 264.115 of this chapter, when closure is completed the owner or operator may submit to the Regional Administrator certification by an independent, qualified soil scientist, in lieu of a qualified Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

* * * * *

Subpart N—Landfills

■ 29. Section 264.314 is amended by:

■ a. Removing paragraph (a);

■ b. Redesignating paragraphs (b) through (f) as paragraphs (a) through (e); and,

■ c. Revising newly designated paragraphs (a) and newly designated paragraph (e) introductory text to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(e) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:

* * * * *

Subpart O—Incinerators

■ 30. Section 264.343 is amended by revising paragraph (a)(2) to read as follows:

§ 264.343 Performance standards.

* * * * *

(a)(1) * * *

(2) An incinerator burning hazardous wastes FO20, FO21, FO22, FO23, FO26,

or FO27 must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated (under § 264.342) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in § 264.343(a)(1).

* * * * *

■ 31. Section 264.347 is amended by revising paragraph (d) to read as follows:

§ 264.347 Monitoring and Inspections.

* * * * *

(d) This monitoring and inspection data must be recorded and the records must be placed in the operating record required by § 264.73 of this part and maintained in the operating record for five years.

Subpart S—Special Provisions for Cleanup

■ 32. Section 264.554 is amended by revising paragraph (c)(2) to read as follows:

§ 264.554 Staging piles.

* * * * *

(c) * * *

(2) Certification by a qualified Professional Engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

* * * * *

Subpart W—Drip Pads

■ 33. Section 264.571 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 264.571 Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 264.570 of this subpart, the owner or operator must evaluate the drip pad and determine whether it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.573(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed,

updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 264.573 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.573, except the standards for liners and leak detection systems, specified in § 264.573(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b) and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 264.573. The plan must be reviewed and certified by a qualified Professional Engineer.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Regional Administrator or state Director, the as-built drawings for the drip pad together with a certification by a qualified Professional Engineer attesting that the drip pad conforms to the drawings.

* * * * *

■ 34. Section 264.573 is amended by revising paragraphs (a)(4)(ii) and (g) to read as follows:

§ 264.573 Design and operating requirements.

(a) * * *

(4) * * *

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from a qualified Professional Engineer certifying that the drip pad design meets the requirements of this section.

* * * * *

■ 35. Section 264.574 is amended by revising paragraph (a) to read as follows:

§ 264.574 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements in § 264.573 of this subpart by a qualified Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

§ 264.1061 [Amended]

■ 36. Section 264.1061 is amended by:

■ a. Removing paragraphs (b)(1) and (d); and,

■ b. Redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

§ 264.1062 [Amended]

■ 37. Section 264.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

Subpart DD—Containment Buildings

■ 38. Section 264.1100 is amended by revising the introductory text to read as follows:

§ 264.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

■ 39. Section 264.1101 is amended by revising paragraphs (c)(2) and (c)(4) to read as follows:

§ 264.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

* * * * *

(4) Inspect and record in the facility's operating record, at least once every

seven days, except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).

* * * * *

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

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

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart B—General Facility Standards

■ 41. Section 265.15 is amended by revising paragraph (b)(4) and adding paragraph (b)(5) to read as follows:

§ 265.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058, and 265.1084 through 265.1090, where applicable.

(5) Performance Track member facilities that choose to reduce inspection frequencies must:

(i) Submit an application to the Director. The application must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the

proposed frequency of inspections. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the application is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) Deny the application; or (2) notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility's operating record.

(iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in its operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.

* * * * *

■ 42. Section 265.16 is amended by adding new paragraph (a)(4) to read as follows:

§ 265.16 Personnel training.

(a) * * *

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

* * * * *

Subpart D—Contingency Plans and Emergency Procedures

■ 43. Section 265.52 is amended by revising paragraph (b) to read as follows:

§ 265.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with Part 112 of this chapter, or Part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or

operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

* * * * *

§ 265.56 [Amended]

■ 44. Section 265.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 45. Section 265.73 is amended by revising the introductory text to paragraph (b), (b)(1), (b)(2) (the comment to paragraph (b)(2) is unchanged), (b)(6) (the comment to paragraph (b)(6) is unchanged), (b)(7), and (b)(8) and adding a new (b)(15) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted below:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I to part 265. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and by §§ 265.19, 265.94, 265.191, 265.193, 265.195, 265.224, 265.226, 265.255, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302, 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090. Maintain in