



Interoffice Communication

To Distribution
From Mary Ann Chance
Date December 11, 1980
Subject RCRA Federal Registers

The attached is for your information:

1. "EPA Environmental Information"

This publication is a summary of all amendments and interpretations that have been published by EPA since the May 19, 1980 Final Regulations and is inclusive of Nov. 12, 1980.

Several additional publications have been issued since that time. They include the Nov. 17, 1980 F.R. which referred to Wastewater Treatment Tanks and Neutralization Tanks (mailed to you Nov. 21, 1980). The following have been issued since that time and are attached:

2. Nov. 19, 1980 F.R. 76618 - 76636

"Identification and Listing of Hazardous Waste" - Interim final.

This amends the regulations to exclude: a) solid waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore and, b) cement kiln dust wastes.

3. Nov. 19, 1980

"Hazardous Waste Management System: Identification and Listing of Hazardous Waste Standards for Generators of Hazardous Waste" - Interim final rules.

This amendment clarified the operation of the special requirements for hazardous waste generated by small quantity generators. Part 262 of the regulations has also been amended to ensure that these generators determine whether their wastes are hazardous.

4. Nov. 19, 1980

"Hazardous Waste Management System: Standards Applicable to Generators of Hazardous Waste" - Interim final rule.

This amendment eliminates the distinction between accumulation for on-site and off-site treatment, storage or disposal, provided that, within 90 days, the waste is sent to a hazardous waste management facility that is either permitted or in interim status.

5. Nov. 19, 1980
"Hazardous Waste Management System" - Interim final rule.
EPA makes clear that the requirements for treatment and storage are not applicable to actions taken to immediately contain and treat spills of hazardous wastes and materials which, when spilled, become hazardous waste. This action also adds a definition of spill.
6. Nov. 19, 1980
"Hazardous Waste Management System: General and EPA Administered Permit Programs: The Hazardous Waste Permit Program" - Interim final rule.
EPA is amending its hazardous waste permit regulations to clarify the circumstances under which hazardous waste management facilities may qualify for interim status.
7. Nov. 25, 1980 F.R. 78524 - 78529
"Hazardous Waste Management System: General Hazardous Waste Management System; Identification and Listing of Hazardous Waste" - Final amendment and interim final amendments.
This new section and the change to 261.33(c) clarify the situations in which residues of hazardous waste that are contained in drums, barrels, tank trucks or other types of containers must be managed as hazardous wastes.
8. Nov. 25, 1980 F.R. 78530 - 78532
"Hazardous Waste Management System; Identification and Listing of Hazardous Waste" - Interim final amendment.
Refers to arsenical-treated wood or wood products.
9. Nov. 25, 1980 F.R. 78532 - 78544
"Hazardous Waste Management System: Identification and Listing of Hazardous Waste" - Final rule.
EPA is finalizing its lists of commercial chemical products, off-specification products, and intermediates that, when disposed of, are considered to be hazardous wastes.
10. Nov. 25, 1980 F.R. 78550 - 78554
"Hazardous Waste Management System; Identification and Listing of Hazardous Waste"
EPA is temporarily excluding solid wastes generated at several particular generating facilities from hazardous waste status.

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11. Dec. 4, 1980 F.R. 80286
"Hazardous Waste Management System; Identification and Listing of Hazardous Waste" - Interim Final Amendment.
This amendment is to provide that a hazardous waste that is generated in a product or raw material pipeline is not subject to regulation under RCRA until it is removed from the pipeline in which it was generated, unless it remains in the pipeline for more than 90 days after the pipeline ceases to be operated for the purpose of transporting product or raw materials. The purpose of this amendment is to clarify that such product or raw material pipelines are not treatment or storage facilities under Section 3004 of RCRA.
12. Dec. 5, 1980 F.R. 80561
"Hazardous Waste Management System; Availability of Information: - Notice of Availability.
EPA is making available to the public a draft document entitled "Used Oil Burned As A Fuel." The information in this document will be used to support the Agency's forthcoming regulations on used oil disposal and recycling pursuant to Sections 3004 and 3012 of the RCRA.

Please let me know if you would like either of these two related F.R. notices:

1. Nov. 24, 1980 F.R. 77514 - 77516
"Proposed Ground Water Protection" - Notice.
EPA is proposing this strategy in the context of two compelling realities: The need to begin a preventive program to protect the quality of the Nation's ground water in the future and to manage the growing number of instances of significant contamination currently being discovered.
2. Nov. 11, 1980 F.R. 74640 - 74670 Dept. of Transportation
"Identification Numbers, Hazardous Wastes, Hazardous Substances, International Descriptions, Improved Descriptions, Forbidden Materials, and Organic Peroxides"
The purpose of this final rule is to dispose of petitions for reconsideration of the final rules published in the May 22, 1980, Federal Register (45 FR 34560) and to make a number of corrections and clarifications to those rules regarding the following subjects:

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1. A numerical identification system,
2. Transportation of hazardous wastes,
3. Identification of, and discharge notifications for, hazardous substances,
4. Forbidden Materials,
5. Proper shipping names for organic peroxides, and
6. Technical names of certain hazardous components of materials covered by n.o.s. entries.

Mary Ann
Mary Ann Chance
Environmental Administrator
Environmental Conservation

CCR 000040729

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Interoffice Communication

To Note to file
From Mary Ann Chance
Date December 8, 1980
Subject RCRA Hazardous Waste Clarification

I talked with Charles Barnes of Region VI on December 5 and 8, 1980 in regard to some questions posed on clarifications of the RCRA regulations. The subjects were:

1. A Hazardous Waste Annual Report (F.R. page 33229 - May 19, 1980) will be due March 1, 1980 for the time Nov. 19, 1980 through Dec. 31, 1980. (Part 265.75 - F.R. page 33239)
2. According to Charles Barnes, if a state has interim authorization, the state will be designated to accept Annual reports and these will not have to be submitted to the Regional Administrator.
3. Notice in deed to property (F.R. Pg. 33243 - Part 265.120) The regulations require that a notice be placed in the deed of property on which any disposal facility is located. Treatment or storage facilities are not included in this requirement; only disposal facilities. The regulations are not retroactive so a notice is not required for disposal sites which were closed before Nov. 19, 1980; but if Conoco had knowledge of a disposal site on the property which was later sold and the site was unknowingly disturbed causing some damage or contamination, Conoco could have liability for their "prior knowledge." Bill Casserly, Conoco Right of Way & Claims, Houston is our contact for assistance in deed changes.

Mary Ann Chance
Mary Ann Chance

cc: F.R. Distribution

CCR 000040731



Environmental Information

EDWARD F. LEE
(214) 767-2630

NOVEMBER 24, 1980

Regulations governing the Environmental Protection Agency's hazardous waste management program published last May--part of the Resource Conservation and Recovery Act of 1976--have received a number of amendments and interpretations.

Changes in the RCRA regulations include:

- 1) July 16 - 40 CFR 261: Hazardous Waste Management System; Identification and Listing of Hazardous Waste.

EPA amended Subpart D of Part 261 to add 18 wastes to the May 19 list of hazardous wastes. Appendices VII-VIII were also amended to include the toxic constituents for these wastes. EPA proposed the addition of seven wastes from specific sources to the hazardous waste list (261.32).

- 2) Aug. 19 - 40 CFR Parts 122-124 and 260-265: Hazardous Waste Management System; Intent to Issue Amendments to Interpretations of and Answers to Questions on Final Regulations.

EPA intends to issue Regulatory Interpretation Memoranda (RIMs) to explain how the regulations will apply in particular situations. Each RIM will be published in the Federal Register and will be assigned a three part number identifying the CFR part it interprets, the calendar year in which it is issued and the sequential order in which it is issued.

- 3) Oct. 8 - 40 CFR 264: Standards Applicable to Owners/Operators of Hazardous Waste Treatment Storage and Disposal Facilities.

This notice sets forth a broad outline of EPA's intended approach for controlling groundwater contamination by hazardous waste from land disposal facilities.

- 4) Oct. 14 - Hazardous Waste Management System, Notice of Recent Congressional Action.

- a. Used Oil Recycling Act of 1980 (S-2412) (Congressional Record Sept. 30, 1980). Highlights of this Act are (1) used oil must no longer be labeled as such; (2) the EPA Administrator must determine within 90 days whether used oil is a hazardous waste; (3) regulations on standards for recycled oil must be published within one year; (4) incentives are provided for oil recycling programs.

(more)

CCR 000040732

b. Solid Waste Disposal Act Amendments (S-1156)
(Congressional Record Oct. 1, 1980).

Major amendments include:

- (1) The date for facilities to be "in existence" is changed from Oct. 21, 1976 to Nov. 19, 1980.
 - (2) Oil and gas exclusion is extended for 24 months, during which time EPA will conduct a study and decide which fluids will be regulated.
 - (3) Similar studies will be conducted on coal and other fossil fuel wastes, phosphate rock, uranium mining overburden and cement kiln dust.
 - (4) Funding is provided for State programs on inactive hazardous waste inventories.
 - (5) EPA enforcement ability and information gathering ability is strengthened. Administrator may issue immediate compliance orders and substantial civil and criminal penalties have been provided.
- 5) Oct. 15 - 40 CFR 261: Identification and Listing of Hazardous Waste; Rulemaking Petition and Request for Comments.

EPA will be accepting comments until Dec. 1 on the National Solid Waste Management Association's petition to request that EPA amend the small quantity generator exclusion to require labeling, manifesting, reporting and record-keeping for all wastes.

- 6) Oct. 30 - 40 CFR 256: Guidelines for Development and Implementation of State Solid Waste Management Plans.

The proposed modifications to EPA guidelines for State solid waste management plans would expand public participation in the planning process and provide for expedited approval of portions of State plans dealing with classification and compliance schedules for open dumps.

40 CFR 260 and 261: Hazardous Waste Management System; General and Identification and Listing of Hazardous Waste.

This regulation amends 40 CFR 261.4 to provide that hazardous waste generated in a product or raw material storage tank, transport vehicle or vessel or in a manufacturing process unit is not subject to regulation until it is removed from the unit. 40 CFR 260.10 is also amended to modify the definition of "generator" to cover persons who remove hazardous waste generated in the process mentioned in 261.4.

40 CFR 261: Hazardous Waste Management System; Identification and Listing of Hazardous Wastes.

EPA is proposing to amend the characteristic of Extraction Procedure (EP) toxicity to apply to hexavalent chromium instead of total chromium. Wastes listed solely due to the presence of chromium would qualify for a temporary exclusion provided:

- (a) The waste contains trivalent chromium exclusively (or nearly so);

- (b) The waste is generated from an industrial process using trivalent chromium exclusively (or nearly so);
- (c) The waste is typically managed in non-oxidizing environments.

As a result, wastes from the leather tanning industry and the titanium dioxide production industry would be removed from the list of regulated hazardous waste. Appendix II is amended to give sole reference to "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."

40 CFR 265: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities.

This amendment allows owners and operators of all hazardous waste facilities to have up to six months after the effective date of the regulations to prepare a written closure plan, post-closure plan and cost estimates for closure and post-closure.

The amendments published in the Oct. 30 Federal Register are the first four technical amendments (TARs) to the RCRA hazardous waste regulations. A series of TARs will be published in the Federal Register to better define and control the hazardous wastes defined under RCRA.

- 7) Nov. 3 - 40 CFR 257: Criteria for Classification of Solid Waste Disposal Facilities and Practices.

This proposed rule change modifies and clarifies criteria for groundwater, surface water and air protection. The modifications also clarify the exclusion for mining overburden returned to the mine site.

- 8) Nov. 10 - 40 CFR: Consolidated Permit Regulations and Hazardous Waste Management System.

EPA issued RIM-122-80-1 on clarification of the requirement for both owner and operator signatures on RCRA permit applications. For the purpose of this regulation (40 CFR 122.4b) EPA interprets "owner" so as to exclude those who hold the legal title for the purpose of providing security for financing and do not exercise any effective control of the hazardous waste facility.

- 9) Nov. 12 - 40 CFR 261: Hazardous Waste Management System; Identification and Listing of Hazardous Waste.

EPA today finalized the listings of hazardous wastes from 261.31 (non-specific sources) and 261.32 (specific sources) which appeared on May 19. Among other actions, four wastes were deleted and final action was deferred on five wastes.

Appendices VII and VIII to part 261 were also finalized.

EPA proposes to amend the listings in subpart D of two hazardous wastes (K048 and K051) generated by the petroleum refining industry to include all sludges from primary and secondary oil/solids/water separation.

(more)

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Copies of these Federal Register notices may be obtained by writing Ed Cox, U.S. EPA-Office of Solid Waste, 26 West St. Clair Street, Cincinnati, Oh. 45268 or by calling 513/684-5362. Copies of the Federal Register are also available in most local libraries.

EPA has established a RCRA hotline with a 24-hour toll-free number for anyone who has questions on hazardous waste regulations. The number is 1-800-424-9346.

For additional information contact Region 6, Solid Waste Branch, 214/767-8941.

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Environmental Protection
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Environmental Information

EDWARD F. LEE
(214) 767-2630

NOVEMBER 24, 1980

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(more)

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Environmental Protection
Agency

Region 6
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CCR 000040739

federal register

**Wednesday
November 19, 1980**

Part III

Environmental Protection Agency

**Hazardous Waste Management System:
Mining and Cement Kiln Wastes
Exemptions; Small Quantity Generator
Standards; Generator Waste
Accumulation Amendment; Hazardous
Waste Spill Response Exemption, and
Clarification of Interim Status
Requirements**

EPA/RCRA

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 261

(SWH-FRL 1675-1)

Identification and Listing of Hazardous
WasteAGENCY: Environmental Protection
Agency.ACTION: Interim final amendment to rule
with request for comments.

SUMMARY: This regulation amends the hazardous waste regulations (40 CFR § 261.4(b)) to exclude from regulation under Subtitle C of the Resource Conservation and Recovery Act (1) solid waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore and (2) cement kiln dust wastes. This action is being taken to bring the regulation into conformance with Section 7 of the recently enacted Solid Waste Disposal Act Amendments of 1980. The Agency, for the time being, is interpreting the scope of these exclusions broadly but is unsure that this interpretation is consistent with the intent of the Congress. Therefore, over the next 90 days, it intends to carefully examine the legislative history of the statutory amendment and consider the public comments being solicited by this action. Based on this review, the Agency, in subsequent rulemaking action, may further narrow the exclusion being promulgated today.

DATE: Effective Date: November 19, 1980.

Comment Date: This amendment is promulgated as an interim final rule. The Agency will accept comments on it until January 19, 1981.

ADDRESSES: Comments on the amendment should be sent to Docket Clerk (Docket No. 3001), Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact Alfred W. Lindsey, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-9185. For information on implementation, contact:

Region I, Dennis Huebner, Chief, Radiation, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5777

Region II, Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0504/5

Region III, Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets,

Philadelphia, Pennsylvania 19106, (215) 597-0980

Region IV, James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 881-3016

Region V, Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148

Region VI, R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 787-2645

Region VII, Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307

Region VIII, Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221

Region IX, Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556-4806

Region X, Kenneth D. Feigner, Chief, Waste Management Branch, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1260

SUPPLEMENTARY INFORMATION:

I. Reason and Basis for Today's
Amendments

On May 19, 1980, EPA promulgated regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA). See 45 FR 33066-33588. These regulations define solid wastes and hazardous wastes and establish requirements applicable to generators, transporters, treaters, storers and disposers of hazardous wastes. These regulations also require owners and operators of hazardous waste treatment, storage and disposal facilities to obtain RCRA permits.

The definition of solid waste is provided in § 261.2 of these regulations. The definition of hazardous waste is provided in § 261.3 of these regulations. Both definitions are sufficiently broad to include many solid wastes generated in the extraction, beneficiation and processing of ores and minerals, exclusive of mining overburden returned to the mine site (see § 261.4(b)(3)). Specifically, eight mining and mineral processing wastes (EPA hazardous waste Nos. FO13-FO15 and KO64-KO68) were listed as hazardous wastes in §§ 261.31 and 261.32 of the May 19 regulations (see 45 FR 33123-33124). In addition, other mining and mineral processing wastes may be hazardous wastes because they exhibit one or more of the characteristics of hazardous wastes in Subpart C of Part 261. By virtue of these definitions, a number of mining and mineral processing wastes will be subject to the regulations on November 19, 1980, the effective date of the regulations.

Additionally, some cement kiln dust waste could be hazardous waste under the regulations, if it exhibits any of the characteristics of hazardous waste in Subpart C of Part 261. Thus, some cement kiln dust waste may be subject to the regulations on and after November 19, 1980.

In Section 7 of the recently enacted Solid Waste Disposal Act Amendments of 1980 (P.L. 94-482, October 21, 1980), the Congress amended Section 3001 of RCRA to prohibit EPA from regulating certain wastes under Subtitle C of RCRA until after completion of certain studies and certain rulemaking. Among these wastes are (1) "solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore" and (2) "cement kiln dust waste." Accordingly EPA is today amending its regulations, at § 261.4, to incorporate this statutory change.

Several trade associations, representing the mining and cement industries, have asked EPA to amend its regulations by November 19, 1980, the effective date of these regulations, to incorporate the 1980 amendments concerning these wastes. In addition these associations have sought a clarification of the scope of the exclusion, particularly regarding the types of mining operations that are excluded. The statutory exclusion of mining wastes in Section 3001(b)(3) is limited to "solid waste from the extraction, beneficiation and processing of ores and minerals." One mining trade association has argued that this exclusion covers wastes from the exploration, mining, milling, smelting and refining of ores and minerals (including coal.)

In the interest of providing the mining and cement industries clear guidance on whether they are subject to the regulations, EPA is amending the regulations before the November 19 date. At the same time EPA questions whether the Section 3001(b)(3) was to be interpreted as broadly as the trade associations suggest. To resolve these questions, the Agency will have to examine carefully the legislative history and consult with the mining and cement industries and the public. The Agency could not accomplish this by November 19, 1980, given the extremely large workload with which it is burdened in developing the Phase II regulations, in responding to other requests for regulatory amendments and interpretations, and in responding to petitions for judicial review of the regulations.

Consequently, the Agency has decided to provide an immediate but temporary accommodation of the requests on this matter by promulgating today interim final amendments to § 261.4(b) which provide the requested exclusion using the language of the statutory amendments. Until the Agency takes further rulemaking action on this matter, it will interpret the language of today's amendments, with respect to the mining and mineral processing waste exclusion, to include solid waste from the exploration, mining, milling, smelting and refining of ores and minerals.

This exclusion does not, however, apply to solid wastes, such as spent solvents, pesticide wastes, and discarded commercial chemical products, that are not uniquely associated with these mining and allied processing operations, or cement kiln operations. Therefore, should either industry generate any of these non-indigenous wastes and the waste is identified or listed as hazardous under Part 261 of the regulations, the waste is hazardous and must be managed in conformance with the Subtitle C regulations.

II. Intended Reconsideration of Today's Amendments

The Agency fully intends to consider the appropriate scope of the statutory exclusion and may well take rulemaking action to lessen the scope of the exclusion being promulgated today. To aid in this consideration, the Agency is soliciting public comments on this matter. In particular EPA questions whether Congress intended to exclude (1) wastes generated in the smelting, refining and other processing of ores and minerals that are further removed from the mining and beneficiation of such ores and minerals, (2) wastes generated during exploration for mineral deposits and (3) wastewater treatment and air emission control sludges generated by the mining and mineral processing industry. EPA specifically seeks comment on whether such wastes should be part of the exclusion. EPA also seeks comment on how it might distinguish between excluded and non-excluded solid wastes.

If EPA narrows the scope of the exclusion being promulgated today in future rulemaking, those who generate, transport, store, treat or dispose of wastes affected by such a change will have six months to prepare for compliance with the regulations. This six month delay in the effective date is provided under authority of Section 3010(b) of RCRA.

In addition to the consideration of the scope of the exclusion discussed above,

the Agency will be considering regulatory amendments to implement other provisions of Section 3001(b)(3). Section 3001(b)(3)(B) recognizes EPA authority to issue regulations under Section 2002 of RCRA to place requirements on owners and operators of disposal sites for excluded wastes. These requirements concern identification and recording of information on the location of disposal sites as well as on the composition of the wastes that are disposed. EPA also invites public comment on how it should formulate such requirements.

III. Effect of Today's Amendments

Today's amendments relieve persons who generate or manage hazardous wastes produced in, and unique to, the exploration, mining, milling, smelting or refining of ores or minerals and persons who generate or manage a cement kiln dust waste from having to comply with EPA's regulations under Subtitle C of RCRA with respect to these wastes. Owners and operators of existing treatment, storage and disposal facilities do not have to submit a Part A, RCRA permit application by November 19, 1980, or comply with the interim status standards of Part 265 after November 19, 1980, with respect to such wastes. Also, owners and operators of new facilities for the treatment, storage or disposal of the subject wastes will not have to apply for and obtain a RCRA permit before constructing or operating such facilities.

Today's action does not relieve persons who generate or manage those wastes herein discussed from compliance with other Federal and State regulations including State regulations designed to implement Subtitle D of RCRA and State regulations being implemented in lieu of the Federal Subtitle C regulations where the State has interim or full authorization under Section 3006 of RCRA.

IV. Relationship to Final Listing of Certain Hazardous Waste in §§ 261.31 and 261.32

On November 12, 1980, in a separate rulemaking action (see 45 FR 74884), the Agency has finalized the list of most of the hazardous wastes listed in §§ 261.31 and 261.32. Included in this action was finalization of seven of the mining and mineral processing wastes mentioned above (EPA hazardous waste nos. F014-15 and K064-68). One of the wastes previously mentioned (F013) was deleted from the list of hazardous waste (§ 261.31) in that separate action. Because of the Agency's uncertainty with respect to the scope of the statutory amendments, as discussed

above, it has gone ahead with the finalization of the aforementioned listed wastes. Notwithstanding, the effect of today's action is to suspend those final listings of hazardous wastes, unless and until the Agency reduces the scope of today's exclusion in subsequent rulemaking action.

V. Coal Mining Waste

The Solid Waste Disposal Act Amendments of 1980 also included special provisions (Sections 1006(c) and 3005(f)) designed to coordinate regulation of coal mining waste with the requirements of the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 *et seq.* EPA believes that these provisions present problems of legal interpretation which cannot be resolved by November 19, 1980. The Agency may seek public comment on its interpretation of those provisions in later rulemaking actions. This interim final rule does not attempt to interpret the scope of Sections 1006(c) and 3005(f). However, since coal is arguably a "mineral or ore" under Section 3001(b)(3), wastes from the extraction, beneficiation and processing of coal are excluded from RCRA Subtitle C regulation in today's amendment to § 261.4(b). Until EPA has had an opportunity to analyze the intended scope of the exclusion, the terms "extraction, beneficiation and processing" will be interpreted broadly to include coal exploration, mining, cleaning, classification, and other processing activities. As with other elements of this exclusion, EPA will be examining this exclusion, particularly the exclusions for classification, and other processing activities, in more detail later and may decide to narrow its scope.

VI. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. The amendments promulgated today, however, serve to put in regulatory form what is already stated in statute. To establish a deferred effective date would only serve to confuse the regulated community. Consequently, the Agency is establishing an immediate effective date for this amendment.

VII. Request for Comments

The Agency invites comments on these amendments and on the issues discussed in this preamble and,

therefore, is providing a 60-day comment period.

Dated: November 14, 1980.

Douglas M. Costle,
Administrator

Title 40 of the Code of Federal Regulations is amended by adding the following paragraphs to § 261.4(b):
§ 261.4 (Amended)

(b) * * *

(6) Solid waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(7) Cement kiln dust waste.

These amendments under the authority of Sections 1006, 2002(a) and 3001 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a) and 6921.

[FR Doc. 80-36129 Filed 11-18-80; 8:45 am]

BILLING CODE 6560-30-M

40 CFR Parts 261 and 262

[SWH-FRL 1675-3]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste Standards for Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Interim final rules and request for comments.

SUMMARY: In regulations promulgated in May, 1980, establishing a federal program for the management of hazardous wastes, EPA excluded from full regulation persons handling hazardous wastes generated in small quantities (40 CFR 261.5, 45 FR 33066, 33120 (May 19, 1980)). This amendment clarifies the operation of the special requirements for hazardous waste generated by small quantity generators. Part 262 of the regulations has also been amended to ensure that these generators determine whether their wastes are hazardous.

DATE: Effective Date: November 19, 1980.

Comment Date: EPA will accept public comments on this regulation until January 19, 1981.

ADDRESSES: Comments on this regulation should be sent to the Docket Clerk [Docket Number 3001], Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The public docket for this regulation is located in Room 2711, U.S.

Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. and is available for viewing from 9 a.m. to 4 p.m. Monday through Friday, excluding holidays. Among other items, the docket contains the background document for this regulation which has been revised to accommodate these amendments.

FOR FURTHER INFORMATION CONTACT:

Robert Holloway, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9200.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. § 6901 *et seq.*, EPA recently promulgated regulations establishing a comprehensive regulatory program for the management and control of hazardous wastes (45 FR 33066 (May 13, 1980)). The regulations, among other things, identify the characteristics of hazardous wastes, list particular wastes as hazardous, and establish standards for generators and transporters of hazardous waste and owners and operators of hazardous waste management facilities.

The regulations also define special requirements for hazardous waste generated by generators who produce less than 1,000 kilograms of hazardous waste during a calendar month. (See 40 CFR 261.5, 45 FR 33120). Hazardous waste generated by a small quantity generator is generally excluded from full regulation provided the generator stores, treats, or disposes of his hazardous waste in facilities specified as acceptable or ensures that his hazardous waste is delivered to such facilities. However, if a small quantity generator generates or accumulates acutely hazardous waste in quantities greater than specified, or if he accumulates more than a total of 1,000 kilograms of hazardous waste at any time, all quantities of hazardous wastes for which an exclusion level is exceeded are fully regulated.

Since the publication of the regulation, members of the regulated community have raised a number of questions concerning the operation of the small quantity exclusion. EPA has been persuaded that, in certain respects, the regulation is ambiguous and does not clearly address certain situations. In addition, the regulation contains certain technical errors which would cause the exclusion to operate in a manner not intended by the Agency or contrary to

the manner explained in the preamble to the regulation and the supporting materials. This amendment to the regulation is intended to clarify the original regulation and to correct the errors contained in it.

The revisions to the small quantity generator exclusion principally concern five aspects of the regulation: the determination of who is a small quantity generator; the requirements applicable to hazardous waste accumulated on-site; the requirements applicable to acutely hazardous wastes; the conditions applicable to wastes excluded from full regulation; and the requirements applicable to mixtures. The changes to the regulation are described in this preamble. The underlying rationale and basis for § 261.5 remain unchanged and are set forth in the preamble to the May regulation. (See 45 FR at 33102-33105.)

The background document supporting the requirements for small quantity generators has been revised to explain in greater detail the operation of § 261.5. In addition to describing the changes made by today's amendments, the background document provides guidance on the operation of regulations applicable to the small quantity generator.

It should be noted that the Agency has received a petition from the National Solid Waste Management Association ("NSWMA") which requests the Agency to make substantive revisions to § 261.5. EPA has noticed and requested comments on the petition. (45 FR 68409 (October 15, 1980).) The amendment to § 261.5 published today does not constitute the Agency's response to the NSWMA petition. EPA's action with regard to that petition will be the subject to further notice and/or rulemaking.

II. Amendments to the Regulation

A. Determination of Small Quantity Generator Status.

Section 261.5(a) of the May regulation set forth the general test for determining who may qualify as a small quantity generator:

* * * if a person generates, in a calendar month, a total of less than 1,000 kilograms of hazardous wastes, those wastes are not subject to regulation * * *

Since publication of the regulation, persons have raised two questions basic to the operation of this section: (a) should the section be keyed to generators rather than persons; and (b) what wastes should be counted in determining the amount of waste generated in a calendar month? The regulation has been revised to resolve both of these questions.

Although it was EPA's intent to key the exclusion levels established in § 261.5 to individual generation sites, the May 19, 1980 regulation refers to "persons" rather than "generators". As these terms are defined in § 260.10 of this Chapter, a corporation (i.e., a person) may comprise numerous facilities that generate hazardous waste, (i.e., generators). Read literally, therefore, § 261.5 makes the Subtitle C regulations and the notification requirements of Section 3010 of RCRA fully applicable to a company which generates, in the aggregate, more than the quantity exclusion level but each of whose facilities generates less than that amount. The revised regulation replaces the prior reference to "persons" with "generators," making it clear that individual facilities which generate hazardous waste in a quantity below the exclusion levels may qualify as small quantity generators.

To provide further clarification, the amended regulation defines a small quantity generator as a generator who generates less than 1000 kilograms of hazardous waste in a calendar month. Thus, this amended regulation makes clear that a generator may be a small quantity generator in one month and a large quantity generator in another month. The recordkeeping and reporting requirements of Part 262 apply, however, only to those periods in which the generator's hazardous waste is subject to full regulation under Part 262. Thus, for example, the annual report of a generator whose waste is subject to full regulation under Part 262 for three months in a year would cover the generator's activity only for those three months.

The second issue resolved by the amended regulation concerns which hazardous wastes should be counted in determining whether a generator generates 1000 kilograms of hazardous waste in a calendar month. One question is how the exclusion of hazardous wastes that are used, re-used, recycled or reclaimed under § 261.6 relates to the § 261.5 requirements. Another set of questions focuses on the potential double-counting of wastes by a generator who removes waste from on-site storage or whose on-site treatment of wastes generates hazardous waste.

The small quantity generator requirements have been revised by the addition of a new paragraph, § 261.5(c), to clarify which hazardous wastes that are being used, re-used, recycled or reclaimed are included in determining small generator status. Section 261.6(a) excludes from regulation wastes that are hazardous because they meet EPA

characteristics and that are beneficially used or re-used or legitimately recycled or reclaimed. Wastes that are excluded under § 261.6(a) are not included in the quantity determination of § 261.5. Section 261.6(b), however, makes sludges, listed hazardous wastes, and hazardous wastes containing listed hazardous wastes subject to full regulation during storage and transportation prior to their use, re-use, recycling or reclamation. Because these wastes are subject to Subtitle C regulation, the revised § 261.5 makes clear that these wastes must be included in the quantity determination and are subject to the other requirements of that section. Although this is a result that a careful reading of the May regulation would support, the revised § 261.5 should resolve any ambiguity on this issue.

A number of persons stated that use of the word "generates" in § 261.5 creates some uncertainty about what wastes should be counted in determining eligibility for small quantity generator status. These commenters believed that, without clarification, the rule might lead to double-counting of wastes when they are also treated or stored on-site. If, for example, a generator's manufacturing process generated 600 kilograms of hazardous waste in a month, and he placed that waste in storage, persons were uncertain whether, when that waste was removed from storage, the 600 kilograms was to be counted again in the quantity determination. Counting this quantity a second time would have the effect of substantially lowering the exclusion levels. A new paragraph, § 261.5(d), has been added to make it clear that a generator counts his hazardous waste only when he first generates it. He is not required to count the waste again when he removes it from on-site accumulation or storage¹ or when he produces a hazardous waste from the on-site treatment of his hazardous waste. The amendment is intended to avoid double-counting of wastes and therefore extends only to the on-site treatment or storage of hazardous wastes generated by the small quantity generator. If the generator receives hazardous waste from another person for treatment, the hazardous waste generated by the treatment process must be counted in the generator's quantity determination.

B. Requirements Applicable to Hazardous Waste Accumulated On-site.

¹ Under the definition of generation, removal from storage is not an act or process that produces a hazardous waste, although it is an act which may subject a waste to regulation. The Agency intends to publish regulations on this subject in the near future.

Section 261.5(b) of the May regulation states that if a generator accumulates more than 1000 kilograms of hazardous waste, these wastes are subject to full Subtitle C regulation. Acutely hazardous wastes, when accumulated, are subject to the lower exclusion limits specified in § 261.5(c) of the May 19, 1980, regulation. After the publication of the regulation, persons questioned how the regulation would apply: whether the generator would be able to use the provisions of § 262.34 allowing on-site storage without a permit for 90 days prior to shipment of the wastes to treatment, storage or disposal facilities; and, if so, how the provisions of that section apply to small quantity generators.

A new paragraph, § 261.5(f), clarifies the manner in which hazardous wastes are regulated when the accumulation limit is exceeded. Because the regulation allows indefinite and unregulated storage of wastes in quantities less than 1000 kilograms, the Agency believes it unreasonable to make this 90 day period start at the time the waste was first generated. Such a result would place generators who exceed the accumulation levels but whose accumulation began more than 90 days prior to exceeding the 1000 kilogram level immediately in violation of the regulatory requirements by storing wastes without a permit or without interim status under Section 3005(e) of RCRA. The revised § 261.5(f) states that at the time the allowable accumulation limit is exceeded, the waste becomes fully regulated and § 262.34 becomes applicable. Section 262.34 provides the generator 90 days to remove the waste from on-site storage without the necessity of having either a permit or interim status for that storage. To take advantage of § 262.34, however, the generator must satisfy the conditions of that section. This will ensure that the generator handles the waste in a satisfactory manner while providing him some time to arrange for proper treatment, storage or disposal.

The revised regulation also clarifies that once the accumulated amounts exceed 1000 kilograms, all of those wastes and those subsequently added to that accumulation are fully regulated until all the waste is sent to a hazardous waste treatment, storage or disposal facility. This rule means that those wastes remain subject to full regulation even if the quantity of wastes accumulated or stored becomes less than 1000 kilograms. In addition, those wastes remain fully regulated regardless of when the wastes are removed from storage or accumulation and regardless of whether the generator is a small

quantity generator in the month they are removed from storage. Certain persons thought that only the amount exceeding 1000 kilograms was subject to regulation. This position was not, however, supported by the language in the May regulation which stated that, if a person accumulates more than 1000 kilograms, "those accumulated wastes" would be subject to full regulation. The revised language should resolve any ambiguity that may have been created by the original language. The provisions for acutely hazardous waste apply similarly.

C. Requirements Applicable to Acutely Hazardous Waste.

Section 261.5(c) of the May regulation sets lower exclusion levels for acutely hazardous discarded chemical products, their off-specification variants, containers and inner liners that held these wastes, and residue and debris resulting from spills of these wastes. The revised regulation, § 261.5(e), clarifies two ambiguities in the regulation: (a) whether the exclusion levels apply to the total amount of acutely hazardous waste generated and (b) whether the exclusion levels apply only to small quantity generators.

With respect to the first question, the language of the regulation has been revised to state that the exclusion levels apply to the aggregate of all of the acutely hazardous wastes subject to a particular exclusion. Thus, if a generator discards in a calendar month 0.5 kilograms of one commercial chemical product listed in § 262.33(e) and 0.5 kilogram each of two other listed commercial chemical products, the total 1.5 kilograms of acutely hazardous wastes would be subject to full Subtitle C regulation. The exclusion thus applies to acutely hazardous wastes in the same manner as it applies to other hazardous wastes. The rationale for aggregating wastes to determine the amount of wastes generated applies with equal force to acutely hazardous waste as to other hazardous waste. The need for full regulatory control of these wastes is the same whether the total is comprised of one listed substance or three such substances.

Second, the regulation is revised to clarify that the lower exclusion levels for acutely hazardous waste apply only to generators who otherwise are deemed small quantity generators. The Agency believes that a generator who produces more than 1000 kilograms of hazardous waste a month and is therefore subject to full regulation should handle his acutely hazardous wastes in the same manner as his other wastes. The basis for the exclusion levels is the administrative impossibility of EPA

regulating all generators of hazardous waste. If a generator is subject to regulation on the basis of generating more than 1000 kilograms of hazardous waste, there is no reason to exclude from regulation his small quantities of those wastes which the Agency has identified as acutely hazardous. There will be no additional drain in the administrative demands placed on the Agency and the protection of human health and the environment will be significantly increased.

A final change to § 261.5 has been made with respect to acutely hazardous wastes. Section 261.5(c) of the May regulation established exclusion levels for containers and inner liners that held acutely hazardous waste. A new section, 261.7, has been added to the regulations under separate rulemaking that excludes "empty" containers from regulation. If a container or inner liner that has held acutely hazardous waste is empty, it is not subject to regulation and not subject to the exclusion levels set in § 261.5. The residues of acutely hazardous waste in nonempty containers or inner liners are subject to the exclusion levels of § 261.5(g) and the requirements of the section. The reference to containers and inner liners that appeared in § 261.5(c) of the May regulations is deleted.

D. Conditions Applicable to Waste Excluded from Full Regulation.

Section 261.5(d) of the May regulation specified the facilities in which hazardous waste excluded from full regulation could be managed. The Agency inadvertently omitted facilities that beneficially use or re-use, or legitimately recycle or reclaim waste from the list of acceptable facilities. The Congressional policy of promoting resource recovery, as implemented by the Subtitle C regulatory program in § 261.6, would not be served by denying to small quantity generators the same opportunity to use, re-use, recycle or reclaim their waste which is provided to other generators. Accordingly, the regulation is revised to allow small quantity generators to treat or dispose of their waste in such facilities. The regulation is also redesignated § 261.5(g).

Section 261.5(g) has also been revised to state that hazardous waste must be stored on-site in accordance with § 261.5(f). This latter paragraph, as described above, covers the accumulation and storage of wastes on-site. This revision merely reiterates that storing or accumulating wastes on-site under § 261.5(f) is allowed.

Today's amendments make one additional technical correction to the May regulations. Section 261.5(d)

required generators, as a condition of the exclusion from full regulation, to determine under § 262.11 whether their wastes were hazardous. Section 262.11(n), however, stated that, if a generator determined that he was subject only to § 261.5, he did not have to determine whether his waste was hazardous. The Agency has corrected this inconsistency by deleting the reference to § 261.5 in § 262.11. The generator of solid waste must determine whether his waste is hazardous before determining whether his waste is conditionally excluded under § 261.5 from full regulation. Without such a determination the generator of hazardous wastes would not know whether any of the Subtitle C requirements, including the reduced requirements, apply to the waste nor whether, if the exclusion levels were exceeded, the full requirements would apply.

E. Requirements Applicable to Mixtures.

Section 261.5(e) of the May regulation established a special mixture provision for hazardous wastes which were excluded from full regulation by § 261.5. This provision is redesignated as § 261.5(h) and has not been revised.

A new paragraph, § 261.5(i), is added to make clear that mixtures of solid waste and hazardous wastes which have exceeded an exclusion level are subject to full Subtitle C regulation. Pursuant to § 261.3(a)(3)(ii), a mixture of solid waste and hazardous wastes is a hazardous waste. Members of the regulated community have asked what exclusion level applies to the mixture; for example, whether a mixture containing an acutely hazardous waste that has exceeded an exclusion level remains subject to the lower exclusion levels applicable to that waste. This new paragraph clarifies that the lower exclusion level applies. A contrary result would encourage generators to mix acutely hazardous wastes subject to full regulation (i.e., because they are generated or accumulated in quantities greater than one kilogram) with other hazardous excluded wastes (e.g., those generated in quantities of less than 1000 kilograms a month) and thus escape the regulatory controls which the Agency has determined are essential for the safe handling and management of hazardous wastes.

III. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient

lead time to prepare to comply with major new regulatory requirements. For the amendment to § 261.5 promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be contrary to the interests of the regulated community and the public. The amended regulation is an integral part of a regulatory program that becomes effective on November 19, 1980. In addition, the principal revisions to the regulation simply clarify and make technical corrections to the regulation. The revisions also allow greater flexibility in the manner in which small quantity generators handle their hazardous waste.

The Agency believes it makes little sense to allow the small quantity generator requirements promulgated on May 19, 1980, to become effective on November 19, 1980, and then to have them substantially revised on a subsequent date by this amendment. Clarification of regulatory requirements and increasing their flexibility are not the types of regulation revision that Congress had in mind when it provided a six month delay between the promulgation and the effective date of revisions to regulations. Consequently, the Agency is setting an effective date of November 19, 1980, for the amendments to §§ 261.5 and 262.11 promulgated in this rulemaking action.

IV. Promulgation in Interim Final Form

These amendments to § 261.5 are designed principally to clarify the manner in which the regulations published in May of 1980 are to operate. EPA has received many questions on the regulation. These questions indicated that there is substantial confusion on the part of the regulated community about the exclusion of generators of small quantities of hazardous waste. Absent immediate effectuation of these clarifying amendments, EPA believes that this confusion will persist after the effective date of the Subtitle C regulations, November 19, 1980. This confusion will lead, EPA believes, to real and substantial hardship for persons subject to the reduced requirements of § 261.5. If uncertain about the rule's application or operation, many responsible generators of hazardous waste may unnecessarily comply with the full Subtitle C regulations. Immediate implementation of the amendment small quantity generator requirements is necessary in order to avoid inadvertently imposing substantial burdens on literally thousands of generators who are

uncertain whether they are excluded from full regulation under § 261.5. Given the real and substantial cost that delay might create, the Agency finds good cause to promulgate these rules without prior notice and opportunity for comment.

V. Request for Comments

The Agency invites comments on all aspects of these amendments to the regulations and on all issues discussed in this preamble. EPA is hopeful that the regulations as revised are reasonable, understandable, and workable. The Agency will be receptive to comments which would improve the regulation.

VI. Regulatory Impacts

The effect of these amendments is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. This is achieved by clarifying the operation of the regulations and increasing their flexibility. The Agency is unable to estimate these reductions.

Dated: November 14, 1980.

Douglas M. Costle,
Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 261.5 is revised to read as follows:

§ 261.5 Special requirements for hazardous waste generated by small quantity generators.

(a) A generator is a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in paragraphs (e) and (f) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 265 and Parts 122 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of paragraph (g) of this section.

(c) Hazardous waste that is beneficially used or re-used or legitimately recycled or reclaimed and that is excluded from regulation by § 261.6(a) is not included in the quantity determinations of this section, and is not subject to any requirements of this section. Hazardous waste that is subject to the special requirements of § 261.6(b) is included in the quantity determinations of this section and is subject to the requirements of this section.

(d) In determining the quantity of hazardous waste he generates, a generator need not include:

(1) His hazardous waste when it is removed from on-site storage; or

(2) Hazardous waste produced by on-site treatment of his hazardous waste.

(e) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under Parts 262 through 265 and Parts 122 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA:

(1) A total of one kilogram of a commercial chemical products and manufacturing chemical intermediates having the generic names listed in § 261.33(e), and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in § 261.33(e); or

(2) A total of 100 kilograms of any residue or contaminated soil, water or other debris resulting from the clean-up of a spill, into or on any land or water, of any commercial chemical products or manufacturing chemical intermediates having the generic names listed in § 261.33(e).

(f) A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than set forth in paragraphs (e)(1) or (e)(2) of this section, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under Parts 262 through 265 and Parts 122 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA. The time period of § 262.34 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

(g) In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this section, the generator must:

(1) Comply with § 262.11 of this chapter;

(2) If he stores his hazardous waste on-site, store it in compliance with the requirements of paragraph (f) of this section; and

(3) Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Permitted under Part 122 of this chapter;

(ii) In interim status under Parts 122 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 123 of this chapter;

(iv) Permitted, licensed or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or re-uses, or legitimately recycles or reclaims his waste; or

(B) Treats his waste prior to beneficial use or re-use, or legitimate recycling or reclamation.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous wastes identified in Subpart C.

(i) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

2. Section 262.11(a) is revised to read as follows:

§ 262.11 Hazardous waste determination.

(a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4.

These amendments are issued under the authority of Sections 1006, 2002(a) and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), and 6922.

[FR Doc. 80-36130 Filed 11-18-80; 9:45 am]
BILLING CODE 6560-30-M

40 CFR Part 262

[SWH-FRC 1675-4]

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule and request for comments.

SUMMARY: In regulations promulgated in May, 1980, establishing a federal program for the management of hazardous wastes, EPA placed requirements on generators of hazardous waste that accumulated their waste on the site of generation prior to shipment to off-site hazardous waste management facilities [40 CFR § 262.34,

45 FR 33066, 33143 (May 19, 1980)]. One of these requirements was that a generator ship all accumulated waste off-site in 90 days or less. This amendment eliminates the distinction between accumulation for on-site and off-site treatment, storage or disposal, provided that, within 90 days, the waste is sent to a hazardous waste management facility that is either permitted or in interim status. The other requirements of § 262.34 are not changed by this rule.

DATES: Effective Date: This requirement is effective on November 19, 1980.

Comment date: Comments are due January 19, 1981.

ADDRESSES: Comments should be addressed to the Docket Clerk (Docket 3002), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Rolf Hill, Office of Solid Waste, (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-9145.

SUPPLEMENTARY INFORMATION:

I. Introduction

In regulations promulgated in February and May, 1980, EPA established standards applicable to generators of hazardous waste. 40 CFR Part 262, 45 FR 12722 (February 26, 1980), 45 FR 33140 (May 19, 1980). These standards, among other things, require generators to initiate a manifest to track the movement of hazardous waste, maintain records, and provide proper containers, labels and placards for the transportation of hazardous waste. Most of these requirements apply only to generators who send their hazardous wastes off the site of generation for treatment, storage or disposal. Some of these requirements, however, apply to generators who treat, store or dispose of their wastes on the site of generation. (See 40 CFR 262.10(b)).

Recognizing that many generators would accumulate hazardous waste for a period of time prior to shipping the waste to an off-site hazardous waste management facility, EPA set special requirements in § 262.34 which, if met by the generator, would allow him to accumulate the waste on-site without having to obtain a RCRA permit for a storage facility under Part 122 of the regulations or comply with the applicable standards under Parts 264 and 265 of the regulations.

The basis and rationale for these special 90-day accumulation rules appear in the preambles to, and the background documents supporting, the

generator regulations first published in February, 1980, and then revised in May, 1980. See 45 FR 12722, 12730 (February 26, 1980) and 45 FR 33140, 33141 (May 19, 1980). By allowing short-term accumulation without a permit, the regulation reflects the congressional intent that the RCRA program not interfere with the manufacturing process. See H.R. Rep. No. 94-1491, 94th Cong. 2d Sess. 26 (Sept. 9, 1976). Generation of hazardous waste necessarily requires some accumulation of that waste prior to taking it to a hazardous waste management facility. On the basis of information received in the comment period, the Agency selected ninety days as a period that provided sufficient time for such accumulation to occur in all reasonable situations.

Holding hazardous waste for a short period, however, entails many of the same risks to human health and environment as long-term storage, and therefore the Agency imposed specific requirements for short-term accumulation. The special requirements of § 262.34 require the generator to (1) ship the wastes off-site within 90 days; (2) place the waste in containers or tanks meeting specified technical standards; (3) mark the date accumulation began on the container or tank; (4) properly label and mark the containers; and, (5) comply with the Part 265 regulations concerning preparedness and prevention, contingency plans and emergency procedures. These requirements are designed to ensure that short-term accumulation of hazardous wastes will be done in a manner that ensures protection of human health and the environment.

Since the publication of the regulations, members of the regulated community have raised two questions that are basic to the application and operation of this regulation. First, these persons have stated that the distinction between accumulation of hazardous waste prior to off-site shipment and accumulation prior to on-site treatment, storage or disposal is arbitrary and that the 90-day accumulation provision should apply to both types of accumulation. Second, these persons have stated that although the special 90-day accumulation requirements of § 262.34 may be appropriate for the more centralized areas and facilities where hazardous wastes are accumulated prior to off-site transport or ultimate on-site disposition, they are more stringent than necessary for the accumulation and very short-term storage of wastes at areas where the wastes are generated and initially

accumulated—often in small containers—prior to movement to the more centralized on-site accumulation and storage areas.

The amendment being promulgated today responds to the first of these concerns. For reasons discussed below, however, EPA believes that more information is necessary prior to ascertaining the need for amending the regulations to respond to the second concern.

II. On-site Accumulation Prior to On-site Treatment, Storage or Disposal

The effect of the current regulations is to allow one class of generators (i.e., those who ship their wastes off-site) to "accumulate" their waste for up to 90 days without having a permit or interim status and to require all other generators (i.e., those who treat, store and dispose of the wastes on-site) to obtain a RCRA permit or interim status for the same activity. The standards applicable to both classes, however, are similar. Generators who accumulate waste on-site under § 262.34 would have to store their wastes in compliance with virtually all of the technical requirements of Part 265 and also satisfy many of the general requirements of that Part, e.g., prepare contingency plans and emergency procedures. The principal difference the Agency had discerned between these two classes of generators was that the areas used for accumulation by the generator who performed such activities on-site would be included in their permit covering the other on-site treatment, storage and disposal facilities. In addition, certain provisions of the Part 265 regulations apply to the accumulation areas of generators who manage their wastes on-site; these include security, financial responsibility, closure and post-closure requirements.

EPA now believes, however, that the regulations as currently written impose substantially different requirements for generators who ship their wastes off-site as opposed to those who do not. These differences do not appear warranted. The most important of these differences concerns eligibility for interim status if short-term accumulation is considered storage for generators who treat, store or dispose of their wastes on-site. To obtain interim status a storage facility must be "in existence" on November 19, 1980. Section 3005(e), 42 U.S.C. § 6925(e) as amended by the Solid Waste Disposal Act Amendments of 1980, P.L. 96-482 (October 21, 1980). A generator who sends his wastes off-site would be able to construct a new loading dock or storage shed for short-term accumulation; a generator who does not

send his wastes off-site could not construct a new loading dock (i.e., a new storage facility) without obtaining a RCRA permit. Second, although applying for a permit for these accumulation areas may not entail significant increased burden, the terms and conditions of the permit could impose requirements beyond those required for generators who ship their wastes off-site. In addition, other differences between on-site accumulation and on-site storage may emerge as the regulations are interpreted and applied.

EPA believes that there is no basis for the distinction and accordingly has amended the requirement of § 262.34(a)(1) that accumulated wastes be shipped off-site within 90 days. The requirements of § 262.34 are designed to ensure protection of human health and the environment during short-term accumulation. The destination of the waste does not change the protection that this rule ensures. Section 262.34 requires that wastes that are accumulated on-site still must, within 90 days, go to treatment, storage or disposal facilities which are permitted or in interim status. The regulation now provides that such facilities may be on-site as well as off-site; the manner of regulation and the degree of environmental control is the same for these facilities.

The selection of a 90-day period in the original rule reflected the maximum accumulation time that the Agency thought was necessary prior to transporting wastes off-site. The generator does not wholly control the timing of the transportation because arrangements have to be made with the transporter and the hazardous waste management facility. The situation is obviously different if the generator is sending his waste to a treatment, storage or disposal facility located on the site of generation. In this situation, the generator has greater control over the handling of the waste and the timing of its shipment. The Agency solicits information on whether given this difference whether a shorter period, say 30 days, should be provided for generators who subsequently send their wastes to an on-site treatment, storage or disposal facility.

III. Application of Requirements to All Accumulation Areas

In promulgating the regulations establishing the requirements for on-site accumulation, EPA assumed that accumulation generally would occur in discrete areas in the manufacturing complex where wastes would be held prior to shipment to a treatment, storage

or disposal facility. Technical standards for tanks or containers, the preparation of contingency plans and similar requirements are appropriate for loading docks, storage buildings and sheds, and other areas in a manufacturing complex where hazardous wastes are collected and accumulated.

Members of the regulated community, however, have pointed out that, within a manufacturing complex, there may be dozens of places where hazardous wastes are collected during daily operations prior to taking a container containing hazardous waste to the loading dock or other accumulation area. These commenters have questioned the appropriateness of applying the requirements of § 262.34 to each place where hazardous wastes may be initially collected.

EPA believes, however, that the requirements of § 262.34 are appropriate for both centralized and satellite accumulation areas. The Agency, however, is soliciting information on whether, in some situations, different requirements should govern these accumulation activities.

Whether at satellite or centralized accumulation areas, the hazardous waste requires proper management in order to minimize the threat to human health and the environment. The requirements of § 262.34 are designed to provide such protection. Containers that meet DOT specifications and tanks that meet Part 265 design and operating requirements appear necessary and appropriate for the accumulation of hazardous waste regardless of whether the accumulation occurs at a centralized facility or in different places within a plant. The other requirements of § 262.34 similarly appear appropriate to all accumulation activities on the site of generation; these include marking and labeling containers; weekly inspections of containers; locating of containers holding ignitable and reactive wastes away from the property line; requirements concerning preparedness and prevention, contingency plans and emergency response and personnel training. The protection that these requirements ensure appear appropriate and necessary wherever hazardous wastes are accumulated.

The Agency recognizes that there may be certain situations in which the requirements of § 262.34 might not work well for the initial collection and accumulation of hazardous waste. For example, the Agency does not expect a company to engage in major reconstruction of a facility simply to be able to fit a DOT container beneath a hard-to-reach leaky pipe. The Agency does, however, want to ensure that all

hazardous waste, once generated, are safely and properly handled. The Agency requests comments on situations in which the requirements of § 262.34 may be inappropriate and on the manner in which EPA should handle such situations.

IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. For the amendments to § 262.34 promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be contrary to the interests of the regulated community and the public. The regulatory provision that this amendment modifies takes effect on November 19, 1980. In the absence of the immediate effectuation of this amendment, generators who accumulate wastes for on-site treatment, storage or disposal must prepare to operate these facilities as fully regulated hazardous waste storage facilities on and after November 19, 1980. This would include preparation and submission of a Part A permit application covering the accumulation area.

The Agency believes it makes little sense to allow the requirements promulgated on May 19, 1980, to become effective on November 19, 1980, and then have them substantially modified on a subsequent date, i.e., the six-month effective date for these amendments. Leasing of regulatory requirements is not the type of revision to regulations for which Congress intended a six-month delay occur between its promulgation and effective date. Consequently, the Agency is setting an effective date of November 19, 1980, for the amendment to § 262.34 promulgated in this rulemaking action.

V. Interim Final Promulgation

This regulation is being promulgated in interim final form. The reasons for taking this exceptional procedure are similar to those supporting the immediate effective date. The delay involved in initiating normal rulemaking would cause substantial hardship on generators who treat, store or dispose of their hazardous wastes on-site. During the pendency of rulemaking, these generators would not be able to construct new accumulation areas in their manufacturing facilities without

obtaining a RCRA permit. Because such areas are intimately tied to the manufacturing process itself, such a delay might in effect create a prohibition of redesign and reconstruction of these manufacturing units.

Although the Agency does not adopt this procedure lightly, the circumstances indicate that the use of interim final promulgation is appropriate. As one court has noted "[i]t is an appropriate safety valve to be used where delay would do real harm." *U.S. Steel Corp. v. EPA*, 595 F.2d 207, 214 (5th Cir., 1979). EPA believes that the effect of delaying promulgation of this amendment would cause substantial, and unnecessary, hardship on a large number of manufacturing operations. In this situation, the use of advance notice and comment procedures would be contrary to the public interest and therefore good cause exists for adopting this amendment in interim final form. See 5 U.S.C. § 553(b)(B).

VII. Request for Comments

The Agency invites comments on all aspects of this amendment to the regulation and on all the issues discussed in this preamble. The Agency has recently requested comments of one aspect of § 262.34, its applicability to product storage tanks. 45 CFR 72024 (October 30, 1980). The Agency will consider all comments received on § 262.34 prior to promulgating this rule in final form. EPA desires to formulate sound and sensible regulations concerning the proper handling of hazardous waste. The requirements of § 262.34 are an important aspect of this broader concern, and, if commenters have suggestions on ways to improve this regulation, the Agency would be receptive to their suggestions.

VIII. Regulatory Impacts

The effect of this amendment is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. This is achieved by removing accumulation areas of generators who send accumulated wastes to on-site disposal facilities from full regulation as storage facilities. The Agency is unable to estimate these cost and impact reductions because it does not have an estimate of the number of such areas that otherwise would be fully regulated. For the reasons already discussed, notwithstanding these cost and impact reductions, the Agency believes that human health and environmental protection will not be reduced by this action.

Dated: November 14, 1980.

Douglas M. Costle,
Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

§ 262.34 [Amended]

1. In § 262.34, paragraph (a)(1) is revised to read as follows.

(a) A generator may accumulate hazardous waste on-site without a permit or without having interim status, provided that:

(1) All such waste is, within 90 days, shipped off-site to a designated facility or placed in an on-site facility that is permitted under Part 122 of this Chapter, has interim status under Parts 122 of this Chapter, or is authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 123 of this Chapter.

These amendments are issued under the authority of Sections 1006, 2002(a), 3002, 3003, 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), 6922, 6923, 6924 and 6925.

[FR Doc. 80-36131 Filed 11-18-80; 8:45 am]

BILLING CODE 6560-30-M

40 CFR Parts 122, 260, 264 and 265 A
[SWH-FRL 1675-5]

Hazardous Waste Management System

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule and request for comments.

SUMMARY: In regulations promulgated in May of 1980, the Environmental Protection Agency ("EPA") established a comprehensive program for the handling and management of hazardous wastes. 45 FR 33066 (May 19, 1980). The regulations, among other things, set forth substantive requirements for the treatment and storage of hazardous wastes and require owners and operators of treatment and storage facilities to have Resource Conservation and Recovery Act (RCRA) permits or interim status pursuant to Parts 265 and 122 of the regulations. Certain activities which persons may take in response to spills of hazardous wastes or materials which, when spilled, become hazardous waste might be considered treatment (e.g., absorption, neutralization) or storage (e.g., diking, containment). In this action EPA makes clear that the requirements for treatment and storage are not applicable to actions taken to

immediately contain and treat spills of hazardous wastes and materials which, when spilled, become hazardous waste. This action also adds a definition of spill in §§ 260.10 and 122.3.

DATES: Effective date: These amendments become effective on November 19, 1980.

Comment Date: The Agency will accept comments on these amendments until January 19, 1981.

ADDRESS: Comments on these amendments should be addressed to the Docket Clerk (Docket 3004, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

For general information, contact Amy Mills, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. For information on implementation, contact:

Region I. Dennis Hueber, Chief, Radiation, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5777

Region II. Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0504/5

Region III. Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980

Region IV. James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 881-3016

Region V. Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148

Region VI. R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 787-2645

Region VII. Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 347-3307

Region VIII. Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221

Region IX. Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556-4606

Region X. Kenneth D. Feigner, Chief, Waste Management Branch, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1260

SUPPLEMENTARY INFORMATION:

I. Introduction

In May of 1980, EPA promulgated regulations implementing Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"). These regulations, among other things, identify and list hazardous wastes (Part 261), establish standards for generators and transporters of hazardous waste (Parts 262 and 263), and set standards and permit requirements for owners and operators of facilities that treat, store or dispose of hazardous waste (Parts 264 and 265 and Parts 122 and 124). 45 FR 33066 (May 19, 1980). These regulations are designed to ensure the proper handling and management of hazardous wastes from their generation through their ultimate disposition.

Because wastes may be produced, handled and disposed of in a large number of ways, the regulations necessarily are cast in broad terms. A generator is anyone whose act or process produces a hazardous waste or whose action first causes a hazardous waste to become subject to regulation. Section 260.10(a), 45 FR 72024 (October 30, 1980). This act or process may be the manufacture of goods or materials, service operations such as cleaning with chemical solvents listed in § 261.31, or the discard of commercial chemical products listed § 261.33. Storage is defined as "the holding of hazardous waste for a temporary period . . .", and treatment as "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume." Section 260.10(a).

This action concerns how the regulations apply to hazardous wastes that are created by spills of hazardous waste or materials which, when spilled, become hazardous waste. For reasons discussed below, the word "spill" is defined in the amendments published today as "the accidental spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste or material which, when spilled, becomes hazardous waste into or on any land or water." This definition obviously covers spills of those hazardous waste listed in §§ 261.31 and 261.32 and those solid wastes that exhibit any of the characteristics of hazardous wastes defined in Subpart C of Part 261. This definition also covers spills of the commercial chemical

products and manufacturing chemical intermediates listed in § 261.33 (e) and (f). The Agency interprets spills of these materials to constitute discarding of such materials (see definitions in § 261.2 (c) and (d)). These materials, when discarded, are hazardous waste (see § 261.33). In addition, other materials, when spilled, are considered solid waste because spilling constitutes discarding and may exhibit the characteristic of hazardous waste defined in Subpart C of Part 261.

Members of the regulated community have asked whether certain activities taken in immediate response to such spills constitute treatment (e.g., neutralizing the hazardous waste) or storage (e.g., containing the waste in order to prevent its spread). These questions have significant practical implications. Treatment and storage of hazardous wastes, under the regulations, must be carried out in facilities that have interim status under Section 3005(e) of RCRA and 40 CFR Part 122 or that have a storage or treatment permit from EPA or a State authorized to run a hazardous waste program under Section 3006.¹ Spills are sudden, unplanned events. In many cases, the treatment or storage necessary to respond to spills will not be covered by a RCRA permit or interim status. This is particularly true for generators who do not treat, store or dispose of hazardous waste and transporters who would have neither a permit nor interim status. It also may be true for owners and operators of treatment, storage or disposal facilities where their permit or interim status may not cover the types of treatment or storage performed in responding to a particular spill. Persons responding to the spills would be placed in the uncomfortable position of taking actions necessary to protect human health and the environment while being in violation of RCRA.²

In addition, Parts 264 and 265 set forth the manner in which persons may treat

¹ Under § 122.27 the Regional Administrator is authorized to issue emergency permits if there is an imminent and substantial endangerment to human health or the environment to allow the treatment, storage or disposal of hazardous waste for a nonpermitted facility or activities not covered by a permit. § 122.27 set forth procedures governing the issuance of emergency permits. EPA is presently developing guidance for the issuance of these permits.

² Hazardous wastes produced in small quantities are excluded from full Subtitle C regulation under § 261.5. A condition of that exclusion, however, is that wastes subject to § 261.5 must be managed in Subtitle C facilities, facilities approved by the State, or use, re-use, recycling or reclamation facilities. Thus, even for spills by small quantity generators, the same dilemma is posed for persons whose response might constitute treatment or storage.

or store hazardous wastes. With respect to chemical, physical, and biological treatment, for example, the regulations prescribe such things as general operating requirements, waste analysis and trail tests, inspections, and closure requirements. See 40 CFR 265 Subpart Q. If, for example, reagents are used to absorb or neutralize a chemical product listed in § 261.33 which has spilled in a plant, the treatment requirements specified in the regulations would technically govern the response to the spill.

This amendment is designed to allow appropriate responses to spills of hazardous wastes without being limited by the treatment and storage standards and the permit and interim status requirements of the regulations. It should be noted that EPA is developing regulations which will address in more comprehensive fashion the application of the RCRA regulations to spill response activities. That rulemaking will clarify, among other things, relationship of RCRA and other Federal statutes, particularly the Clean Water Act and the Hazardous Materials Transportation Act, which concern spill activities.

II. What These Amendments Do

The amendments published today add three new elements to the regulations published in May, 1980: they add a definition of spill; exempt immediate containment and treatment activities from the Part 264 and 265 regulations governing treatment and storage; and, amend Part 122 to indicate that such activities do not have to be covered by a RCRA permit or interim status.

The definition of "spill" is the same as the definition of "discharge" in § 260.10(a), except that the word "intentional" has been deleted from the definition of spill and the phrase "material which, when spilled, becomes hazardous waste" has been added. The exclusion from regulation provided in today's amendments is designed to allow persons to respond immediately to sudden, unplanned occurrences, i.e., accidents, which release materials or wastes into the environment. There does not appear to be any basis to extend today's action to intentional releases which might occur. Releases which occur from burst pipes and ruptured containers would be considered spills; releases which routinely occur from, for example, scheduled maintenance of machinery would not be. The Agency specifically requests comment on whether the definition of spills provides appropriate scope for the substantive amendments published today. For purposes of the RCRA portions of the consolidated permit regulations, a

corresponding definition of spill has been added to § 122.3.

The amendments to Parts 264 and 265 state that treatment and containment actions taken in immediate response to spills are not considered treatment or storage of hazardous waste. These response activities are not subject, therefore, to the detailed requirements of those parts governing treatment and storage. The amendment to § 122.21 indicates that these activities do not have to be covered by a RCRA permit.

The amendments only cover activities during the immediate response to a spill. As discussed below, once this response is accomplished, other regulatory provisions apply. Section IV of this preamble provides examples of how these amendments and the other regulatory provisions apply to spill situations. These amendments are designed to allow persons to respond immediately to spills which may pose dangers to human health and the environment. If the Agency believes that anyone is abusing this provision, it will not hesitate to bring enforcement actions, including, under appropriate circumstances, criminal prosecutions.

III. Regulations not Affected by This Amendment

The purpose of today's amendments is to allow persons to treat and contain spills without having engaged in treatment and storage activities and to recognize that spills occur at places which might otherwise not be treatment and storage facilities. These amendments do not affect whether the spilled substance, residue or debris is a hazardous waste or not; Part 261 will govern. They do not affect in any way the application of the generator and transporter requirements; Parts 262 and 263 will govern these activities. After the immediate response activities are completed, the hazardous waste is subject to all the requirements for transportation, treatment, storage, or disposal.

The regulations promulgated in May, 1980, explicitly place specific requirements for certain spills of hazardous waste—discharges occurring during transportation and releases occurring at on-site accumulation areas and in treatment, storage and disposal facilities. These regulations, described briefly below, are unaffected by the amendments published today. These amendments complement the regulations by clarifying that actions taken in response to spills and in compliance with those regulations are not subject to the treatment and storage regulations and do not have to be carried out at a treatment or storage

facility with a RCRA permit or in interim status.

Discharges of hazardous waste during transportation are subject to the provisions of Part 263 concerning immediate action, reporting, and cleanup. 40 CFR 263.30 and 263.31, 45 FR 12744 (February 26, 1980), republished at 45 FR 33152 (May 19, 1980). Discharges of hazardous materials during transportation are also subject to the reporting provisions of DOT regulations under the Hazardous Materials Transportation Act. 49 CFR 171.15, 171.16. These regulations will apply to spills during transportation and these requirements are not affected by today's amendment.

The Part 264 and 265 regulations contain extensive requirements for hazardous waste management facilities concerning preparedness and prevention, and contingency plans and emergency procedures. 40 CFR Part 265, Subparts C and D, 45 FR 33236, 33237 (May 19, 1980). To ensure proper response to explosions, fires, and other releases of hazardous waste, these provisions require owners and operators of regulated facilities to have safety equipment and systems, arrangements with relevant local authorities, a contingency plan and emergency procedures covering response activities. These regulations continue to apply to releases at hazardous waste management facilities which present dangers to human health and the environment. For example, §§ 264.56 and 265.56, concerning emergency procedures, have not been exempted. The emergency coordinator must follow the procedures set forth in those sections. Today's amendment simply means that actions taken, for example, under § 265.56(e), are not subject to the treatment and storage requirements of Part 265.

Regulations promulgated under other Federal, state or local laws may apply to spills of hazardous waste and other materials. On the Federal level, two examples are Section 311 of the Clean Water Act and the Hazardous Materials Transportation Act. Under Section 311 of the Clean Water Act, discharges of oils and hazardous substances (which may also be hazardous wastes) are subject to regulation. Hazardous materials, as regulated by DOT under the Hazardous Materials Transportation Act, include hazardous wastes. See 45 FR 3451 (May 22, 1980). The amendments published today concern only RCRA requirements and in no way affect a person's obligations or responsibilities under any other applicable Federal, state or local law.

IV. Examples of How These Amendments Operate

The following examples illustrate the manner in which the amendments published today operate and tie in with the other RCRA regulations.

1. A manufacturer spills a commercial chemical product listed in § 261.33(e) on the floor of his plant. He immediately uses a reagent to absorb or neutralize the spill, whose residue amounts to more than 100 kilograms. He places the residue in containers for subsequent transportation off-site. What regulations apply?

The manufacturer is a generator of a hazardous waste—the spilled chemical as well as the resulting residue. He is not a small quantity generator because he has generated more than 100 kilograms of § 261.33(e) residue. See 40 CFR § 261.5(e)(2). His use of the reagent is not subject to treatment regulations of Parts 264 and 265 and this use does not have to be covered by a RCRA permit or interim status. Once the immediate response is over, however, he becomes subject to the generator requirements of Part 262. These include requirements for accumulation on-site, use of EPA identification numbers prior to transporting the residue off-site, initiation of the manifest, and use of appropriate packaging, labelling, marking and placarding.³ Manufacturers who anticipate such spills may, as a precautionary measure, make necessary arrangements to comply with the Part 262 regulations in advance. And, the transportation and subsequent treatment, storage or disposal of the spill residue is subject to the requirements of Parts 263, 264, 265 and 122.

2. A tank used to accumulate hazardous waste (under the requirements of § 262.34) ruptures and the wastes spill on to the ground. Because the tank does not have a secondary containment system, the generator immediately builds an emergency dike to contain the spilled waste. He subsequently pumps the spilled waste into drums and, after

several weeks, ships those drums off-site to an incinerator.

The design, construction and operation of the emergency containment dike is not subject to the RCRA Subtitle C regulations (however, the overall response to the spill is subject to the requirements of Subparts C and D of Part 265 which apply by reference through § 262.34). The storage of the cleaned-up wastes in drums is subject to the accumulation requirements of § 262.34 if storage in the drums is for less than 90-days before off-site shipment or in a on-site. If storage in the drums exceeds 90-days, then this must be covered by a RCRA permit (an existing permit, a new permit, or an emergency permit) or be covered by interim status, and must be carried out in compliance with the applicable requirements of Parts 264 or 265. The incinerator that the drummed wastes shipped to, must have a RCRA permit or interim status.

If, as part of the immediate clean-up action, the containment soil of the diked containment area is treated (e.g., decontamination of the soil in a mobile treatment unit) or the spilled waste is treated, such activity also would not be subject to regulation. However, if such treatment extends beyond the immediate clean-up action, EPA will require an emergency RCRA permit to be obtained. If contaminated soil is left in place, this constitutes disposal and will require a RCRA permit.

3. A spill of hazardous waste material listed in § 261.33(e) occurs in transportation. What must the transporter do?

Under § 263.30(a), the transporter must take appropriate immediate action to protect human health and the environment. The spill containment or treatment action taken in immediate response is exempt from the treatment and storage requirements of Parts 264 and 265 and the transporter is not required to have a RCRA permit or interim status for such action. If he has generated hazardous waste, he must comply with Part 262 when the immediate actions are over. If he transports the spill residue from the spill site, he must comply with the transporter requirements of Part 263 and transport the residue to a facility with a RCRA permit or interim status.

If required by DOT regulations (see 49 CFR 171.15) or other federal regulations (see, e.g., 40 CFR 117.21 and 33 CFR 153.201), the transporter must notify the National Response Center. If an on-scene coordinator or other official arrives, that official may undertake response activities which are exempted by today's amendments from the RCRA

standards and permit requirements for treatment and storage. Under the present regulations, § 263.30(b), these officials may authorize the removal of the waste by transporters without EPA identification numbers and without the preparation of a manifest. The hazardous waste residue must be sent to a hazardous waste management facility with a RCRA permit or interim status. If long-term containment or treatment occurs at the spill site, the site must have a full RCRA permit, interim status, or an emergency permit.

4. A spill occurs on the site of disposal facility which is in interim status. The operator of the facility undertakes immediate containment and clean up. He subsequently disposes of the waste at his facility.

The immediate containment and clean up activities are exempted from the requirements of Part 264 and storage and treatment. The owners and operators of the facility must, however, carry out the provisions of the contingency plan under § 265.51 and follow the emergency procedures § 265.56. The disposal of the hazardous waste is subject to the disposal requirements of Part 265. If the disposal facility is unable to dispose of the spill residue, the owner or operator of the facility, if he has generated a hazardous waste, may accumulate the waste on-site under the provisions of § 262.34, and must comply with all the Part 262 requirements applicable to generators of hazardous waste.

V. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. For the amendments promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be contrary to the public interest. The amendments make clear that persons responding to spills are not engaging in treatment and storage activities and that such activities do not have to be done in facilities with a RCRA permit or in interim status. The effect of the amendments will be to relieve these persons of having to comply with a number of impractical requirements with respect to spills response actions. The Agency believes that this is not the type of regulation revision that Congress had in mind

³EPA recognizes that certain persons, including manufacturers and transporters of hazardous materials, may not have EPA identification numbers prior to a spill which creates hazardous waste. At this time EPA has decided not to exempt discharges from the requirement of having an EPA ID number. Generators do not need an EPA ID number at the time of generation but rather at the time of treating, storing or disposing of the waste or transporting or offering the waste for transportation. Generators will have an opportunity to obtain an EPA ID number after the spill. And, persons who anticipate that they may generate hazardous waste in the future may obtain an EPA ID number in advance. For these reasons, EPA believes that at this time there is no reason to exempt these generators from this requirement.

when it provided a six month delay between the promulgation and the effective date of revisions to regulations. Consequently, the Agency is setting an effective date of November 19, 1980, for these amendments.

VI. Promulgation in Interim Final Form

These amendments operate as a clarification of the hazardous waste regulations published in May of 1980. 45 FR 33066 (May 19, 1980). With certain exceptions, those regulations did not address containment and treatment of spills of hazardous wastes or materials which, when spilled, become hazardous wastes. A literal interpretation of the May regulations, however, would mean that such actions constitute storage and disposal fully subject to regulation. These amendments conform the regulations to their original intent. The Agency believes that good cause exists for promulgation of this rule in final form. See 5 U.S.C. 553(b)(B).

Delaying the application of these rules to allow opportunity for public notice and comment would work substantial hardship on persons handling hazardous waste. The regulatory program goes into effect on November 19, 1980. Spills are everyday occurrences in the real world. Without immediate clarification of the regulations, all persons who might in the future spill a hazardous material or hazardous waste would have to be prepared to be in full compliance with the Part 265 regulations governing treatment and storage. Without these clarifying amendments substantial hardship would be imposed, without appreciable benefit, on the regulated community.

VII. Requests for Comments

The Agency is soliciting comments on all aspects of the amendments and on all issues discussed in this preamble. In addition, the Agency may initiate more comprehensive rulemaking in the near future on RCRA's application to spill responses. The amendments published today will be subject to reconsideration at that time. The public may accordingly be provided additional opportunity to comment on the Agency's regulation of spills.

VIII. Regulatory Impacts

The effect of these amendments is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. The Agency is unable to estimate these reductions.

Dated: November 14, 1980.

Douglas M. Costle,
Administrator.

Title 40 of the code of Federal Regulations is amended as follows:

§ 260.10 (Amended)

1. Add the following definition to § 260.10(a)(64a):

"Spill" means the accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

§ 122.3 (Amended)

2. Add the following definition to § 122.3:

"Spill" [RCRA] means the accidental spilling, leaking, pumping, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

§ 264.1 (Amended)

3. Add the following paragraph (g)(8) to § 264.1:

(g) * * *

(8) Persons with respect to those activities which are carried out to immediately contain or treat a spill of hazardous waste or material which, when spilled, becomes a hazardous waste, except that, with respect to such activities, the appropriate requirements of Subpart C and D of this Part are applicable to owners and operators of treatment, storage and disposal facilities otherwise subject to this Part. [Comment: This paragraph only applies to activities taken in immediate response to a spill. After the immediate response activities are completed, the applicable regulations of this Chapter apply fully to the management of any spill residue or debris which is a hazardous waste under Part 261.]

§ 265.1 (Amended)

4. Add the following paragraph (c)(11) to § 265.1:

(c) * * *

(11) Persons with respect to those activities which are carried out to immediately contain or treat a spill of hazardous waste or material which, when spilled, becomes a hazardous waste, except that, with respect to such activities, the appropriate requirements of Subpart C and D of this Part are applicable to owners and operators of treatment, storage and disposal facilities otherwise subject to this Part. [Comment: This paragraph only applies to activities taken in immediate response to a spill. After the immediate

response activities are completed, the regulations of this Chapter apply fully to the management of any spill residue or debris which is a hazardous waste under Part 261.]

§ 122.21 (Amended)

5. Add the following paragraph (d)(3) to § 122.21:

(d) * * *

(3) Further exclusions. A person is not required to obtain a RCRA permit for those activities he carries out to immediately contain or treat a spill of hazardous waste or material which, when spilled, becomes a hazardous waste. [Comments: This exclusion is intended to relieve persons of the necessity of obtaining a RCRA permit where the treatment or storage of hazardous waste is undertaken as part of an immediate response to a spill. Any treatment, storage or disposal of spilled material or spill residue or debris that is undertaken must be covered by a RCRA permit, an emergency RCRA permit or interim status.]

These amendments are issued under the authority of Sections 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), 6924 and 6925.

[FR Doc. 80-36132 Filed 11-18-80; 8:45 am]

BILLING CODE 6560-30-M

40 CFR Part 122

[SWH-FRL 1675-2]

Hazardous Waste Management System: General and EPA Administered Permit Programs: The Hazardous Waste Permit Program

AGENCY: United States Environmental Protection Agency.

ACTION: Interim final rule and request for comments.

SUMMARY: The Environmental Protection Agency ("EPA") is today amending its hazardous waste permit regulations to clarify the circumstances under which hazardous waste management facilities may qualify for interim status. Interim status is the condition under which certain facilities would be treated as having been issued a permit until such time as final administrative action was taken on their permit application. These amendments have been prompted by questions from States and the regulated community concerning the eligibility of various types of facilities for interim status.

This notice also solicits comment on enforcement and regulatory policies which EPA is considering adopting to deal with facilities which miss the notice and application filing deadlines for interim status.

DATES: Effective date: November 19, 1980. Comment Date: Comments on the amendments and policies discussed in this notice are due February 17, 1981.

FOR FURTHER INFORMATION CONTACT: John H. Skinner, Director, State Programs and Resource Recovery Division (WH-564), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202/755-9107.

ADDRESSES: Comments should be sent to Docket Clerk, Office of Solid Waste (WH-562), 401 M Street, S.W., Washington, D.C. The comments should refer to "Docket 3005-Interim status".

SUPPLEMENTARY INFORMATION:

I. Introduction

Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. §§ 6921-6933, requires EPA to establish a comprehensive Federal regulatory program to assure the proper management of hazardous waste. One of the most important features of this program is the requirement that facilities which treat, store or dispose of hazardous waste obtain a permit from EPA (or a State authorized by EPA to conduct a hazardous waste program) and that hazardous wastes only be designated for, delivered to and treated, stored or disposed of in these permitted facilities (Sections 3002, 3003, 3004 and 3005). Indeed, after the effective date of EPA's regulations identifying hazardous wastes, it is a felony to transport those wastes to an unpermitted facility or to treat, store or dispose of them at an unpermitted facility (Sections 3008(d)(1) and (2)).

Recognizing that EPA and authorized States would not be able to issue permits to all hazardous waste management facilities before the Subtitle C program became effective, Congress provided in Section 3005(e) of RCRA that certain facilities would be treated as having been issued a permit until such time as final administrative action was taken on their permit application. This statutory permit—commonly referred to as "interim status", the title of Section 3005(e)—is

conditioned on a facility's meeting the following three requirements:

1. The facility must have been in existence on November 19, 1980.²
2. The facility must have "complied with the requirements of section 3010(a)" of RCRA (notification of hazardous waste activity).
3. The facility must have filed an application for a permit under Section 3005.

On May 19, 1980, EPA published regulations defining when a hazardous waste management facility may qualify for interim status. See 40 CFR §§ 122.22(a) and 122.23(a), 45 FR 33433-33434 (May 19, 1980). Those regulations provide that interim status may only be obtained by an existing facility (defined in § 122.3) which has "[n]otified the Administrator within 90 days from the promulgation or revision of Part 261 as required by Section 3010 of RCRA" (§ 122.23(a)(1)) and submitted an application within "six months after the first promulgation of regulations in 40 CFR Part 261 listing and identifying hazardous wastes"—i.e., November 19, 1980 (§ 122.22(a)).

EPA has received numerous questions about these provisions since their publication. Most have focused on two major issues: whether facilities can qualify for interim status after November 19, 1980, and whether facilities which missed statutory or regulatory filing deadlines can qualify for interim status. We have examined these issues carefully and have concluded that §§ 122.22(a) and 122.23 need to be amended to better define the universe of hazardous waste management facilities which are eligible for interim status under Section 3005(e). We have also decided that the Agency needs to establish enforcement and regulatory policies to deal with facilities which have failed to meet applicable deadlines for filing notifications and permit applications. These amendments and policies are discussed below in the context of the three statutory prerequisites for interim status.

II. Requirement That Facilities "Comply With the Requirements of Section 3010(a)"

Section 3005(e)(2) of RCRA conditions interim status on a facility's having "complied with the requirements of Section 3010(a)." Section 3010(a) in turn requires that:

Not later than ninety days after promulgation of regulations under section 3001 identifying " " or listing any substance as a hazardous waste . . . any person generating or transporting such substance or owning or operating a facility for the treatment, storage or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs " ") a notification stating the location and general description of the activity and the identified or listed hazardous wastes handled by such person.

Three major questions have been raised concerning the interrelationship between Sections 3005(e)(2) and 3010(a).

A. Requirement to notify.

A number of facilities have pointed out to EPA that they were not required to notify under Section 3010(a). They have asked whether a facility which is not required to notify under Section 3010(a) (and therefore did not submit a timely notification) would be eligible for interim status.

These facilities are correct in their observation that Section 3010(a) does not require all hazardous waste management facilities to notify. The notification requirements of Section 3010 are triggered only by the publication of regulations under Section 3001 "identify by its characteristics or listing any substance as hazardous waste subject to . . . subtitle [C]" and apply only to persons who are handling those substances at the time the regulations are published. See also 45 FR 12747-12748 (February 26, 1980). Moreover, EPA has, by regulation, exempted several classes of facilities which would otherwise be required to notify under Section 3010 from having to comply with any notification requirements (e.g., on-site storage facilities operated by small quantity generators (see § 261.5) and recycling facilities (see § 261.6)).

If a facility is not required to file a Section 3010 notification, it is EPA's opinion that it has "complied with the requirements of Section 3010(a)" and has met that prerequisite for interim status. A contrary construction of Section 3005(e)(2)—which would have eligibility for interim status turn on whether a facility had filed a notification, irrespective of whether it was required to—would condition interim status on a facility's meeting a requirement which was not dictated by either statute or regulation. Indeed, in some cases—e.g., where a facility did not begin handling hazardous waste until after the ninety-day notification deadline—it would condition interim status on a facility's meeting a requirement with which it could not, as a practical matter, comply.

EPA's May 19, 1980, regulations defining when a facility may obtain

¹ Throughout this notice, EPA will use the term "facility" to refer to the owner and operator of a hazardous waste management facility as well as the facility itself. Thus where, for example, the notice speaks of a "facility" being issued a permit, that term should be understood to mean the owner and operator of the facility.

² When RCRA was originally enacted, Section 3005(e) provided that a facility had to be in existence as of "the date of enactment of this Act"—i.e., October 21, 1976. Recent amendments to RCRA have changed this date to November 19, 1980. See Section 10 of the Solid Waste Disposal Act Amendments of 1980, P.L. 96-482 (October 21, 1980).

interim status did not reflect the distinction between filing a notification and being required to file a notification under Section 3010. To correct this error, EPA is today amending § 122.23(a)(1) to make it clear that a facility which is not required to notify under Section 3010 may obtain interim status without filing a notification if it meets the remaining two prerequisites set forth in Section 3005(e).³

B. Ninety day filing deadline.

A number of facilities which were required to file a notification as a result of the publication of EPA's May 19, 1980, regulations have advised the Agency that they did not file a notification within ninety days. These facilities have asked whether they will be eligible for interim status if they file a late notification.

As noted above, Section 3010(a) requires facilities handling wastes listed in EPA's May 19, 1980, regulations not only to file a notification, but to file the notification within ninety days (i.e., by August 18, 1980). It is EPA's opinion that a facility which was required to notify as a result of the publication of EPA's May 19, 1980, regulations and did not file a notification by August 18, 1980, has not "complied with the requirements of section 3010(a)" and is not eligible for interim status. A contrary interpretation of Section 3010(a) would essentially read the ninety-day deadline out of the statute.

EPA recognizes that this literal construction may have the effect of preventing some well-managed facilities from ever qualifying for interim status. We have developed two policies to provide relief in these situations. The first deals with facilities whose failure to notify is attributable to ambiguities in EPA's regulations; the second with facilities whose failure to notify is their own fault. In our opinion, these policies will preserve the integrity of the ninety-day deadline in Section 3010 while at the same time providing the administrative flexibility necessary to deal with late filings on a case-by-case basis.

1. Revised notification requirements.

Since the publication of EPA's May 19, 1980, regulations, members of the regulated community, States and environmental groups have brought to EPA's attention a number of provisions in the regulations which were not clear, or, as applied to specific waste management situations, did not make sense. In an August 19, 1980, Federal

Register notice (45 FR 55386), EPA identified approximately twenty of these provisions, and promised to issue regulatory amendments or regulatory interpretation memoranda (RIMs) to correct, modify or clarify them.

Some of these provisions deal with the issue of whether a person was handling a hazardous waste on May 19, 1980, and therefore was required to notify EPA under Section 3010 by August 18, 1980. In most cases, the regulatory amendments and RIMs which are now being developed by EPA will have the effect of narrowing the universe of persons who were required to notify on August 18, 1980 (based on a literal reading of the regulations). In a few cases, however, they may bring within Subtitle C control owners and operators of facilities who could reasonably have concluded, based on a careful reading of the May 19, 1980, regulations, that they were not required to notify on August 18, 1980.

We do not think it is fair to penalize facilities for failing to notify under Section 3010 where that failure is attributable to major ambiguities in EPA's hazardous waste regulations. Although we do not believe we have the authority to waive the ninety-day statutory filing deadline for facilities which were required to notify on August 18, 1980, we do think we have the authority under RCRA to issue a *post hoc* administrative finding that a particular class of facilities was not required to notify at all because of major uncertainties in EPA's regulations. It is our intent, therefore, at the time EPA publishes future Federal Register notices announcing amendments to or interpretations of our hazardous waste regulations, (1) to decide whether some class of facilities may have failed to notify because of ambiguities in those regulations and if so, (2) to issue a determination that that class of facilities was not required to notify under Section 3010 on August 18, 1980, and to establish new deadlines for submitting permit applications and complying with interim status standards under 40 CFR Part 265.⁴ The effect of this determination will be to make the designated facilities eligible for interim status even though they failed to notify on August 18, 1980.

b. Enforcement discretion.

In addition to facilities which failed to file a timely notification because of major ambiguities in EPA's regulations, there are no doubt a number of facilities which failed to notify as a result of

clerical errors, oversight or other factors. Some may be well-managed facilities whose continued operation is in the public interest.

Although EPA cannot grant interim status to facilities which failed to file a timely Section 3010 notification, we are prepared to exercise our enforcement discretion to allow such facilities to continue operating after November 19, where their continued operation would be in the public interest. To provide formal assurances to these facilities that they will not be prosecuted for operating without a permit, EPA is considering issuing Interim Status Compliance Letters ("ISCLs") to qualifying facilities stating that the Government will not prosecute them for operating without a permit if they file a permit application and comply with all applicable Part 265 standards. The ISCL would contain similar provisions shielding generators and transporters using these facilities from Federal prosecution for sending wastes to an unpermitted facility. Compliance orders issued under Section 3008 of RCRA (with or without a civil penalty assessment) could also be used to achieve essentially the same result.

Although a facility operating under an ISCL or compliance order and complying with EPA's Part 265 regulations would not be immune from citizen suits under Section 7002 of RCRA because it was technically operating without a permit, we doubt that such suits would ever be successful. Federal courts sitting in equity are not likely to close down facilities which have failed to submit a timely notification under Section 3010 if they are otherwise fully complying with all applicable substantive environmental standards.

An ISCL or compliance order would also assist facilities which must file under Section 13 of the Securities and Exchange Act of 1934, as amended, in making a full disclosure of the extent of their potential liability under RCRA. As noted above, for a facility which is complying with its ISCL or compliance order, potential liability under Section 3008 or 7002 should be negligible.

EPA expressly solicits comment on these approaches. A similar enforcement policy was successfully used by EPA under the Clean Water Act ("CWA") to deal with an inflexible statutory deadline much like the ninety-day deadline in Section 3010.⁵ The main

³ Facilities which have not submitted a notification under Section 3010(a) would, of course, still be required to file for an EPA identification number. See 40 CFR § 265.11, 45 FR 33234 (May 19, 1980).

⁴ If an amendment deals with the issue whether a material is a hazardous waste, EPA may at the same time trigger a new opportunity for notification under Section 3010.

⁵ Section 301(b) of the Clean Water Act, 33 U.S.C. § 1331(b), requires all point source dischargers to meet effluent limitations based on the best practicable control technology by July 1, 1977. When it became apparent that some dischargers would not be able to meet July 1, 1977 deadline, EPA began issuing letters and orders to these facilities stating

Footnotes continued on next page

difference between the CWA policy and the policy announced above is that under the latter EPA would generally not extend deadlines for complying with applicable regulatory requirements. In this respect, we think it is an even more judicious and environmentally sound exercise of EPA's enforcement discretion.

3. A Caveat.

Facilities should not construe the announcement of the foregoing policies (or the amendments discussed in Section III, below) as an invitation to miss applicable statutory or regulatory filing deadlines. These policies are designed to address situations where facilities have acted reasonably and in good faith or where well-operated facilities have through clerical error or oversight failed to submit a timely notification date. They are not intended for facilities which have made little or no effort to comply with EPA's regulations.

C. 1980 Amendments to Section 3010(a).

The Solid Waste Disposal Act Amendments of 1980, P.L. 96-482 (October 21, 1980), amend Section 3010(a) of RCRA to make notifications triggered by amendments to EPA's Section 3001 regulations after October 21, 1980, discretionary with the Administrator. EPA has been asked what effect these amendments will have on facilities' eligibility for interim status.

We see two important consequences for interim status flowing from the enactment of these amendments. First, facilities which handle wastes listed or identified as hazardous wastes by EPA after October 21, 1980, are no longer automatically required to notify under Section 3010. Only if EPA expressly requires facilities to notify will notification under Section 3010(a) be required.

Second, there is no longer any statutory deadline for filing notifications. In the future, all notification deadlines will be set by regulation. This will give EPA the same administrative flexibility to deal with late notifications that it currently has with respect to late permit applications. See Section III, below.

III. Requirement that a Facility Have "Filed an Application Under this Section"

A second statutory prerequisite of interim status is that the owner and operator of a facility have "filed an

application under * * * section [3005]". Section 3005(e)(3) EPA's regulations implementing Section 3005 condition eligibility for interim status on a facility's having "complied with the requirements of § 122.22(a) * * * governing submissions of Part A applications." See § 122.23(a)(2). Section 122.22(a)(2) in turn requires that a Part A application be submitted by November 19, 1980.

EPA has been asked whether, in light of these requirements, an existing hazardous waste management facility which is not now subject to EPA's hazardous waste regulations will be able to obtain interim status by filing an application after November 19, 1980, if EPA amends its regulations to bring them into the hazardous waste management system. The answer to this question is yes, if the owner and operator of the facility file a permit application within six months of the amendment to EPA's regulations which first subjects the facility to the requirements of Part 265 or 266. EPA is today amending § 122.23(a) to clarify this point. As noted in the "comment" to this amendment, EPA will make every effort to identify permit filing deadlines in the *Federal Register* publications announcing amendments to its regulations to avoid future confusion about when Part A permit applications must be submitted. See, e.g., 45 FR 47832 (July 16, 1980), 45 FR 74884-74885 (November 12, 1980).

EPA is also adding a paragraph to § 122.22(a) to make it clear that a facility which submits a permit application by a revised filing deadline announced by EPA in a *Federal Register* notice clarifying its regulations (see discussion in Section II.B.1, above) has met the prerequisites of Section 3005(e)(3) and is eligible for interim status.

Some existing hazardous waste management facilities may need to qualify for interim status in the future, not as a result of EPA regulatory action, but because of changes in their own operations. For example, a small quantity generator may start generating over 1,000 kg of hazardous waste a month and need to obtain interim status for an existing on-site treatment, storage or disposal facility. Or a facility which properly determined on August 1, 1980, that the solid waste it was treating did not exhibit any of the characteristics of hazardous waste may retest it after November 19, 1980, and find that it exhibits the characteristic of extraction procedure toxicity. We have been asked whether the facilities will be able to qualify for interim status if they do not

submit a permit application by November 19, 1980.

EPA believes these facilities should be eligible for interim status if they promptly file a permit application. Accordingly, we are today amending § 122.22(a) to allow these facilities to qualify for interim status if they file a permit application within 30 days after they lose their regulatory exemption or begin handling hazardous waste.

Readers should note that these facilities will technically be operating without a permit until they submit their permit application. EPA will not initiate any enforcement action against them, however, if they contact their EPA Regional Office immediately and file an application within the thirty-day period.

EPA believes these amendments will cover most situations where facilities which are eligible for interim status under Sections 3005(e) (1) and (2) must file a permit application. In the event they do not, and in the event some facilities inadvertently miss the filing deadlines set forth in § 122.23(a), EPA is adding another new provision to that section which allows a facility to obtain interim status if it files a permit application by the deadline set forth in a compliance order issued by EPA under Section 3008.

IV. Requirement that a Facility Be "in Existence on November 19, 1980"

The final statutory prerequisite for obtaining interim status is that a facility have been "in existence on November 19, 1980". EPA regulations define "existing facility" as a "facility in operation," (i.e., a facility "receiving hazardous waste for treatment, storage or disposal") or "facility for which construction has commenced." 40 CFR § 122.3 (definitions of "existing HWM facility" and "in operation"). EPA has been asked if a facility which was handling a solid waste on November 19, 1980, that was not identified or listed as a hazardous waste in EPA's Part 261 regulations prior to November 19, 1980, but was identified or listed in a subsequent amendment to those regulations could qualify as an existing hazardous waste management facility for purposes of obtaining interim status.

In EPA's opinion, if a facility was receiving for treatment, storage or disposal on or before November 19, 1980, a solid waste which is subsequently listed or identified as a hazardous waste by EPA, the facility was "in existence on November 19, 1980" and is eligible for interim status if it files a timely permit application and Section 3010 notification (if required). Limiting eligibility for interim status only to those facilities which were

Footnotes continued from last page that the Agency would not prosecute them for failing to meet the July 1, 1977, date if they met an alternative deadline and accompanying compliance schedule set forth in the letter or order.

handling a solid waste on November 19, 1980, that had been listed or identified as a hazardous waste prior to that date, would attach too much regulatory significance to the order in which EPA promulgates its hazardous waste listings. It would also prevent any facility which was handling a solid waste now temporarily exempted from Subtitle C controls as a "special waste" from ever obtaining interim status.⁶

Readers should note, however, that for a facility to qualify as an "existing facility" in this situation, the solid waste which the facility was handling on or before November 19, 1980, must be the same waste which is later identified or listed in EPA's hazardous waste regulations. A facility which is handling trash on November 19, 1980, for example, would not qualify as an existing facility simply because after November 19, 1980, it began handling a solid waste which was subsequently listed as a hazardous waste in EPA's Part 261 regulations.

EPA recognizes that it may be difficult for some facilities to establish a precise correlation between solid wastes handled prior to and after November 19, 1980, because of changes in manufacturing processes, wastewater treatment processes, air emission controls, raw materials or other similar components of the manufacturing and waste treatment process. The Agency solicits comment on what types of guidelines it should follow in these situations to determine if the wastes being handled prior to and after November 19, 1980, are the "same waste."

V. Practical application

To assist readers in understanding the amendments and policies which have been outlined above, EPA believes it would be useful to discuss how they would apply in concrete factual situations.

1. The ABC Company completed construction of a hazardous waste incinerator on October 1, 1980. On October 2, 1980, the facility begins incinerating a number of hazardous wastes listed in EPA's May 19, 1980 regulations. The facility submitted a permit application on November 1, 1980, but did not notify on August 18, 1980. Does the facility have interim status?

Yes. The facility was not required to file a Section 3010 notification because it was not handling hazardous waste at the time of promulgation of EPA's May 19, 1980, regulations. Thus, although it has not notified, it has nevertheless

"complied with section 3010(a)" within the meaning of Section 3005(c).

The facility also meets the other two prerequisites for interim status.

2. The ABC Company owns a landfill which, since 1978, has been used continuously and exclusively for the disposal of sludges from the treatment of wastewater from widgeit production. On January 1, 1982, EPA adds wastewater treatment sludge from the production of widgeits to its hazardous waste list. The preamble to the *Federal Register* publication announcing the new listing does not expressly require facilities handling wastewater treatment sludges from widgeit production to notify. It does state, however, that such facilities must file a permit application and begin complying with all applicable interim status standards by July 1, 1982. The ABC Company files a complete permit application by July 1, 1982. Does it have interim status?

Yes. Section 3010(a) of RCRA was amended by the Solid Waste Disposal Act Amendments of 1980 on October 21, 1980, to make Section 3010(a) notifications based on revisions to EPA's hazardous waste list and characteristics discretionary with the Agency. Thus, in the absence of an explicit EPA directive to notify, a company handling a hazardous waste listed in a revision to EPA's Part 261 regulations which was published after October 21, 1980, would not be required to submit a new Section 3010 notification.

The ABC Company landfill also meets the two remaining prerequisites for interim status. Because it was handling a solid waste on November 19, 1980, which was subsequently listed as a hazardous waste by EPA, it was a hazardous waste management facility which was "in existence on November 19, 1980." It also filed a timely permit application.

3. The ABC Company owns an on-site landfill which was handling garbage on November 19, 1980. On January 1, 1981, the company goes into the widgeit production business and begins using the landfill to dispose of sludges from the treatment of wastewater generated by the widgeit production process. On January 1, 1982, EPA lists wastewater treatment sludges from the production of widgeits as a hazardous waste. The preamble to the *Federal Register* publication announcing the new listing requires facilities handling widgeit wastewater treatment sludges to notify by March 30, 1982, and submit a permit application by July 1, 1982. The ABC Company files a timely notification and permit application. Does its landfill have interim status?

No. On November 19, 1980, the landfill was not handling a hazardous waste (as defined by EPA in its May 19, or July 18, 1980, regulations) or a solid waste which was subsequently identified or listed as a hazardous waste by EPA. It was therefore not "in existence" as a hazardous waste management facility on November 19, 1980, and cannot qualify for interim status.

4. The ABC Company generates 500 kg per month of a waste listed in EPA's May 19, 1980, regulations. Since 1975, the company has disposed of this waste in an unlicensed on-site landfill. Starting on November 19, 1980, the company starts sending its waste to a state approved industrial landfill in order to take advantage of EPA's small quantity generator regulations. Later, EPA lowers the small quantity generator exemption to 100 kg per month. The ABC Company cannot find a nearby hazardous waste management facility to take its waste and would like to reactivate its on-site landfill. Is the landfill eligible for interim status?

Yes. The landfill can meet all three prerequisites for interim status if it submits complete permit application within six months after EPA amends Part 261 to lower the small quantity generator exemption.

5. The ABC Company treats a waste which it believes is exempted as hazardous waste under § 261.4 of EPA's May 19, 1980, regulations. It does not notify on August 18, 1980, or submit a permit application by November 19, 1980. On March 1, 1981, EPA issues an interpretation of § 261.4 which makes it clear that the waste treated by the company is not exempt. The company tests the waste against the characteristics of hazardous waste identified in Subpart C of Part 261 and the waste exhibits several of the characteristics. Can the company's treatment facility qualify for interim status?

This will depend on the content of the *Federal Register* notice announcing EPA's regulatory interpretation. If the Agency decides that the exemption in § 261.4 was so vague or ambiguous that facilities in the position of the ABC Company could not reasonably have been expected to know that they were required to notify and submit a permit application, it will (1) include as part of its interpretation a formal Agency determination that those facilities were not required to notify and (2) set a new deadline by which those facilities must submit a complete permit application if they wish to qualify for interim status. Thus, if the ABC Company submits a complete application by the new

⁶The same reasoning applies to facilities which commenced construction by November 19, 1980.

deadline, its treatment facility will have qualified for interim status.

On the other hand, if EPA decides that the regulation was not vague or ambiguous or that Agency's resolution of ambiguities in the regulation does not affect facilities in the position of the ABC Company, it will not modify existing filing and compliance dates for those facilities. In this situation, the treatment facility cannot qualify for interim status because it has not submitted a timely notification and permit application.

VI. Miscellaneous Issues

A. Protective filings.

We have been advised that a number of facilities which are not now subject to EPA's hazardous waste regulations have filed "protective" notifications and permit applications to comply with EPA's May 19, 1980, Part 122 regulations and thus assure that they will be able to obtain interim status in the future (if necessary). Many of these filings may not be necessary under today's revised regulations.

We urge facilities which have filed unnecessary notifications or permit applications to advise the EPA Regional Office. This will help assure that our list of existing hazardous waste management facilities is accurate for enforcement and other purposes.

B. Units within existing facilities.

Section 122.3 of EPA's May 19, 1980, regulations defines the term "hazardous waste management facility" to include sites consisting of several operational units which handle hazardous waste. A facility, for example, may consist of two hazardous waste storage facilities, a hazardous waste landfill and a hazardous waste incinerator.

Section 122.23(c) restricts the modifications which may be made during interim status to the design capacity of an existing facility and to the processes used by the facility to treat, store or dispose of hazardous waste. EPA has been asked whether, when an individual unit in an interim status facility later qualifies for interim status, that constitutes a "change" in existing design capacity or processes and, if so, whether that change would be subject to the restrictions set forth in § 122.23(c).

The restrictions on modifications in § 122.23(c) are intended to prevent interim status facilities from making major changes in their existing operations which either would be tantamount to the construction of a new facility or should ideally be made after an individual permit is issued. See 45 FR

33324 (May 19, 1980). They are not intended to restrict the number of individual units within those facilities which can qualify for interim status. Thus, EPA would not consider the fact that an individual unit within a facility has independently qualified for interim status (or is operating under an ISCL or compliance order, as discussed above) to be a "change" to the facility subject to the restrictions of § 122.23(c). The individual unit would, of course, be subject to those restrictions if the facility sought to enlarge the design capacity of the unit or modify the processes used by the unit to handle hazardous waste.

VII. Interim Final Regulations and Effective Date

A. Interim final regulations.

EPA has determined under Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, that there is good cause for promulgating these amendments without prior notice and comment. As discussed above, EPA's regulations defining when a facility can obtain interim status have erroneously led many facilities to believe that unless they file a permit application by November 19, 1980, they will never be able to obtain interim status. We think it is essential to correct this error before November 19, 1980, or else a significant number of facilities will be filing unnecessary permit applications on November 19, 1980. Readers will have ample opportunity (ninety days) to comment on these amendments before they are issued in "final final" form.

B. Effective date.

Section 3010(b) of RCRA requires that revisions to "regulations * * * respecting * * * requirements [for] permits * * * shall take effect on the date six months after the date of * * * revision." We do not think a literal application of this requirement would make sense in this case. The purpose of Section 3010(b) is to allow persons handling hazardous waste sufficient lead time to prepare to comply with major new regulatory requirements. Delaying the effective date of amendments which reduce existing regulatory requirements is not necessary to carry out this objective. Furthermore, for the reasons stated above, EPA believes an effective date of six months after promulgation would be counterproductive since much of the unnecessary regulatory burden which these amendments seek to avert will already have been imposed. We are therefore making these amendments effective on November 19, 1980, the

effective date of the remainder of EPA's May 19, 1980, hazardous waste regulations.

Dated: November 14, 1980.

Douglas M. Costle,
Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 122.22 is amended by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(4) and (a)(5) respectively, and revising paragraph (a)(1) and adding new paragraphs (a)(2) and (a)(3) to read as follows:

§ 122.22 Application for a permit.

(a) *Existing HWM facilities.* (1) Owners and operators of existing hazardous waste management facilities must submit Part A of their permit application to the Regional Administrator no later than (i) six months after the date of publication of regulations which first require them to comply with the standards set forth in 40 CFR Parts 265 or 266, or (ii) thirty days after the date they first become subject to the standards set forth in 40 CFR Parts 265 or 266, whichever first occurs. [Comment: For facilities which must comply with Part 265 because they handle a waste listed in EPA's May 19, 1980, Part 261 regulations (45 FR 33006 et seq.), the deadline for submitting an application is November 19, 1980. Where other existing facilities must begin complying with Parts 265 or 266 at a later date because of revisions to Parts 260, 261, 265, or 266, the Administrator will specify in the preamble to those revisions when those facilities must submit a permit application.]

(2) The Administrator may by publication in the *Federal Register* extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit Part A of their permit application if he finds that (i) there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application and (ii) such confusion is attributable to ambiguities in EPA's Parts 260, 261, 265, or 266 regulations.

(3) The Administrator may by compliance order issued under Section 3008 of RCRA extend the date by which the owner and operator of an existing hazardous waste management facility must submit Part A of their permit application.

2. Section 122.23 is amended by revising paragraph (a)(1) to read as follows:

§ 122.23 Interim status.

(a) * * *

(1) Complied with the requirements of Section 3010(a) of RCRA pertaining to notification of hazardous waste activity. [Comment: Some existing facilities may not be required to file a notification under Section 3010(a) of RCRA. These facilities may qualify for interim status by meeting paragraph (a)(2) of this Section.]

* * * * *

These amendments are issued under the authority of Sections 1006, 2002(a) and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a) and 6925.

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federal register

**Tuesday
November 25, 1980**

Part X

Environmental Protection Agency

**Hazardous Waste Management System:
Clarification of Regulations on Hazardous
Waste in Containers; Exemption of
Certain Treated-Wood Wastes; Final List
of Commercial Products Which Are
Hazardous Wastes if Discarded (S261.33);
Exclusions in Response to Deregulating
Petitions**

CCR 000040760

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 262, and 265

[SWH-FRL 1680-3]

Hazardous Waste Management System: General Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final amendment and interim final amendments to rule and request for comments.

SUMMARY: These amendments modify 40 CFR 261.33(c) and add a new section, 40 CFR 261.7, to EPA's May 19, 1980, hazardous waste management regulations. This new section and the change to § 261.33(c) clarify the situations in which residues of hazardous waste that are contained in drums, barrels, tank trucks or other types of containers must be managed as hazardous wastes under 40 CFR Parts 261 through 265 and 122 through 124.

DATES:

Effective dates: The effective date for § 261.7 is November 19, 1980.

The effective date for the amendments to § 261.33, § 265.173 and to § 262.51 is May 25, 1981.

Comment date: Today's amendments, with the exception of § 261.7(b)(3), which is merely a recodification, are being promulgated as interim final rules. EPA will accept comments on them until January 25, 1981.

Compliance dates: See Supplementary Information for details on compliance dates.

ADDRESSES: Comments of these amendments should be sent to Docket Clerk (Docket No. 3001), Office of Solid Waste (WH-585), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Alfred W. Lindsey, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 755-9185.

SUPPLEMENTARY INFORMATION:

I. Authority

These amendments are issued under the authority of Sections 1005, 2002(a), and 3001 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), and 6921.

II. Compliance Dates

EPA does not consider new § 261.7 to be a "revision" of the Section 3001 regulations within the meaning of Section 3010(b) of RCRA. It is merely a clarification of the May 19, 1980, regulations and does not subject any person to regulatory control who was not already subject to the May regulations. All such persons, of course, should have already notified EPA of their hazardous waste activities on or before August 18, 1980, and if they are hazardous waste treatment, storage or disposal facilities must submit a Part A permit application to EPA on or before November 19, 1980.

Today's amendment to § 261.33(c), which clarifies that EPA considers as hazardous wastes containers residues of acutely hazardous materials that are discarded, and does not consider the containers themselves to be hazardous wastes when they are discarded, will require additional persons to notify EPA that they handle these acutely hazardous wastes and will require any treatment, storage or disposal facility which wants to continue to handle such wastes also to submit a Part A permit application and qualify for interim status.

A. Notification

Persons who generate, transport, treat, store or dispose of wastes which are newly subject to regulation under Parts 261 through 265, 122 and 124 because of today's revision to § 261.33(c) are not required to notify EPA so long as they previously notified the Agency that they handle a hazardous waste and received an EPA identification number.¹ Persons who have not previously notified EPA and who now generate or handle the wastes newly included by the amendment to § 261.33(c) must now notify EPA of their activities under Section 3010 no later than January 25, 1981. Notification instructions are set forth in 45 FR 12746 (February 26, 1980).

B. Part A Permit Applications

The owners or operators of all existing hazardous waste management facilities (see the definition of "existing HWM facility" in 40 CFR 122.3, 45 FR 33421 (May 19, 1980) and 45 FR 67756 (October 14, 1980)) which treat, store or dispose of wastes newly included in these regulations by the amendment to § 261.33(c), and who wish to qualify for

interim status under Section 3005(e) of RCRA, must file a notification by January 26, 1981, unless they have notified previously (as described in II.A. above), and must file a permit application by May 25, 1981 (see 40 CFR 122.23(a)(1) and (2), 45 FR 33434 (May 19, 1980)).

Owners or operators of facilities who have qualified for interim status and who wish to manage wastes newly included in these regulations by the amendment to § 261.33(c) must submit an amended permit application by May 25, 1981 (see 40 CFR 122.23(c)(1), 45 FR 33434 (May 19, 1980)).

Owners or operators who do not comply with the notification or permit application requirements are precluded from managing these wastes after May 25, 1981 until they have obtained an RCRA permit under Part 122.

C. Compliance With the Requirements of Parts 262 Through 265, 122 and 124

Beginning on May 25, 1981, persons handling wastes newly included by today's amendment to § 261.33(c) must comply with all applicable standards for hazardous waste generators, transporters, and owners and operators of hazardous waste management facilities set forth in 40 CFR Parts 262 through 265, 122 and 124 with respect to these wastes.

III. Background

In May of 1980, EPA promulgated regulations implementing Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"). These regulations, among other things, identify and list hazardous waste (Part 261), establish standards for generators and transporters of hazardous waste (Parts 262 and 263), and set management and permit requirements for owners and operators of facilities that treat, store or dispose of hazardous waste (Parts 264 and 265 and Parts 122 and 124). 45 FR 33066 (May 19, 1980). These regulations are designed to ensure the proper handling and management of hazardous wastes from their generation through their ultimate disposition.

Hazardous wastes are often stored or transported in containers.² Some of these containers may be full, others partially full. Depending on how a particular hazardous waste is to be managed and whether a container is to be re-used, some containers may be emptied, leaving a residue in the container. Other containers may be

¹ EPA's authority for this action is the recent amendment to Section 3010(a) of RCRA contained in the Solid Waste Disposal Act Amendments of 1980 (Pub. L. 96-482, (October 21, 1980)) which leaves the requirements for notification following revision of the Section 3001 regulations to the discretion of the Administrator.

² "Container" is defined in 40 CFR 260.10 as "any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled."

cleaned, perhaps creating a rinseate containing hazardous waste.

EPA has received numerous questions about the extent to which partially full, "empty" and cleaned containers, or more precisely, the waste or waste residues in such containers, are regulated under RCRA. Specifically,

(1) What is an "empty container?"

(2) Under what circumstances is a container that has held hazardous waste, but is now "empty," controlled under the RCRA hazardous waste regulations?

(3) How do the small quantity provisions (§ 261.5) and the use, re-use, recycling and reclamation provisions (§ 261.6) apply to container management?

(4) Are container cleaning operations subject to the RCRA facility and permitting requirements?

In response to these questions, EPA is modifying its hazardous waste regulations to better explain the circumstances under which a container which has held hazardous waste (including any of the chemicals listed in § 261.33 (e) and (f), when they are wastes) remains subject to the requirements of Parts 261 through 265, 122 and 124, and the notification requirements of Section 3010 of RCRA. The Agency is doing this by adding a new section of Part 261, § 261.7, which deals exclusively with the issue of when residues in containers will be subject to regulation. This new section will enable persons who deal with container residues to look to one section of the regulations to determine whether they are regulated.

IV. The Control of Residues in Empty Containers and the Definition of Empty Container

In the May 1980 regulations the only specific references to containers of hazardous waste in Part 261, which identifies those wastes subject to regulation, are in §§ 261.33(c) and 261.5(c)(3)-(4). Section 261.33(c) provides that any container or inner liner from a container that has been used to hold any acutely hazardous commercial chemical product or manufacturing chemical intermediate listed in § 261.33(e) is a hazardous waste when it is discarded or intended to be discarded, unless it has been triple rinsed or otherwise appropriately cleaned. Sections 261.5(c)(3) and 261.5(c)(4), part of the special requirements for hazardous waste generated by small quantity generators, excluded from regulation certain small containers and a certain amount of inner liners from containers identified in § 261.33(c). Otherwise, the May 1980 Part 261 regulations are silent

on the control of "empty" containers and hazardous waste residues in "empty" containers.

A. Full or Partially Full Containers

Under Part 261, all solid waste that is identified or listed as hazardous waste is subject to regulation under Parts 261 through 265, 122 and 124. Thus, the May 19, 1980, regulations clearly regulate hazardous wastes in full or partially full containers.

B. "Empty" Containers

The typical emptying of a container by pouring, pumping, aspirating or other common emptying methods is not capable of removing all residues. So-called "empty" containers hold small amounts of residue unless they have been thoroughly rinsed or otherwise cleaned to remove such residues. Many persons have concluded that unless hazardous waste residues in "empty" containers are excluded by the small quantity generator exclusion of § 261.5, all such residues are fully controlled as hazardous wastes and thus persons handling such containers would, because of the residues have to ship such containers accompanied by a manifest and have a permit (or interim status) for the treatment, storage or disposal of the residues.

The Agency did not intend, however, to regulate hazardous waste residues in "empty" but unrinsed containers, except where the hazardous waste is an acutely hazardous material listed in § 261.33(e). See the preamble discussion at 45 FR 33116, May 19, 1980. EPA believes that, except where the hazardous waste is an acutely hazardous material listed in § 261.33(e), the small amount of hazardous waste residue that remains in individual empty, unrinsed containers does not pose a substantial hazard to human health or the environment. If there are certain situations where this presumption is unjustified, the Agency will consider amendments to the regulations to accommodate them. See the discussion below in section IV.E. of this preamble.

In making this presumption, the Agency considered the amounts of hazardous waste residues contained in "empty" containers from which all hazardous wastes have been removed by common methods of emptying containers: Dumping, pouring, pumping and aspirating and, for containers of contained gas, allowing the pressure in the container to reach atmospheric. Although EPA officials have explained in many public meetings that the only residues in "empty" containers that the Agency intended to regulate were those of acutely hazardous materials listed in

§ 261.33(e), (see 40 CFR 261.33(c), 45 FR 33124, (May 19, 1980)), the Agency did not articulate this in the regulations.

To rectify this omission, the Agency is amending the regulations to expressly specify that the hazardous waste remaining in an "empty" container is not subject to the regulations. See § 261.7(a). On the other hand, the hazardous waste residue in any container that is not considered empty is subject to full regulation as a hazardous waste unless any of the special requirements or exclusions in Part 261 or § 262.34 apply. To implement this clarification EPA is also amending the regulations to provide a definition of "empty container." See § 261.7(b). This definition is in three parts and is keyed to the type of waste in the container, i.e., the methods that must be used to remove the residue from a container for it to be considered empty under § 261.7(b) depend on the material that the container held. What should be clear from § 261.7, however, is that no "empty" containers are subject to regulatory control because no "empty" containers hold residues that are considered hazardous wastes for regulatory purposes.

1. *Containers that have held hazardous wastes other than gases and acutely hazardous materials.* The first part of the definition of "empty container" deals with containers that have held hazardous wastes other than compressed gases and acutely hazardous materials listed in § 261.33(e). For such containers, the definition provides that an empty container is one from which all wastes or other materials have been removed that can be removed using the practices commonly employed to remove materials from that type of container. The definition further provides that no more than 2.5 centimeters (one inch) of residue may remain on the bottom of the container for it to be considered empty. The Agency recognizes that this part of the definition is not perfectly precise and may be subject to interpretation in difficult cases. For example, if the hazardous waste is a two-phase mixture of a liquid and a non-viscous solid or semi-solid and is contained in a drum with a sealed top (with only bung holes provided for filling and emptying the drum), it is very possible that common emptying methods will not remove all of the waste. Common emptying methods might remove the liquid phase and leave the solids or semi-solids adhering to the sides so that there is less than 2.5 centimeters of waste on the bottom of the container. In this example, the Agency would not view the container as an empty container because the total

amount of material in the container would be greater than a 2.5 centimeter layer on the bottom. In spite of its imperfection, the Agency believes this definition is useful and can be made to work with only occasional interpretation for unusual situations. The Agency will render such interpretations when necessary to implement this definition and the related regulatory provisions. Even so, the Agency is open to any advice on how to improve this definition and specifically solicits each advice during the comment period provided for this interim final rule.

2. Compressed gas containers. For compressed gas containers, the second part of the definition provides that an empty container is one which has been opened to atmospheric pressure.

3. Containers that have held acutely hazardous materials. For containers that have held any of the acutely hazardous materials listed in § 261.33(e), the third part of the definition provides that an empty container is one that has been triple rinsed with an appropriate solvent, or cleaned using another method shown to achieve equivalent removal or, in the case of a container, has had the inner liner removed. This part of the definition of empty container has been shifted from 40 CFR 261.33(c)(1)-(3) in order to combine in one section of the regulations all provisions dealing with the issue of when container residues must be managed as hazardous waste. It was explained in the preamble to the May 19, 1980, regulations. See 45 FR 53115-16.

C. Interim Final Promulgation

Because the first two parts of the definition of empty container (§ 261.7(b)(1)-(2)) are new regulatory provisions, EPA is promulgating them in interim final form and with a 30-day comment period. Section 261.7(a), which clarifies when container residues must be managed as hazardous waste, also is new and also is being promulgated in interim final form with a 30-day comment period. EPA believes that use of advance notice and comment procedures for these amendments would be impracticable and contrary to the public interest, and therefore finds that good cause exists for adopting these regulations in interim final form (see 5 U.S.C. 553(b)(3)). Section IV.D. below, entitled "Effective Date," discusses the confusion and disruption that would result were EPA not to promulgate these amendments in interim final form with a November 19, 1980, effective date.

The third part of the definition of empty container, § 261.7(b)(3), is merely

recodified and is being promulgated as a final regulation.

D. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. For the new § 261.7 promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be counterproductive for the regulated community and the public.

The regulatory provisions that these amendments modify take effect on November 19, 1980. Beginning on that date, in the absence of the effectuation of these amendments, all hazardous waste residues down to very minute quantities arguably would have to be managed as hazardous wastes. The clarifications in § 261.7 have been requested by the regulated community and will eliminate the confusion that has existed concerning when container residues must be managed as hazardous wastes. Section 261.7 does not subject any persons or activities to regulation which were not covered by the May 19 regulations. The section only serves to exclude certain residues of hazardous waste from regulatory control. Persons handling excluded residues thus need not comply with any hazardous waste management requirements for those residues. In the absence of this new section, these persons arguably would have to comply with all applicable regulations in Parts 261 through 265, 122 and 124 on November 19, 1980. The lessening of regulatory requirements surely is not the type of revision to regulations that Congress had in mind when it provided a six-month delay between the promulgation and the effective date of revisions to regulations. Consequently the Agency is setting an effective date of November 19, 1980.

E. Options Under Consideration for Regulating Hazardous Waste Residues in "Empty" Containers

As discussed in section IV.B. of this preamble, EPA believes that the small amount of hazardous waste residue that remains in individual empty, unrinsed containers does not pose a substantial hazard to human health or the environment. EPA is concerned, however, that drum resodification and other facilities that clean large numbers of "empty" containers may accumulate

and treat or dispose of significant amounts of unregulated residues which may pose a substantial hazard to human health or the environment. EPA is currently considering three options to deal with this possible problem.

1. Triple rinsing for all containers. The option which EPA considers the most equitable and which appears to offer the greatest protection to human health and the environment is to require that all containers be triple rinsed before they are considered empty. This would ensure that the only residues that would be unregulated under the Part 262 through 265, 122 and 124 regulations would be trace amounts that would remain in a container after triple rinsing or an equivalent cleaning operation. If a container that hadn't been triple rinsed were transported, it would have to be accompanied by a manifest, unless the residue in the container were excluded from regulation by the small quantity generator exclusion (§ 261.5) or by the use, re-use, recycling or reclamation provisions of § 261.6, and could only be shipped to a treatment, storage or disposal facility with a permit or interim status. Under § 261.7(a), as promulgated today, container residues (other than those of acutely hazardous materials listed in § 261.33(e)) of less than an inch are not subject to the RCRA Subtitle C requirements. If all containers had to be triple rinsed before the remaining residue were not regulated, the potential for environmental and health problems that exists under the current version of § 261.7 could be eliminated.

2. Regulation of the residue when it is removed from the container. Another option EPA is considering is to add the words "until it is removed from the container" to § 261.7(a)(1) so that the section would read: "Any hazardous waste remaining in a container or an inner liner removed from a container that is empty, as defined in paragraph (b) of this section, is not subject to regulation under Parts 261 through 265, Part 122 or 124 of this chapter or to the notification requirements of Section 3010 of RCRA until it is removed from the container."

Such language would mean that the hazardous waste residue in an empty container could be transported, treated, stored or disposed of without being subject to RCRA regulation while it remained in the container, but that the residue would be regulated if it were removed from the container. This solution would be less burdensome to the regulated community than requiring triple rinsing of all containers that have held hazardous waste, but it would not offer as much protection of human

health and the environment because residues that remained in empty containers would be unregulated. It would require facilities about which EPA is most concerned, i.e., those container cleaning facilities which accumulate large amounts of container residues, to properly manage the residues as hazardous wastes once they were removed from the container. EPA would consider the person who removed the waste to be the generator. Persons who removed only small quantities of residues could qualify for the small quantity generator exclusion, if they also did not have large quantities of other hazardous wastes. One problem with this approach, though, would be how persons removing residues from empty containers that had been shipped to them would receive notice that the residues were hazardous wastes. Because, until their removal, the residues would be unregulated, and thus could be shipped without a manifest while they remained in their containers.

3. *Limitation on the amount of unregulated residue.* A third option EPA is considering is to regulate only persons who handle large amounts of hazardous waste residue in, or removed from, empty containers. The Agency could accomplish this by limiting the amounts of unregulated residue a person could manage during a particular period of time without becoming subject to hazardous waste management controls. All container residues handled by persons who regularly deal with large amounts of such residues could be regulated.

EPA solicits comments and data on whether the residues left unregulated by § 261.7 may pose a substantial hazard to human health or the environment and, if so, whether commenters favor one of the three options outlined above, or some other alternative to deal with the problem.

V. Clarification of 40 CFR 261.33

Section 261.33(c) lists containers that hold residues of certain acutely hazardous commercial chemical products, manufacturing chemical intermediates, and off-specification products as hazardous wastes if and when they are discarded or intended to be discarded. EPA is making certain clarifying changes to this section.

A. Clarifying Changes Including Regulation of Residues Rather Than Containers

First, as mentioned above, today's amendments move the provisions of § 261.33(c)(1)-(3) to § 261.7(b). Second, EPA also is changing the remaining wording of § 261.33(c) and the title of,

§ 261.33 to clarify that it is the hazardous material residue in a container, rather than the container itself, that is controlled under the regulations if and when the residue is discarded or intended to be discarded. This avoids the problems that can result from a literal reading of the regulations if the container, rather than the residue, is considered a hazardous waste. Read literally, for example, § 262.34(a) would require that a container, if the container itself were considered a hazardous waste, be placed within another container for temporary accumulation.

This change to the wording of § 261.33(c), although merely a clarification of the Agency's intent in the May 19, 1980, regulations, does alter the substance of the requirement in one respect. Although § 261.33(f) implies that any amount of a listed acutely hazardous material is a hazardous waste when it is discarded or intended to be discarded, § 261.33(f) in the May 19 regulations implies that a container or liner that previously held an acutely hazardous material listed in § 261.33(e) becomes a hazardous waste only if and when the container or liner—discarded to the hazardous waste residues—is "discarded or intended to be discarded." Under one reasonable interpretation of § 261.33(c), a container which is re-used by anyone or sent to a reconditioner for cleaning and subsequent re-use would not be subject to the hazardous waste management regulations because it was not "intended to be discarded." When the residue, rather than the container, is considered the hazardous waste, as it is under the amended § 261.33(c), a container holding a regulated residue, i.e., a container that is not "empty," that is sent to a reconditioner for cleaning and re-use must be accompanied by a manifest and may only be sent to a person with a RCRA permit or interim status for the treatment, storage or disposal of the waste in question. Because this amendment to § 261.33(c) may extend regulatory control to some persons whose activities were not previously regulated under RCRA, EPA is providing time for these persons to notify under Section 3010 of RCRA and to submit permit applications pursuant to 40 CFR Part 122. See the discussion above in section II of this preamble entitled "Compliance Dates."

On the other hand, if the residue of an acutely hazardous waste listed in § 261.33 itself is to be beneficially used, re-used, recycled or reclaimed, it is not being discarded and it never becomes a hazardous waste and thus is not subject to the hazardous waste management regulations. For example, if a container

that has held an acutely hazardous material listed in § 261.33(e) is to be re-used to contain the same material listed in § 261.33(e) that it previously held (and the initial residue is not discarded), or to contain some other material where the mixing of the other material with the residue of the § 261.33(e) material constitutes a beneficial use or re-use of that residue, then the acutely hazardous residue in the container or liner is not discarded and thus is not a hazardous waste. EPA has added a "comment" to § 261.33(c) to remind readers of the regulation that unless residues are beneficially used or re-used, or legitimately recycled or reclaimed, or are being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, EPA considers the residue to be intended for discard and thus a hazardous waste.

B. Interim Final Form of the Change

EPA believes that use of advance notice and comment procedures for the clarification to § 261.33(c) would be impracticable and contrary to the public interest, and therefore finds that good cause exists for adopting this change in interim final form under C.F.R. 553(b)(3). Delay in promulgating this clarification could cause significant harm to the regulated community and the general public. Without this clarification, confusion exists over whether the provisions of § 261.33(a) or § 261.33(c) govern container residues of acutely hazardous materials that are discarded or intended to be discarded. EPA intended that all such residues be controlled as hazardous wastes, but, as discussed above, one reasonable interpretation of § 261.33(c) is that such residues are not considered hazardous wastes if the containers that hold such residues are not discarded. To give notice to the regulated community of how EPA intended § 261.33(c) to work, and to protect the public against the possible mismanagement of the acutely hazardous material residues that may remain in unlined containers that are re-used, EPA is promulgating its clarification to § 261.33(c) in interim final form. EPA will accept comments on this change for 90 days and will make any further changes deemed necessary as a result of those comments.

C. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. EPA

agrees that the amendment to § 261.33(c) should take effect six months after its promulgation. The amendment will subject some people to the hazardous waste management regulations whose activities were not subject to regulation under the May 19, 1980, regulations. Two classes of people may be brought under regulation for the first time by this amendment. The first class of people are those who for the first time will be considered generators. These are people whose only hazardous wastes are container residues of acutely hazardous materials (that are discarded) from containers that are re-used. Although it was not EPA's intent to allow these residues to go unregulated under the May 19 regulations, EPA agrees that a reasonable reading of § 261.33(c) would so allow. Thus, the change to that section will bring some people under the hazardous waste management regulatory system for the first time as generators and these persons need time to plan to meet the regulatory requirements of Part 262.

The other class of people affected by today's amendment are owners and operators of container cleaning facilities which receive containers which are not considered empty under new § 261.7, i.e., which hold residues of regulated acutely hazardous materials. They will, under the interpretation of § 261.33(c) discussed above, be considered treatment, storage or disposal facilities for the first time under today's amendment. The owners and operators of these facilities will have to prepare to meet the applicable Part 265 standards, if they are eligible for interim status.

The effective date for today's amendment to § 261.33(c) is May 25, 1981. Section II of this preamble, entitled "Compliance Dates" sets forth the dates by which persons who are subject to regulation for the first time by today's amendment to § 261.33(c) or who wish to handle wastes newly regulated by today's clarification must notify EPA and submit a new or revised Part A permit application.

Until the amendment to § 261.33(c) is effective, the provisions of § 261.33(c), as promulgated on May 19, 1980, will remain in effect. Until the amendment to § 261.33(c) is effective, persons handling residues of acutely hazardous materials in containers that are not discarded or intended to be discarded will not be considered subject to Part 262 through 265, 122 and 124 requirements.

VI. Special Small Quantity Provisions

If any container is not considered empty under § 261.7(b), then the hazardous waste remaining in the container is subject to full regulation

unless the generator of the waste qualifies for the special requirements for hazardous waste generated by small quantity generators established in § 261.5 or for one of the other special provisions in the regulations.

In response to numerous comments and questions on § 261.5, EPA has amended it in a separate rulemaking. Containers and inner liners are no longer specifically mentioned in the amended § 261.5 because of the change to § 261.33(c) discussed above. Because EPA considers the residue of the acutely hazardous material, rather than the container or inner liner, to be the hazardous waste, § 261.5 no longer specifies a number of containers or an amount of inner liners containing § 261.33(c) residues that a small quantity generator may generate and still come within the special requirements. See § 261.5(c)(3) and § 261.5(c)(4), May 19, 1980.

Under amended § 261.5, a generator with § 261.33(c) container residues is subject to full Subtitle C regulation if the amount of such hazardous waste residue he generates in a calendar month exceeds an exclusion level specified in § 261.5. If the sum of all of his acutely hazardous waste, including his § 261.33(c) residues, is less than 1 kilogram, that waste is excluded from regulation unless he generates more than 1000 kilograms of other hazardous waste in a calendar month, in which case all of his acutely hazardous waste is also subject to regulation that month. If he generates more than one kilogram of acutely hazardous waste in a calendar month, including § 261.33(c) residues, all of that hazardous waste is regulated. Container residues of other than § 261.33(c) materials that are subject to regulation because they measure more than one inch in an individual container (see § 261.7) must be counted toward the 1000 kilogram exclusion in § 261.5. The preamble to the amendments to § 261.5 discusses the application of that section in further detail.

VII. Use, Re-use, Recycling and Reclamation Provisions

There is an important distinction to be drawn between wastes listed in § 261.33 and other listed wastes, with respect to the re-use provisions of the regulations. The use, re-use, recycling, and reclamation provisions of § 261.6 do not apply to any materials listed in § 261.33, including container residues, because § 261.6 only applies to hazardous waste, and materials listed in § 261.33 become hazardous wastes only when they are discarded or are intended to be discarded. Thus, these materials are not

hazardous wastes if they are used, re-used, recycled or reclaimed.

On the other hand, hazardous waste container residues, other than those listed in § 261.33, which are regulated because they are in containers that are not empty, i.e., which don't meet the provisions of § 261.7(b) (1) or (2), can qualify for the special requirements in § 261.6 just as any other hazardous waste can.

VIII. Container Cleaning Operations

Some persons have read the definition of treatment in § 260.10 to encompass all container cleaning operations. Commenters were particularly concerned that the triple rinsing or other cleaning operations prescribed in § 261.33(c) (1) and (2) constituted treatment of the hazardous waste which adhered to the container.

A. Triple Rinsing

Triple rinsing, a procedure sanctioned in the regulations, is carried out with the express purpose of removing the waste from the container. The usual intent is simply to remove the waste and not to treat it, and the procedure is not usually "designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize . . . it. Therefore, most triple rinsing does not meet the definition of treatment in Section 1004 of RCRA and § 260.10, and is, therefore, not subject to the requirements of Parts 264 and 265. The rinsate, however, is a hazardous waste if it meets one of the characteristics or if it contains a listed waste which remains subject to regulations via the mixing rule. See § 261.3(a)(2)(ii). Also, any treatment of the rinsate would almost certainly meet the definition of treatment in RCRA and such secondary treatment operations would be subject to the requirements of Parts 264 and 265.

B. Other Forms of Container Cleaning

Forms of container cleaning other than triple rinsing may constitute treatment because the intent and design of the operations involve not only removal of the waste from the container but also modification of the physical or chemical composition or character of the waste to render it less hazardous or non-hazardous. This is the case where drums are incinerated or "burned out." In this case, the burning operation is designed to remove and destroy the wastes. In other cases, chemicals are added to drums, again, not only to remove the waste, but to react with the wastes and destroy or detoxify them. These processes meet the RCRA definition of "treatment" and are thus

subject to the requirements of Parts 264 and 265.

C. Facilities Which Handle Only "Empty Containers"

Section 261.7 clarifies that container 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. The mixture rule (§ 261.3(a)(2)(ii)) is inapplicable to any residues excluded from regulation by 261.7(a)(1), which would be the only residues with which a facility that handles only "empty" containers would deal.

D. Facilities Which Handle "Non-Empty" containers

Any facility that handles any "non-empty" containers, i.e., containers which don't meet the definition of "empty" in 261.7(b), is managing regulated hazardous waste.

If the facility is the generator of the hazardous waste, i.e., the container residue, then the small quantity generator exclusion (§ 261.5) and the non-permitted accumulation time provision (§ 262.34) are available to the facility as a generator. Unless one of those provisions is applicable, though, all treatment, storage and disposal of regulated residues must be carried out in accordance with all applicable Part 264 or 265 standards at a facility with a permit or interim status. Note also that any regulated residue of a listed hazardous waste is subject to the mixture rule, so that rinse waters or solvents containing these residues also are considered hazardous wastes, unless they have been deleted in accordance with the procedures in §§ 260.20 and 260.22.

IX. Request for Comments

EPA invites comments on all aspects of the interim final amendments promulgated today and all of the issues discussed in this preamble. The Agency is providing a 90-day comment period and will carefully consider all comments received during that period.

X. Regulatory Impacts

The clarification to § 261.33(c) will bring a small number of additional persons under regulation as generators, transporters, or owners or operators of treatment, storage or disposal facilities. EPA is unable to estimate the number of such persons and thus cannot accurately estimate the increased impacts of the clarification.

The effect of the promulgation of

§ 261.7 is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. This is achieved by clarifying that container residues of hazardous waste, measuring an inch or less, except residues of certain acutely hazardous materials, are not subject to the regulations. The Agency is unable to estimate these cost and impact reductions.

Dated: November 19, 1980.

Douglas M. Costle,
Administrator.

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

1. Add the following new section to Part 261:

§ 261.7 Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either (i) an empty container or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under Parts 261 through 265, or Part 122 or 124 of this chapter or to the notification requirements of Section 3010 of RCRA.

(2) Any hazardous waste in either (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under Parts 261 through 265, and Parts 122 and 124 of this chapter and to the notification requirements of Section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified in § 261.33(c) of this chapter, is empty if:

(i) all wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held a hazardous waste identified in § 261.33(c) of this chapter is empty if:

(i) the container or inner liner has

been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

2. Revise the title of § 261.33 and paragraph (c) to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

(c) Any residue remaining in a container or an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) of this section, unless the container is empty as defined in § 261.7(b)(3) of this chapter. [Comment: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, EPA considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.]

§ 265.173 [Amended]

3. Delete the first sentence of the "Comment" to § 265.173.

§ 262.51 [Amended]

4. Change the reference for triple rinsing in § 262.51 from "§ 262.33(c)" to "§ 261.7(b)(3)."

[FR Doc. 80-36982 Filed 11-24-80; 8:48 am]

BILLING CODE 6560-30-01

CCR 000040766

40 CFR Part 261**[SWH-FRL 1680-4]****Hazardous Waste Management System; Identification and Listing of Hazardous Waste****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Interim final amendment to rule and request for comments.

SUMMARY: The Environmental Protection Agency is amending the hazardous waste management regulations (40 CFR 261.4) to provide that arsenical-treated wood or wood products which are generated by persons who utilize such treated wood or wood products for the woods' intended end use, and which wood constitutes hazardous waste solely because it fails the test for the characteristic of Extraction Procedure toxicity, is not subject to regulation under 40 CFR Parts 262 through 265 or Parts 122 through 124 or the requirements of Section 3010 of RCRA until the Agency's Office of Pesticide Programs has made further progress in its pending review of arsenical wood preservatives. This amendment is being made as a result of public comments.

DATES: Effective date: November 19, 1980.

Comment date: The Agency will accept comments on this amendment until January 28, 1981. Any person may request a hearing on this interim final rule by filing a request with John P. Lehman, whose address appears below, by December 18, 1980. The request must contain the information prescribed in § 260.20(d) of this chapter.

ADDRESSES: Comments on this amendment should be sent to Docket Clerk, Docket No. "3001/Arsenical-Treated Wood," Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460.

The public docket for this interim final rule is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. The public docket is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Matthew A. Straus, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202) 755-8187.

SUPPLEMENTARY INFORMATION:**I. Introduction**

On May 19, 1980, as part of its initial regulations implementing Section 3001 of the Resource Conservation and Recovery Act (RCRA), the Agency promulgated rules governing the identification and listing of hazardous wastes. Among other things, these rules identified four characteristics of hazardous wastes which are to be used by all persons generating solid waste to determine if the solid waste is hazardous. (See 40 CFR Part 261, Subpart C.) Pursuant to 40 CFR Part 261, a solid waste is a hazardous waste if it is not excluded by a provision of 40 CFR 261.4(b) and it exhibits one or more of the characteristics of hazardous waste identified in Subpart C of 40 CFR Part 261.

One of the characteristics which EPA has determined makes a solid waste a hazardous waste is described as "Extraction Procedure Toxicity" or "EP Toxicity" and appears at 40 CFR 261.24. In December, 1978, the Agency proposed the EP toxicity characteristic as a criterion for identifying hazardous waste. No comments relating to arsenical-treated wood or wood products were submitted in response to the proposal. In May, 1980, the Agency promulgated the EP toxicity characteristic as a final regulation. In July, 1980, approximately one and one-half years after the initial proposal of the EP toxicity characteristic, the American Wood Preservers Institute (AWPI) first brought to the Agency's attention the possibility that some wood treated with arsenical-based preservatives exhibits the characteristic of EP toxicity and, therefore, might be classified as hazardous waste when disposed of. AWPI requested a delay in the regulations' effective date with respect to arsenical-treated wood.

II. AWPI Comments Relating to Arsenical-Treated Wood

AWPI has requested that the Agency delay action to classify treated wood as a hazardous waste and to "clarify its regulations to indicate that all types of preserved wood, including arsenical treated wood, do not constitute hazardous wastes when disposed." AWPI's request is based on two arguments:

(1) the method of disposing of wood treated with arsenical preservatives is identical to registered uses of the treated wood in place—ground contact; and (2) the Office of Solid Waste should await the outcome of the Agency's Office of Pesticide Programs' pending examination of wood preservatives. The

Office of Pesticide Programs is reviewing the risks and benefits associated with the use of arsenical wood preservatives as part of the Federal Insecticide, Fungicide and Rodenticide Rebuttable Presumption Against Registration (RPAR) process. (Arsenical wood preservatives are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) because they are applied to control fungi and termites.) The RPAR review will determine whether pesticide registrations of arsenical wood treatments should be modified or canceled.

AWPI commented that application of EPA's hazardous waste regulations to arsenical preservative-treated wood on November 19, 1980, would have unintended consequences. For example, construction companies, utility companies, and other buyers of treated wood could become generators of hazardous waste. AWPI supported its request that the Agency await the completion of the RPAR review by pointing out that the RPAR review would "examine all the environmental effects of the use of treated wood, including ground and marine installation of arsenical-treated wood, such as utility poles and pilings." AWPI contended that the RPAR review would reveal that ground-contact uses of arsenical-treated wood would present no environmental hazard and, consequently, that disposal of arsenical-treated wood by land burial presents no hazard.

III. Amendments to 40 CFR 261.4 With Respect to Arsenical-Treated Wood and Wood Products

The Agency does not believe that implementation of RCRA regulations that affect toxic chemicals that are undergoing review for possible regulation by a program administered by EPA other than the Office of Solid Waste necessarily should await the conclusion of the other program's review. In particular, the Agency believes that substantial differences in the statutory mandates of RCRA and of FIFRA militate against deferring RCRA regulation until the completion of RPAR reviews. RPAR reviews do not include analyses of waste streams and, thus, do not relate directly to concerns about hazardous waste. For example, information relating to the risks associated with the use of creosote- and pentachlorophenol-based wood preservatives would have little direct relevance to the hazards of disposal of wastewater treatment sludges from wood preserving processes that use creosote and/or pentachlorophenol. These wastes are listed in 40 CFR

261.32. In a separate notice, the Agency in fact has announced that it will not wait until the completion of the RPAR review of wood preservatives before proceeding with regulation of these wastes under RCRA. 45 FR 74885, 74888-89 (November 12, 1980). The Agency recognizes, however, that in unusual instances it may be appropriate to defer action under RCRA while RPAR reviews are generating information.

The Agency agrees with AWPI that the RPAR review of wood preservatives could provide meaningful information with respect to the risks presented by disposal of arsenical-treated wood and that it is appropriate for the Agency to defer temporarily the full impact of characterizing arsenical-treated wood as a hazardous waste until the pending RPAR review has progressed further. As AWPI has pointed out, ground-contact uses of arsenical-treated wood present risks similar to the risks associated with land burial of discarded arsenical-treated wood. Therefore, the RPAR review, which will analyze to some extent the risks associated with ground-contact uses of arsenical-treated wood, is likely to produce information directly relevant to the risk associated with disposal of arsenical-treated wood by land burial. In addition, the RPAR review may provide guidance with respect to waste management procedures which might be specifically appropriate to disposal of arsenical-treated wood.

Although the Agency believes it appropriate to await further progress of the RPAR review of wood preservatives before making Subtitle C requirements completely applicable to disposal of arsenical-treated wood, the Agency believes that Subtitle C requirements should apply immediately to arsenical-containing wood wastes such as wastes generated by sawmills or by facilities at which arsenical preservatives are applied to wood. These arsenical-treated wood wastes are likely to be generated and managed in larger, more concentrated quantities than wastes generated by ultimate users of arsenical-treated wood. Moreover, these generators' wastes might be in a form—such as sawdust—which presents risks dissimilar to those which the RPAR review will analyze. In addition, disposal of freshly-treated wood by sawmills or processors is likely to present greater hazards than wood which has been treated years prior to use and disposal. For these reasons, today's action provides a temporary exclusion from Subtitle C only for arsenical-treated wood wastes generated by persons who utilize such

treated wood or wood products for the woods' intended end use.

For the reasons set forth above, the Agency has decided to defer, for an estimated three to six-month period, applying RCRA Subtitle C requirements to discarded arsenical-treated wood or wood products following these materials' intended end use. It should be noted, however, that the decision to await further progress of the RPAR review does not signify that discarded arsenical-treated wood and wood products will be excluded permanently from all Subtitle C requirements if the Agency's Office of Pesticide Programs determines that certain ground uses of arsenical wood preservatives do not present unreasonable risks. Such a determination under FIFRA does not necessarily mean that the pesticide is not hazardous; it may mean that the economic benefits of a pesticide are great enough that the risk should be tolerated. This conclusion—if it is reached by the Agency's Office of Pesticide Programs—would not necessarily indicate that the disposal of arsenical-treated wood at the expiration of its useful life should not be subject to safeguards imposed under RCRA.

IV. Interim Final Promulgation

This temporary exclusion from Subtitle C requirements is being promulgated in interim final form. Thus, discarded arsenical-treated wood or wood products following these materials' intended end use is no longer subject to Subtitle C requirements on the basis of the arsenical treatments. This amendment is final for purposes of the 90-day petition deadline under Section 7006 of RCRA. The Agency, however, is soliciting comments on the amendment.

The Agency is making this amendment effective immediately because public comment has been submitted and because delay in promulgating the temporary exclusion could cause significant harm to the regulated community. Since it was public comment which prompted the Agency to promulgate this amendment, the policy underlying solicitation of comments prior to the effectiveness of regulations has been substantially satisfied. The purpose of the temporary exclusion is to defer imposing the full Subtitle C requirements for only a few months to await further development of pertinent information. During this period, the most likely sources of possible hazard—entities such as sawmills—will be subject to Subtitle C. Thus, the Agency believes that there will be sufficient protection of public health. Accordingly, good cause exists

for adopting this regulation in interim final form (see 5 U.S.C. § 553(b)(B)).

V. Solicitation of Public Comments

The Agency invites further public comments with respect to any aspect to today's action. In particular, the Agency would welcome comments relevant to the following issues:

1. What percentage of these wastes fail the test for the characteristic of EP toxicity? Do any particular types of arsenical-treated wood products fail more than others? What are the results of particular EP toxicity tests for arsenical-treated wood products? (These data should be currently available, in light of generators' obligations under 40 CFR § 262.11 to determine whether their waste is hazardous.)¹

2. What are the usual disposal practices for these wastes? What percentage of this material is reused, what are the types of reuses, and what percentage of reuses constitute direct land application of the material?

3. How many generators which are not subject to the small generator exclusion (40 CFR 261.5) would become generators of hazardous waste but for the promulgation of today's exclusion? What is the volume of waste that they generate?

4. What modifications, if any, in the waste management standards established in 40 CFR Part 264 and 40 CFR Part 265 should be made if the Agency were to conclude that the disposal of arsenical-treated wood by all generators should be subject to regulation under Subtitle C?

Dated: November 19, 1980.

Douglas M. Costle,
Administrator.

Title 40 CFR Part 261 amended as follows:

1. In § 261.4, Exclusions, add the following paragraph (b)(8):

§ 261.4 [Amended]

(b) * * *

(8) Solid waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and

¹ Today's action, of course, does not excuse generators of these wastes from their past obligation to determine if their wastes are hazardous and, in the case of large quantity generators, to have notified the Agency as of August 18, 1980.

wood products for these materials' intended end use.

(FR Doc. 80-36603 Filed 11-24-80; 8:45 am)

BILLING CODE 5590-30-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 1681-7]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today finalizing its lists of commercial chemical products, off-specification products, and intermediates that, when disposed of, are considered to be hazardous wastes (40 CFR 261.33). These lists were initially promulgated in interim final form on May 19, 1980 (45 FR 33124-33127). In addition, the Agency is deleting ethylenediamine (Hazardous Waste No. P053), N-nitrosodiphenylamine (Hazardous Waste No. P089), oleyl alcohol condensed with 2 moles of ethylene oxide (Hazardous Waste No. P086), 1,2-propanediol (Hazardous Waste No. P100), and chlorodibromomethane (Hazardous Waste Nos. U040 and U065) from the list of generically-named chemicals in § 261.33 (e) and (f), and making a number of technical changes in the listing descriptions of other listed, generically-named chemicals. Appendix VIII of Part 261 is being amended to reflect these deletions, and to add one compound whose name was omitted.

The Agency also is removing all trade names from the lists of § 261.33 (e) and (f), but clarifying that the scope of § 261.33 (e) and (f) includes in addition to the commercially pure grades of the chemicals, all technical grades, and all formulated products in which the listed chemical is the sole active ingredient. Finally, the Agency is responding to certain questions regarding the interpretation of § 261.33, and indicating that additional questions will be answered in a forthcoming Regulatory Interpretation Memoranda (RIM).

DATES: Effective Date: November 19, 1980. However, persons handling materials covered by this regulation which are formulated products in which a listed chemical is the sole active ingredient, and who have not yet

notified the Agency due to a misunderstanding of the scope of the listings must do so by February 23, 1980. Facilities managing such wastes still may qualify for interim status if they submit a Part A permit application by May 25, 1981 (or, in the case of facilities which already have applied to manage other identified or listed hazardous wastes, if they submit an amended Part A application by that date). Interim status standards for all such facilities become effective on May 25, 1981.

ADDRESSES: The public docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, and is available for viewing from 9 a.m. to 4 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For general information, contact David Friedman, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-0187.

For information in implementation contact:

Region I—Doris Haebner, Chief, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5777.

Region II—Dr. Ernest Regna, Chief, Solid Waste Branch, 36 Federal Plaza, New York, New York 10007, (212) 264-0604/5.

Region III—Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980.

Region IV—James Scarbrough, Chief, Residuals Management Branch, 346 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 681-3018.

Region V—Karl J. Klepetch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148.

Region VI—R. Stan Jorgensen, Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 787-2045.

Region VII—Robert L. Mosby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307.

Region VIII—Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221.

Region IX—Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 558-4808.

Region X—Kenneth D. Feigner, Chief,

Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-1280.

SUPPLEMENTARY INFORMATION: On May 19, 1980, as part of its final and interim final regulations implementing Section 3001 of RCRA, the Agency promulgated as § 261.33 of the regulations a list of 361 commercial chemical products or manufacturing chemical intermediates which are hazardous wastes if they are discarded or intended to be discarded. (45 FR 33124-33127.) Section 261.33 also lists as hazardous wastes off-specification variants and the residues and debris from the clean-up of spills of these 361 chemicals, if discarded or intended to be discarded (§ 261.33 (b) and (d)). Finally, § 261.33 lists as hazardous wastes the containers and inner liners of containers that have held 122 of these chemicals (those listed in paragraph (e)), if they are discarded or intended to be discarded, unless they have been triple rinsed with an appropriate solvent or have been decontaminated in an equivalent manner. (§ 261.33(c).) The regulation also covers materials not specifically listed by name, so long as they "have the generic name listed in paragraphs (e) or (f) . . ." (§ 261.33 (a), (b), (c), and (d).)

The Agency received a large number of comments on this regulation. The comments for the most part challenged the Agency's decision to list particular substances as hazardous wastes. Some questions also were raised regarding the scope of the regulation, particularly with respect to trade products containing a listed chemical but not specifically listed themselves. Comments also were submitted concerning the difficulty of determining the chemical constituents of unlisted trade name products. Finally, many questions have been received regarding the interpretation of § 261.33.

We are setting forth in this preamble our disposition of all listings of particular substances, and a summary of the basis for our decision.¹ We also are clarifying the scope of coverage of trade products, and providing guidance as to how to determine whether a given tradename product is regulated under this section. We also are responding to certain of the interpretative questions raised regarding § 261.33. Additional questions will be answered in a forthcoming Regulatory Interpretation Memoranda (RIM).

¹We also are indicating the appropriate conforming amendments to Appendix VII to Part 261.

1. Finalization of Chemical Product Names in § 261.33 (e) and (f)

A. The changes made in response to comments on specific listings are described summarily below. More detailed explanations are contained in the revised Background Document.

EPA hazardous waste No.	Compound name	Action taken	Reason
P019 and U180	2-Butanone peroxide (Methyl ethyl ketone peroxide)	Deleted from § 261.33(e). Remains in § 261.33(f). Added (R) designation.	2-Butanone peroxide and methyl ethyl ketone peroxide, synonyms for the same compound, were mistakenly included in both the § 261.33 (e) and (f) lists. This compound does not meet the criteria for listing as an acutely hazardous waste. However, the compound's oral (rat) LD50 of 484 mg/kg qualifies it for continued inclusion in § 261.33(f). Moreover, the compound is reactive, since it is an oxidizer.
P025	1-(p-Chlorobenzoyl)-5-methoxy-2-methylindole-3-acetic acid.	Moved from § 261.33(e) to § 261.33(f)	After evaluating the data supplied by the commenter which indicated that the correct oral (rat) LD50 value for the subject compound (also known as indomethacin) is 1100 mg/Kg, not the cited 12 mg/Kg, the Agency concluded that waste does not pose an acute hazard. However, since the Agency's Carcinogen Assessment Group has concluded that substantial evidence of carcinogenicity exists for indomethacin, the waste will remain listed under § 261.33(f) as U245.
P032	Cyanogen bromide	Moved from § 261.33(e) to § 261.33(f)	The LC50 value cited in the May 19th Background Document was incorrect. According to new data, the compound does not meet the criteria for listing as an acutely toxic waste. However, cyanogen bromide's inhalation (rat) LC50 of 4.35 mg/l/hr—only slightly less toxic than the standard for an acutely hazardous waste—qualifies it for inclusion as a hazardous waste. It thus remains listed under § 261.33(f) as U248.
P035	2,4-Dichlorophenoxyacetic acid (2,4-D)	Moved from § 261.33(e) to § 261.33(f) and listing clarified.	Re-evaluation of this listing in light of data received during the comment period indicates that the compound does not meet the criteria for listing as an acute hazard. Since the toxicity of 2,4-D is well recognized (for example, it is a National Interim Primary Drinking Water Standard pollutant), the compound is listed as a hazardous waste under § 261.33(f) as U240.
P052	Ethioyamide	Deleted	The active pesticide (C ₁₂ H ₁₇ (Cl) ₂ OCH ₂ COO moiety) is marketed commercially in a number of chemical forms. To clarify that the listing is meant to cover these various forms, the listing description has been clarified by explicitly including 2,4-D's salts and esters.
P053	Ethyleedamine	Deleted	Listing duplicated P101 listing.
P081	Hexachloropropene	Moved from § 261.33(e) to § 261.33(f)	LDLo value cited in the May 19th Background Document was incorrect. New data indicates that the compound is unlikely to pose a substantial hazard to human health or the environment even if the waste is mismanaged, so the waste therefore has been deleted from § 261.33.
P079	Nitrogen peroxide	Deleted	The LC50 value cited in the May 19th Background Document was incorrect. According to new data, the compound does not meet the criteria for listing as an acutely toxic waste. However, hexachloropropene's inhalation (rat) LC50 of 2.4 mg/l/hr—only slightly less toxic than the standard for an acutely hazardous waste—qualifies it for inclusion as a hazardous waste. It thus remains listed under § 261.33(f) as U243.
P083	N-Nitrosodiphenylamine	Deleted	Listing duplicated P078 listing.
P086	Oleyl alcohol condensed with 2 moles of ethylene oxide.	Deleted	The LD50 value cited in the May 19th Background Document was incorrect. New data indicates that the compound is unlikely to pose a significant threat to human health or the environment even if the waste is mismanaged and it therefore has been deleted from § 261.33.
P090	Pentachlorophenol	Moved from § 261.33(e) to § 261.33(f)	Listing duplicated P078 listing.
P100	1,2-Propanediol	Deleted	The LD50 value cited in the May 19th Background Document was incorrect. New data indicates that the compound is unlikely to pose a significant hazard to either human health or the environment even if the waste is improperly managed. This decision is further supported by the Food & Drug Administration's approval of this compound as a direct food additive.

1. Finalization of Chemical Product Names in § 261.33 (a) and (f)—Continued

A. The changes made in response to comments on specific listings are described summarily below. More detailed explanations are contained in the revised Background Document.

EPA hazardous waste No.	Compound name	Action taken	Reason
P117	Thiurem	Moved from § 261.33(a) to § 261.33(f) and listing changed to clarify the specific waste being regulated.	According to the NIOSH "Registry of Toxic Effects of Chemical Substances", thiurem is a synonym for bis(dimethylthiocarbamoyl) disulfide. Comments were received which indicated that other compounds were also known as "thiurem". We have accordingly changed the listing "thiurem" to clarify that the intended compound is "bis(dimethylthiocarbamoyl) disulfide". Secondly, the LD ₅₀ data cited in the May 19th Background Document was incorrect. According to the new data, the waste does not meet the standard for an acutely hazardous waste. However, bis(dimethylthiocarbamoyl) disulfide's synergistic action with alcohol could pose a substantial hazard to human health if the waste was mismanaged and, as a result, contaminated drinking water. Thus the compound has been listed in § 261.33(f) as U244.
U040 and U065	Chlorodibromomethane and Dibromochloromethane	Deleted	After reevaluating the available environmental and toxicological information, the Agency has concluded that the information is not conclusive enough to justify retaining the listing. Pending receipt of additional data, the waste has been removed from inclusion under § 261.33.
U044	Chloroform	Deleted (f) designation	Mistakenly included. Chloroform does not have a flash point below 60°C.
U100	Dimethylacetamine	Deleted	Acutely toxic and remains listed as P082.
U104	2,4-Dichlorophenol	do	Acutely toxic and remains listed as P048.
U154	Methanol	Changed to (f) designation	After considering the comments received, the Agency has concluded that it has insufficient information to justify listing methanol for toxicity. However, since it has a flash point of 11°C, it will remain listed under § 261.33(f) as an ignitable waste.
U161	Methylisobutyl ketone	Changed to (f) designation	After considering the comments received, the Agency has concluded that it has insufficient information to justify listing methyl isobutyl ketone for toxicity. However, since it has a flash point of 22.8°C, it will remain listed under § 261.33(f).
U167	Quinones	Changed to p-benzoquinone	As the May 19th Background Document indicated, the Agency's available toxicological data referred to p-benzoquinone only. The original listing of "Quinones" thus was over-inclusive. We are accordingly revising the listing description. Appendix A to the May 19th listing Background Document summarizes adverse health and environmental effects associated with p-benzoquinone.
U202	Saccharin	Added to listing "... and salts."	The May 19th Background Document was intended to include both the parent and its salts, since several commercial uses include (and is known to include) both forms. In light of this common usage, we do not believe that any notice and comment issues are present. The arguments that saccharin is not carcinogenic were not deemed persuasive enough by the Agency to warrant deletion from § 261.33 list. That saccharin poses a significant carcinogenic hazard is amply demonstrated by the warnings that are required by the Food & Drug Administration to appear on any food to which saccharin is added.
U228	Trichlorofluoromethane	Deleted	Listing duplicated U121 listing.
U236	Urethane	Listing description modified	The original listing of urethane has been changed to read "ethyl carbamate (urethan)" to indicate more clearly that the listing does not refer to either the polymers commonly known as "polyurethanes" or their precursors.
U236	Xylene	Changed to (f) designation	Xylene was mistakenly listed as toxic instead of as ignitable. While xylene does not appear to pose a sufficient toxicity hazard for listing as a toxic waste, as the May 19th Background Document indicated, xylene is an ignitable waste due to its flash point of 27°C.

B. In addition to the above changes made in response to comments, the following changes, described summarily below, have been made as a result of the Agency's review of the interim final regulations.

EPA hazardous waste No.	Compound name	Action taken	Reason
P096	Aluminum phosphide	Added (T) designation	In addition to its reactivity toward water (indicated in the May 19th Background Document), the waste is also acutely toxic because of its toxicity. The (T) designation had been omitted inadvertently.
P030	Cyanide salt mixtures not otherwise specified	Modified listing description	Clarify the meaning of the term "cyanides" in light of a comment which indicated that the listing might be misunderstood.
P055	Ferrocyanide	Deleted	Listing duplicated P030 listing.

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I. Finalization of Chemical Product Names in § 261.33 (e) and (f)—Continued

EPA hazardous waste No.	Compound name	Action taken	Reason
P085	Mercury fulminate	Added (R) designation	The (R) designation was omitted inadvertently. While mercury fulminate is toxic (as the May 19th Background Document points out), it is also acutely hazardous because of mercury fulminate's explosive properties.
P080	Nitrogen tetroxide	Deleted	Listing duplicated P078 listing.
P081	Phenyl dichloroarsine	Deleted	Listing duplicated P036 listing.
P097	Phosphorothioic acid, O,O-dimethyl ester, O-ester with N,N-dimethyl benzene sulfonamide.	Listing corrected	The Agency had mistakenly listed this compound. It does not exist. The correct compound is "Phosphorothioic acid, O,O-dimethyl O-[p-(dimethylamino)sulfonylphenyl] ester."
P112	Tetranitromethane	Changed to (R) designation	The (R) designation was inadvertently omitted. While tetranitromethane is toxic (as the May 19th Background Document points out), it is acutely hazardous because of tetranitromethane's explosive properties.
U001	Acetaldehyde	Changed to (I) designation	This compound does not pose a sufficient hazard for listing because of toxicity. However, acetaldehyde's flash point of -37.8°C classifies it as a hazardous waste by reason of ignitability.
U006	Acetyl chloride	Added (R) designation	The reactivity designation was mistakenly omitted from the listing, although the May 19th Background Document cited reactivity as a reason for listing.
U012	Aniline	Added (I) designation	In addition to aniline's ignitable properties, it is also toxic with an oral (rat) LD50 of 440 mg/kg (Merck Index).
U019	Benzene	Added (I) designation	As well as being toxic, this compound is highly flammable (10-12°C). (Merck Index.)
U033	Carbonyl fluoride	Added (R) designation	In addition to carbonyl fluoride's toxic properties, as the May 19th Background Document indicates, it also poses a hazard due to its reactivity.
U054	Cresylic acid	Deleted	Listing duplicated U052 listing, which now reads cresol and cresylic acid.
U055	Cumene	Changed to (I) designation	This compound does not pose a sufficient hazard for listing because of toxicity. However, cumene poses an ignitability hazard due to its flash point of 44°C.
U074	1,2-Dichloro-2-butane	Added (I) designation	A review of the literature indicated that as well as being toxic, this compound is highly flammable (flash point of 27°C).
U085	1,2,3,4-Tetrahydrobutene	Listing corrected	Clarification, prefix omitted by mistake.
U117	Ethyl ether	Changed to (I) designation	This compound does not pose a sufficient hazard for listing because of toxicity. However, ethyl ether's flash point of -45°C classifies it as an ignitable waste.
U140	Isobutyl alcohol	Added (I) designation	This ignitability designation was mistakenly omitted. As the F006 Listing indicated, the waste possesses a flash point of 28°C. (See discussion in section I, C. of this preamble.)
U152	Methoxybenzene	Added (I) designation	As well as being toxic, this compound is highly flammable (12°C).
U153	Methanethiol	Added (I)	As well as being toxic, this compound is highly flammable (-18°C).
U156	Methyl chloroacetate	Added (I) designation	This designation was mistakenly omitted although the May 19th Background Document indicated that the waste presents a hazard due to ignitability. The waste in fact has a flash point of 12°C.
U162	Methyl isothiocyanate	Added (I) designation	This designation was mistakenly omitted from the regulation, although the May 19th Background Document indicates that the compound is ignitable. The waste, in fact, possesses a flash point of 10°C.
U175	N-Nitrosodi-n-propylamine	Deleted	Listing duplicated U111 listing.
U194	n-Propylamine	Added (I) designation	The toxic designation was omitted mistakenly. Further discussion is contained in section I, C. of this preamble.
U223	Toluene diisocyanate	Added (R) designation	As well as being toxic, this compound is highly reactive. See discussion in 2. C. of this preamble.
U244	Toxaphene	Moved from § 261.33(f) to § 261.33(e)	Material has an oral (rat) LD50 of 40 mg/kg; thus meeting the standards for an acutely hazardous waste. Its new hazardous waste number is P123.

C. Several comments were received which argued against the listing of a specific compound but were judged by the Agency to be nonpersuasive. These comments are summarized below along with the reason for our decision to retain the chemical in the § 261.33 lists.

EPA hazardous waste No.	Compound name	Reason
PO 56	Flourine	This chemical was listed as intended. The hazardous material is flourine, the diatomic molecule F ₂ , not the polynuclear aromatic "fluorene" discussed in the comment. Since flourine has a reported inhalation (human) TCl ₀₁ of .00035 mg/l/hr, which falls within the standards for an acutely hazardous waste, it will remain listed under § 261.33(e).
P107	Bromine sulfide	While the oral (rat) LD50 data cited in the May 19th Background Document was incorrect, the correct oral (human) TCl ₀₁ data which was cited by the commenter—50 mg/Kg (Letter from Chemical Products Corp., dated August 18, 1980)—confirms the agency's original classification of this waste as acutely hazardous.

EPA hazardous waste No	Compound name	Reason
U0017	Acrylamide	The Agency admits that the Health and Environmental Effects profile for acrylamide was unavailable for comment when the regulations were promulgated. However, the Agency strongly believes that sufficient information on the toxicity/carcinogenicity of this compound was presented in the listing Background Document for waste K014 to support the continued inclusion of acrylamide under § 261.33.
U030	4-Bromophenyl phenyl ether	The commenter claims that this compound is not in commercial use. Pending verification of the claim the compound will remain listed under § 261.33.
U037	Chlorobenzene	As was discussed in the Health and Environmental Effects Profile cited in the May 19th Background Document, chlorobenzene is absorbed from the gastrointestinal tract and is in part metabolized to chlorinated phenols. Although its acute toxicity is not very high, many chronic effects have been noted. Continued administration at low doses inhibits red blood cell formation, induces eosinophilia, and chromosome changes in the rat. Decreased spermatogenesis and other gonadal effects were also noted in male dogs and in female rats exposed to low doses. Chlorobenzene has also been found to be mutagenic in certain short term bioassays.
J075	Dichlorodifluoromethane	Commenter did not present any data to argue against the continued listing of dichlorodifluoromethane and the waste thus will remain listed. It should be noted that the Agency's overriding concern with this compound, as with all chlorinated fluorocarbons, relates to the fact that chlorinated fluorocarbons may indirectly cause skin cancer by depletion of the stratospheric ozone. For further information, the reader is referred to the Listing Background Document "Spent Halogenated and Non-Halogenated Solvents and Still Bottoms/Sludges From The Recovery Of Those Solvents."
U080	Dichloromethane	The Agency disagrees with the comment that dichloromethane does not pose a hazard if mismanaged. Although the NCI sponsored bioassay studies have not been completed, EPA has found suggestive evidence of its carcinogenicity. Therefore, while the Agency is revising the Background Document to indicate that dichloromethane is only a suspect carcinogen, it cannot ignore this preliminary finding particularly in light of the large quantity of this material in use and the likelihood of its being discarded. For further information the reader is referred to the Listing Background Document "Spent Halogenated and Non-Halogenated Solvents and the Still Bottoms/Sludges From the Recovery of these Solvents."
U102 and U107	Dimethyl phthalate (U102) and Di-n-octyl phthalate (U107)	While these compounds are not acutely toxic to man, they have been found to be teratogenic in rats, causing fetal resorption, gross abnormalities, and decreased fetal weight. Dimethyl phthalate is mutagenic in microbial assay systems. In addition, a recent report (Water Quality Criteria Document: Phthalate Esters, NTIS PB No. 81-117780) indicated that neurotoxic effects have been observed in workers exposed to mixtures of phthalates.
U121	Fluorotrichloromethane	Fluorotrichloromethane has been listed because of the danger it poses to the earth's ozone layer and thus its removal from the list of toxic chemicals under § 307 of the Clean Water Act is not germane to the reason it was listed as a hazardous waste.
U140	Isobutyl Alcohol	The Health and Environmental Effects Profile cited in the May 19, 1980 Background Document (Appendix A of the Listing Background Document) discusses and supports the listing of this waste as toxic. More specifically, oral administration in rats of relatively high concentrations of this substance resulted in biochemical and histologic liver changes. Liver carcinomas and sarcomas as well as myeloid leukemia have also been produced in this species. Additionally, this compound should also have been listed as ignitable in § 261.33(f), since the May 19, 1980 listing of waste F005 clearly indicates that the compound is ignitable. The waste, in fact, possesses a flash point 28°C. Isobutyl alcohol also will be added to Appendix VII of Part 261, from which it was omitted inadvertently.
U184	Pentachloroethane	Contrary to claims of the commenter, a Health and Environmental Effects Profile for this compound was published (Appendix A of §§ 261.31 and 261.32 Listing Background Documents, pp. 435-453. According to this profile, release of pentachloroethane to the environment poses a potential hazard to aquatic ecosystems. For example, according to the recent Water Quality Criteria Document (U.S. EPA, Ambient Water Quality Criteria: Chlorinated Ethanes, EPA 440/5-80-029, October 1980), the maximum concentration that can be present in surface waters without danger to the ecosystem is 38-57 µg/L. Pentachloroethane also is bioaccumulative, a further reason for its continued listing.
U188	Phenol	The Agency strongly disagrees with the comment that mismanagement of waste phenol does not pose a hazard to human health. While the carcinogenicity of phenol has not been firmly established, both liver and kidney damage to humans will result from chronic exposure to phenol with death a potential consequence. In addition, the acute toxicity of phenol results in central nervous system depression with symptoms severe enough to earn phenol a toxicity rating of 'High' in Sax (Dangerous Properties of Industrial Materials, Fifth Edition, 1979, Van Nostrand Reinhold Co., New York). This standard reference indicates that "death or permanent injury may occur due to exposure at normal use . . .". Therefore, the Agency will continue to include phenol under § 261.33(f).
U184	n-Propylamine	While the commenter believes that compounds, such as this one, having an oral (rat) LD50 of 570 mg/kg are not toxic, the Agency disagrees. Other standard sources support the Agency's viewpoint. For example, "Clinical Toxicology of Commercial Products", (3rd ed.) considers compounds which have an oral LD50 (as determined using rats) in the range of 500 mg/kg to 5000 mg/kg to be toxic to moderately toxic; however, it should be noted that this compound is at the higher end of the range and would tend to be considered toxic rather than moderately toxic.
U207	Tetrachlorobenzene	The Health and Environmental Effects Profile cited in the May 19th Background Document discusses and supports the listing of all waste commercial chlorinated benzenes. Among the specific toxic effects of tetrachlorobenzene are its aquatic toxicity (14.5 µg/l) and bioconcentration factor (1800X). Since the commenter did not present any specific evidence or reasons for the Agency not to list tetrachlorobenzene as a hazardous waste, it will remain listed under § 261.33(f).
U212	2,3,4,6-Tetrachlorophenol	As stated in the Health Effects Profile for this compound, 2,3,4,6-Tetrachlorophenol is fetotoxic in rats, and inhibits both carbohydrate metabolism and the liver oxidase system. It also is bioaccumulative (bioaccumulation factor 1100). EPA has established 1 µg/l as the ambient water quality criterion based on organoleptic effects; 440 µg/l was established for the protection of aquatic life.
U220	Toluene	While toluene has a relatively low acute toxicity (oral [rat] LD50 of 5000 mg/kg), as described in the cited Health and Environmental Effects Profile, low level chronic exposure to toluene has caused chromosome damage in humans and has led to the development of neuro-muscular disorders. Toluene has also reported to cause reproductive problems to female workers during occupational exposure.
U223	Toluene diisocyanate	The Agency believes that toluene diisocyanate (TDI) should continue to be listed as a hazardous waste when discarded. TDI exposure produces respiratory sensitization, and decreased lung function. Exposure to high concentrations can result in pulmonary edema and death. Additionally, the reaction of free isocyanate groups with water usually occurs very rapidly, is exothermic, and results in a possibly explosive release

EPA hazardous waste No.	Compound name	Action taken	Reason
U226	1,1,1-Trichloroethane	No data was presented by the commenter to justify the contention that waste 1,1,1-trichloroethane does not pose a health hazard and should not be listed. As the biosays described in the May 19th Appendix A Health and Environment Effects Profile indicate increased tumor production was noted in animals treated with 1,1,1-trichloroethane. In addition, <i>in vitro</i> transformation of rat embryo cells and subsequent fibrosarcoma production by these cells when injected <i>in vivo</i> , also indicates that 1,1,1-trichloroethane has carcinogenic potential. It should also be noted that the Agency recently determined that 1,1,1-Trichloroethane should continue to be listed as a toxic pollutant under § 307(a) of the Clean Water Act.	
U232 and U233	2,4,5-Trichlorophenoxyacetic acid and 2,4,5-Trichlorophenoxypropionic acid.	One commenter questioned the presence of these constituents on the § 261.33 list when the waste constituents are among the parameters measured by the characteristic of Extraction Procedure Toxicity (EP). We believe the concern is largely academic since discarded commercial chemical products consisting of these pesticides will undoubtedly contain concentrations many orders of magnitude above the EP levels.	

D. The Agency received several comments indicating that a mistake had been made in converting from one set of units to another during the computation of inhalation toxicity values. We acknowledge that for a number of the compounds listed for acute inhalation toxicity, the conversions were erroneous so that the values given in the May 18th Background Document were incorrect. After recalculating the toxicity values, it was found that the following compounds still meet the criteria for listing as an acutely hazardous waste (inhalation (rat) LC50 $\leq$ 2 mg/l/hr or inhalation (human) LCLo $\leq$ 2 mg/l). The recalculated raw data and the correct values are presented below. The formulas used in converting inhalation toxicity values are:

$$\begin{aligned} \text{ppm} &= \text{mg/m}^3 \times (22.4/\text{MW}) \\ \text{mg/l} &= (\text{mg/m}^3)/1000 \\ \text{mg/l} &= (\text{MW})(\text{ppm})/(22.4)(1000) \\ (\text{mg/l/minute})/60 &= \text{mg/l/hour} \\ (\text{mg/l/hour(s)}) \times (\text{hour(s)}) &= \text{mg/l/hour} \\ \text{MW} &= \text{Molecular weight} \end{aligned}$$

EPA hazardous waste No.	Compound name	Molecular weight	Cited value (mg/l/hr)	Correct value (mg/l/hr)	Published value (source of data)
P005	Allyl alcohol	58	6.8	0.06	TCLo(hum) 25ppm (N)
P016	Bis(chloromethyl) ether	115	0.49	0.25	LC50(rat) 7ppm/7 hr (S)
P017	Bromoisobutene	137	0.85	0.53	TCLo(hum) 8.2mg/l/10min (D)
P026	alpha-Chlorotoluene	127	0.003	1.70	LC50(rat) 150ppm/2hr (S)
P031	Cyanogen	52	0.18	0.81	LC50(rat) 350ppm/hr (S)
P033	Cyanogen chloride	61	0.89	0.01	TCLo(hum) 10mg/m ³ (S)
P056	Fluorine	38	1.85	0.03	LC50(rat) 185ppm/hr (S)
P064	Isocyanic acid, methyl ester	41	0.20	0.004	TCLo(hum) 2ppm (N)
P066	Methomyl	162	8.77	0.56	LC50(rat) 77ppm (N)
P068	Methyl hydrazine	46	2.96	0.61	LC50(rat) 74ppm/4hr (S)
P073	Nickel carbonyl	171	0.73	0.12	LC50(rat) 240mg/m ³ /30min (S)
P086	Phosphine	34	0.44	0.07	LC50(rat) 11ppm/4hr (S)
P110	Tetraethyl lead	384	1.98	0.09	LC50(rat) 6ppm (S)
P118	Trichloromethanesulfol		19	0.45	

¹ Listed in oral exposure column of Background Document instead of inhalation exposure column.

(N) = NIOSH Registry, (S) = Sax, (D) = DOT.

E. The Agency also received a number of inquiries regarding the specific nomenclature used in listing the generic chemical names, expressing confusion in certain cases because these compounds often go by a number of different names. In order to eliminate any confusion, the Agency has revised the listing descriptions in § 261.33 (e) and (f). The new lists contain only the International Union for Pure and Applied Chemistry (IUPAC) name and, where available, a cross-reference to the compound's

commonly-used generic name. Since the IUPAC name is the one employed in *Chemical Abstracts*, the premier guide to the world's chemical literature, the Agency believes that the new listing descriptions will permit unambiguous compound identification.

In compiling the new regulation, we have listed each identified substance in alphabetical order but have retained the hazardous waste number used in the May 19th, interim final regulation. As a result, the § 261.33 (e) and (f) lists no

longer numbered consecutively. Furthermore, where a generic name and the IUPAC name are cross-referenced, both will be listed under the same hazardous waste number, but will not appear consecutively in the regulation. We have chosen this method of organization because we believe additional (and unnecessary) confusion would result if new hazardous waste numbers were assigned to each waste, and because the existing numbers

already have been used for notification purposes.²

F. Asbestos.

The Asbestos Information Association submitted extensive comments arguing that the interim final listing of discarded asbestos (as hazardous waste U013) was procedurally defective for want of prior notice, and substantively unjustified because disposal is already regulated under the National Emission Standard for Asbestos (NESHAP) program (40 CFR Part 61).

We disagree that the interim final promulgation of the asbestos listing was procedurally defective. In our view, the opportunity to comment prior to any regulatory effect of § 261.33 cures any possible procedural deficiencies. The situation here thus is distinguishable from those in such cases as *U.S. Steel Corp. v. EPA*, 595 F.2d 207 (5th Cir., 1979), and *State of New Jersey v. EPA*, — F.2d — (D.C. Cir., 1980), where interim final regulations became effective prior to opportunity for comment.

We are, however, more impressed with the commenter's substantive argument. Certainly, duplicative regulation should be avoided where possible. We therefore are temporarily deferring final promulgation of the listing of asbestos while we investigate further the relationship of the NESHAP and the RCRA management standards, and the extent to which NESHAP facilities afford comparable environmental protection in managing waste asbestos. One possible approach would be to grant NESHAP facilities a RCRA permit by rule, and apply substantive RCRA standards to discarded asbestos up until the point of disposal. (See § 265.1(c) (1) and (2) and § 122.26 (a) and (b) where the Agency has adopted a comparable approach for hazardous wastes also subject to regulation under the Marine Protection, Research, and Sanctuaries Act, and the Underground Injection Control program approved or promulgated under the Safe Drinking Water Act). Another approach would be integration of the Toxic Substances Control Act asbestos-in-the-schools program, the NESHAP program, and RCRA standards into a single regulatory program. The NESHAP program will serve as a safeguard against pollution problems resulting from asbestos disposal pending final determination of this issue.

²The Agency has not, however, used IUPAC names in Appendix VIII of Part 261, in large part because no questions have been raised about the identity of the Appendix VIII compounds. The Agency will consider using IUPAC names in Appendix VIII if the regulated community believes that such a change is warranted.

II. Trade Names Included in the List and Scope of Coverage of the Regulation

A. The May 19th regulation applied to all discarded commercial chemical products, manufacturing chemical intermediates, off-specification species, and container and spill residues thereof "having the generic name listed in paragraphs (e) or (f)" (§ 261.33(a), (b), (d).) The regulation thus clearly included more materials than those listed specifically in § 261.33(e) and (f). A footnote to both § 261.33(e) and (f) likewise indicated that the scope of coverage of these provisions was broader than materials listed by name: "The Agency included those trade names of which it was aware; an omission of a trade name does not imply that the omitted material is not hazardous. The material is hazardous if it is listed under its generic name."

Included in this list of generically-named materials were several hundred trade name products (for example, RAT AND MICE BAIT, RO-DETH, and SPOR-KIL). As the above-cited footnote indicates, these trade names are illustrative, and not the exclusive list of hazardous discarded trade name products. However, the form of the list confused a number of commenters, who questioned why other similarly-constituted products were not named. Other commenters complained that the lists in (e) and (f) operated in a commercially discriminatory manner because their products were included by name, while other comparable products were included only by reference.

In order to eliminate this confusion, the Agency has decided to remove all trade names from the list of generic names in § 261.33(e) and (f). Since no trade names now will appear in the regulation, the footnote to these provisions also will be deleted. As before, all trade name products having a listed generic name are included within the scope of the regulation.

B. Questions also have been raised as to the precise meaning of the regulatory language "having the generic name listed in paragraphs (e) or (f)." The Agency intends that this language include the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. This scope of coverage was expressed in the May 19th regulation where hundreds of such products were listed by name in

§ 261.33(e) and (f).⁴ We also believe that this reading conforms to usual understanding. Commercial chemicals are almost never sold in pure form. Generally, a chemical need not be present at full strength for a product to have its intended effect, and so is diluted to the desired concentration. For practical purposes, however, the product is considered to be the chemical comprising its active portion. For example, persons purchasing the fungicide pentachlorophenol (U-242) do not normally receive a pure chemical, but rather a formulation (e.g., Permatox DP-2) in which the fungicide pentachlorophenol is the active ingredient. There is no doubt, however, that this trade product formulation is identified with the active chemical constituent. Another more homely example is the functional identity of aspirin and acetylsalicylic acid even though an aspirin is not pure active acetylsalicylic acid.⁵

This understanding likewise is reflected in the principal journals cataloguing chemical substances. The NIOSH Registry (National Institute of Occupational Safety and Health, *Registry of Toxic Effects of Chemical Substances* (1978 ed.)), for instance, lists generic chemical names along with the synonymous commercial product trade name, explaining that "commercial product trade names are included . . . when they represent a single active chemical entity . . ." (*id.* at xvii.) *The Farm Chemicals Handbook* (Meister Publishing Co., 1979 ed.), probably the basic reference source for information on the agricultural chemicals industry, likewise lists all trade products having a generically-named chemical as the sole active ingredient as "other names" for that chemical. Similarly, manufacturers of trade name products, in complying with reporting obligations under the Toxic Substances Control Act, voluntarily and routinely report trade names as synonyms for the pure generically-named chemical even though the trade product does not consist of the chemical in its pure form. See, e.g., Toxic Substances Control Act Chemical Substance Inventory, Volume II, p. 111 (Arasan, Arasan 70, Arasan 75, Arasan-M, Arasan 425, Arasan-SF, and Arasan 70-S Red listed as synonyms for thiuram); p. 113 (Arsodent listed as synonym for arsenic trioxide).

Public comment on the interim final regulation likewise reflected an

⁴We are, however, adding appropriate clarifying language to the comment to § 261.33.

⁵Needless to say, neither aspirin nor acetylsalicylic acid are hazardous wastes when discarded.

³Containers and liners are included insofar as they held a material "having the generic name listed in paragraph (e)." § 261.33(c).

understanding that discarded products containing a generically-named chemical as the sole (or in some cases even the principal) active ingredient were included by the regulation. The Dow Chemical Company, for instance, commented that the "same generic material" generally is sold under many different trademarks, listing as an example 38 chemical names, trade name products, and synonyms for 1,1,1-trichloroethane, widely-used as a solvent. Almost all of these trade names are not the pure chemical, but rather contain the chemical as the (or an) active ingredient.* USS Agri-Chemicals, another commenter, also indicated that trade products need not be identical in chemical composition to the generically-named chemical to be thought of as that chemical.

The approach outlined above—that products containing a generically-listed chemical as the sole active ingredient are included within the scope of the regulation—has a number of significant advantages. First, the approach seems to reflect normal commercial understanding. Further, a potential unintended loophole for diluted formulations of generically-listed chemicals is eliminated. In addition, the regulation would have little practical effect, and would be at odds with usual understanding, if it were read as applying only to pure chemicals, since 100% pure chemicals are used only rarely in commercial practice.

There should be little question that single active ingredient products containing a generically-listed chemical as its active ingredient will usually and frequently be toxic and thus hazardous waste when discarded. The toxicity data contained in the May 19th Background Document indicates that most of the chemicals need be present in only low concentrations for the product to have toxic effects. We further believe that products which are identified with the generically-listed chemical because the chemical is the sole active ingredient will normally contain concentrations of the chemical far higher than necessary to produce toxic effects or will be present in combination with so-called inert ingredients which tend to magnify its toxic effects (e.g., solvents and surfactants). The products mentioned as synonyms for 1,1,1 trichloroethane in

Dow's comments, for example, contain over 90% of the generically-listed chemical. We also note that many of the trade products regulated under this section are pesticides or fungicides, produced for the express purpose of destroying plant or animal life. It is evident that such a substance, when discarded, meets the RCRA definition of hazardous waste.

We recognize that this regulation is deficient in its failure to address products containing mixtures of chemicals listed in § 261.33 as their ingredients. Because these products are normally not thought of as having a 1:1 relationship to a listed compound, we do not think that we can address the problems by means of final or interim final Agency action. We do intend, however, in the near future to propose an amendment to § 261.33 to cover active ingredient mixtures.

We also recognize that some persons legitimately may not have realized the intended scope of coverage of § 261.33 and thus may have not notified the Agency that they generate these materials, nor, in the case of treaters, storers or disposers, filed a permit application as required by sections 3010 and 3005(e) of RCRA. Since this failure is, at least in part, due to an ambiguity in EPA's regulations, we do not believe it fair to penalize persons who thus far have failed to comply. Consequently, persons handling products covered by § 261.33 which consist of a listed chemical as the sole active ingredient, and who have not yet notified the Agency, must do so by February 23, 1981.⁷ Facilities managing these wastes still may qualify for interim status if they submit a Part A permit application (or an amended Part A application, in the case of facilities which already have applied to manage other identified or listed hazardous wastes) by May 25, 1981.

C. A number of comments indicated that trade name products listed specifically in the May 19th interim final regulation do not contain a generically-named chemical as the sole active ingredient, or (in some cases) do not refer to any specific product formulation but rather to a family of products. Since § 261.33 as promulgated and finalized applies only to sole active ingredient formulations, these products are not presently hazardous wastes when discarded. Trade name products in this category are D-CON (formerly listed as waste P001), PERMATOX (formerly

listed as waste P090) and SANTOPHEN (formerly listed as waste P090). The Agency notes, however, that a number of products marketed under these general trademarks are in fact products which consist of a compound listed in § 261.33(e) or (f) as its sole active ingredient, and where this is the case, that trade name product is a hazardous waste when discarded. Examples are PERMATOX DP-2 (technical grade pentachlorophenol), and SANTOPHEN-20 (sole active ingredient pentachlorophenol).

Comments also reflected confusion about two of the other trade name products listed in the May 19th regulation. Even though trade names are now being removed from the text of the regulation, we believe it is important to clarify our intent. One commenter indicated that it handles a product called 'METAFOF 164', a trademark for the surfactant sodium hexametaphosphate. The commenter believed this product was included under the May 19th listing of 'METAFOF', a trade product listed in both the NIOSH Registry and the *Farm Chemicals Handbook* as a synonym for methyl parathion (P071). In fact, the similarity of product names appears coincidental. The Agency, as stated, intends to regulate only trade products containing a listed chemical (in this case methyl parathion) as the sole active ingredient, so that the product METAFOF 164 would not be a hazardous waste when discarded.

A second, similar situation arose with respect to another listed product, 'THIONEX'. THIONEX is a trade product name for the pesticide endosulfan (waste P050) (*Farm Chemicals Handbook*), and so is a hazardous waste when discarded. According to a commenter, however, an identically-named but chemically very different product also exists. Obviously, only the product consisting of the pesticide endosulfan is a hazardous waste when discarded. Confusion caused by name similarity should be addressed by determining the identity of a product's active ingredient.

III. The Problem of Identifying Which Discarded Trade Name Products Are Hazardous

The Agency is aware that many persons handling commercial products have found it difficult to determine whether these materials are hazardous wastes when discarded because the product's chemical composition is not always readily obtainable. Manufacturers in many cases have been reluctant or have refused to divulge this information, in part because of concern

*Dow also commented that discarded products containing chemicals measured by the characteristic of EP toxicity should not be listed in § 261.33, again reflecting an understanding that products containing a § 261.33 (e) or (f) chemical as an active ingredient are covered by the regulation, since the comment would have little point if a pure chemical was involved (v/z. a material containing 100% 2,4,5-T would always fail the test for the characteristic of EP toxicity).

⁷Under Section 3010 of RCRA, persons who already have notified that they handle any identified or listed hazardous waste are not required to notify again.

for revealing proprietary data. In the face of these difficulties, some commenters went so far as to suggest that generators not be responsible for complying with the regulations unless they have actual knowledge of the product's chemical composition.

The Agency is taking a number of steps to deal with this problem. First, we are now preparing a directory of chemical products⁴ which are hazardous wastes when discarded. The Directory will include generic names, other names by which the chemicals are known (e.g., myrbane oil for nitrobenzene) and the names of trade products which are regulated under § 261.33 as well as the applicable hazardous waste number. The Directory will be advisory, not part of the regulation itself, so that a defendant in an enforcement proceeding will still be able to show that a waste listed in the Directory is not a waste listed in § 261.33. By the same token, absence of a product name from the Directory is not a defense. The Agency will expand the Directory over time to try and provide as complete a list as possible.

A second form of Agency guidance is the recently-implemented RCRA Industry Assistance Hotline. Persons unsure whether the trade name product they are discarding is a hazardous waste may call this toll-free number and provide the name of the product. The Agency will then provide advice as to whether the product is a hazardous waste and its basis for the determination. As with the Directory, the Agency's response will be advisory, not a formal regulatory action. The hotline telephone number is 800-424-9346 (in Washington, D.C., 554-1404).

We also expect that persons unsure of the hazardousness of a given product will call the manufacturer of the product. Although manufacturers may not want to give out the formula for their products, the Agency believes it is reasonable to expect suppliers to inform customers if disposal of the product is regulated under either § 261.33(e) or § 261.33(f). Customers of course have the option of refusing to deal further with a supplier who will not divulge this information.

We disagree strongly with the suggestion that generators lacking actual knowledge of a product's chemical composition remain unregulated. Such a standard provides a strong incentive for generators not to determine whether discarded products are hazardous

wastes. One purpose of RCRA is to require closer attention and inquiry into the potentially hazardous nature of discarded materials, and generators of discarded trade products are no exception. Suggestions for further means of dealing with the question of identity are, however, solicited.

IV. Interpretative Issues

As noted above, most interpretative questions involving § 261.33 will not be resolved until publication of a forthcoming RIM. Certain questions, however, can be dealt with in this preamble.

A. Are solid wastes that contain one or more of the chemicals listed in § 261.33 hazardous wastes by virtue of containing these materials?

Solid wastes which simply contain one of the chemicals listed in § 261.33 are not thereby hazardous. Where EPA intends to list such wastes, it will do so by listing them in §§ 261.31 and 261.32. This intention is in fact clearly expressed in the comment to § 261.33(d) which is part of the promulgated regulation. The purpose of § 261.33 is to regulate only the listed chemical products and intermediates and their trade name equivalents (and certain off-specification variants, emptied containers⁵ and spill residues and debris thereof) as hazardous wastes when they are discarded or intended to be discarded.

However, when a solid waste is mixed with one of these discarded materials, the resulting mixture is a hazardous waste until delisted (with certain exceptions set forth in § 261.5(h)). See § 261.3(a)(2)(ii). As set out in § 261.3(b)(2), the solid waste becomes a hazardous waste when the mixing of the § 261.33 chemical takes place either as an act of discarding that chemical or the time the chemical is intended for later discard (i.e., at the time the § 261.33 substance becomes a hazardous waste).

There are many situations where a solid waste becomes a hazardous waste by virtue of the actual or intended discarding of materials listed in § 261.33. Some of these situations are:

1. Where excess, expired or otherwise unwanted commercial chemical products or manufacturing chemical intermediates are discarded by discharging them into a wastewater stream or are discarded by being mixed into other solid wastes.

2. Where off-specification materials that, if they met specification, would be

commercial chemical products or manufacturing chemical intermediates, are discarded by being discharged into a wastewater stream or discarded by being mixed into other solid wastes.

Where contaminated residues or debris from the clean-up of spills of listed chemicals are discarded by being mixed into other solid wastes.

B. Are the commercial products and manufacturing chemical intermediates listed in § 261.33 subject to regulation if they are used, reused, recycled or reclaimed in lieu of being discarded?

No. A commercial chemical product or manufacturing chemical intermediate listed in § 261.33 is a hazardous waste only if discarded or intended to be discarded. If it continues to be used or sold, it is not being discarded and therefore is not a hazardous waste. If it is an off-specification material and is reprocessed, recycled or reclaimed it is not being discarded and therefore is not a hazardous waste. Thus the provisions of § 261.6(b) are not intended to apply to reuses of § 261.33 materials, since in such cases the materials are never discarded. The reference in § 261.6(b) to wastes "listed in subpart D" is confusing. Wastes listed in §§ 261.31 and 261.32 are the only wastes intended to be included.

There are numerous situations where the above interpretations apply. Some of these are:

1. Where a customer receives an off-specification product listed in § 261.33 and returns it to the manufacturer for reprocessing, the product is not being discarded and is not a hazardous waste.

2. Where a commercial product becomes excess inventory or outlives its expiration date in a wholesale or retail outlet or in the hands of a user and the supplier takes the product back for resale or reprocessing, the product is not being discarded by the wholesaler, retailer or user and is not a hazardous waste.

3. Where there is breakage of containers holding § 261.33 chemicals and the supplier takes back the affected chemicals, including recovered spilled chemicals, for repackaging or reprocessing, the chemicals are not being discarded and are not hazardous wastes. If, however, some of the spilled chemicals are discarded or intended to be discarded because they cannot be returned (e.g., they are mixed with dirt or other materials), these spilled chemicals (and associated spill cleanup residues and debris) are hazardous wastes.

These are examples of common practice which EPA believes should be encouraged because they avoid discarding valuable materials and

⁴SW-884, "Directory of Trade Name Products and Synonyms" will be available from Mr. Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair St., Cincinnati, Ohio 45268 (telephone number 513-684-5362).

⁵Regulation of containers which formerly held § 261.33 chemicals is addressed elsewhere in this Part X of the Federal Register.

thereby conserve resources, while at the same time avoiding the potential hazards associated with discarding of hazardous chemicals. The above practices also avoid causing many thousands of wholesalers, retailers and users from becoming generators of hazardous wastes because they will be able to return the materials for reuse instead of possibly discarding them. The Agency believes that many of these persons will be unfamiliar or not well acquainted with the regulations and may fail to properly perform the responsibilities of a generator if they have to discard the materials.

It is quite likely that, in some cases, a manufacturer or supplier will find it necessary to discard some portion of the materials returned to him because he is unable to reprocess, repack, resell or use it. Where this occurs, that portion which is discarded becomes a hazardous waste when it is discarded or when a decision is made to discard the material. In this situation the manufacturer or supplier is the generator of a hazardous waste because he is the "person . . . whose act . . . produces hazardous waste . . ." (see the definition of "generator" in § 260.10).

C. Are manufactured articles (such as battery and mercury vapor lights) that contain any of the chemicals listed in § 261.33 hazardous wastes by definition if they are discarded or intended to be discarded?

EPA intends that the materials listed in § 261.33 include only those commercial chemical products and manufacturing chemical intermediates that are known by the generic name of the chemicals listed in paragraphs (e) and (f) of that section. Manufactured articles that contain any of the chemicals listed in paragraphs (e) and (f) are rarely, if even, known by the generic name of the chemical(s) they contain and, therefore, are not covered by the § 261.33 listings. Should the Agency find it necessary to list any manufactured articles as hazardous wastes, it will initiate rulemaking to add these articles to § 261.33.

Date: November 20, 1980.

Douglas M. Costle,
Administrator.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Title 40, Part 261 of the Code of Federal Regulations is amended as follows:

1. Revise § 261.33 to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section.

(c) Any container or inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) of this section, unless:

(1) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate; or

(2) The container or inner liner has been cleansed by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(3) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this Section. [Comment: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in paragraphs (e) or (f), such waste will be listed in either §§ 261.31 or 261.32 or will be identified as a hazardous waste by

the characteristics set forth in Subpart C of this Part.]

(e) The commercial chemical products or manufacturing chemical intermediates, referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in § 261.5(e).

[Comment: For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity.] These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous waste No	Substance
P023	Acetaldehyde, chloro-
P002	Acetamide, N-(aminothioxomethyl)-
P057	Acetamide, 2-fluoro-
P058	Acetic acid, fluoro-, sodium salt
P066	Acetimidic acid, N-(methoxycarbonyloxy)thio-, methyl ester
P001	3-(alpha-acetonylbenzyl) 4-hydroxycoumarin and salts
P002	1-Acetyl-2-thiourea
P003	Acrolein
P070	Aldicarb
P004	Aldrin
P005	Allyl alcohol
P006	Aluminum phosphide
P007	5-(Aminomethyl)-3-isoxazolol
P008	4-Aminopyridine
P009	Ammonium picrate (R)
P119	Ammonium vanadate
P010	Arsenic acid
P012	Arsenic (III) oxide
P011	Arsenic (V) oxide
P011	Arsenic pentoxide
P012	Arsenic trioxide
P038	Arsine, diethyl-
P054	Azidine
P013	Barium cyanide
P024	Benzenamine, 4-chloro-
P077	Benzenamine, 4-nitro-
P026	Benzene, (chloromethyl)-
P042	1,2-Benzenediol, 4-[(1-hydroxy-2-(methylamino)ethyl)-
P014	Benzenethiol
P028	Benzyl chloride
P015	Beryllium dust
P016	Bis(chloromethyl) ether
P017	Bromoacetone
P018	Bruce
P021	Calcium cyanide
P123	Camphene, octachloro-
P103	Carbamimidodiselenic acid
P022	Carbon bisulfide
P022	Carbon disulfide
P095	Carbonyl chloride
P033	Chlorine cyanide
P023	Chloroacetaldehyde
P024	p-Chloroaniline
P026	1-(o-Chlorophenyl)thiourea
P027	3-Chloropropionitrile
P029	Copper cyanides
P030	Cyanides (soluble cyanide salts), not elsewhere specified
P031	Cyanogen
P033	Cyanogen chloride
P036	Dichlorophenylarsine
P037	Dieldrin
P038	Diethylarsine
P039	O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorothioate
P041	Diethyl-p-nitrophenyl phosphate
P040	O,O-Diethyl O-pyrazinyl phosphorothioate
P043	Diisopropyl fluorophosphate
P044	Dimethoate
P045	2,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino)carbonyl] oxime
P071	O,O-Dimethyl O-p-nitrophenyl phosphorothioate

[illegible]

Hazardous waste No.	Substance
P044	Phosphorothioic acid, O,O-dimethyl S-(2-methylethenyl)-2-oxoethyl ester
P043	Phosphorofluoric acid, bis(1-methylethyl) ester
P094	Phosphorothioic acid, O,O-diethyl S-(ethylthio)methyl ester
P089	Phosphorothioic acid, O,O-disthyl O-(p-nitrophenyl) ester
P040	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P097	Phosphorothioic acid, O,O-dimethyl O-[p-(dimethylamino)sulfonyl]phenyl ester
P110	Plumbane, tetraethyl-
P088	Potassium cyanide
P089	Potassium silver cyanide
P077	Propanal, 2-methyl-2-(methylthio), [(methylamino)carbonyl]oxime
P101	Propanenitrile
P027	Propanetricloro-
P019	Propanenitrile, 2-hydroxy-2-methyl-
P061	1,2,3-Propanetriol, triborate (II)
P017	2-Propanone, 1-bromo-
P102	Propargyl alcohol
P011	2-Propenal
P063	2-Propen-1-ol
P012	Propyleneimine
P013	2-Propyn-1-ol
P064	4-Pyrrolamine
P075	Pyridine, (S)-(3-(1-methyl-2-pyrrolidinyl))- and salts
P111	Tripolyphosphoric acid; tetrachlyl ester
F103	Silverazaurate
P114	Silver cyanide
P115	Sodium azide
P116	Sodium cyanide
P107	Sulfur monosulfide
P129	Strychnin-10-one, and salts
P074	Strychnin-10-one, 2,3-dimethoxy-
P076	Strychnine and salts
P115	Sulfonic acid, thallium(I) salt
P111	Tetraethyl lithium phosphophosphate
P111	Tetraethyl lead
P111	Tetraethyl-trophosphosphate
P112	Tetranitromethane (R)
P060	Tetraphosphoric acid, hexaethyl ester
P113	Thionic oxide
P113	Thionium(III) oxide
P114	Thionium(VI) sesquioxide
P115	Thionium(IV) sulfate
P116	Thiopyran
P117	Thioselenic acid
P118	Thiourea, phenyl-
P119	Thiourea, phenyl-
P120	Trichloromethanol
P121	Vanadic acid, ammonium salt
P122	Vandium pentoxide
P123	Vandium(VI) oxide
P001	Warfarin
P121	Zinc cyanide
P122	Zinc cyanohydrate (R,T)

(f) The commercial chemical products or manufacturing chemical intermediates, referred to in paragraphs (a), (b), and (d) of this section, are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in § 261.5(a) and (f). [Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability), and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.] These wastes and their corresponding EPA Hazardous

Hazardous Waste No.	Substance
U001	Acetaldehyde (I)
U034	Acetaldehyde, trichloro-
U197	Acetamide, N-(4-ethoxyphenyl)-
U195	Acetaminide, N-(4-fluorophenyl)-
U112	Acetic acid, ethyl ester (I)
U144	Acetic acid, lead salt
U214	Acetic acid, (cellium(I) salt
U002	Acetone (I)
U003	Acetonitrile (I,T)
U004	Acetophenone
U005	2-Acetylaminofluorene
U006	Acetyl chloride (C,R,T)
U007	Acrylamide
U008	Acrylic acid (f)
U009	Acrylonitrile
U150	Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-, L-
U011	Angiotensin
U012	Aniline (I,T)
U014	Aniline
U015	Azobenzene
U010	Azobenzene, 3,3',4,4'-bipyrrolyl-1,2-bis(4,4'-dichloro-6-amino-8-[[[ammoniocarbonyl]oxy]methyl]-1,1a,2,8,8a,9b-hexahydro-8a-methoxy-5-methyl-,
U157	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U018	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U019	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U016	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U017	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U018	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U019	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U020	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U021	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U022	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U023	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U024	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U025	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U026	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U027	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U028	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U029	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U030	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U031	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U032	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U033	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U034	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U035	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U036	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U037	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U038	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U039	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U040	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U041	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U042	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U043	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U044	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U045	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U046	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U047	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U048	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U049	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U050	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U051	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U052	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U053	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U054	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U055	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U056	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U057	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U058	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U059	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U060	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U061	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U062	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U063	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U064	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U065	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U066	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U067	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U068	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U069	Benz[1,2-c:4,5-c']acanthrylene, 1,2-dithio-3-methyl-,
U070	Benzene, 1,2-dichloro-
U071	Benzene, 1,3-dichloro-
U072	Benzene, 1,4-dichloro-
U073	Benzene, dichloromethyl-
U074	Benzene, 1,2-dichloro-4-methyl-
U075	Benzene, 1,3-dichloro-4-methyl-
U076	Benzene, 1,4-dichloro-4-methyl-
U077	Benzene, 1,2-dichloro-4-methyl-
U078	Benzene, 1,3-dichloro-4-methyl-
U079	Benzene, 1,4-dichloro-4-methyl-
U080	Benzene, 1,2-dichloro-4-methyl-
U081	Benzene, 1,3-dichloro-4-methyl-
U082	Benzene, 1,4-dichloro-4-methyl-
U083	Benzene, 1,2-dichloro-4-methyl-
U084	Benzene, 1,3-dichloro-4-methyl-
U085	Benzene, 1,4-dichloro-4-methyl-
U086	Benzene, 1,2-dichloro-4-methyl-
U087	Benzene, 1,3-dichloro-4-methyl-

Hazardous Waste No.	Substance	Hazardous Waste No.	Substance	Hazardous Waste No.	Substance
U095	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-	U083	1,2-Dichloropropane	U109	Hydrazine, 1,2-diphenyl-
U024	Bis(2-chloroethoxy) methane	U084	1,3-Dichloropropane	U134	Hydrofluoric acid (C,T)
U027	Bis(2-chloroisopropyl) ether	U085	1,2,3,4-Depoxybutane (I,T)	U134	Hydrogen fluoride (C,T)
U244	Bis(dimethylthiocarbamoyl) disulfide	U108	1,4-Diethylene dioxide	U135	Hydrogen sulfide
U028	Bis(2-ethylhexyl) phthalate	U086	N,N-Diethylhydrazine	U088	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U248	Bromine cyanide	U087	O,O-Diethyl-S-methyl-dithiophosphate	U136	Hydroxymethylamine oxide
U229	Bromoform	U088	Diethyl phthalate	U118	2-Iminodimethanone
U030	4-Bromophenyl phenyl ether	U089	Diethylthiostol	U137	Indanol 1,2,3-cd pyrene
U120	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	U148	1,8-Dihydro-3,6-pyridinedione	U245	Indomethacin
U172	1-Butanamine, N-butyl-N-nitroso-	U090	Dihydroazole	U139	Iron dextran
U035	Butanoic acid, 4-[Bis(2-chloroethyl)amino] benzene-	U091	3,3'-Dimethoxybenzidine	U140	Isobutyl alcohol (I,T)
U031	1-Butanol (I)	U092	Dimethylamine (I)	U141	Isosafrole
U159	2-Butanone (R,T)	U093	Dimethylaminooxobenzene	U142	Kapone
U160	2-Butanone peroxide (R,T)	U094	7,12-Dimethylbenz[a]anthracene	U143	Lasiocarpine
U053	2-Butenal	U095	3,3'-Dimethylbenzidine	U144	Lead acetate
U074	2-Butene, 1,4-dichloro- (I,T)	U096	alpha, alpha-Dimethylbenzylhydroperoxide (R)	U145	Lead phosphate
U051	n-Butyl alcohol (I)	U097	Dimethylcarbamoyl chloride	U146	Lead subacetate
U136	Calcodylic acid	U098	1,1-Dimethylhydrazine	U129	Lindane
U032	Calcium chromate	U099	1,2-Dimethylhydrazine	U147	Maleic anhydride
U236	Carbamic acid, ethyl ester	U101	2,4-Dimethylphenol	U148	Maleic hydrazide
U178	Carbamic acid, methylnitroso-, ethyl ester	U102	Dimethyl phthalate	U149	Melatonin
U178	Carbamide, N-ethyl-N-nitroso-	U103	Dimethyl sulfide	U150	Melphalan
U177	Carbamide, N-methyl-N-nitroso-	U105	2,4-Dinitrotoluene	U151	Mercury
U219	Carbamide, thio-	U106	2,6-Dinitrotoluene	U152	Methacrylonitrile (I,T)
U097	Carbamoyl chloride, dimethyl-	U107	O-n-octyl phthalate	U092	Methanamine, N-methyl- (I)
U215	Carbonic acid, diethalammonium salt	U108	1,4-Dioxane	U029	Methane, bromo-
U156	Carbonochloride acid, methyl ester (I,T)	U109	1,2-Diphenylhydrazine	U045	Methane, chloro- (I,T)
U033	Carbon oxyfluoride (R,T)	U110	Dipropylamine (I)	U046	Methane, chloromethoxy-
U211	Carbon tetrachloride	U111	Di-N-propylnitrosamine	U088	Methane, dibromo-
U033	Carbonyl fluoride (R,T)	U001	Ethanol (I)	U080	Methane, dichloro-
U034	Chloral	U174	Ethylamine, N-ethyl-N-nitroso-	U075	Methane, dichlorodifluoro-
U035	Chlorambucil	U067	Ethane, 1,2-dibromo-	U138	Methane, iodo-
U036	Chlorane, technical	U076	Ethane, 1,1-dichloro-	U119	Methanesulfonic acid, ethyl ester
U026	Chloramphenicol	U077	Ethane, 1,2-dichloro-	U211	Methane, tetrachloro-
U037	Chlorobenzene	U114	1,2-Ethenedithiocarbamodithioic acid	U121	Methane, trichlorofluoro-
U245	1-(p-Chlorobenzoyl)-6-methoxy-2-methylindole-3-acetic acid	U121	Ethane, 1,1,1,2,2,2-hexachloro-	U153	Methanethiol (I,T)
U039	4-Chloro-m-cresol	U024	Ethane, 1,1'-(methylenebis(may))bis(2-chloro-	U225	Methane, tribromo-
U041	1-Chloro-2,3-epoxypropene	U003	Ethanenitrile (I, T)	U044	Methane, trichloro-
U042	2-Chloroethyl vinyl ether	U117	Ethane, 1,1'-oxybis- (I)	U121	Methane, trichlorofluoro-
U044	Chloroform	U025	Ethane, 1,1'-oxybis(2-chloro-	U123	Methanoic acid (C,T)
U046	Chloromethyl methyl ether	U184	Ethane, pentachloro-	U030	4,7-Methanedolan, 1,2,4,5,6,7,8,8-octa-
U047	beta-Chloronaphthalene	U208	Ethane, 1,1,1,2-tetrachloro-	chloro-3a,4,7,7a-tetrahydro-	
U048	o-Chlorophenol	U209	Ethane, 1,1,2,2-tetrachloro-	U154	Methanol (I)
U049	4-Chloro-o-toluidine, hydrochloride	U218	Ethanethioamide	U155	Methaphylene
U032	Chromic acid, calcium salt	U227	Ethane, 1,1,2-trichloro-	U154	Methyl alcohol (I)
U050	Chrysene	U043	Ethane, chloro-	U029	Methyl bromide
U051	Cresols	U042	Ethane, 2-chloroethoxy-	U186	1-Methylbutadiene (I)
U058	Cresols	U078	Ethane, 1,1-dichloro-	U045	Methyl chloride (I,T)
U052	Cresylic acid	U079	Ethane, trans-1,2-dichloro-	U156	Methyl chlorocarbonate (I,T)
U053	Crotonaldehyde	U210	Ethane, 1,1,2,2-tetrachloro-	U226	Methylchloroform
U055	Cumene (I)	U173	Ethanol, 2,2'-(nitrosoimino)bis-	U157	3-Methylcholanthrene
U248	Cyanogen bromide	U004	Ethanone, 1-phenyl-	U158	4,4'-Methylenebis(2-chloroaniline)
U197	1,4-Cyclohexadienedione	U006	Ethanoyl chloride (C,R,T)	U132	2,2'-Methylenebis(3,4,6-trichlorophenol)
U056	Cyclohexane (I)	U112	Ethyl acetate (I)	U088	Methylene bromide
U057	Cyclohexanone (I)	U113	Ethyl acrylate (I)	U080	Methylene chloride
U130	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	U236	Ethyl carbamate (urethan)	U122	Methylene oxide
U058	Cyclophosphamide	U038	Ethyl 4,4'-dichlorobenzate	U159	Methyl ethyl ketone (I,T)
U240	2,4,4-D, salts and esters	U114	Ethylenebis(dithiocarbamic acid)	U180	Methyl ethyl ketone peroxide (R,T)
U059	Daunomycin	U087	Ethylene dibromide	U138	Methyl iodide
U060	DDD	U077	Ethylene dichloride	U181	Methyl isobutyl ketone (I)
U081	DDT	U115	Ethylene oxide (I,T)	U182	Methyl methacrylate (I,T)
U142	Decachlorocyclohexa-1,3,4-metheno-2H-cyclobutal c, a, l-pentaten-2-one	U116	Ethylene thourae	U183	N-Methyl-N'-nitro-N-nitrosoguanidine
U062	Diallate	U117	Ethyl ether (I)	U184	Methylthiouracil
U133	Diamine (R,T)	U078	Ethylene dichloride	U010	Mitomycin C
U221	Diaminotoluene	U118	Ethylmethacrylate	U059	5,12-Naphthacenedione, (6S-cis)-6-acetyl-
U063	Dibenz[a,h]anthracene	U119	Ethyl methanesulfonate	10-[(3-amino-2,3,6-trideoxy-alpha-L-xyro-	
U063	1,2,5,6-Dibenzanthracene	U139	Ferric dextran	hexopyranosyl)oxy]-7,8,9,10-tetrahydro-	
U064	1,2,7,8-Dibenzopyrene	U120	Formaldehyde	6,8,11-trihydroxy-1-methoxy-	
U064	Dibenz[a,h]pyrene	U123	Formic acid (C,T)	U165	Naphthalene
U066	1,2-Dibromo-3-chloropropane	U184	Furan (I)	U047	Naphthalene, 2-chloro-
U069	Dibutyl phthalate	U125	2-Furancarboxaldehyde (I)	U186	1,4-Naphthalenedione
U062	S-(2,3-Dichloroethyl) diisopropylthiocarbamate	U147	2,5-Furandione	U236	2,7-Naphthalenedisulfonic acid, 3,5'-(3,3'-
U070	o-Dichlorobenzene	U213	Furan, tetrahydro- (I)	dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis	
U071	m-Dichlorobenzene	U125	Furfural (I)	(azo)bis(5-amino-4-hydroxy)-tetrasodium	
U072	p-Dichlorobenzene	U124	Furfuran (I)	salt)	
U073	3,3'-Dichlorobenzidine	U206	D-Glucopyranose, 2-deoxy-2(3-methyl-3-ni-	U166	1,4-Naphthoquinone
U074	1,4-Dichloro-2-butene (I, T)	troscouide)-	U167	1-Naphthylamine	
U075	Dichlorodifluoromethane	U128	Glycidylaldehyde	U168	2-Naphthylamine
U182	3,5-Dichloro-N-(1,1-dimethyl-2-propynyl) benzamide	U183	Guanidine, N-nitroso-N-methyl-N-nitro-	U187	alpha-Naphthylamine
U068	Dichloro diphenyl dichloroethane	U127	Hexachlorobenzene	U168	beta-Naphthylamine
U061	Dichloro diphenyl trichloroethane	U128	Hexachlorobutadiene	U026	2-Naphthylamine, N,N'-bis(2-chloro-
U078	1,1-Dichloroethylene	U128	Hexachlorocyclohexane (gamma isomer)	methyl)-	
U079	1,2-Dichloroethylene	U130	Hexachlorocyclopentadiene	U169	Nitrobenzene (I,T)
U025	Dichloroethyl ether	U131	Hexachloroethane	U170	p-Nitrophenol
U081	2,4-Dichlorophenol	U132	Hexachlorophene	U171	2-Nitropropane (I)
U082	2,6-Dichlorophenol	U243	Hexachloropropene	U172	N-Nitrosodimethylamine
U240	2,4-Dichlorophenoxyacetic acid, salts and esters	U133	Hydrazine (R,T)	U173	N-Nitrosodimethylamine
		U088	Hydrazine, 1,2-dimethyl-	U174	N-Nitrosodimethylamine
		U089	Hydrazine, 1,1-dimethyl-	U111	N-Nitroso-N-propylamine
		U099	Hydrazine, 1,2-dimethyl-	U178	N-Nitroso-N-ethylurea
				U177	N-Nitroso-N-methylurea
				U178	N-Nitroso-N-methylurethane

Hazardous Waste No.	Substance
U179.....	N-Nitrosopiperidine
U180.....	N-Nitrosopyrrolidine
U181.....	5-Nitro-o-toluidine
U183.....	1,2-Oxathiolane, 2,2-dioxide
U058.....	2H-1,3,2-Oxazaphosphorine, 2-[bis(2-chloro-ethyl)amino]tetrahydro-, oxide 2-
U115.....	Oxirane (I,T)
U041.....	Oxirane, 2-(chloromethyl)-
U182.....	Paraldehyde
U183.....	Pentachlorobenzene
U184.....	Pentachloroethane
U185.....	Pentachloronitrobenzene
U242.....	Pentachlorophenol
U186.....	1,3-Pentadiene (I)
U187.....	Phenacetin
U188.....	Phenol
U048.....	Phenol, 2-chloro-
U039.....	Phenol, 4-chloro-3-methyl-
U061.....	Phenol, 2,4-dichloro-
U082.....	Phenol, 2,6-dichloro-
U101.....	Phenol, 2,4-dimethyl-
U170.....	Phenol, 4-nitro-
U242.....	Phenol, pentachloro-
U212.....	Phenol, 2,3,4,6-tetrachloro-
U230.....	Phenol, 2,4,5-trichloro-
U231.....	Phenol, 2,4,6-trichloro-
U137.....	1,10-(1,2-phenylene)pyrene
U145.....	Phosphoric acid, Lead salt
U087.....	Phosphorodithioic acid, O,O-diethyl-, S-methyl ester
U189.....	Phosphorous sulfide (R)
U190.....	Phthalic anhydride
U191.....	2-Picoline
U192.....	Pronamide
U194.....	1-Propanamine (I,T)
U110.....	1-Propanamine, N-propyl- (I)
U066.....	Propane, 1,2-dibromo-3-chloro-
U149.....	Propanedinitrile
U171.....	Propane, 2-nitro- (I)
U027.....	Propane, 2,2'-oxybis[2-chloro-
U193.....	1,3-Propane sultone
U235.....	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U126.....	1-Propanol, 2,3-epoxy-
U140.....	1-Propanol, 2-methyl- (I,T)
U002.....	2-Propanone (I)
U007.....	2-Propanamide
U084.....	Propane, 1,3-dichloro-
U243.....	1-Propane, 1,1,2,3,3,3-hexachloro-
U009.....	2-Propenenitrile
U152.....	2-Propenenitrile, 2-methyl- (I,T)
U008.....	2-Propenoic acid (I)
U113.....	2-Propenoic acid, ethyl ester (I)
U118.....	2-Propenoic acid, 2-methyl-, ethyl ester
U162.....	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U233.....	Propionic acid, 2-(2,4,5-trichlorophenoxy)-
U194.....	n-Propylamine (I,T)
U083.....	Propylene dichloride
U196.....	Pyridine
U155.....	Pyridine, 2-[(2-dimethylamino)-2-thenylamino]-
U178.....	Pyridine, hexahydro-N-nitroso-
U191.....	Pyridine, 2-methyl-
U164.....	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U180.....	Pyrrrole, tetrahydro-N-nitroso-
U200.....	Reserpine
U201.....	Resorcinol
U202.....	Saccharin and salts
U203.....	Saltol
U204.....	Selenous acid
U204.....	Selenium dioxide
U206.....	Selenium disulfide (R,T)
U015.....	L-Serine, diazacetate (ester)
U233.....	Silvex
U089.....	4,4'-Stilbenediol, alpha, alpha'-diethyl-
U206.....	Streptozotocin
U135.....	Sulfur hydride
U103.....	Sulfuric acid, dimethyl ester
U188.....	Sulfur phosphide (R)
U205.....	Sulfur selenide (R,T)
U232.....	2,4,5-T
U207.....	1,2,4,5-Tetrachlorobenzene
U208.....	1,1,1,2-Tetrachloroethane
U209.....	1,1,2,2-Tetrachloroethane
U210.....	Tetrachloroethylene
U212.....	2,3,4,5-Tetrachlorophenol
U213.....	Tetrahydrofuran (I)
U214.....	Thallium(I) acetate
U215.....	Thallium(I) carbonate
U216.....	Thallium(I) chloride
U217.....	Thallium(I) nitrate
U218.....	Thioacetamide

Hazardous Waste No.	Substance
U153.....	Thiomethanol (I,T)
U219.....	Thiourea
U244.....	Thuran
U220.....	Toluene
U221.....	Toluenediamine
U223.....	Toluene diisocyanate (R,T)
U222.....	O-Toluidine hydrochloride
U011.....	1H-1,2,4-Triazol-3-amine
U226.....	1,1,1-Trichloroethane
U227.....	1,1,2-Trichloroethane
U228.....	Trichloroethene
U228.....	Trichloroethylene
U121.....	Trichloromono-fluoromethane
U230.....	2,4,6-Trichlorophenol
U231.....	2,4,8-Trichlorophenol
U232.....	2,4,5-Trichlorophenoxyacetic acid
U234.....	sym-Trinitrobenzene (R,T)
U182.....	1,3,5-Trioxane, 2,4,5-trimethyl-
U235.....	Tris(2,3-dibromopropyl) phosphate
U236.....	Trypan blue
U237.....	Uracyl, 5[bis(2-chloromethyl)amino]-
U237.....	Uracyl mustard
U043.....	Vinyl chloride
U239.....	Xylene (I)
U200.....	Yohimben-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyloxy)-, methyl ester,

Appendix VIII [Amended]

2. In Appendix VIII of Part 261, delete the following compounds:

-Ethylenediamine
-N-Nitrosodiphenylamine
-Oleyl alcohol condensed with 2 moles ethylene oxide
-1,2 Propanediol

Appendix VIII [Amended]

3. In Appendix VIII of Part 261, add the following constituent alphabetically:
-iso butyl alcohol

These regulations are issued under the authority of Sections 1006, 2002(a) and 3001 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 USC 6905, 6912(a) and 6921.

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40 CFR Part 261

[SWH-FRL 1680-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Grant of temporary exclusions and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is today temporarily excluding solid wastes generated at several particular generating facilities from hazardous waste status. These temporary exclusions respond to delisting petitions submitted under 40 CFR 260.20 and 260.22 and are granted pursuant to 40 CFR 260.22(m). The effect of this action is to temporarily exclude certain wastes generated at these facilities from listing as hazardous

wastes under 40 CFR 261, and from the management standards issued by EPA under Sections 3002 through 3006 of RCRA (40 CFR Parts 262 through 265 and 122 through 124 of this Chapter).

DATES: Effective date: November 19, 1980.

EPA will accept public comments on these temporary exclusions until January 26, 1981. Any person may request a hearing on these temporary exclusions by filing a request with John P. Lehman, whose address appears below, by December 17, 1980. The request must contain the information prescribed in § 260.20(d) of this chapter.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001/Delisting Petitions."

The public docket for these temporary exclusions is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Myles Morse, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C., (202) 755-9187.

SUPPLEMENTARY INFORMATION: On July 16, 1980 and November 12, 1980 as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published lists of hazardous wastes from non-specific and from specific sources. See 40 CFR §§ 261.31 and 261.32 (45 FR 47832-47836 and 74890-74892). These wastes were listed as hazardous because they typically and frequently exhibit either any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (ignitability, corrosivity, reactivity and EP toxicity) or meet the criteria for listing contained in §§ 261.11(a)(2) or 261.11(a)(3).

The Agency, however, recognizes that individual waste streams may vary depending on raw materials, industrial processes and other factors. Thus, while a type of waste described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be hazardous. For this reason,

§§ 260.20 and 260.22 provide a delisting procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be listed. To be delisted, petitioners must show that the waste produced at their facilities does not meet any of the criteria under which the waste was listed, and, in the case of an acutely hazardous waste, that it also does not meet the criterion of § 261.11(a)(3). (See § 260.22(a).) Wastes which are delisted may, however, still be hazardous if they exhibit any of the characteristics of a hazardous waste and generators remain obligated to make this determination.

In addition to wastes listed as hazardous in §§ 261.31 and 261.32, waste mixtures containing a listed hazardous waste and residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for delisting (and in fact remain hazardous wastes until delisted). (See §§ 261.3(a)(2)(ii), (c), and (d)(2).) Again, the substantive standard for delisting is that the waste not meet any of the criteria for which the waste was listed originally. Where the waste is a mixture of solid waste and one or more listed hazardous wastes, or is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent listed waste, or the waste mixture as a whole. (See § 260.22(b).) Like other delisted wastes, delisted mixtures and delisted hazardous waste treatment, storage or disposal residues remain subject to subpart C of Part 261, and so may be hazardous if they exhibit any of the characteristics of hazardous waste.

EPA recognizes as well that there will be circumstances where immediate action on delisting petitions is appropriate. Therefore, upon Agency review of a submitted petition, the Administrator may under § 260.22(m) grant a temporary exclusion if there is substantial likelihood that an exclusion will finally be granted.

The Agency to date has received 30 delisting petitions. Based on EPA's review of these petitions, seven temporary exclusions have been granted as indicated by today's publication. To allow the Agency to concentrate its efforts on petitions relating to waste listings becoming effective on November 19, 1980, the Agency has deferred action on five petitions which involve the interim final waste listings of July 16, 1980 (which become effective on January 16, 1981). An additional eight petitions have been mooted by amendments of the May 19, interim final hazardous waste listings (see 45 FR 74036 (October 30, 1980) and 45 FR 74884 (November 12,

1980)). Five other petitioners have been notified that the data supplied is insufficient and that additional information would be necessary in order to process their petitions. The remaining petitions were submitted too recently for the Agency to complete its evaluation by November 19, 1980. Additional temporary exclusions may be granted when our evaluation is completed.

It should be noted that the Agency has not run spot checks on the test data submitted to date in delisting petitions. The Agency believes that the sworn affidavits submitted with each petition sufficiently bind the petitioners to ensure presentation of truthful and accurate test results. The Agency may, however, spot sample and analyze wastes and/or groundwater before a final decision is made whether to exclude any particular waste from the hazardous waste regulations.

We also note that the temporary exclusions granted today apply only to the Federal hazardous waste management system established under the RCRA. States remain free to take any action they deem appropriate with regard to these wastes.

The temporary exclusions published today involve the following petitioners: The Stablax Corporation, Radnor, Pennsylvania, for its proposed waste treatment/stabilization facility in Groveland Township, Oakland County, Michigan; the Firestone Wire and Cable Company, Danville, Kentucky; the Fosbrink Machine Company, Connellsville, Pennsylvania; the General Electric Company/Lighting Business Group, Conneaut, Ohio; John Deere Des Moines Works, Des Moines, Iowa; Johnson Steel and Wire Company, Inc., Worcester, Massachusetts; and Dresser Industries, Inc./Tool Group, Johnson City, Tennessee. The Agency has determined as a result of analysis of treatment processes, waste constituent and leachate test data, and specific product formulation lists, that these petitioners may receive final exclusions for their wastes and therefore, that the granting of temporary exclusions is appropriate. The final decision, to exclude the wastes described above, will be made after the Agency receives additional testing and operational data (as specified in this publication) and reviews the comments submitted in response to this notice.

Discussion of Specific Temporary Exclusions

1. Stablax Corporation

A. *Petition for Delisting.* The Stablax Corporation (Stablax) plans to operate several hazardous waste treatment

facilities, utilizing industrial waste treatment processes and stabilization techniques which are designed to produce a solid cementitious landfill material. Stablax presently is applying for the necessary state and federal permits to construct and operate a hazardous waste treatment facility in the State of Michigan. In anticipation of treatment of industrial wastes, Stablax has petitioned the Agency (as required by § 261.3(d)(2)) to delist the treatment residue produced by the Stablax treatment process for the following hazardous wastes:

Inorganic Pigments

K002 Wastewater treatment sludge from the production of chrome yellow and orange pigments.

K003 Wastewater treatment sludge from the production of molybdate orange pigments.

K004 Wastewater treatment sludge from the production of zinc yellow pigments.

K005 Wastewater treatment sludge from the production of chrome green pigments.

K006 Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).

K007 Wastewater treatment sludge from the production of iron blue pigments.

K008 Oven residues from the production of chrome oxide green pigments.

Petroleum Refining

K050 Heat exchanger bundle cleaning sludge from the petroleum refining industry.

K052 Tank bottoms (lead) from the petroleum refining industry.

Leather Tanning and Finishing

K053¹ Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

K054¹ Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

K055¹ Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

K056¹ Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet

¹ The Agency has deleted these wastes from the hazardous waste list in finalizing the May 19, 1980 interim final regulations (see 45 FR 72036 (October 30, 1980) and 45 FR 74884 (November 12, 1980)) so that the petition for delisting residues from treatment of these wastes is moot.

finish; no beamhouse; through-the-blue; and shearing.

K057¹ Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

K058¹ Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

K059¹ Wastewater treatment sludges generated by the following subcategory of the leather tanning and finishing industry: hair save/non-chrome tan/retan/wet finish.

Metals Recovery

F013¹ Flotation tailings from selective flotation from mineral metals recovery operations.

F014 Cyanidation wastewater treatment tailing pond sediment from mineral metals recovery operations.

F015 Spent cyanide bath solutions from mineral metals recovery operations.

Scrubber Sludges

F016¹ Dewatered air pollution control scrubber sludges from coke ovens and blast furnaces.

Electroplating

F006² Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

F007² Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions).

F008² Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating plating bath sludges).

F009² Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions).

Metal Heat Treating

F010² Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching bath sludges).

F011² Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat

treating spent cyanide solutions from salt bath pot cleaning).

F012² Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges).

Organic Chemicals

K021 Aqueous spent antimony catalyst waste from fluoromethanes production.

Iron and Steel

K060 Ammonia still lime sludge from coking operations

Commercial Chemical Products

P010 Arsenic Acid.
P011 Arsenic pentoxide.
P012 Arsenic trioxide.
P013 Barium cyanide.
P029 Copper cyanide.
P030 Cyanides.
P032 Cyanogen bromide.
P055 Ferric cyanide.
P098 Potassium cyanide.
P099 Potassium silver cyanide.
P104 Silver cyanide.
P108 Sodium cyanide.
P107 Strontium sulfide.
P120 Vanadium pentoxide.
P121 Zinc cyanide.
U013³ Asbestos.

Stablex argues that the residue (called "stablex material") from treatment of these hazardous wastes should be delisted because many of the hazardous constituents of each waste stream are present only in an immobilized, non-hazardous form, or are destroyed during the treatment process, leaving only negligible concentrations in the final stabilized material. Stablex therefore claims that its stabilized treatment sludge no longer meets the criteria for listing contained in 40 CFR §§ 261.11(a)(2) and 261.11(a)(3).

B. *Support for delisting.* Stablex claims that in operating its facilities it uses a prescreening program which accepts only wastes that can be fixed successfully by the Stablex process—predominately metal and cyanide-containing wastes. The Stablex process combines various hazardous waste treatment processes (including metal hydroxide precipitation, acid/alkaline neutralization, cyanide destruction via hypochlorite oxidation, and hexavalent chromium reduction and precipitation) with a waste fixation/stabilization process. The stabilization process is a mixed batching system which combines the treated waste sludges with cement and fly ash. The stablex material is pumped (as a sludge) to specified landfill sites. This fill material begins to

set in 24 hours. The resulting stabilized product, the petitioner claims, is characterized by the formation of silicate lattices with "polymer-like" bonds, creating a cementitious material having compressive strength similar to an industrial grout (200–800 psi).

Stablex has been treating hazardous industrial wastes which are very similar in composition to the prospective U.S. wastes at its several existing English and Japanese facilities. These wastes include sludge from the production of paint pigments, still lime sludge from coking operations, sludge from metals recovery operations, quenching sludge from metal heat treating operations, and assorted sludges from electroplating operations. Automotive industry wastes also have been treated frequently.

In order to characterize the claimed non-hazardous nature of the stablex product, Stablex has submitted leachate tests on U.S., Japanese and English stabilized wastes. Total constituent analyses of the stablex material and groundwater and surface water run-off monitoring data (from active overseas operations) also were submitted. Waste streams from a typical range of processes in the U.S. automotive industry were tested, including plating operations (principle constituents nickel, chromium and copper); paint priming (principle constituent zinc phosphate); and waste treatment sludges from painting and metal preparation processes. Specific parameters measured in each EP toxicity test included arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, copper, iron, manganese, zinc, nickel, aluminum and cyanide.

EP toxicity tests were performed on stablex material which was ground to a fine powder to maximize the surface area available to the leaching action of the acidic solutions of these tests. EP toxicity tests performed on stabilized prospective U.S. wastes produced the following leachate results:

Leachate Concentration

Constituent	Parts per million
Arsenic	.02
Barium	1.4
Cadmium	0.01
Chromium	0.27
Cyanide	0.8
Lead	0.05
Mercury	0.004
Selenium	0.003
Silver	0.01

Note.—Total constituent analysis of the stablex material revealed cyanide concentrations of 1 ppm.

In addition, groundwater and surface water run-off monitoring data were submitted from the Stablex facility in

¹ These descriptions reflect the finalized listing description in 40 CFR 261.31 and 261.32 (45 FR 74890-74892 (November 12, 1980).)

³ The Agency will delete asbestos from the hazardous waste list in finalizing the May 19, 1980 interim final regulations so that the petition for delisting residues from treatment of this waste is moot.

Thurrock, England which indicate that the concentration of the constituents of concern in groundwater were below the levels established by the U.S. interim primary drinking water standards. Maximum cyanide levels in groundwater were reported as 0.11 ppm. The Agency notes, however, that the low levels of hazardous constituents reported in groundwater are not necessarily satisfactory indicators of the long term fixation characteristics of a stabilized material (since particular landfill design features may impede groundwater contamination). Indeed, since the Thurrock facility has been operational only since 1978, high levels of contaminants in the groundwater would not be expected at this time unless particularly poor disposal practices were employed.

In addition to submitting analytic data, Stablex also offers a number of short-term safeguards to prevent environmental insult while the Agency reviews additional data before making a final decision on whether to grant a final delisting. Stablex has agreed with the Michigan Department of Natural Resources and the EPA to manage the stablex material as if it were a hazardous waste for the initial two year period of facility operation. During this period, the stablex material will be deposited within a demonstration cell containing a double underdrain/double compacted clay bottom liner and a PVC sidewall liner. The lower liner will consist of 4 feet of compacted clay, (with a permeability factor of 10^{-7}) while the upper liner will consist of 1 foot of compacted clay. A minimum separation of 12 feet between the bottom liner and the groundwater level will be maintained. During rain and winter conditions the stablex material will be placed in enclosed cylindrical molds within the lined demonstration cell to assure proper curing. Leachate monitoring systems will be constructed beneath the stablex material and the bottom liner of the demonstration cell and will incorporate sampling sumps for leachate withdrawal. In addition, monitoring wells will be placed along the perimeter of the placement area. A monitoring program involving analysis of leachate and storm run-off will be established during the demonstration period to determine the stability of the

stablex product and the migratory potential of the leachate from the site.

C. Agency analysis and action. The Agency's function under RCRA includes the establishment of a national program to improve solid waste management and promotion of environmentally sound hazardous waste treatment and disposal practices. Historically-tested stabilization processes could assume an important role in properly managing hazardous wastes, particularly in view of the scarcity of hazardous waste disposal sites.

The Agency has reviewed the monitoring data submitted by the Stablex Corporation from its facility in Thurrock, England. Groundwater samples extracted from the Thurrock, England placement site revealed all EP toxic constituents to be at levels below the U.S. interim primary drinking water standards. The maximum reported cyanide concentration of 0.11 ppm in groundwater is one half that of the U.S. Public Health Service's suggested drinking water standard. However, the absence of high levels of these constituents in the groundwater below a very new landfill does not in itself indicate long-term inertness of the landfill material.

The Agency also has reviewed the leachate tests submitted from the facilities in England and Japan and domestic laboratories. Analysis of the EP toxic constituents in these waste extracts revealed concentrations well below the EP maximum toxicity levels for each waste stream tested. In addition, cyanides were present in the stablex material only in concentrations below 1 ppm, apparently indicating the effectiveness of the cyanide-destruction process.

Therefore, based predominately on the test data submitted on prospective U.S. wastes, the Agency is granting the Stablex Corporation's facility in Groveland Township, Oakland County, Michigan, a temporary exclusion for the stablex material produced using the treatment techniques described in its petition, from the following wastes listed in Subpart D of the hazardous waste regulations:

Inorganic Pigments

K002 Wastewater treatment sludge from the production of chrome yellow and orange pigments.

K003 Wastewater treatment sludge from the production of molybdate orange pigments.
K004 Wastewater treatment sludge from the production of zinc yellow pigments.
K005 Wastewater treatment sludge from the production of chrome green pigments.
K006 Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
K007 Wastewater treatment sludge from the production of iron blue pigments.
K008 Oven residues from the production of chrome oxide green pigments.

Electroplating

F006 Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.
F007 Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions).
F008 Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating plating bath sludges).
F009 Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions).

Metal Heat Treating

F010 Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching bath sludges).
F011 Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning).
F012 Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges).

Metals Recovery

F014 Cyanidation wastewater treatment tailing pond sediment from mineral metals recovery operations
F015 Spent cyanide bath solutions from mineral metals recovery operations

Commercial Chemical Products

P010 Arsenic acid.

P011 Arsenic pentoxide.
 P012 Arsenic trioxide.
 P013 Barium cyanide.
 P029 Copper cyanide.
 P030 Cyanides.
 P032 Cyanogen bromide.
 P055 Ferric cyanide.
 P098 Potassium cyanide.
 P099 Potassium silver cyanide.
 P104 Silver cyanide.
 P106 Sodium cyanide.
 P121 Zinc cyanide.

We remained concerned, however, with the long-term leaching characteristics of the stablex material (and residue from other waste stabilization processes). The Agency, as discussed further below, may find it necessary to have these long-term characteristics addressed before a final delisting is granted. Stablex' two year management pledge, however, is a safeguard during that period.

D. *Wastestreams for which Stablex submitted insufficient data.* The Agency has deferred action on the stablex material produced from the treatment of the following wastes due to submission of insufficient test data:

Organic Chemicals

K021 Aqueous spent antimony catalyst waste from fluoromethanes production.

Iron and Steel

K060 Ammonia still lime sludge from coking operations.

Petroleum

K050 Heat exchanger bundle cleaning sludge from the petroleum refining industry.

K052 Tank bottoms (lead) from the petroleum refining industry.

Commercial Chemical Products

P107 Strontium sulfide.
 P120 Vanadium pentoxide.

Stablex has been notified of these deficiencies and is presently testing for the additional characterization of the total naphthalene, phenolics, carbon tetrachloride, chloroform, antimony, strontium sulfide, and vanadium pentoxide concentrations in the stablex material. If this data indicates that these constituents are either destroyed or immobilized as part of the treatment process, the Agency expects to grant a temporary exclusion for these waste streams as well. Data has also been requested characterizing the effects of organics present in petroleum refining wastes on the leaching characteristics of the metal constituents and on the overall stability of the stablex material.

E. *Agency information needs for final delisting.* The Stablex Corporation has been notified of a number of information needs before a final delisting can be granted. This information includes all

test data previously mentioned in section D of this publication, as well as four repetitions of the EP Toxicity test for metals and cyanide, on each prospective U.S. waste on both cured and uncured stablex material; submission of a complete set of borehole monitoring data throughout placement areas in England and Japan, and a detailed description of the process and of the safety and monitoring features incorporated into each pretreatment operation. In addition, data addressing the long-term leaching characteristics of the stablex material should be presented. The Agency also may condition any final exclusion upon performance of certain operating standards such as continuous groundwater monitoring.

II. Firestone Wire and Cable Company

A. *Petition for delisting.* The Firestone Wire and Cable Company (Firestone), involved in the manufacture of high strength wires and strands, has petitioned the Agency to delist its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006 (Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.* Cadmium, chromium, nickel, and cyanide are the hazardous constituents of this waste. Firestone has petitioned to delist its waste because it does not meet the criteria for which Hazardous Waste F006 was listed in Part 261, Subpart D. Firestone utilizes the processes of wire drawing, heat treating, acid and alkali cleaning, electroplating, electrochemical displacement deposition and twisting, in its production of steel wire and strands. Firestone indicates that since its electroplating process uses brass (copper and zinc) and bronze (copper and tin), its waste cannot contain hazardous levels of cadmium and chromium. Firestone further states that the cyanide destruction process eliminates all but negligible levels of cyanide in the sludge.

Firestone's brass and bronze cleaning and plating operations use hydrochloric and sulfuric acids, sodium hydroxide, copper and zinc cyanide, and copper and tin sulfate. These chemicals are rinsed from the wire after each process

step. The rinse waters are piped directly to the effluent pretreatment plant. The pretreatment plant operation of acid neutralization utilizes alkali addition for pH adjustment, while the cyanide destruction process involves oxidation by chlorination. The sludge cake produced by flocculation, clarification, and filtration consists primarily of the hydroxides of iron, copper, zinc and tin.

B. *Support for delisting.* The Firestone Wire and Cable Company has submitted a detailed description of its sludge pretreatment system, results of influent sludge composition analyses, EP toxicity test results, distilled water leachate tests for cyanides, and total constituent analyses of sludge samples for chromium, cadmium, nickel and cyanide. Samples were obtained over a three month period to represent the uniformity of constituent concentrations in the waste.

The total constituent analyses revealed concentrations of cyanides in finished sludge of <2 ppm, while leachate tests produced cyanide leachate concentrations of <0.08 ppm. EP toxicity tests involving cadmium, chromium and nickel produced leachate levels of <0.1, <0.1, and <1 ppm respectively.

C. *Agency analysis and action.* The constituents of concern for Hazardous Waste No. F006 are cadmium, chromium, nickel and cyanide. Firestone does not use cadmium, chromium or nickel in its electroplating process. Cyanides however, are used and therefore may be present in the sludge. Firestone has, however, sufficiently demonstrated that its sludge pretreatment system removes the majority of cyanides from its waste, leaving residue concentrations of less than 2 ppm in the sludge. The cyanide leachate values of <0.08 ppm are well below the Public Health Service's recommended drinking water standard.

Total constituent levels of cadmium, chromium and nickel concentrations in the sludge of <1, 13, and 48 ppm respectively support the fact that the Firestone process does not use these metals in their plating operation. They apparently appear only as contaminants in other process solutions. Leachate concentrations of <0.1, <0.1, and 1 ppm for cadmium, chromium and nickel respectively, indicate that these elements also are present in essentially an immobile form.

Firestone therefore has presented sufficient data indicating the non-hazardous levels of cadmium, chromium, nickel, and cyanide in their waste. The Agency also acknowledges that the cyanide pretreatment operation is effective and employs satisfactory

* This listing reflects the finalized listing 40 CFR Part 261, Subpart D, November 12, 1980.

safety features, including transfer pumps automatically triggered by alkali/chlorination sensors, and a standard sampling operating procedure prior to the transfer of wastes to the pH adjustment tank. The Agency therefore has granted a temporary exclusion to Firestone's Danville, Kentucky facility for their electroplating wastewater treatment sludge, as described in its petition, from its listing under EPA Hazardous Waste No. F006.

III. Fosbrink Machine Company Incorporated

A. Petition for delisting. The Fosbrink Machine Company (Fosbrink), involved in the manufacture of wire and wire products, has petitioned the Agency for the delisting of its sludge, formerly listed as EPA Hazardous Waste No. K063, sludge from lime treatment of spent pickle liquor from steel finishing operations.⁵ Fosbrink has petitioned to delist their waste because it does not meet the criteria for listing.

The Fosbrink Machine Company utilizes the processes of cold drawing, pickling and lime treatment in the production of wire from wire rods. Its waste treatment process for spent pickle liquor rinse and overflow wastes involves neutralization, oxidation, flocculation, settling, drying and recycling of the liquid waste stream component. They claim their sludge is environmentally stable and non-hazardous, and specifically that its sludge does not contain hazardous levels of chromium and lead, the constituents of concern in the spent pickle liquor of hazardous waste K062.

Fosbrink has submitted a detailed description of their sludge treatment system, and EP toxicity test results for all toxic constituents specified in Section 261.24 of the regulations. The sludge samples were taken over a one month period to represent sufficiently the uniformity of constituent concentrations in the waste. EP toxicity tests involving chromium and lead produced leachate levels of <0.04 and <0.03 ppm, respectively.

B. Agency analysis and action. The constituents of concern in this waste, are chromium and lead. EP extracts from sludge samples analyzed by Fosbrink show lead and chromium consistently below the national interim primary

drinking water standards. These low leachate levels indicate that the constituents are present in essentially an immobile form. The Agency therefore, has granted temporary exclusion to the Fosbrink's facility in Connellsville, Pennsylvania for its treated pickling rinse and overflow wastes, as described in its petition.

IV. General Electric Company

A. Petition for delisting. The General Electric Company/Lighting Business Group's, Conneaut Base Plant (General Electric), involved in the production of light bulbs, has petitioned the Agency to delist its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006, (Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.)⁶ General Electric has petitioned to delist their waste because it does not meet the criteria for which Hazardous Waste F006 was listed in Part 261, Subpart D of the regulations.

The General Electric Company uses a "bright-dip" etching and stamping process for its light bulb bases which is characterized as an electroplating operation under Hazardous Waste F006. General Electric claims that the chemical etch or "bright-dip" process employed this facility does not use any of the hazardous constituents for which Waste No. F006 are listed. Instead, an aluminum and brass (copper and zinc) chemical etching process utilizing nitric and sulfuric acids is used. The stamping process generates a light diluting cutting oil as a waste stream. General Electric further states that its wastewater treatment process combines the streams for these two operations, and as a result, cracks the oils from the stamping process (due to the action of the etching acid wastes). The addition of sodium hydroxide, it is claimed, neutralizes these acids, rendering the waste non-hazardous.

General Electric has submitted a detailed description of the etching and stamping processes utilized at this facility to indicate that the listed hazardous waste constituents of Hazardous Waste No. F006 are not used in its operation. General Electric has also submitted constituent analyses and

leachate tests of their sludge for chromium, cadmium, nickel and cyanide. Total constituent analyses revealed concentrations of <10, <22, <8 and <.005 ppm for chromium, cadmium, nickel and cyanide, respectively. EP toxicity tests produced leachate concentrations of <0.01, <0.02, and 0.08 ppm for chromium, cadmium, and nickel respectively. The levels of cadmium, chromium and nickel which appeared in these wastes are attributed to unknown sources, since they are not used intentionally in the process.

B. Agency analysis and action. The hazardous waste constituents for which EPA Hazardous Waste No. F006 is listed are cadmium, chromium, nickel and cyanide. General Electric has submitted sufficient evidence that the wastewater treatment sludge produced in its chemical etching process does not contain hazardous levels of these constituents. Concentrations of cadmium, chromium and nickel in EP extracts of the sludge were consistently below the national interim primary drinking water standards. The low leachate levels indicate that the constituents of concern are present in an immobile form. Cyanide concentrations of <0.005 ppm in the sludge are considered negligible. The low concentrations of these constituents are probably a result of unknown minor sources of contamination and background levels, rather than direct use of these constituents in the process. The Agency therefore, has granted a temporary exclusion to the General Electric Company, Conneaut Base Plant, for the wastes generated by its "bright-dip" chemical etching and stamping process as described in its petition, listed under EPA Hazardous Waste No. F006.

V. Dresser Industries, Incorporated

A. Petition for delisting. Dresser Industries, Inc. (Dresser), involved in the manufacture of hand tools, has petitioned the Agency to delist its sludge, formerly listed as EPA Hazardous Waste No. K063 (sludge from lime treatment of spent pickle liquor from steel finishing operations).⁷ Dresser has petitioned to delist their waste because it does not meet the criteria for listing.

Dresser utilizes the processes of sulfuric acid pickling, phosphate coating

⁵ On November 12, 1980 (45 FR 74884), EPA removed waste K063 from the hazardous waste list (§ 261.32). However, since these lime treatment sludges are generated from the treatment of a listed hazardous waste (K062), they still are considered to be a hazardous waste (§ 261.3(c)(2)). Further, they remain hazardous wastes until they no longer meet any of the characteristics of hazardous wastes and are delisted (§ 261.3(d)(2)).

⁶ This listing reflects the finalized listing 40 CFR Part 261, Subpart D, November 12, 1980.

⁷ On November 12, 1980 (45 FR 74884), EPA removed waste K063 from the hazardous waste list (§ 261.32). However, since these lime treatment sludges are generated from the treatment of a listed hazardous waste (K062), they still are considered to be a hazardous waste (§ 261.3(c)(2)). Further, they remain hazardous wastes until they no longer meet any of the characteristics of hazardous wastes and are delisted (§ 261.3(d)(2)).

and cold extrusion of medium carbon non-alloyed steel in the production of hand tools. Its waste treatment process for spent pickle liquor, pickling rinse and overflow wastes involves neutralization (using lime and sodium hydroxide), flocculation, settling, and filtration. Dresser claims that its sludge is environmentally stable and non-hazardous, and specifically that it does not contain hazardous levels of chromium and lead, the constituents of concern in the spent pickle liquor waste K062.

Dresser submitted a detailed description of their sludge treatment system, and EP toxicity test results for all toxic constituents specified in § 261.24 of the regulations. The samples were taken over a one month period to represent sufficiently the uniformity of constituent concentrations in the waste. EP toxicity tests performed on the waste for chromium and lead leachate concentrations of 0.07 and <0.04 ppm, respectively.

B. Agency analysis and action. The constituents of concern in this waste are chromium and lead. EP extracts from large samples analyzed by Dresser show lead and chromium consistently well below the maximum EP toxicity levels. The low leachate levels indicate that the constituents are present in an essentially immobile form. The Agency, therefore, has granted temporary exclusion to Dresser's facility in Johnson City, Tennessee for its treated spent pickle liquor and pickling rinse waste sludge, as described in its petition.

VI. Johnson Steel & Wire Company, Inc.

A. Petition for delisting. The Johnson Steel and Wire Company (JS&W), involved in the manufacture of specialty ferrous wire, has petitioned the Agency to delist its sludge, formerly listed as EPA Hazardous Waste No. K063, (sludge from lime treatment of spent pickle liquor from steel finishing operations).*

JS&W has petitioned to delist their waste because it does not meet the criteria for listing.

JS&W utilizes the processes of cold drawing, hydrochloric acid pickling, and replacement coating of tin, bronze and phosphate in the production of ferrous wire. Its waste treatment process for spent pickle liquor rinse and overflow

wastes involves neutralization, lime and polymer flocculation, settling, and pressed filtration. They claim their sludge is environmentally stable and non-hazardous, and specifically that the sludge does not contain hazardous levels of chromium and lead, the constituents of concern in the spent pickle liquor of waste K062.

JS&W submitted a detailed description of their sludge treatment system, and EP toxicity test results for all toxic constituents specified in § 261.24 of the regulations. The samples were taken over a one month period to represent sufficiently the uniformity of constituent concentrations in the waste. EP toxicity tests revealed chromium and lead levels in the waste extract of 0.07 and 0.04 ppm, respectively.

B. Agency analysis and action. The constituents of concern in this waste, are chromium and lead. EP extracts from large samples analyzed by JS&W show lead and chromium consistently well below the maximum EP toxicity levels. The low leachate levels indicate that the constituents are present in an essentially immobile form. The Agency, therefore, has granted a temporary exclusion to the JS&W's facility in Worcester, Massachusetts for its treated spent pickle liquor, as described in its petition.

VII. John Deere Des Moines Works

A. Petition for delisting. John Deere Des Moines Works (John Deere), a company manufacturing farm equipment and machinery, has petitioned the Agency to delist its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006. (Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum).^{*} John Deere has petitioned to delist its sludge, because it does not meet the criteria for which it was listed in Part 261, Subpart D, of the regulations.

John Deere utilizes the processes of metal cleaning, metal machining, electroplating of chromium and zinc, and metal heat treating in the production of farm machinery. It claims that its waste treatment process is successful in generating a non-hazardous sludge cake, with cadmium

and chromium present at non-hazardous levels and in essentially an immobile form. In addition, John Deere states that nickel and cyanide are not used in its electroplating processes.

John Deere submitted a detailed description of its waste treatment system; EP toxicity test results for cadmium, chromium, and nickel; and total and amenable cyanide analyses of its sludge.

John Deere utilizes a lime/cationic polymer, pH regulated, precipitation waste treatment system. EP toxicity tests for cadmium, chromium and nickel performed on the resulting sludge cake produced maximum leachate concentrations of 0.08, .37, and 0.66 ppm, respectively. The total concentration of nickel and cyanide in sludge were reported at 10.6 and <0.13 ppm, respectively. The concentration of cyanide amenable to chlorination (free cyanide) was determined to be <0.007 ppm.

B. Agency analysis and action. The hazardous waste constituents for which Waste No. F006 is listed are cadmium, chromium, nickel and cyanide. Although John Deere does not use nickel and cyanide in its electroplating process, cadmium and chromium are used and are present in the sludge. These constituents appear, however, to be present in an immobile form.

EP toxicity test leachate results for cadmium and chromium are well below the EP maximum toxicity levels and indicate the immobile nature of these constituents. The low levels of nickel and cyanide in the sludge (10.6 and 0.13 ppm respectively) indicate that these constituents are not used in John Deere's electroplating process but are probably a result of known minor sources of contamination and background levels. The levels of cyanide found in the sludge are below the U.S. Public Health Service's suggested drinking water standard, and the low levels of free cyanide indicate that levels of mobile cyanide are even lower. The Agency, therefore, has granted a temporary exclusion to the John Deere Des Moines Works, facility for its treated electroplating waste sludge, as described in its petition, listed under EPA Hazardous Waste No. F006.

Dated: November 13, 1980.

Eckardt C. Beck,

Assistant Administrator.

[FR Doc. 80-36884 Filed 11-24-80; 8:45 am]

BILLING CODE 5560-30-M

*On November 12, 1980 (45 FR 74884), EPA removed waste K063 from the hazardous waste list (§ 261.32). However, since these lime treatment sludges are generated from the treatment of a listed hazardous waste (K062), they still are considered to be a hazardous waste (§ 261.3(c)(2)). Further, they remain hazardous wastes until they no longer meet any of the characteristics of hazardous wastes and are delisted (§ 261.3(d)(2)).

*The listing reflects the finalized listing 40 CFR Part 261, Subpart D, November 12, 1980.

40 CFR Part 261**[SWH-FRL 1690-4]****Hazardous Waste Management System; Identification and Listing of Hazardous Waste****AGENCY:** United States Environmental Protection Agency.**ACTION:** Interim final amendment to rule and request for comment.

SUMMARY: The Environmental Protection Agency ("EPA") is today amending 40 CFR 261.4 to provide that a hazardous waste that is generated in a product or raw material pipeline is not subject to regulation under 40 CFR Parts 262 through 265 or Parts 122 through 124 or the requirements of Section 3010 of the Resource Conservation and Recovery Act ("RCRA") until it is removed from the pipeline in which it was generated, unless it remains in the pipeline for more than 90 days after the pipeline ceases to be operated for the purpose of transporting product or raw materials. The purpose of this amendment is to clarify that such product or raw material pipelines are not treatment or storage facilities under Section 3004 of RCRA. The effect of this amendment is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations.

DATES: Effective date: November 19, 1980. Comment Date: This amendment is promulgated as an interim final rule. The Agency will accept comments on it until February 2, 1981.

ADDRESSES: Comments should be addressed to Docket Clerk (Docket No. 3001), Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Alfred Lindsey 755-9185.

SUPPLEMENTARY INFORMATION:**I. Authority**

This amendment is issued under the authority of Sections 1006, 2002(a), 3001 and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), 6921 and 6924.

II. Background

On February 26 and May 19, 1980,

EPA promulgated hazardous waste regulations in 40 CFR Parts 260 through 265 (45 FR 12721 et seq. and 45 FR 33066 et seq.) and on May 19, 1980, promulgated consolidated permit regulations in 40 CFR Parts 122 through 124 (45 FR 33289 et seq.). Section 261.3 provides that a solid waste becomes a hazardous waste when (1) it first meets any of the listing descriptions set forth in Part 261, Subpart D; or (2) it first becomes a mixture containing a hazardous waste listed in Part 261, Subpart D; or (3) it first exhibits one or more of the characteristics of hazardous waste identified in Part 261 Subpart C. The effect of this provision was that hazardous sludges, sediments, and other wastes accumulating in product or raw material storage tanks or transport vehicles were subject to regulation before they were removed from the tanks or vehicles in which they were generated.

EPA did not intend to regulate these tanks and vehicles as hazardous waste storage units, except in certain limited situations. On October 30, 1980, the Agency promulgated an interim final amendment to § 261.4 in order to clarify its intent. 45 FR 72024. That amendment added a new § 261.4(c), which provides that a hazardous waste generated "in a product or raw material storage tank, a product or raw material transport vehicle or vessel, or in a manufacturing process unit or an associated non-waste treatment manufacturing unit" is not subject to regulation until it leaves the unit in which it was generated, unless the unit is a surface impoundment or ceases to be used for the storage or transportation of product or raw materials. 45 FR 72028.

As EPA explained in its October 30 Federal Register preamble, storage tanks, transport vehicles, and similar units are typically designed to hold valuable products or raw materials. Thus, they "are capable of holding, and are typically operated to hold, the hazardous wastes which are generated in them, until the wastes are purposefully removed." 45 FR 72025. As a result, any risks to human health or the environment posed by these wastes prior to removal "are very low and are only incidental to the risks posed by the valuable product or raw material with which they are associated." Id. EPA therefore decided that these wastes should not be subject to regulation

before they are removed from the unit in which they were generated.

After that amendment was promulgated, members of the regulated community have asked whether hazardous wastes accumulating in pipelines used to transport product or raw materials should be included. These people point out that major pipeline systems are used throughout the United States to transport crude oil, petroleum products, chemicals, and other valuable products and raw materials. They contend that these pipelines are just as secure as the storage tanks and transport vehicles covered by EPA's October 30 amendment, and that wastes generated in these pipelines therefore present the same low level of risk as waste generated in storage tanks.

If wastes generated in pipelines used to transport products or raw materials were subject to regulation before removal, these pipelines would technically be hazardous waste storage facilities subject to Parts 264, 265, 122 and 124. EPA believes, however, that the reasoning of the October 30, 1980, amendments concerning product storage tanks, transportation vehicles and vessels supports inclusion of pipelines used to transport products and raw materials in the amendment. Pipelines, like product storage tanks, are designed and operated in a manner to hold the material and to prevent releases to the environment. The design and operation of many of the pipelines subject to today's amendments are governed by detailed federal regulation. See, e.g., 49 CFR Part 195 (pipelines transporting liquid hazardous materials, petroleum and petroleum products). Hazardous waste sludges and sediments, while in these pipelines, generally do not present dangers to human health and the environment. The need for the tight controls of the Subtitle C regulations is at the time that hazardous wastes are removed from these product and raw material pipelines.

Based on the foregoing, EPA is today amending § 261.4(c), which was added by the October 30 amendment, to provide that a hazardous waste generated in a product or raw material pipeline is not subject to regulation until it is removed from the pipeline, unless it remains in the pipeline for more than 90 days after the pipeline ceases to be operated for the transportation of

product or raw materials. For the reasons already discussed, EPA believes that this action will not diminish protection of human health and the environment.

III. Effective Date and Regulatory Impacts

The Agency is setting November 19, 1980, as the effective date for this amendment, to insure conformity with the effective date of § 261.4(c) itself. The reasons for promulgating this amendment in interim final form and setting an immediate effective date are the same as those discussed in the preamble to the October 30, 1980, amendments. The regulatory impacts are also analogous. See 45 FR 72027-28.

EPA invites comments on all aspects of this amendment to § 261.4(c) and all of the issues discussed in this preamble. The Agency is providing a 60-day comment period and will carefully consider all comments received during that period.

Dated: November 26, 1980.

Douglas M. Costle,
Administrator.

For the reasons set out in the preamble, Part 261 of Title 40 of the Code of Federal Regulations is amended by revising § 261.4(c) to read as follows:

§ 261.4 Exclusions.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Parts 262 through 265 and Parts 122 through 124 of this chapter or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

DEPARTMENT OF ENERGY

41 CFR Part 109-40

Property Management Regulations, Transportation and Traffic Management

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: In the July 1, 1979, revision of Title 41 (Chapter 101 to End) of the Code of Federal Regulations, Part 109-40 appearing in Subchapter G—Transportation and Motor Vehicles, was inadvertently omitted. This Part was republished without revision appearing as 45 CFR 16489 on March 14, 1980, in a CFR Correction which permitted Part 109-40 to remain in force and effect, and to appear in the 1980 revision of Title 41. Part 109-40 is herewith updated and changed to reflect the transition from U.S. Energy Research and Development Administration (ERDA) to U.S. Department of Energy (DOE) under the DOE Organization Act (Pub. L. 95-91).

Part 109-40, as updated, was published in the *Federal Register* on Friday, July 25, 1980, at 45 FR 49601 as a proposed rule with a 30 day comment period. Only one comment was received during this period.

It was suggested that the proposed rule be revised at subpart 109-40.000 to read " * * * Government in terms of economy, efficiency, service, environment, safety and security." This comment has been incorporated verbatim into the final rule. The only additional change was in referencing the Director, Transportation Operations Staff from Transportation Officer due to a change in title. These changes are found at 40.109, 40.5001, and 40.5101.

DATE: Effective December 4, 1980.

ADDRESS: Mail Station B-107, Washington, D.C. 20545.

FOR FURTHER INFORMATION CONTACT:

Roy F. Garrison, Director,
Transportation Operations Staff,
Office of Transportation and Fuel
Storage, Department of Energy (301)
353-5363.

Steve Miller, Office of the General
Counsel, Department of Energy (202)
252-6947.

SUPPLEMENTARY INFORMATION: DOE and its contractors for the purposes of transportation and traffic management have certain exemptions from the Federal Property and Administrative Act of 1949, as amended (Pub. L. 152, 81st Congress, 63 Stat., 377) at Title II, Section 201(b) which provides "The Administrator (GSA) shall, as far as practicable provide any of the services

specified * * * to any other Federal agency * * *, upon request."

Title IV, Section 602(d) of the same Act provides "nothing in this act shall impair or affect any authority of * * * (13) the Atomic Energy Commission (AEC)."

Title 41 CFR Part 109-40 Transportation and Traffic Management iterates the applicability of and departure from Title 41 Parts 101 *et seq.* for the U.S. Department of Energy and its cost-type contractors in conducting transportation and traffic management type activities.

Traffic Management and Transportation Operations functions existed in AEC. These functions were transferred to ERDA by Section 104 of the Energy Reorganization Act of 1974 (Pub. L. 93-438) and then to DOE by Section 641 of the Department of Energy Organization Act of 1977 (Pub. L. 95-91).

The Department of Energy desires to continue in effect the exemption granted to it by the Congress and consequently adopts the following amended Transportation Management Regulations. Further implementation will be published in appropriate DOE Orders. The Department of Energy has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and therefore, is not significant for the purpose of Executive Order 12044.

Issued in Washington, D.C. November 14, 1980.

George W. Cunningham,
Assistant Secretary for Nuclear Energy.

41 CFR Part 109-40 is revised to read as follows:

PART 109-40—TRANSPORTATION AND TRAFFIC MANAGEMENT

Sec.

109-40.000 Scope of part.

109-40.000-50 Applicability to contractors.

Subpart 109-40.1—General Provisions

109-40.102 Representation before regulatory bodies.

109-40.103 Selection of carriers.

109-40.103-1 Domestic transportation.

109-40.103-2 Disqualification and suspension of carriers.

109-40.103-3 International transportation.

109-40.104 Use of Government owned transportation equipment.

109-40.109 Utilization of special contracts and agreements.

109-40.110 Assistance to economically disadvantaged transportation businesses.

109-40.110-1 Small business assistance.

109-40.110-2 Minority business enterprises.

109-40.112 Transportation factors in the location of Government facilities.

109-40.113 Insurance against transportation hazard.

Subpart MM—Oregon

In § 52.1970, (c)(33) is added as follows.

§ 52.1970 Identification of plan.

(c) ***

(33) On December 27, 1979, the State of Oregon Department of Environmental Quality submitted a plan revision to meet the requirements of Air Quality Monitoring 40 CFR Part 58, Subpart C § 52.20.

(JFR Doc. 80-37 Filed 12-4-80; 8:45 am)
BILLING CODE 6560-38-M

40 CFR Part 266

[SWH-FRL 1690-2]

Hazardous Waste Management System; Availability of Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

SUMMARY: The Environmental Protection Agency is today making available to the public a draft document entitled "Used Oil Burned As A Fuel." The information in this document will be used to support the Agency's forthcoming regulations on used oil disposal and recycling pursuant to Sections 3004 and 3012 of the Resource Conservation and Recovery Act. EPA requests comments on this draft report.

DATE: Comments on the report are due no later than January 19, 1981.

ADDRESSES: Comments should be addressed to Deborah Villari, Docket Clerk (Docket No. 3004), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Communications should identify the regulatory docket or notice number, which is Section 3004.

Copies of the report are available for reading at the EPA Public Information Reference Unit [Room 2404] and the Subtitle C Docket Room [Room 2711], both located at 401 M Street SW., Washington, D.C., and at all EPA Regional Office libraries during the hours of 9:00 a.m. to 4:30 p.m., Monday through Friday.

Copies of the report may also be ordered from Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268, (513) 684-5362. (Please identify the document as SW-892.) EPA plans to provide the document free of charge to all who request copies. However, the Agency

may charge \$0.20 per page for photocopying if the available copies run out.

FOR FURTHER INFORMATION CONTACT: Arline M. Sheehan, Technology Branch, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), 401 M Street SW., Washington, D.C. 20460, (202) 755-9200.

SUPPLEMENTARY INFORMATION: On December 18, 1978 (43 FR 58946-59028) EPA proposed regulations implementing Sections 3001-3004 of the Solid Waste Disposal Act, as amended by RCRA. As a result of its review of public comments on these proposed regulations, EPA determined that further study was warranted on the potential hazards associated with burning used oil as a fuel. The draft document being noticed today was written to assess these hazards.

The purpose of making this document available to the public is to obtain comment on the accuracy of the data it contains, and not to reopen the comment period on either EPA's proposed Sections 3001-3004 regulations or EPA's final and interim final hazardous waste regulations issued on May 19, 1980 (45 FR 33063-33258). Commenters should limit the scope of their written submissions accordingly.

Steffen W. Plehn,
Deputy Assistant Administrator for Solid Waste.

(JFR Doc. 80-17736 Filed 12-4-80; 8:45 am)
BILLING CODE 6560-30-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[Docket No. 21474; RM-1968; RM-2810; RM-2978; BC Docket No. 80-253; RM-2898]

Broadcast Equal Employment Opportunity Rules; Applications for Renewal of License of Commercial and Non-Commercial AM, FM, and Television Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; extension of reply comment period and denial of suspension of reply comment dates and other relief.

SUMMARY: Action taken herein extends the time for filing reply comments in BC Docket No. 80-253. *Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM and Television Licensees.* Action is taken in response to a request by

Citizens Communications Center, which states that additional time is necessary in order to fully prepare a reply to the initial comments. Action taken herein also denies a request for suspension of the reply comment dates and other relief in Docket 21474. *Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395.* and BC Docket No. 80-253, filed by the National Association of Broadcasters ("NAB").

DATE: Reply comments in BC Docket No. 80-253 must be filed on or before December 8, 1980.

ADDRESS: Submit comments to Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steven A. Bookshester, Broadcast Bureau, (202) 653-7586, or Israel Teitelbaum, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395. *Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM and Television Licensees.* Order extending time for filing reply comments in BC Docket No. 80-253 and denying suspension of reply comment dates and other relief in Docket 21474 and BC Docket No. 80-253.

Adopted: November 25, 1980.

Released: November 26, 1980.

By the Chief, Broadcast Bureau:

1. On June 4, 1980, the Commission adopted a *Second Further Notice of Proposed Rule Making* in Docket 21474, FCC 80-328, 45 FR 42729, published June 25, 1980. On the same date, the Commission also adopted a *Notice of Proposed Rule Making* in BC Docket 80-253, FCC 80-327, 45 FR 47444, published July 15, 1980.

2. The dates initially established for filing comments and reply comments in Docket 21474 were August 25, 1980, and September 25, 1980, respectively. By Order, 45 FR 56116, published August 22, 1980, the Commission granted the request of the National Association of Broadcasters ("NAB") and extended the filing dates for comments and reply comments to October 24, 1980, and November 24, 1980, respectively. By Order released October 23, 1980, BC-00759, the date for filing comments was further extended in response to an NAB request, to October 30, 1980. At that time, the Commission, on its own motion, also extended the reply comment date to December 1, 1980. In granting this additional time, the