may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: For the early years of the Tier 2 gasoline sulfur program (to December 31, 2003), EPA estimated a total of 192,063 responses, a total annual burden of 12,532 hours, and a total annual cost of $325,702 to industry. This estimate includes the initial burden associated with learning and adapting to the new requirements. Most of the burdens associated with the early years of the program relate to applications for various hardship provisions and the generation of early credits, which will not be applicable after 2004.

The standards for gasoline sulfur become effective beginning January 1, 2004. Compliance with these standards requires some additional testing and reporting beyond that required under the RFG/CG programs. The most significant increase in the testing and reporting burden is due to the requirement that refiners and importers test and report every batch of gasoline for compliance with the sulfur standards. Currently, all refiners and importers of RFG are required to test and report every batch of RFG; however, refiners and importers of conventional gasoline currently are allowed to composite samples for purposes of demonstrating compliance with the CG anti-dumping regulations. EPA estimates that the annual burden on refiners associated with this every batch testing/reporting requirement will be about one hour per response per refiner, and 400 responses per year per refiner. There are about 75 refiners that will be affected by this requirement. For importers, the burden will be one hour per response per importer, and 27 responses per year per importer. About 30 importers will be affected by this requirement. The cost associated with this burden for refiners will depend on whether the refiner uses its own testing equipment or uses an independent laboratory. Most importers will use an independent laboratory. The estimated annual cost is $24,800 for refiners that use their own equipment and $29,600 for refiners that use an independent laboratory. The estimated annual cost for importers is $1,998. There are some additional modest burdens and costs for refiners and importers associated with this rule. Some of these burdens are related to additional information regarding sulfur content required on annual reports currently being submitted to EPA under the RFG/CG programs. Several of the additional burdens are related to various hardship or other flexibility provisions provided in the rule. There are also some modest burdens on terminals and pipelines associated with this rule due to additional Q/A testing requirements. Beginning in 2004, EPA estimates there will be a total of about 2,536 annual responses, a total annual average burden of 38,742 hours, and a total annual cost of $2,405,355 to industry. There are no capital and start-up costs or operation and maintenance costs associated with this rule. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 14, 2003.

David J. Kortum,

Acting Director, Transportation and Regional Programs Division.

[FR Doc. 03–26410 Filed 10–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0023; FRL–7576–1]

Hazardous Waste Management System: Petroleum Refining Process Wastes; Identification of Characteristically Hazardous Self-Heating Solids; Land Disposal Restrictions: Treatment Standards for Spent Hydrorefining Catalyst (K172) Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This notice of data availability (NODA) makes available to the public certain analytical data pertaining to the polyaromatic hydrocarbon (PAH) content of spent hydrorefining catalyst from petroleum refining operations (K172). These analytical data are contained in a petition for rulemaking (petition) submitted to EPA by the Vanadium Producers and Reclaimers Association (VPRA), formerly known as the Ferroalloys Association (TFA). The data were submitted by the petitioner to support its request that EPA amend the land disposal restriction (LDR) treatment standards for the K172 listed waste. The VPRA petition also asserted that K171 and K172 wastes are often being landfilled without being decharacterized for their ignitability/reactivity potential. Therefore, this notice provides information supporting the petitioner's assertions and requests comment and submittal of any additional relevant documentation. At this time, EPA is requesting comment only on the analytical data for K172 and information supporting VPRA's concerns about characteristically hazardous solids. The Agency is not proposing any rule changes in today's notice, and any future action the Agency takes in response to the VPRA petition will be noticed in a subsequent **Federal Register**.

DATES: Submit comments on or before December 4, 2003. Comments postmarked after this date will be marked ''late'' and may not be considered.

ADDRESSES: You may view the supporting materials for this NODA in the EPA Docket Center (EPA/DC), Room B102, EPA West, 1301 Constitution Avenue, NW., Washington, DC. The docket number is RCRA–2003–0023. The EPA/DC is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. Copies cost $0.15 per page. For information on

accessing an electronic copy of the treatability study and peer review documents, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial (703) 412–9810 or TDD (703) 412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 a.m. to 5 p.m., Eastern Standard Time. For more information on specific aspects of this NODA, contact Ross Elliott at (703) 308–8748, *elliott.ross@epa.gov,* or write him at the Office of Solid Waste, Mail Code 5304W, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. Docket

EPA has established an official public docket for this action under Docket Number: RCRA–2003–0023. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the OSWER Docket in the EPA Docket Center, Room B102, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. Copies cost $0.15/page.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/*, and you can make comments on this proposed rule at the federal e-rulemaking portal, *http://www.regulations.gov.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket or to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center facility identified above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Docket. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any

identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

EPA Dockets—Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <*http://www.epa.gov/edocket,*> and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID Number RCRA–2003–0023. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

E-mail—Comments may be sent by electronic mail (e-mail) to ''rcra-docket@epamail.epa.gov'', Attention Docket ID Number RCRA–2003–0023. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Disk or CD ROM—You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this section. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail

Send your comments to: OSWER Docket, EPA Docket Center, Mailcode: 5305T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID Number RCRA–2003–0023.

3. By Hand Delivery or Courier

Deliver your comments to: Environmental Protection Agency, EPA Docket Center, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID Number RCRA–2003–0023. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

4. By Facsimile

Fax your comments to: (202) 566–0272, Attention Docket ID Number RCRA–2003–0023.

C. How Should I Submit Confidential Business Information (CBI) to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0023. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Did VPRA Petition the EPA To Change?

Pursuant to 40 CFR 260.20, VPRA submitted a rulemaking petition to the EPA (a copy of which is included in the Docket to today's notice) which requests that the Agency amend the hazardous waste regulations as follows:

1. Amend the LDR treatment standards for K171 and K172 spent catalysts by requiring prescriptive technology-based treatment standards, such as (1) recycling and metals recovery, or (2) oxidation and stabilization to address landfilling of catalyst with untreated PAHs and self-heating characteristics; and, if the process for requiring prescriptive LDRs is expected to take a considerable amount of time, amend the LDR treatment standards for K172 to add numerical (concentration-based) standards for PAHs to be consistent with the K171 standards in the interim period; and

2. Clarify that the hazardous oil-bearing secondary material exclusion (40 CFR 261.4(a)(12)(i)) does not apply to K171 and K172 catalysts; or amend the F037 LDR treatment standards by adding vanadium, arsenic and antimony to be consistent with the K171 and K172 standards.

III. What Is the Purpose of This NODA?

Today's notice presents analytical data contained in VPRA's petition pertaining to six samples of spent hydrorefining catalyst (K172) collected and analyzed by VPRA from various refineries located in the U.S. The data represents the concentration of PAHs contained in the VPRA samples to show that PAHs do exist in K172. The original data collected and analyzed by EPA presented in the supporting documents to the *1998 Final Rule for Petroleum Refining Process Wastes* (''Petroleum Refinery Rule'') (63 FR 42110, August 6, 1998) indicated that detectable levels of PAHs did not exist in K172.

This notice also presents information provided by the petitioner regarding the decharacterization of K171 and K172 for ignitability/reactivity potential prior to

landfill disposal, and solicits comments on this data as well as submission of other data relevant to this topic.

IV. What Is the VPRA Petition?

A. Who Is VPRA?

The Vanadium Producers and Reclaimers Association (VPRA, formerly known as The Ferroalloys Association or TFA) represents the following five member companies: Bear Metallurgical Company, C.S. Metals of Louisiana, Gulf Chemical & Metallurgical Corporation, Shieldalloy Metallurgical Corporation and Strategic Minerals Corporation. VPRA initially submitted the rulemaking petition on August 1, 2001, but provided supplementary information on April 3, 2002, May 28, 2003, July 10, 2003, and July 14, 2003.

B. What Is VPRA Petitioning EPA To Do?

VPRA is petitioning EPA to amend several alleged deficiencies in the LDR treatment standards for K172 and F037 as established in the Petroleum Refinery Rule. The petition states that the correction of these deficiencies will prevent the mismanagement of spent catalyst and will result in increased recycling to recover metal resources. The petition maintains that the combination of the lack of LDR treatment standards for PAHs in K172 and the lack of effective guidance for identifying and treating waste that exhibits the ignitability or reactivity characteristics has caused increased landfilling of spent catalyst since the Petroleum Refinery Rule was promulgated in August 1998.

C. What Is the Basis for the Petitioner's Amendment of the LDR Treatment Standards for K172?

The basis for the petitioner's request for amending the LDR treatment standards for K172 is that PAHs are not included in list of constituents requiring treatment prior to disposal. In addition to several organic and inorganic constituents included in the K172 LDR treatment standards (*see* 63 FR 42187), a prescriptive standard of deactivation was established for reactive sulfides. The petitioner asserts that PAHs were not included in the K172 LDR treatment standards because the original samples collected by EPA were not properly characterized as spent hydrorefining catalyst (which is now listed as K172). The data presented in VPRA's petition for K172 spent catalysts are new data collected and analyzed after the K172 wastes were listed. The petitioner argues that these data demonstrate that PAHs are present in the majority of the K172 samples above the LDR treatment standards. The samples were classified by the petitioner based on the guidance provided by EPA in the original rule and in the *Dual Purpose Reactor Notice.* (*See* May 8, 2002 **Federal Register**; 67 FR 30811.) The petitioner also relied on interviews with industry personnel familiar with the processes from which the samples originated and on general refining industry knowledge.

The petitioner also raised concern with the adequate treatment of the reactivity and self-heating properties of both K171 and K172 spent catalysts. This issue is discussed in more detail below.

D. What Are the Analytical Data Results for K172 Presented in the Petition?

The analytical data for K172 submitted by the petitioner are located in Table 1 below and in Exhibit B of the original petition, entitled *Determination of Treatment Methods used by the Hazardous Waste Industry for Spent Hydroprocessing Catalyst K171/K172,* Scherger Associates, May 2001 (hereinafter the ''Scherger Report'') and in the *Supplement to Petition for Rulemaking,* April 3, 2002. The original and supplemental petitions are included in the docket for today's notice.

TABLE 1.—VPRA ANALYTICAL DATA RESULTS FOR K172 (PAH RESULTS IN MG/KG)

	Sample ID													
	C[1,2]	D[1,2]	E[3]	M[4]	N[5]	W1[6]	W2[6]	W3[6]	W4[6]	W5[6]	W6[6]	W7[6]	W8[6]	Ex.A[7]
Benz(a)anthracene	<33	<32.8	<0.33	<50.0	<1.3	<3.27	<3.25	<3.28	<3.26	<3.30	<3.31	<3.29	<3.32	<26
Chrysene	<33	<32.8	<0.33	<50.0	3.0	<3.27	<3.25	<3.28	<3.26	<3.30	<3.31	<3.29	<3.32	**13 J**
Napthalene	<33	<32.8	0.485	**50 J**	**7.4**	<3.27	<3.25	<3.28	<3.26	<3.30	<3.31	<3.29	<3.32	<26
Phenanthrene	<33	<32.8	<0.33	**50 J**	**41.0**	<3.27	<3.25	**6.56**	<3.26	**5.58**	**5.62**	<3.29	<3.32	**150**
Pyrene	<33	<32.8	<0.33	**50 J**	**17.0**	<3.27	<3.25	<3.28	<3.26	<3.30	<3.31	<3.29	<3.32	**38**

Bold indicates that the maximum concentration in any one sample meets or exceeds Universal Treatment Standards (UTS—see 40 CFR 268.48). Notes below reproduced from petition.
[1] The sample extract could not be concentrated to the normal final volume. This results in elevated practical reporting limit.
[2] Sample was diluted due to high concentrations of non-target compounds.
[3] Internal standard and surrogate failure attributed to matrix interference based on review of chromatogram.
[4] Sample diluted 150 to 1 due to matrix and presence of many compounds; J means detected between the MDL (Method Detection Limit) (0.33 mg/kg) and the PQL (Practical Quantitation Limit) (50.0 mg/kg).
[5] Sample diluted 4:1 and 20:1 due to the presence of numerous target compounds including acenaphthene, fluoranthene, fluorene in addition to LDR PAH compounds.
[6] These sample extracts could not be concentrated to the normal final volume. This results in elevated practical reporting limit.
[7] Sample from ''Exhibit A'' of Supplemental Petition dated April 3, 2002. (J = estimated value between the MDL and the PQL.)

V. Reactivity and Ignitability Concerns With K171 and K172

A. What Are the Petitioner's Concerns With K171 and K172 Ignitability/ Reactivity?

VPRA asserts that K171 and K172 are not being adequately decharacterized with regard to the ignitability and reactivity hazardous characteristics (40 CFR 261.21(a)(2) and 261.23(a)(5), respectively), but are nonetheless being landfilled. In the Petroleum Refinery Rule, EPA identified the self-heating properties of this catalyst, and the potential formation of hydrogen sulfide gas from metal sulfides formed in the catalyst during use, as posing ignitability concerns (D001) and reactivity concerns (D003). The petitioner asserts that the existing regulations for identifying and treating (*i.e.*, permanently decharacterizing) characteristic hazardous wastes have proved ineffective in ensuring adequate treatment before disposal, because there is currently no EPA sanctioned test method and regulatory value for identifying ignitable solids or reactive wastes.[1]

Although the Petroleum Refinery Rule established prescriptive LDR treatment standards for K171 and K172 (deactivation for reactive sulfides), the petitioner argues that the lack of test methods or guidance is making waste classification determinations by spent catalyst generators difficult, and is resulting in the land placement of K171 and K172 spent catalysts without proper treatment.

EPA cited ignitability as part of the basis for listing K171 and K172 (40 CFR 261.32), but did not specifically identify the need to treat K171/172 for this

[1] 40 CFR 261.21(a)(2) and 261.23(a)(5) define ignitable waste solids, and reactive cyanide or sulfide wastes, using narrative standards—that is, there are no established tests, with corresponding regulatory trigger values, for identifying these wastes. Identification of these wastes is done by applying the narrative criteria to the waste.

hazardous characteristic. This is because the Agency believed that high temperature thermal treatment would be used to treat for the organic chemicals found in this waste, and that this treatment would also appropriately treat for the ignitability characteristic of the waste (by oxidizing the metal sulfides in the waste; November 20, 1995 **Federal Register**, 60 FR at 57785). However, the petitioner asserts that lower temperature thermal desorption, which does not oxidize the metal sulfides, is the primary mode of organics treatment for K171, and that K172 receives no thermal treatment before landfilling (only solidification/stabilization for metals), because the LDR does not include a requirement to treat for PAHs. Thus, VPRA argues that this results in significant volumes of spent catalyst being land disposed without adequate treatment for ignitability.

VPRA also asserts that changes in industry waste coding practices for these wastes contribute to inadequate identification and decharacterization before disposal. These spent catalysts are currently identified (by the generator) only by their K waste codes, according to the petitioner, and are no longer identified as D001 or D003, as was the previous practice (9 percent of these spent catalysts were being classified as D001 before rule promulgation).[2] VPRA believes that by using only the K codes for waste identification, waste generators are facilitating disposal of spent catalyst without adequate treatment for reactive sulfides (D003) that may be present (as required by the LDR treatment standards for these wastes), or ignitability (D001). (The Agency notes, however, that a review of EPA's 1999 Biennial Reporting System database indicates eighteen refineries reported generating a total of 6,800 tons (20 percent of the total) of hazardous waste coded as D001/D003 in 1999, in addition to the codes reported in the table as K171 or K172.)

The petitioner also asserts via the Scherger Report (p. 7) that spent catalyst receives special handling at petroleum refineries. Specifically, petroleum refineries are reported to routinely have special safety programs for handling spent catalyst and for addressing potential fires or hydrogen sulfide generation, ship spent catalyst in special bins to reduce air contact, and frequently designate spent catalyst under DOT (Department of Transportation) pyrophoric or self-heating designations for hazardous materials. The Scherger Report asserts that landfills treat spent catalyst (by solidification/stabilization treatment) and landfill it soon after its arrival, and if it must be stored before treatment, store it in bins to reduce its air exposure or wet it with water (p. 14). The petitioner asserts that this special handling of the spent catalyst, and DOT designation as pyrophoric, support a conclusion that the spent catalyst is an ignitable hazardous waste being landfilled without proper deactivation treatment.

B. How Can Waste Generators and Treaters Determine Whether Their K171/172 Is Ignitable or Reactive Hazardous Waste?

As discussed in both the proposed and final Petroleum Refinery Rules, a significant finding of the Agency in listing K171/172 was the self-heating potential of these spent catalysts, which would make them ignitable hazardous waste, and their potential to react and emit hydrogen sulfide, which would make them reactive hazardous wastes. 60 FR at 57767; 63 FR at 42154 and 42157. The petitioner has asserted that generators and treaters are having difficulty properly characterizing spent catalyst because EPA has not established a test(s) with numerical criteria for determining whether a waste is ignitable and/or reactive hazardous waste.

The Agency believes that the K171/172 Petroleum Refinery Rule, as well as the original 1980 **Federal Register** discussion promulgating the hazardous characteristics regulations, provide considerable guidance to generators and others for applying the narrative regulatory criteria to this waste in the absence of specific tests. Testing was also an issue in 1980, and the Agency provided generators with the following guidance for identifying reactive hazardous waste:

''The unavailability of suitable test methods for measuring reactivity should not cause problems. Most generators of reactive wastes are aware that their wastes possess this property and require special handling. This is because such wastes are dangerous to the generators' own operations, and are rarely generated from unreactive feedstocks.'' (May 19, 1980 **Federal Register**; 45 FR at 33110).''

While this passage specifically refers to the reactivity characteristic, the Agency believes its logic is equally applicable to classifying non-liquid wastes which may be ignitable under 40 CFR 261.21(a)(2), as discussed in the *Background Document for the Characteristic of Ignitability* (May 2, 1980, p. 42).

In the preamble to the Petroleum Refinery Rule, the Agency documented and described the potential hazards of spent catalyst, as well as several types of special handling precautions for managing spent catalyst. EPA staff studying these wastes observed that some spent catalyst is removed from process units and is immediately placed in air-tight containers (sometimes under an inert gas atmosphere) to prevent self-heating. In collecting catalyst samples to support waste characterization for the listing determination, EPA samplers were twice denied access to inert gas catalyst storage bins, in favor of specially trained refinery sampling personnel, who collected samples under EPA observation. 60 FR at 57767. Spent catalyst being staged for recycling has also been found to be smoking, and occasional fires have been reported. 63 FR at 42154.

The Agency also clarified the role of testing and other information in applying the narrative hazardous characteristic criteria to waste in the absence of a specific test, in a 1997 letter from David Bussard, Director, Hazardous Waste Identification Division to Paul Wallach, Hale and Dorr, LLP, dated August 14, 1997. The letter said, in part:

With regard to the hazardous waste determination, it is the generator's obligation to make a determination. For the hazardous characteristics, this determination is made by evaluating the waste using a required test or by comparing the properties of the waste with the narrative standards. The narrative standard is what is enforced if there is no applicable test that is required by the regulations. For the characteristics of ignitability of solids and reactivity, there is no test method specified as to the operational definition of the characteristic, and we have therefore given reasonable deference to the operational experience of the waste generator or facility. However, we agree with the Region that this is not a blanket shield from consideration of information or test data in the case where there is reason to question the generator's RCRA determination. In fact, in this case, we believe the Region has a reasonable position in that the manufacturers of the catalyst routinely inform users of the

[2] In the *1995 Notice of Proposed Rulemaking for Petroleum Refining Process Wastes*, EPA documented the petroleum refining industry's responses to the RCRA 3007 survey indicating that hydrotreating and hydrorefining spent catalyst wastes exhibit D001 (ignitability), D003 (reactivity), and other hazardous constituent characteristics (primarily D004-arsenic and D018-benzene). See 60 FR at 57785. The survey data showed approximately 9 percent of hydrotreating and hydrorefining residuals as ignitable [513 metric tons (mt) of 5,640 mt total hydrotreating residuals; 1,671 mt of 18,634 mt total hydrorefining residuals]. *See Listing Background Document for the 1992–1996 Petroleum Refining Listing Determination*, October 31, 1995, pages 75 and 88. EPA found that: ''These wastes are routinely managed in thermal processes that destroy organics and thus, leave behind residues free of the ignitable characteristic and other corrosive causing constituents.'' 60 FR at 57785.

potential hazards of the catalyst, that they often advise users to treat the spent catalyst to remove the potential hazard, and that Pfizer's own material safety data sheet (MSDS) indicated that Pfizer considered the material to pose a potential hazard. Given these circumstances, I believe it is totally appropriate for the Region to obtain and consider test information that illustrates the properties of the waste along with other information in determining whether or not this material meets one or more of the narrative standards of the hazardous characteristics.

Much of the information discussed in the preamble to the Petroleum Refinery Rule can be used by waste generators and others to classify spent catalyst appropriately. The Agency also believes that some of the types of information suggested as useful by the Scherger Report are in fact relevant and appropriate to use in this regard. Specifically, the following types of information are relevant and appropriate to use in understanding the properties of spent catalyst for applying the narrative hazardous characteristics definitions at 40 CFR 261.21 and 261.23 to this waste:

—Landfill or other fires attributable to spent catalyst disposal
—Observation of spent catalyst emitting smoke during any phase of waste management
—Transport of spent catalyst with a DOT designation as a pyrophoric or self-heating material, or packaged as required by DOT for materials with this designation
—Failing the DOT test for self-heating material (49 CFR 173.125)
—Information from catalyst new-product MSDS (Material Safety Data Sheet)
—Storage of spent catalyst in special containers or under inert gas such as nitrogen
—Any other management practice intended to, or with no reasonable purpose other than to, limit exposure of waste spent catalyst to the air, such as coating with oil or wetting with water.

Only the first of these waste properties listed above, *landfill or other fires attributable to spent catalyst disposal,* would be sufficient by itself for definitive classification of spent catalyst as an ignitable hazardous waste under 40 CFR 261.21(a)(2). Prevention of landfill fires was one of the underlying reasons for developing an ignitability hazardous characteristic for waste (*see Background Document for the Characteristic of Ignitability,* May 2, 1980, p. 3). Waste generators and others should use the other types of information collectively to make an appropriate determination regarding the ignitable/reactive properties of spent catalysts. Testing data alone are not sufficient to determine waste status (because the Agency has established no such tests to date [3]), but the DOT test may be useful in understanding the properties of the waste. The special handling described in this list is relevant because the Agency assumes that waste generators and transporters would not incur the extra cost of special shipping containers or handling and shipping under inert gas absent the need for these measures to ensure the safety of those workers handling the materials. Given what the Agency knows about the potential hazardous properties of spent catalysts, the Agency presumes that any particular spent catalyst managed under these special conditions would very likely pose significant hazards were it managed as non-ignitable waste. RCRA requires the Agency to regulate as hazardous those wastes which may pose a substantial hazard to human health or the environment when improperly managed. The special management of spent catalyst clearly leads to the conclusion that ''normal'' management of the waste, *e.g.*, in contact with ambient air, poses hazards that RCRA was intended to control by designation of the waste as hazardous.

Disposal of waste spent catalyst that is D001 or D003 hazardous (as determined using the types of information described in the previous paragraphs), which is not decharacterized before disposal, would violate RCRA and its regulations. This may be of particular concern for spent catalyst being sent to a landfill not permitted to manage D001 or D003 wastes.

The Agency solicits from the public any comment on the supporting documentation provided by the petitioner regarding ongoing mismanagement of spent catalyst waste. The Agency also solicits any additional documentary information (as described above) relevant to the potential mismanagement of ignitable spent catalyst that has occurred subsequent to the effective date of the listing determination (February 8, 1999).

What Can You Do To Respond to This NODA?

EPA is seeking comment on the data presented in the VPRA petition regarding PAH concentrations contained in the K172 samples. In particular, we are interested in whether there are other data available on typical concentrations of PAHs in K172 (spent hydrorefining catalysts). In order for any data you submit to be considered by us in making a determination, the data should be collected, transported, and analyzed under the proper quality assurance and quality control protocols as described at *http://www.epa.gov/quality/*. In addition, process information such as a simplified process diagram and the type of feed for the hydroprocessing reactor from which the sample was collected should be provided to verify the sample represents a K172 spent catalyst. We are also seeking comment on the guidance provided in this notice to aid in the identification of D001 ignitable solids.

What Are the Potential Outcomes of This NODA?

The potential outcomes based on the comments and/or data received under this NODA include a proposed rulemaking to revise the numerical LDR treatment standards for K172, and/or to revise technology-based standards for the self-heating properties of K171 and K172. Also, a potential outcome of this NODA is additional clarification for identifying D001 ignitable solids.

Dated: September 30, 2003.

Matt Hale,

Acting Director, Office of Solid Waste.

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[3] The Agency is currently in the process of deleting from SW–846 the 1985 guidance for evaluating waste for sulfide/cyanide reactivity, which was withdrawn from use in 1998.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the