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Part IV

Environmental Protection Agency

40 CFR Part 63

**Site-Specific Rulemaking for Packaging
Corporation of America's Pulp and Paper
Mill Located in Tomahawk, WI, in
Pursuant to the Joint State/EPA
Agreement To Pursue Regulatory
Innovation; Direct Final Rule and
Proposed Rule**

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 63**

[FRL-7646-6]

RIN 2090-AA33

**Site-Specific Rulemaking for
Packaging Corporation of America's
Pulp and Paper Mill Located in
Tomahawk, WI, Pursuant to the Joint
State/EPA Agreement To Pursue
Regulatory Innovation****AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is taking direct final action to approve revisions to the National Emissions Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (Pulp and Paper Industry NESHAP). Collectively, these revisions comprise a site-specific rule to control Hazardous Air Pollutants (HAPs) applicable only to the semi-chemical pulp and paper mill currently owned and operated by Packaging Corporation of America (PCA) in Tomahawk, Wisconsin (the Tomahawk Mill). EPA is adopting these revisions pursuant to the Clean Air Act (CAA) and the Joint State/EPA Agreement to Pursue Regulatory Innovation (Innovations Agreement).

The Pulp and Paper Industry NESHAP currently requires semi-chemical pulp and paper mills to control the HAP emissions from the air stack for the collection of equipment comprising the Low Volume High Concentration (LVHC) system. Neither the Pulp and Paper Industry NESHAP, nor any other Federal or State regulation, requires such mills to control HAPs that may be contained in the liquid condensates from the LVHC system. This site-specific rule allows PCA's Tomahawk Mill to control the HAPs generated in the LVHC system by condensing them into a liquid and treating them via anaerobic biodegradation in the facility's wastewater treatment system. In other words, the site-specific rule allows PCA's Tomahawk Mill to control the HAPs generated in the LVHC system from an emission point and with a technology not addressed by the Pulp and Paper Industry NESHAP.

As a result, PCA will maintain compliance with the CAA and achieve a reduction in HAPs emitted to the environment significantly superior to that which would have been achieved through compliance with the control

methodology currently prescribed by the Pulp and Paper Industry NESHAP. Additionally, the revisions are consistent with the Innovations Agreement by allowing PCA's Tomahawk Mill to achieve superior environmental performance through regulatory flexibility.

DATES: This direct final rule will be effective on June 14, 2004 without further notice, unless EPA receives adverse comments by May 13, 2004. If EPA receives adverse comments, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted by mail by sending two (2) copies of your comments to the Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR-2003-0205. Comments may also be submitted electronically, or through hand delivery/courier, following the detailed instructions as provided in the proposed rule action with the same title located in the "Proposed Rules" section of today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen L. Furey or Mr. Eaton R. Weiler at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Ms. Furey or Mr. Weiler can be reached at (312) 886-7950 or (312) 886-6041, respectively (or by e-mail at: furey.eileen@epa.gov or weiler.eaton@epa.gov).

SUPPLEMENTARY INFORMATION:**Regulated Entities**

This site-specific revision to the Pulp and Paper Industry NESHAP, which governs the emission of HAPs from the pulp and paper industry, applies only to a single source, PCA's Tomahawk, Wisconsin pulp and paper mill.

Direct Final Rule

EPA is issuing these revisions as a direct final rule, without prior proposal, because we consider the revisions to be noncontroversial and anticipate no significant adverse comments. Additionally, EPA is aware that most persons with an interest in this proposed rule have already been afforded at least two opportunities to comment on its merits. In April 2003, and again in September 2003, PCA sponsored public meetings regarding the project that is described at length in today's rule. EPA believes that PCA made every reasonable effort to invite all potential stakeholders to those

public meetings. Nevertheless, in the "Proposed Rules" section of this **Federal Register**, EPA is publishing a separate document with the same title that will serve as the proposal to amend the Pulp and Paper Industry NESHAP if significant adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket

EPA has established an official public docket for this action under Docket ID No. OAR-2003-0205. 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 statutorily restricted from disclosure. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Outline of Today's Document

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

I. Authority

EPA issues this regulation under the authority provided by sections 112 and 301(a)(1) of the CAA, 42 U.S.C. 7412 and 7601(a)(1). EPA has determined that this rulemaking is subject to the provisions of section 307(d) of the CAA, 42 U.S.C. 7607(d).

II. Background

A. Background of the Pulp and Paper Industry NESHAP

1. Background of the Pulp and Paper Industry NESHAP Generally

Section 112 of the CAA, 42 U.S.C. 7412 *et seq.*, requires EPA first to identify, by industrial category or subcategory, "major sources" of HAPs, and then to promulgate regulations to

control HAPs emitted by such sources. "Major sources" are those that emit (or have the potential to emit) at least 10 tons per year of any single HAP (*e.g.* methanol), or 25 tons per year of any combination of HAPs. Additionally, section 112 specifies that EPA's regulations promulgated thereunder must require major sources of HAPs to attain the maximum achievable reduction in HAP emissions, taking into consideration cost, non-air quality health and environmental impacts, and energy requirements. In essence, regulations promulgated pursuant to section 112 must ensure that all regulated HAP sources achieve the level of control that is already being achieved by the lower (12% lowest) emitting sources in each industrial category or subcategory. *See* 42 U.S.C. 7412(d)(3). This approach provides assurance to U.S. citizens that regulated sources will employ good control measures to limit their HAP emissions.

EPA identified the pulp and paper industry as a major source requiring regulation under section 112 of the CAA. Accordingly, on April 15, 1998, EPA promulgated the Pulp and Paper Industry NESHAP (*See* 63 FR 18503). The Pulp and Paper Industry NESHAP, 40 CFR 63.440 through 63.459, subcategorized the pulp and paper industry according to seven different pulping processes (kraft, sulfite, semi-chemical, soda, mechanical wood pulping, secondary fiber pulping, or non-wood pulping), and established different emissions standards for each such process. For a thorough and detailed discussion on the background, development, and promulgation of the Pulp and Paper Industry NESHAP, the reader is referred to the following Web site: <http://www.epa.gov/ttn/atw/pulp/pulppg.html>. The website contains links to all relevant **Federal Register** notices, background documents, enabling documents, fact sheets, and rule summary documents.

2. The Requirements of the Pulp and Paper Industry NESHAP as Applied to PCA's Tomahawk Mill

PCA uses a sodium carbonate semi-chemical process to produce unbleached corrugating medium at the Tomahawk Mill. In order to prevent pollution of the air by HAPs generated during semi-chemical pulping processes, the Pulp and Paper Industry NESHAP requires the collection and control of HAP emissions from a collection of equipment systems. This collection of equipment systems (which includes the digester and evaporator systems) is referred to in the Pulp and Paper Industry NESHAP as the LVHC

system. Semi-chemical mills must enclose the numerous equipment systems comprising the LVHC system, and route the HAP-containing air emissions through a closed-vent system to a control device. The positive pressure portions of the closed vent system must be designed and operated with no detectable leaks. Regulated mills may choose among four control device options for destroying the collected HAPs. The control device must: (1) Reduce the total HAP emissions by 98 percent or more by weight; (2) reduce total HAP concentration at the outlet of the thermal oxidizer to 20 parts per million or less by volume, corrected to 10 percent oxygen on a dry basis; (3) reduce total HAP emissions using a thermal oxidizer designed and operated at a minimum temperature of 871 degrees Centigrade and a minimum residence time of 0.75 seconds; or (4) reduce the total HAP emissions using a boiler, lime kiln, or recovery furnace by introducing the HAP emission stream with the primary fuel or into the flame zone. *See* 40 CFR 63.443(d). Neither the Pulp and Paper Industry NESHAP, nor any other federal or state regulation, requires semi-chemical pulp and paper mills to control the HAPs that may be contained in the liquid condensates generated in the LVHC system ("pulping process condensates").

B. Overview of the Regulatory Innovation Agreements

1. The Joint State/EPA Agreement To Pursue Regulatory Innovation (Innovations Agreement)

EPA announced the Innovations Agreement on May 5, 1998 (63 FR 24874). Through this agreement, EPA and senior State environmental officials jointly committed to encouraging new and innovative approaches to improvement of the nation's environment. The parties to the Innovations Agreement agreed that the following seven principles would guide the process of developing, testing and implementing regulatory innovations: experimentation; environmental performance; smarter approaches; stakeholder involvement; measuring and verifying results; accountability/enforcement; and State-EPA partnership. The Innovations Agreement encouraged "prudent risk taking" as a necessary component of the effort to continue the nation's progress towards protection of human health and the environment.

The Innovations Agreement established a process by which the States would develop innovation

proposals and obtain prompt review and acceptance or rejection by EPA. The success of any innovation project would be measured by its environmental impact, improved efficiency, or other relevant indicator of superior performance.

2. The WDNR/EPA Memorandum of Agreement

To carry out the purposes of the Innovations Agreement, on March 25, 1999 the Wisconsin Department of Natural Resources (WDNR) and Region 5 EPA entered into a Memorandum of Agreement (MOA). The MOA recognized that the Wisconsin legislature had established an Environmental Cooperation Pilot Program, which provided WDNR the statutory authority to develop up to ten pilot projects with companies willing to test alternative approaches to traditional command and control regulations. (Wis. Stat. Sec. 299.80). Many of the goals of the Wisconsin pilot program were similar to those articulated in the Innovations Agreement. The Wisconsin pilot program required any participating company to enter into an environmental cooperative agreement with WDNR. In return for operational flexibility and variances from applicable state regulations, participating pilot companies agreed to achieve environmental performance superior to that which would be achieved through compliance with existing regulations. Participating companies further agreed to establish environmental management systems at their facilities to ensure regular auditing and reporting of environmental performance and compliance.

WDNR and Region 5 recognized in the MOA that EPA would not be a party to these state-company agreements, but provided that when Federal involvement was needed or helpful, Region 5 would promptly identify and, when appropriate, take the necessary federal steps to implement a pilot project. WDNR and EPA agreed that when a project undertaken pursuant to a Wisconsin environmental cooperative agreement required a change in the regulatory requirements of a federally authorized or delegated program, the agencies would follow applicable Federal procedures for the necessary rule or program changes. The agencies specifically intended that any such changes would be federally enforceable.

3. The WDNR/PCA Environmental Cooperative Agreement

As explained at greater length below, when PCA began to investigate what changes would be necessary at its

Tomahawk Mill to comply with the then recently-enacted Pulp and Paper Industry NESHAP, the company discovered that, due to its unique process configuration, the vast majority of HAPs generated in the LVHC system partition to the pulping process condensates. PCA used these condensates as process water in other facility operations, which allowed the HAPs in the condensates to be emitted to the air. Recognizing the opportunity to destroy a far greater quantity of HAPs by treating the condensates instead of the LVHC air stack emissions, PCA proposed an environmental pilot project to WDNR. In lieu of treatment of the LVHC air stack emissions via thermal destruction (as contemplated by the Pulp and Paper Industry NESHAP), PCA proposed to treat the condensed HAPs via biodegradation in the Tomahawk Mill's anaerobic wastewater treatment system.

WDNR concurred with PCA's conclusions about the environmental benefits of the proposed project and, on August 27, 1999, submitted PCA's proposal to Region 5 as one appropriate for evaluation under the terms of the MOA. EPA's Office of Air Quality Planning and Standards (OAQPS) thereafter requested PCA to conduct a full-scale study of the ability of its anaerobic wastewater treatment system to achieve a level of HAP destruction superior to that which would be achieved through compliance with the Pulp and Paper Industry NESHAP. The full-scale treatability study successfully established that PCA's anaerobic system could: (1) Destroy the same HAPs as are required to be controlled under the Pulp and Paper Industry NESHAP; and (2) destroy a significantly greater quantity of those HAPs than would be destroyed through compliance with the Pulp and Paper Industry NESHAP. In June 2001, OAQPS and Region 5 approved PCA's innovation project as one appropriate to pursue.

On September 10, 2002, pursuant to the Wisconsin Environmental Cooperation Pilot Program, and with Region 5 EPA's support under the MOA, WDNR and PCA entered into an Environmental Cooperative Agreement (WDNR/PCA Agreement). The WDNR/PCA Agreement required PCA's Tomahawk Mill to achieve approximately double the destruction of HAPs over what would be achieved through compliance with 40 CFR 63.443(c) and (d) (as explained below, EPA actually believes the facility will achieve a greater than five-fold increase in HAP destruction over what would have been achieved through compliance with the Pulp and Paper Industry

NESHAP.) In lieu of controlling the HAPs from the LVHC system at the LVHC air stack, the WDNR/PCA Agreement allowed PCA to route the LVHC air emissions at its Tomahawk Mill through a series of indirect contact condensers and hardpipe the resulting pulping process condensates to an anaerobic digester for biodegradation. Additionally, the WDNR/PCA Agreement required PCA to conduct a second full-scale performance test of its wastewater treatment system in order to identify and develop enforceable operating parameters and a monitoring plan, acceptable to EPA, that would ensure continuous compliance with the more stringent level of HAP destruction. Finally, the WDNR/PCA Agreement identified certain provisions of the Pulp and Paper Industry NESHAP with which PCA's Tomahawk Mill would be required to comply regardless of, or because of, its use of an alternative treatment technology. See 68 FR 7706, 7707-7708 (February 18, 2003), where EPA adopted a similar amendment to the Pulp and Paper NESHAP.

Pursuant to the WDNR/PCA Agreement, during October of 2002, PCA performed the second full-scale performance test of the Tomahawk Mill's anaerobic wastewater treatment system. The test further verified that PCA's anaerobic wastewater treatment system was capable of achieving a more stringent level of HAP destruction than would be accomplished through compliance with the Pulp and Paper Industry NESHAP. Importantly, through the test results, PCA, EPA and WDNR identified enforceable operating parameters, and also developed a monitoring plan that ensures continuous achievement of the more stringent level of HAP destruction.

The WDNR/PCA Agreement specified that in the event a site-specific rule for PCA's Tomahawk Mill was not finalized, the WDNR/PCA Agreement would terminate. EPA agreed to take no enforcement action against PCA for violations of the requirements of 40 CFR 63.443(c) and (d) at the Tomahawk facility until EPA either revised the Pulp and Paper Industry NESHAP to include a Federal site-specific rule for PCA's Tomahawk Mill, or notified the company that EPA had decided that a site-specific rule was inappropriate, improper or inadequate. Finally, the WDNR/PCA Agreement specified that, provided certain conditions were satisfied and subject to the approval of U.S. EPA and WDNR, PCA's rights and obligations under the agreement could be transferred to any subsequent owner of the Tomahawk Mill. Among other things, a transferee would be obligated

to demonstrate that it had the financial and technical capability to assume the obligations of the WDNR/PCA Agreement.

For a copy of the WDNR/PCA Agreement, and associated fact sheets and public notices, the reader is referred to the following Web site: <http://www.dnr.state.wi.us/org/caer/cea/ecpp/agreements/pca/>.

III. The Site-Specific Rule

A. Rationale and Background of the Site-Specific Rule

Existing semi-chemical mills subject to the Pulp and Paper Industry NESHAP, including PCA's Tomahawk Mill, were required to comply with the applicable provisions of the Pulp and Paper Industry NESHAP by April 16, 2001. In 1999, while preparing to comply with the Pulp and Paper Industry NESHAP at its Tomahawk Mill, PCA recognized that to properly design and operate a Pulp and Paper Industry NESHAP-compliant incineration control device, it needed to condition the air emissions from the digester system. Accordingly, PCA installed two in-series indirect contact condensers following the digester system, which conditioned the air emissions by reducing the moisture content.

Before designing the incineration control device, PCA next sought to characterize (for HAP content, flow rate, moisture content, etc.) the air emissions from the two new indirect contact condensers. PCA's testing surprisingly revealed that the HAP content in the LVHC air emissions was far less than the company had expected. The air emissions from the digester system at the Tomahawk Mill contained approximately 0.4 pounds of HAPs, as methanol, per Oven Dried Ton of Pulp (ODTP). Background studies for the Pulp and Paper Industry NESHAP had led PCA to believe that these air emissions would contain greater than two pounds of HAPs, as methanol, per ODTP.

PCA then undertook a study to determine why the HAP content of the digester system's air emissions was far less than expected. PCA determined that, because of the unique process configuration at its Tomahawk Mill, the vast majority of the HAPs contained in the air emissions from the digester system partitioned to the condensate stream produced by the indirect contact condensers. Under the Pulp and Paper Industry NESHAP (or any other Federal or State regulation), the Tomahawk Mill is not required to treat any pulping process condensates and, at that time,

the Tomahawk Mill mixed the pulping process condensates with other reuse water streams and routed them to other uncontrolled production processes at the mill. Testing conducted by PCA revealed that the condensates from the two indirect contact condensers following the digester system contained approximately 2.5 pounds of HAPs per ODTP—in other words, approximately six times the quantity of HAPs, as methanol, that could potentially be treated as LVHC air emissions, as currently prescribed by the Pulp and Paper Industry NESHAP.

EPA, WDNR, and PCA concluded that the destruction of HAPs contained in the pulping process condensates from the Tomahawk Mill's LVHC system—rather than destruction of HAPs contained in the air stack emissions from the LVHC system—would result in greater overall reduction of HAPs emitted to the environment. EPA, WDNR, and PCA further reasoned that PCA's Tomahawk Mill would be able to treat the HAPs contained in the pulping process condensates by hardpiping them to the basins of PCA Tomahawk's state-of-the-art wastewater treatment plant for anaerobic biodegradation. Such alternative treatment would yield significant cost savings to PCA, since the company would not need to design and install an incinerator to control the HAPs contained in the air emissions from the LVHC system at the Tomahawk Mill.

EPA then authorized PCA to proceed to implement the project for the entire LVHC system (as opposed to just the digester system), and requested PCA to conduct full scale testing upon completion of the project. PCA proceeded thereafter to install a third indirect contact condenser, and collect and route the HAP-containing air emissions from the entire LVHC system through the third indirect contact condenser.

B. Environmental Benefit of the Site-Specific Rule

PCA's subsequent full-scale testing demonstrated that, with the installation of the third indirect contact condenser, approximately 85 percent of the HAPs in the entire LVHC system partition to the pulping process condensates. While the air emissions from the entire LVHC system contain approximately 0.6 pounds of HAPs per ODTP, the pulping process condensates contain approximately 3.0 pounds of HAPs per ODTP. Full-scale testing at PCA's Tomahawk Mill further verified that between 96 and 100 percent of the HAPs contained in the pulping process condensates and hardpiped to the

wastewater treatment plant are destroyed by anaerobic biodegradation.¹

The maximum quantity of HAPs available for destruction at PCA's Tomahawk Mill through compliance with 40 CFR 63.443(d) is approximately 0.6 pounds of HAP per ODTP. The Pulp and Paper Industry NESHAP requires that 98 percent of the approximately 0.6 pounds (*i.e.* 0.59 pounds HAPs/ODTP) be destroyed. As indicated above, by hardpiping the pulping process condensates to the anaerobic basins of the wastewater treatment plant, approximately 3.0 pounds of HAPs per ODTP are available for destruction and, in actuality, more than 96 percent of the approximately 3.0 pounds (*i.e.* at least 2.9 pounds/ODTP) are destroyed. In short, by condensing the HAPs from the entire LVHC system and routing them to the anaerobic wastewater treatment system for treatment, PCA is able to destroy approximately five times the mass of HAPs that it would otherwise destroy through compliance with the Pulp and Paper Industry NESHAP.

C. Overview of the Site-Specific Rule

EPA's rule allows PCA, in lieu of controlling HAPs in the Tomahawk Mill's LVHC air stack emissions, to control the HAPs partitioning from those air emissions to the pulping process condensates. More particularly, EPA's rule allows PCA to: (1) Install a closed-vent system to collect the HAP-containing air emissions from the LVHC system; (2) route the emissions through a series of indirect contact condensers; and (3) hardpipe the resulting pulping process condensates to the anaerobic basins of the facility's wastewater treatment plant. The anaerobic basins of the wastewater treatment plant must achieve a destruction efficiency of at least 1.0 pound of HAPs per ODTP by anaerobic biodegradation, *i.e.* approximately twice the quantity of what would have been achieved by the facility under the current Pulp and Paper Industry NESHAP. EPA and PCA actually anticipate that the HAP destruction in the wastewater treatment plant anaerobic basins will significantly exceed the 1.0 pound per ODTP requirement. As stated above, the average HAP destruction efficiency of the wastewater treatment system is approximately 3.0 pounds per ODTP.

¹ For purposes of calculating a HAP destruction efficiency, EPA required PCA to assume that the concentration of HAPs in the wastewater treatment plant effluent was equal to the detection limit concentration. Use of the detection limit concentration result in a 96 percent HAP destruction efficiency calculation. No HAPs were actually detected in the wastewater treatment plant effluent, potentially signifying a 100% destruction efficiency.

To allow PCA to achieve this superior environmental performance and remain in compliance with the CAA, EPA is promulgating limited revisions to the Pulp and Paper Industry NESHAP, Subpart S, 40 CFR 63.440 through 63.459. The revisions collectively comprise a site-specific rule applicable only to PCA's Tomahawk Mill. Under the site-specific rule, PCA's Tomahawk Mill may comply with either the otherwise applicable control technology requirements of the Pulp and Paper Industry NESHAP, or the control technology requirements of the site-specific rule.

Like the otherwise applicable provisions of the Pulp and Paper Industry NESHAP, the site-specific rule requires PCA's Tomahawk Mill to enclose the LVHC system and vent the air emissions to a closed-vent system. The standards and monitoring requirements for the enclosures and closed-vent system included in the rule are equivalent (except for formatting and reference changes) to the otherwise applicable Pulp and Paper Industry NESHAP requirements.

The site-specific rule allows PCA's Tomahawk Mill to use an alternative treatment technology to control the HAPs collected in the closed-vent system. The rule allows PCA to treat its HAPs at an emission point not addressed by the Pulp and Paper Industry NESHAP. PCA may route the collected air emissions through a series of indirect contact condensers and hardpipe the resulting pulping process condensates in a closed collection system to the wastewater treatment plant for anaerobic biodegradation. The standards and monitoring requirements for the closed collection system are equivalent (except for formatting and reference changes) to those required by the Pulp and Paper Industry NESHAP for kraft mills (which must collect and treat pulping process condensates).

The site-specific rule establishes a minimum destruction efficiency standard of 1.0 pound of HAPs per ODTP, and further requires PCA to monitor, and maintain within specified limits, several operating parameters to ensure continuous compliance with the HAP destruction efficiency standard. PCA must conduct quarterly performance testing of the anaerobic wastewater treatment system to verify compliance with the minimum HAP destruction efficiency standard. Finally, PCA's Tomahawk Mill must continue to comply with all applicable recordkeeping and reporting requirements of the general provisions at subpart A, 40 CFR 63.10.

Under the site-specific rule (and analogous to the excess emission allowance of 40 CFR 63.443(e)(1)), PCA's Tomahawk Mill will be deemed in compliance with the Pulp and Paper Industry NESHAP so long as it complies with all applicable provisions, including the requirement that it achieve the established destruction efficiency standard, no less than 99 percent of the operating time.

IV. Statutory and Executive Order Reviews.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of this regulatory action. The Order defines "significant regulatory" action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this rule affects only one facility, it is not a rule of general applicability. EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, since it applies to only one facility. It is exempt from OMB review under the Paperwork Reduction Act because it is a site-specific rule, directed to fewer than ten persons. 44 U.S.C. 3502(3), (10); 5 CFR 1320.3(c), 1320.4 and 1320.5.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose

or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and public comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The subject of this site-specific rulemaking, PCA, is not a small business. This rule does not apply to small businesses, small not-for-profit enterprises, or small governmental jurisdictions. Further, it is a site-specific rule with limited applicability to only one pulp and paper mill in the nation. After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments in the aggregate, or by the private sector, of \$100 million or

more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposal with significant Federal mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. As used here, "small government" has the same meaning as that contained under 5 U.S.C. 601(5), that is, governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.

As discussed above, this rule will have limited application. It applies only to the PCA's pulp and paper mill located in Tomahawk, Wisconsin. This site-specific rule does not impose any additional costs on PCA's Tomahawk Mill. EPA has determined that this site-specific rule does not contain a Federal mandate that may result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The phrase, "Policies that have federalism implications" is

defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

To the extent that this rule gives rise to federalism concerns, they have been addressed via EPA's direct consultation with Wisconsin, the affected State. As noted above, this rule was developed pursuant to the State-sponsored WDNR/PCA Agreement and the MOA between WDNR and Region 5 EPA.

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

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

This rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant," as defined in Executive Order 12886; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to potentially effective and

feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency believes the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. This rule will require PCA to achieve a greater reduction of HAPs emitted to the environment by allowing it to use an alternative treatment technology not currently allowed by the existing the Pulp and Paper Industry NESHAP. Therefore, no additional risk to public health, including children's health, is expected to result from this action.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It will not result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless such practice is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, material specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule uses all available and applicable voluntary consensus standards.

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

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11,

1994) is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high adverse human health or environmental impacts as a result of EPA's policies, programs, and activities. Today's action applies to one facility in Tomahawk, Wisconsin, and will have no disproportionate impacts on minority or low income communities. Overall, the project being undertaken at PCA's Tomahawk Mill, if successful, will produce environmental performance superior to that expected through compliance with existing regulations.

K. Executive Order 12988: Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled Civil Justice Reform (61 FR 4729, February 7, 1996).

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 63

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

Dated: April 7, 2004.

Michael O. Leavitt,
Administrator.

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

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

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

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

Subpart S—National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry

■ 2. Amend § 63.459 by adding paragraph (b) to read as follows:

§ 63.459 Alternative standards.

* * * * *

(b) *Tomahawk Wisconsin Mill. (1) Applicability.* (i) The provisions of this paragraph (b) apply to the owner or operator of the stand-alone semi-chemical pulp and paper mill located at N9090 County Road E in Tomahawk, Wisconsin, referred to as the Tomahawk Mill.

(ii) The owner or operator is not required to comply with the provisions of this paragraph (b) if the owner and operator chooses to comply with the otherwise applicable sections of this subpart and provides the EPA with notice.

(iii) If the owner or operator chooses to comply with the provisions of this paragraph (b) the owner or operator shall comply with all applicable provisions of this part, including this subpart, except the following:

- (A) Section 63.443(b);
- (B) Section 63.443(c); and
- (C) Section 63.443(d).

(2) *Collection and routing of HAP emissions.* (i) The owner or operator shall collect the total HAP emissions from each LVHC system.

(ii) Each LVHC system shall be enclosed and the HAP emissions shall be vented into a closed-vent system. The enclosures and closed-vent system shall meet requirements specified in paragraph (b)(6) of this section.

(iii) The HAP emissions shall be routed as follows:

(A) The HAP emissions collected in the closed-vent system from the digester system shall be routed through the primary indirect contact condenser, secondary indirect contact condenser, and evaporator indirect contact condenser; and

(B) The HAP emissions collected in the closed-vent system from the evaporator system and foul condensate standpipe shall be routed through the evaporator indirect contact condenser.

(3) *Collection and routing of pulping process condensates.* (i) The owner or operator shall collect the pulping process condensates from the following equipment systems:

- (A) Primary indirect contact condenser;
- (B) Secondary indirect contact condenser; and
- (C) Evaporator indirect contact condenser.

(ii) The collected pulping process condensates shall be conveyed in a closed collection system that is designed and operated to meet the requirements specified in paragraph (b)(7) of this section.

(iii) The collected pulping process condensates shall be routed in the closed collection system to the wastewater treatment plant anaerobic basins for biodegradation.

(iv) The pulping process condensates shall be discharged into the wastewater treatment plant anaerobic basins below the liquid surface of the wastewater treatment plant anaerobic basins.

(4) *HAP destruction efficiency requirements of the wastewater treatment plant.* (i) The owner or operator shall achieve a destruction efficiency of at least one pound of HAPs per ton of ODP by biodegradation in the wastewater treatment plant.

(ii) The following calculation shall be performed to determine the HAP destruction efficiency by biodegradation in the wastewater treatment plant:

$$\text{HAP}_d = \frac{[(\text{RME}_{fr} \times \text{RME}_c) + (\text{PPC}_{fr} \times \text{PPC}_c) - (\text{ABD}_{fr} \times \text{ABD}_c)] \times 8.34}{\text{ODP}_r}$$

Where:

HAP_d = HAP destruction efficiency of wastewater treatment plant (pounds of HAPs per ton of ODP);

RME_{fr} = flow rate of raw mill effluent (millions of gallons per day);

RME_c = HAP concentration of raw mill effluent (milligrams per liter);

PPC_{fr} = flow rate of pulping process condensates (millions of gallons per day);

PPC_c = HAP concentration of pulping process condensates (milligrams per liter);

ABD_{fr} = flow rate of anaerobic basin discharge (millions of gallons per day);

ABD_c = HAP concentration of anaerobic basin discharge (milligrams per liter); and

ODP_r = rate of production of oven dried pulp (tons per day).

(5) *Monitoring requirements and parameter ranges.* (i) The owner or operator shall install, calibrate, operate, and maintain according to the manufacturer's specifications a continuous monitoring system (CMS, as defined in § 63.2), using a continuous recorder, to monitor the following parameters:

(A) Evaporator indirect contact condenser vent temperature;

(B) Pulping process condensates flow rate;

(C) Wastewater treatment plant effluent flow rate; and

(D) Production rate of ODP.

(ii) The owner or operator shall additionally monitor, on a daily basis, in each of the four anaerobic basins, the ratio of volatile acid to alkalinity (VA/A ratio). The owner or operator shall use the test methods identified for determining acidity and alkalinity as specified in 40 CFR 136.3, Table 1B.

(iii) The temperature of the evaporator indirect contact condenser vent shall be maintained at or below 140 °F on a continuous basis.

(iv) The VA/A ratio in each of the four anaerobic basins shall be maintained at or below 0.5 on a continuous basis.

(A) The owner or operator shall measure the methanol concentration of the outfall of any basin (using NCASI Method DI/MEOH 94.03) when the VA/A ratio of that basin exceeds the following:

(1) 0.38, or

(2) The highest VA/A ratio at which the outfall of any basin has previously measured non-detect for methanol (using NCASI Method DI/MEOH 94.03).

(B) If the outfall of that basin measures detect for methanol, the owner or operator shall verify compliance with the emission standard specified in

paragraph (b)(4) of this section by conducting a performance test pursuant to the requirements specified in paragraph (b)(8) of this section.

(v) The owner or operator may seek to establish or reestablish the parameter ranges, and/or the parameters required to be monitored as provided in paragraphs (b)(5)(i) through (v) of this section, by following the provisions of § 63.453(n)(1) through (4).

(6) *Standards and monitoring requirements for each enclosure and closed-vent system.*

(i) The owner or operator shall comply with the design and operational requirements specified in paragraphs (b)(6)(ii) through (iv) of this section, and the monitoring requirements of paragraphs (b)(6)(v) through (x) of this section for each enclosure and closed-vent system used for collecting and routing of HAP emissions as specified in paragraph (b)(2) of this section.

(ii) Each enclosure shall be maintained at negative pressure at each enclosure or hood opening as demonstrated by the procedures specified in § 63.457(e). Each enclosure or hood opening closed during the initial performance test shall be maintained in the same closed and sealed position as during the performance test at all times except when necessary to use the opening for sampling, inspection, maintenance, or repairs.

(iii) Each component of the closed-vent system that is operated at positive pressure shall be designed for and operated with no detectable leaks as indicated by an instrument reading of less than 500 parts per million by volume above background, as measured by the procedures specified in § 63.457(d).

(iv) Each bypass line in the closed-vent system that could divert vent streams containing HAPs to the atmosphere without meeting the routing requirements specified in paragraph (b)(2) of this section shall comply with either of the following requirements:

(A) On each bypass line, the owner or operator shall install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of the presence of gas stream flow in the bypass line at least once every 15 minutes. The flow indicator shall be installed in the bypass line in such a way as to indicate flow in the bypass line; or

(B) For bypass line valves that are not computer controlled, the owner or operator shall maintain the bypass line valve in the closed position with a car seal or seal placed on the valve or

closure mechanism in such a way that the valve or closure mechanism cannot be opened without breaking the seal.

(v) For each enclosure opening, the owner or operator shall perform, at least once every 30 days, a visual inspection of the closure mechanism specified in paragraph (b)(6)(ii) of this section to ensure the opening is maintained in the closed position and sealed.

(vi) For each closed-vent system required by paragraph (b)(2) of this section, the owner or operator shall perform a visual inspection every 30 days and at other times as requested by the Administrator. The visual inspection shall include inspection of ductwork, piping, enclosures, and connections to covers for visible evidence of defects.

(vii) For positive pressure closed-vent systems, or portions of closed-vent systems, the owner or operator shall demonstrate no detectable leaks as specified in paragraph (b)(6)(iii) of this section, measured initially and annually by the procedures in § 63.457(d).

(viii) For each enclosure that is maintained at negative pressure, the owner or operator shall demonstrate initially and annually that it is maintained at negative pressure as specified in § 63.457(e).

(ix) For each valve or closure mechanism as specified in paragraph (b)(6)(iv)(B) of this section, the owner or operator shall perform an inspection at least once every 30 days to ensure that the valve is maintained in the closed position and the emissions point gas stream is not diverted through the bypass line.

(x) If an inspection required by paragraph (b)(6) of this section identifies visible defects in ductwork, piping, enclosures, or connections to covers required by paragraph (b)(6) of this section, or if an instrument reading of 500 parts per million by volume or greater above background is measured, or if the enclosure openings are not maintained at negative pressure, then the following corrective actions shall be taken as soon as follows:

(A) A first effort to repair or correct the closed-vent system shall be made as soon as practicable but no later than 5 calendar days after the problem is identified.

(B) The repair or corrective action shall be completed no later than 15 calendar days after the problem is identified.

(7) *Standards and monitoring requirements for the pulping process condensates closed collection system.* (i) The owner or operator shall comply with the design and operational requirements specified in paragraphs

(b)(7)(ii) through (iii) of this section, and monitoring requirements of paragraph (b)(7)(iv) for the equipment systems in paragraph (b)(3) of this section used to route the pulping process condensates in a closed collection system.

(ii) Each closed collection system shall meet the individual drain system requirements specified in §§ 63.960, 63.961, and 63.962, except that the closed vent systems shall be designed and operated in accordance with paragraph (b)(6) of this section, instead of in accordance with § 63.693 as specified in § 63.692(a)(3)(ii),

(b)(3)(ii)(A), and (b)(3)(ii)(B)(5)(iii); and

(iii) If a condensate tank is used in the closed collection system, the tank shall meet the following requirements:

(A) The fixed roof and all openings (*e.g.*, access hatches, sampling ports, gauge wells) shall be designed and operated with no detectable leaks as indicated by an instrument reading of less than 500 parts per million above background, and vented into a closed-vent system that meets the requirements of paragraph (b)(6) of this section and routed in accordance with paragraph (b)(2) of this section; and

(B) Each opening shall be maintained in a closed, sealed position (*e.g.*, covered by a lid that is gasketed and latched) at all times that the tank contains pulping process condensates or any HAPs removed from a pulping process condensate stream except when it is necessary to use the opening for sampling, removal, or for equipment inspection, maintenance, or repair.

(iv) For each pulping process condensate closed collection system used to comply with paragraph (b)(3) of this section, the owner or operator shall perform a visual inspection every 30 days and shall comply with the inspection and monitoring requirements specified in § 63.964 except for the closed-vent system and control device inspection and monitoring requirements specified in § 63.964(a)(2).

(8) *Quarterly performance testing.* (i) The owner or operator shall, within 45 days after the beginning of each quarter, conduct a performance test.

(ii) The owner or operator shall use NCASI Method DI/HAPS-99.01 to collect a grab sample and determine the HAP concentration of the Raw Mill Effluent, Pulping Process Condensates, and Anaerobic Basin Discharge for the quarterly performance test conducted during the first quarter each year.

(iii) For each of the remaining three quarters, the owner or operator may use NCASI Method DI/MEOH 94.03 as a surrogate to collect and determine the HAP concentration of the Raw Mill Effluent, Pulping Process Condensates, and Anaerobic Basin Discharge.

(iv) The sample used to determine the HAP or Methanol concentration in the Raw Mill Effluent, Pulping Process Condensates, or Anaerobic Basin Discharge shall be a composite of four grab samples taken evenly spaced over an eight hour time period.

(v) The Raw Mill Effluent grab samples shall be taken from the raw mill effluent composite sampler.

(vi) The Pulping Process Condensates grab samples shall be taken from a line tap on the closed condensate collection system prior to discharge into the wastewater treatment plant.

(vii) The Anaerobic Basic Discharge grab samples shall be taken subsequent to the confluence of the four anaerobic basin discharges.

(viii) The flow rate of the Raw Mill Effluent, Pulping Process Condensates, and Anaerobic Basin Discharge, and the production rate of ODP shall be averaged over eight hours.

(ix) The data collected as specified in paragraphs (b)(5) and (b)(8) of this section shall be used to determine the HAP destruction efficiency of the wastewater treatment plant as specified in paragraph (b)(4)(ii) of this section.

(x) The HAP destruction efficiency shall be at least as great as that specified by paragraph (b)(4)(i) of this section.

(9) *Recordkeeping requirements.* (i) The owner or operator shall comply with the recordkeeping requirements as specified in Table 1 of subpart S of part 63 as it pertains to § 63.10.

(ii) The owner or operator shall comply with the recordkeeping requirements as specified in § 63.454(b).

(iii) The owner or operator shall comply with the recordkeeping requirements as specified in § 63.453(d).

(10) *Reporting requirements.* (i) Each owner or operator shall comply with the reporting requirements as specified in Table 1 of § 63.10.

(ii) Each owner or operator shall comply with the reporting requirements as specified in § 63.455(d).

(11) *Violations.* (i) Failure to comply with any applicable provision of this part shall constitute a violation.

(ii) Periods of excess emissions shall not constitute a violation provided the time of excess emissions (excluding periods of startup, shutdown, or malfunction) divided by the total process operating time in a semi-annual reporting period does not exceed one percent. All periods of excess emission (including periods of startup, shutdown, and malfunction) shall be reported, and shall include:

(A) Failure to monitor a parameter, or maintain a parameter within minimum or maximum (as appropriate) ranges as specified in paragraph (b)(5), (b)(6), or (b)(7) of this section; and

(B) Failure to meet the HAP destruction efficiency standard specified in paragraph (b)(4) of this section.

(iii) Notwithstanding paragraph (b)(11)(ii) of this section, any excess emissions that present an imminent threat to public health or the environment, or may cause serious harm to public health or the environment, shall constitute a violation.

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