

# Federal Register

---

TUESDAY  
November 2, 1993

---

## ENVIRONMENTAL FEDERAL REGISTER

---

**Electronic Sub-Set**

**Note: Agencies currently participating in  
this sub-set include: EPA**

---

# Contents

**Federal Register**

Vol. 58, No. 210

Tuesday, November 2, 1993

---

## **Environmental Protection Agency**

### **RULES**

Air quality implementation plans:

Preparation, adoption, and submittal—

Sources categories list and regulatory schedules for air emissions from other solid waste incinerators; availability, 58498

Hazardous waste:

State underground storage tank program approvals—

New Hampshire, 58264

### **PROPOSED RULES**

Hazardous waste:

Identification and listing—

Exclusions, 58521

### **NOTICES**

Clean Air Act:

Acid rain provisions—

State permits, 58548

Hydrogen fluoride study; report to Congress; availability, 58548

Clean Water Act:

Class I and II administrative penalty assessments, 58548

Water pollution control:

Clean Water Act—

State water quality standards; approval and disapproval lists and individual control strategies; availability, 58548

**CFR PARTS AFFECTED IN THIS ISSUE**

---

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**40 CFR**

51.....58498  
282.....58624

**Proposed Rules:**

261.....58521

# Rules and Regulations

Federal Register

Vol. 58, No. 210

Tuesday, November 2, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

[AD-FRL-4795-6]

#### Notice of Listing of Categories and Regulatory Schedule for Air Emissions From Other Solid Waste Incinerators

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of listing of categories of sources of other solid waste incineration units under section 129 of the Clean Air Act (Act) and a schedule for promulgation of regulations.

**SUMMARY:** Section 129 of the Act requires the EPA to develop new source performance standards (NSPS) and emission guidelines (EG) for four classes of solid waste incineration units. These are municipal waste combustors (MWC's), medical waste incinerators (MWI's), industrial and commercial waste incinerators (ICWI's), and categories of other solid waste incinerators (OSWI's). This document announces the listing of types of incinerators to be included under the category of OSWI's and a regulatory schedule for these units, as required under section 129 of the 1990 Amendments to the Clean Air Act (1990 Amendments). This document includes public comments on the draft list of categories of sources and the regulatory schedule published in the **Federal Register** on June 2, 1993 (58 FR 31358), and EPA responses to the comments.

**EFFECTIVE DATE:** November 2, 1993.

**ADDRESSES:** *Docket.* Docket No. A-93-11 containing supporting information used in developing this document is available for public inspection and copying between the hours of 8:30 a.m. and 3:30 p.m., Monday through Friday, excluding Federal holidays, at the EPA's Air Docket, Waterside Mall, Room M-1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For information concerning specific aspects of this document, contact Mr. David Painter, Industrial Studies Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5515.

**SUPPLEMENTARY INFORMATION:** The following outline is provided to aid in locating information in this document.

- I. Introduction
- II. Discussion of Public Comments and Responses to Comments
- III. Final List of Categories of Sources
- IV. Regulatory Schedule

#### I. Introduction

This document presents a list of categories of OSWI sources which EPA will further investigate and a schedule for subsequent regulatory activities. Under a consent agreement (see Waxman, et al. vs. Reilly, No. 92-1230 (D.D.C.) consent decree entered January 25, 1993), the EPA agreed to publish this listing of source categories and schedule by December 31, 1993.

Prior to developing NSPS and EG for OSWI's, the EPA is required to list the categories of sources that comprise OSWI's and specify the regulatory schedule for promulgating standards for any of these sources. To identify categories of OSWI's, the EPA conducted a literature review of solid waste incineration technologies and contacted selected State air pollution control and solid waste management agencies, the U.S. Department of Energy, incineration equipment manufacturers, and their trade associations. Through these efforts, information was gathered on potential categories of OSWI's, and a draft list of categories and a regulatory schedule were published in the **Federal Register** on June 2, 1993 (58 FR 31358). That document listed and described the categories of sources to be included under OSWI's as follows:

##### A. Small MWC's

This category includes MWC plants with capacities of 35 Mg/d (39 tons/d) or less. This includes, but is not limited to, incinerators burning municipal solid waste (MSW) which service communities or are located at prisons, schools, or other institutions.

These very small incinerators are not covered under the MWC regulations promulgated on February 11, 1991 (56 FR 5488 and 56 FR 5514), and are not currently expected to be covered by the NSPS and EG presently under development. Due to the differences in incineration technology and ownership between these small incinerators

and larger MWC's, the EPA is proposing to include very small MWC's under OSWI's.

##### B. Residential Incinerators

This category includes small incinerators at single and multi-family dwellings, hotels and motels.

##### C. Agricultural Waste Incinerators

This category includes incinerators burning agricultural waste for the purpose of destruction of the waste and/or energy recovery. Agricultural waste includes material generated or used by an agricultural operation, including, for example, crop residue, rice hulls, and almond shells.

##### D. Wood Waste Incinerators

This category includes conical incinerators (including wigwam burners) and other types of incineration equipment burning solid waste that is predominately wood waste for the purpose of destruction of the waste and/or energy recovery. As directed by section 129 of the 1990 Amendments, this category does not include air curtain incinerators burning wood wastes, yard wastes, or clean lumber. However, the Administrator will establish opacity limitations for such units as required under the 1990 Amendments.

##### E. Construction and Demolition Waste Incinerators

This category covers incinerators burning construction and demolition waste for the purpose of destruction of the waste and/or energy recovery. Construction and demolition waste includes, for example, wood pallets, crates, used lumber, demolition wastes, etc., and is excluded from the definition of MSW.

##### F. Crematories

This category includes those units which cremate both human and animal remains.

##### G. Petroleum-Contaminated Soil Treatment Facilities

This category covers stationary facilities or portable units that treat petroleum-contaminated soil. Sections 104 and 127 of the Comprehensive Environmental Response, Compensation, and Liability Act exclude petroleum from the definition of hazardous substance, pollutant or contaminant. Therefore, petroleum-contaminated soil treatment facilities are not regulated as hazardous waste treatment facilities. The process involves heating the soil with natural gas, propane, or No. 2 fuel oil to remove hydrocarbons, which are then either combusted in the kiln or condensed for reuse.

As noted above, section 129 of the 1990 Amendments directs the EPA to develop

NSPS and EG for categories of OSWI's. Prior to doing this, the EPA must define categories of OSWI's and determine a regulatory schedule for promulgating any standards. (Section 129 specifies the schedule for regulatory development for MWC's, MWI's, and ICWI's.) In the June 2, 1993 **Federal Register** document, the EPA noted that the emission reductions to be derived from regulating MWC's, MWI's, and ICWI's are expected to outweigh those that can be achieved in regulating the categories of incinerators included in the draft list of OSWI's. The categories of OSWI's included in the initial listing are smaller sources and controls for these are likely to be less cost-effective than controls for MWC's, MWI's, and ICWI's. Additionally, the EPA is still assessing and understanding the emission generation mechanisms, emission controls and control costs for the larger incineration sources, and it will be more efficient to take advantage of the information developed on these sources before beginning the further assessment of OSWI's.

For the above reasons, the EPA proposed to prioritize the use of its resources by focusing first on the MWC, MWI, and ICWI regulatory projects. Therefore, the EPA proposed November 15, 2000 as the regulatory deadline for promulgating NSPS and EG for OSWI's. Selection of this date was based upon the Administrator's judgment that the proposed categories of sources of OSWI's are of lesser significance than MWC's, MWI's, and ICWI's, and upon the Administrator's conclusion that it would be a more efficient use of the EPA's resources to regulate those three source categories first.

The EPA requested comments on whether the categories of sources included in the initial list were appropriate, and whether there were other categories that should be added to this list. The EPA also requested comments upon the appropriateness of its planned regulatory schedule.

## II. Discussion of Public Comments and Responses to Comments

### A. General

A total of seven comments were received. Three commenters expressed support for the inclusion of some or all of the seven categories of OSWI's in the proposed list. One of the commenters, representing a State agency, explained that the citizens of that State have been very concerned about the significant emissions of air toxics from all types of incinerators which may be impacting the quality of water in the Great Lakes and other bodies of water. The remaining commenters requested clarifications or modifications of the categories of OSWI. Those comments and EPA's responses are summarized below.

### B. Small MWC's

One commenter stated that it is not clear whether incinerators installed at schools and other governmental agencies are included in the proposed list of categories of OSWI's. This commenter expressed support for including these incinerators under OSWI. The commenter stated that many incinerators owned and operated by schools and governmental agencies do not utilize state-of-the-art combustion and control equipment and have poor operation and maintenance.

The EPA agrees with the commenters that incinerators at schools and other governmental facilities belong in the category of small MWC's, as was previously indicated in the June 2, 1993 document. The commenters' concerns about the operation and emissions of these sources will be considered in a subsequent study to scope the category, and, if needed, to establish emission limits for this class of incinerators.

### C. Residential Incinerators

One commenter stated that residential incinerators should include incinerators located at both apartment buildings and residential homes. Another commenter expressed the opinion that residential incinerators should not be allowed to operate because they cannot be properly operated or monitored.

As was indicated in the June 2, 1993 document, the EPA is including incinerators located at both apartment buildings and residential homes in the category of residential incinerators. The commenters' concerns about the operation and control of these sources will be addressed in a subsequent study to scope the category, and, if needed, to establish emission limits for this class of incinerators.

### D. Wood Waste Incinerators and Agricultural Waste Incinerators

One commenter representing an industry association, expressed support for narrow definitions of wood waste incinerators and agricultural waste incinerators to exclude current industry operations whose primary purpose is energy recovery, rather than material destruction. The commenter provided a list of wood waste energy recovery incineration operations to be exempted from the definitions. The commenter stated that these operations typically have fuel specifications (e.g., chip or pellet size, moisture content, acceptable contamination levels) that differentiate them from other typical incineration devices whose primary use is thermal destruction. In addition, the commenter said that such wood waste energy recovery incineration operations are already regulated under other EPA regulations, including the NSPS subpart D(b) and D(c) standards and are to be included in future maximum achievable control technology standards for industrial boilers. Also

expressed was a concern that some of these energy recovery incinerators would be regulated under the OSWI category of agricultural waste incinerators because some of these incinerators also use agricultural products as a fuel, such as the material remaining after recovering chips from plantation-grown hybrid poplar or cottonwoods.

The EPA shares the concerns of the commenter with regard to the need to avoid overlap of possible new NSPS applicable to OSWI's with other regulations. In particular, the EPA examined the commenter's observations about the potential to overlap subparts D(b) and D(c) of the NSPS. The EPA notes that the purpose of the NSPS is to control criteria pollutants. Those same pollutants were included among the pollutants listed in section 129 of the 1990 Amendments. However, the additional focus of section 129 is on the control of hazardous air pollutants (HAP's) and, therefore, the Congress mandated that the EPA establish numerical limits for several HAP's in addition to those pollutants covered by subparts D(b) and D(c) of the NSPS. Additionally, the EPA notes that NSPS apply only to new sources and do not apply to the large number of existing sources. For these reasons, the EPA has concluded that the coverage of wood waste incinerators should not be narrowed any further than as was described in the June 2, 1993 document. The 1990 Amendments require the EPA to address such sources. However, the EPA will remain sensitive to the commenter's concerns about duplicative regulations. In addition, if regulations are later developed under section 129, the EPA will identify those sources which are excluded from coverage, such as those energy recovery facilities described in section 129(g)(1)(B).

The EPA has determined that facilities incinerating agricultural waste for energy recovery purposes are included in the OSWI category of agricultural waste incinerators. Air emissions from these incinerators are not regulated by any other standard, and the 1990 Amendments do not exempt energy recovery operations incinerating agricultural waste from its definition of solid waste incinerators.

### E. Construction and Demolition Waste Incinerators

A commenter stated that demolition wastes should not be exempted from incineration regulations. This commenter said that demolition wastes may contain materials that will emit toxic fumes when burned and also expressed a concern about the presence of asbestos in demolition wastes.

It is the intent of the EPA that the incineration of demolition wastes is to be included in the category of construction and demolition waste incinerators. In assessing the need for regulating these sources, the EPA will investigate the emissions resulting from

combustion of the toxic components of these types of wastes.

#### F. Crematories

One commenter expressed support for crematories being included in the proposed list. This commenter is concerned that some States still apply the same opacity standards to crematories as they do to other incinerators. The commenter stated that most opacity limits allow for higher levels of visible emissions during start-up operations. The commenter suggested that this may be reasonable for large municipal incinerators that start up once a week, but asserted that such allowances are not reasonable for crematories which undergo start-up operations at the beginning of each cremation. In assessing the need to develop emission limitations applicable to crematories, the EPA will specifically evaluate the commenter's concerns regarding possible excess emissions occurring during start-up.

#### G. Petroleum-Contaminated Soil Treatment Facilities

One commenter stated that the incineration of contaminated soil needs immediate attention and urged the EPA to regulate contaminated soil incinerators. Another commenter suggested that the EPA clarify how petroleum-contaminated soil treatment facilities are covered under the OSWI categories. The commenter said that petroleum-contaminated soil treatment facilities which treat soil that passes the Toxicity Characteristic (TC) Rule test for hazardous waste should be subject to the OSWI requirements since these facilities do not treat hazardous waste. The same commenter said that if the soil fails the TC Rule test, the facility would be regulated under the Solid Waste Disposal Act (SWDA), and therefore should be exempt from the OSWI requirements.

A third commenter stated that all treatment devices that heat hazardous wastes or polychlorinated biphenyls (PCB's) in an oxidizing environment should be regulated as incinerators. The commenter maintained that these types of devices are engaged in combustion and pose the same potential risks to human health and the environment that an incinerator does. The commenter urged the EPA to include under the ICWI category those thermal desorbers, sludge dryers, and other treatment units that do not fall within the definitions of MWC's or MWI's and that heat any portion of the waste in an oxidizing environment. As an alternative, the commenter recommended that the EPA add an eighth OSWI category to cover these devices. In support of this recommendation, the commenter incorporated, in its entirety, a petition that was submitted to the EPA on July 13, 1993 entitled, "Petition for Rulemaking to Amend EPA's Regulations to Address

Thermal Oxidation of Hazardous Wastes and PCBs in Thermal Desorbers, Sludge Dryers, and Other Devices."

In response to the comments, the EPA has decided to expand the proposed category of "petroleum-contaminated soil treatment facilities" and to indicate this by dropping the word petroleum from the title. In the listing below, this class of incinerators has been listed as "contaminated soil treatment facilities". This class of OSWI's covers all soil treatment facilities that are not required to have a permit under section 3005 of the SWDA.

The third commenter's request that the EPA include incineration of hazardous wastes and PCB's, thermal desorbers, and sludge driers under OSWI or ICWI rulemaking actions is beyond the purview of section 129. This is evidenced by the limited number of pollutants for which EPA must develop emission limits and by the restrictive language of the definition of a solid waste incineration unit in section 129(g)(1). The commenter's concerns about regulation of these particular types of sources will be the subject of EPA's response to the commenter's petition for their coverage under either the Toxic Substances Control Act or the Resource Conservation and Recovery Act.

#### H. Additional Categories to be Considered

One commenter contended that the proposed list should include tire incinerators and material recovery facilities. This commenter also maintained that cogeneration facilities should not be exempted from the proposed list because these facilities impact the health of people living nearby. In response, the EPA notes that the three categories the commenter mentioned (tire incinerators, material recovery facilities, and cogeneration facilities) are specifically excluded from the 1990 Amendments' definition of solid waste incinerators. Therefore, these categories of sources will not be included under OSWI's.

#### I. Regulatory Schedule

One commenter expressed support for the proposed promulgation schedule for OSWI's. A second commenter agreed that MWC's, MWI's, and ICWI's should have a higher priority than OSWI's, but contended, as did a third commenter, that the promulgation schedule for OSWI's represents an unreasonably long period of time, considering the potential for OSWI's to emit dangerous toxic air pollutants.

To support an argument for a shorter promulgation schedule, the second commenter provided a list of various types of solid waste materials incinerated by the seven proposed categories of incinerators and the resulting toxic substances that the commenter believed could potentially be emitted. Also, the commenter predicted that small MWC's will increasingly replace small landfills in

many rural areas due to new landfill regulations which make small MWC's more economically attractive. This commenter postulates that small units will be constructed with inadequate air pollution controls to reduce costs and, thereby, cause negative human health consequences. The commenter suggested that locating small MWC's in rural areas may allow toxic emissions to affect the food chain more directly. The commenter further noted that some States cannot legally regulate OSWI's until the EPA does.

After considering the comments provided, the EPA has decided to adopt the proposed promulgation schedule of November 15, 2000 for OSWI's. The commenters who suggested a shorter promulgation period did not provide information to support their conclusion that the amounts of toxic pollutants potentially emitted from the OSWI categories of sources create more significant health and environmental impacts than other sources to be controlled pursuant to section 129 of the 1990 Amendments. Therefore, the EPA still believes that the November 15, 2000 promulgation date reasonably allows it to prioritize its resources by first focusing on MWC's, MWI's, and ICWI's. This date is a target date, and regulations for individual categories of OSWI's may be promulgated sooner.

#### III. Final List of Categories of Sources

After reviewing the comments provided, the EPA has decided to pursue regulatory development for the following categories of OSWI's:

1. Small MWC's—those MWC plants with capacities of 35 megagrams per day (Mg/d) [39 tons per day (tons/d)] or less;
2. Residential incinerators;
3. Agricultural waste incinerators;
4. Wood waste incinerators;
5. Construction and demolition waste incinerators;
6. Crematories; and
7. Contaminated soil treatment facilities.

The coverage of the classes is as originally published (see 58 FR 31358) subject to the clarifications and modifications described above. Due to the limited information available to date, the EPA cannot say at this time that regulations will be promulgated for all categories that are listed. However, each category listed will be further investigated and regulations will be developed and promulgated as appropriate.

#### IV. Regulatory Schedule

The scheduled date for promulgating NSPS and EG for OSWI's is November 15, 2000.

Dated: October 21, 1993.

**Michael H. Shapiro,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 93-26677 Filed 11-1-93; 8:45 am]

**BILLING CODE 6560-50-F**

# Proposed Rules

Federal Register

Vol. 58, No. 210

Tuesday, November 2, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[SW-FRL-4796-2]

#### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is proposing to grant a petition submitted by Conversion Systems, Inc. (CSI), Horsham, Pennsylvania, to exclude certain solid wastes generated by CSI's electric arc furnace dust (EAFD) treatment facilities from the lists of hazardous wastes contained in §§ 261.31 and 261.32. This action responds to a delisting petition submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The Agency is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed of.

**DATES:** EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will

be accepted until December 17, 1993.

Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision by filing a request with the Director, Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by November 17, 1993. The request must contain the information prescribed in § 260.20(d).

**ADDRESSES:** Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to James Kent, Delisting Section, Waste Identification Branch, CAD/OSW (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-93-CSEP-FFFFF."

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (Room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at \$0.15 per page for additional copies.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-7392.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.31 and § 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the

characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, § 260.20 and § 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the Agency on procedural grounds. *Shell Oil Co. v. EPA*, 950 F.2d 741 (DC Cir. 1991). On March 3, 1992, EPA reinstated the mixture

and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). The Agency plans to address issues related to waste mixtures and residues in a future rulemaking.

#### B. Approach Used To Evaluate This Petition

CSI's petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11 (a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the Agency used such information to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The Agency determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for CSI's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the Agency is proposing to use a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of CSI's petitioned waste on human health and the environment. Specifically, the Agency used the maximum estimated waste volume and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case

scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that it would be inappropriate to request ground-water monitoring data. Specifically, CSI currently disposes of the petitioned waste generated at its operating Sterling, Illinois treatment facility in an on-site, RCRA hazardous waste landfill (which is not owned/operated by CSI). This landfill, which was constructed in 1980, accepted unstabilized EAFD and spent pickle liquor (EPA Hazardous Waste Nos. K061 and K062, respectively), and did not begin accepting the petitioned waste (stabilized EAFD) generated by the Sterling treatment facility until 1989. In other words, the petitioned waste comprises a small fraction of the total waste managed in the unit, while the mixed wastestreams contain unstabilized waste constituents that are more mobile and hazardous. The Agency, therefore, believes that any ground-water monitoring data from the landfill would not be meaningful for an evaluation of the specific effect of the petitioned waste on ground water. Nonetheless, the Agency notes that CSI did submit some ground-water monitoring data collected from monitoring wells installed at the landfill. Specifically,

CSI submitted two sampling events worth of data (February 1992 and June 1992) showing that no hazardous constituents were migrating from the unit. (These ground-water monitoring data are included in the RCRA Public Docket for today's proposed decision.)

CSI petitioned the Agency for a "multiple-site" exclusion based on a description of its treatment system, and analytical data from both the full-scale Sterling, Illinois treatment facility and the laboratory-scale processing of EAFD from 12 other steel mills at CSI's laboratory located in Horsham, Pennsylvania. CSI, therefore, is petitioning for both a conditional exclusion for its Sterling, Illinois facility and an upfront exclusion for wastes to be generated at facilities yet to be constructed (CSI initially is planning to construct 12 other facilities nation-wide).

Similar to other facilities seeking upfront exclusions, the upfront portion of CSI's multiple-site exclusion (if granted) would be contingent upon CSI conducting analytical testing of representative samples of the petitioned waste at each of the newly constructed facilities once the Super Detox treatment system is brought on-line. This testing would be necessary to verify that the treatment system is operating as demonstrated by both CSI's full-scale Sterling, Illinois facility and CSI's laboratory-scale processing at its Horsham, Pennsylvania laboratory. Specifically, the verification testing requirements from the conditional portion of CSI's multiple-site exclusion (if granted), will be implemented in order to demonstrate that each newly constructed Super Detox processing facility, once on-line, will generate a non-hazardous waste (*i.e.*, a waste that meets the Agency's verification testing conditions).

Upon successfully demonstrating that each newly constructed Super Detox treatment facility meets the verification testing requirements, the Agency will add the newly constructed facility to CSI's multiple-site exclusion. The Agency's proposed decision to delist wastes from new CSI treatment facilities is based on the information submitted in support of today's rule, *i.e.*, CSI's description of the treatment system and analytical data from both the full-scale Sterling, Illinois facility and the laboratory-scale processing of EAFD from 12 other steel mills at CSI's laboratory located in Horsham, Pennsylvania. If the new facility is constructed and operated according to CSI's petition, and if the verification testing data meet the exclusion levels proposed in today's rule, the Agency will publish a notice in the **Federal Register** that amends CSI's exclusion to add the new site.

From the evaluation of CSI's delisting petition, a list of constituents was developed for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate

and transport model for a landfill management scenario. These concentrations (*i.e.*, "delisting levels") are part of the proposed verification testing conditions of the exclusion.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents will be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delistings will allow new facilities to receive exclusions prior to generating wastes, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional testing requirements to verify that the delisting levels are achieved by the fully operational treatment systems will ensure that only non-hazardous wastes are removed from Subtitle C control.

In the past, the Agency has granted numerous conditional delistings, including conditional delistings for waste treatment facilities located at multiple sites (see 51 FR 41323, November 14, 1986, and 51 FR 41494, November 17, 1986), as well as an upfront delisting that allows an additional treatment unit to be added at the same site (see 56 FR 32993, July 18, 1991). This is the first time the Agency has proposed an upfront delisting that allows new treatment units at different sites to be added, provided the verification testing conditions are satisfied.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

## II. Disposition of Delisting Petition

Conversion Systems, Inc., Horsham, Pennsylvania

### A. Petition for Exclusion

Conversion Systems, Inc. (CSI), located in Horsham, Pennsylvania, petitioned the Agency for a multiple-site exclusion for chemically stabilized electric arc furnace dust (CSEAFD) resulting from the Super Detox™ treatment process as modified by CSI. (The original Super Detox treatment process was developed by Bethlehem Steel Corporation and used at its Johnstown and Steelton, Pennsylvania facilities.) The resulting CSEAFD is presently listed, in accordance with 40 CFR 261.3(c)(2)(i) (*i.e.*, the "derived from" rule), as EPA Hazardous Waste No. K061—"Emission control dust/sludge from

the primary production of steel in electric furnaces." The listed constituents of concern for EPA Hazardous Waste No. K061 are cadmium, hexavalent chromium, and lead. CSI petitioned to exclude Super Detox treatment residues because it does not believe that the CSEAFD meets the criteria for which it was listed. CSI also believes that the Super Detox process, as modified by CSI, generates a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. CSI further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Lastly, CSI believes that a multiple-site delisting will save both EPA and CSI the cost and administrative burden of multiple petitions each providing essentially the same, duplicative information of a process already well known and accepted by the Agency as effective in treating EAFD (see Final Exclusions for Bethlehem Steel Corporation's Johnstown and Steelton, Pennsylvania facilities, 54 FR 21941; May 22, 1989). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C 6921(f), and 40 CFR 260.22(d) (2)-(4).

### B. Background

On August 31, 1992, CSI petitioned the Agency to exclude electric arc furnace dust when treated by CSI using the Super Detox process, as licensed by Bethlehem Steel Corporation and modified by CSI, from the lists of hazardous wastes contained in § 261.31 and § 261.32, and subsequently provided additional information to complete its petition. Specifically, CSI requested that the Agency grant a multiple-site exclusion for CSEAFD generated by CSI using its modified Super Detox process at the existing Sterling, Illinois facility at Northwestern Steel and future facilities to be constructed (CSI initially is planning to construct 12 other facilities nation-wide).

In support of its petition, CSI submitted: (1) Detailed descriptions and schematics of the Super Detox treatment process for both wet and dry electric arc furnace dust (EAFD) <sup>1</sup>; (2) total constituent analyses results for the eight Toxicity Characteristic (TC) metals listed in 40 CFR 261.24 and six other metals from representative samples of the untreated (non-stabilized) EAFD; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) results for the eight TC metals from a representative sample of untreated EAFD; (4) TCLP results for the eight TC metals and six other metals from

representative samples of the uncured CSEAFD; (5) Multiple Extraction Procedure (MEP, SW-846 Method 1320) results for the TC metals and six other metals from representative samples of the uncured CSEAFD; (6) total oil and grease (TOG), total cyanide, and total sulfide results from representative samples of the untreated EAFD; (7) information and test results regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity for the CSEAFD; and (8) ground-water monitoring data from the landfill containing the CSEAFD generated from CSI's Sterling, Illinois Super Detox facility.

As discussed above, CSI currently has one full-scale Super Detox treatment facility and initially plans to construct 12 more Super Detox treatment facilities across the nation. CSI also may construct additional Super Detox treatment facilities in the future. This multiple-site exclusion (if granted) will be applicable to these additional sites once CSI confirms that each new Super Detox treatment facility operates as demonstrated in its petition. Any wastes generated from these Super Detox treatment facilities prior to such a demonstration will be considered hazardous. The aspects of this demonstration are detailed in the testing conditions of this notice (see Section F—*Verification Testing Conditions*). Today's proposal serves as notice that, if the verification conditions are met, the Agency will amend CSI's multiple-site exclusion to include new Super Detox treatment facilities. The Agency specifically requests comments on the possibility of amending CSI's multiple-site exclusion to include newly constructed Super Detox facilities.

CSI claims that its modified Super Detox treatment process operates on both chemical and physical levels as the heavy metals contained in EAFD are physically absorbed and entrapped into a pozzolanic calcium-aluminum-silicate matrix. CSI currently operates this Super Detox treatment process as a contractor at Northwestern Steel, Sterling, Illinois. CSI also intends to operate the same Super Detox treatment process as a contractor at other steel mills located nationwide, to treat either dry or wet type of EAFD. In the Super Detox treatment process, dry EAFD is pneumatically conveyed from the steel mill's baghouse to a receiving silo at CSI's on-site facility. Wet EAFD is transported from the steel mill to a double walled pit and then removed by a "clam shell" crane to a storage hopper at CSI's on-site facility. CSI will treat EAFD only, and will not accept or manage any other wastes, at its Super Detox treatment facilities.

On a batch process basis, precise quantities of EAFD (dry or wet) and treatment reagents are combined in a mixing apparatus; all ingredients are weighed or metered in precise amounts in accordance with treatment formulations developed at CSI's laboratory located in Horsham, Pennsylvania. The weighing and metering of EAFD and

<sup>1</sup> CSI has claimed some treatment process descriptions, including information on how they improved the original Super Detox™ treatment process, as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.

treatment reagents are controlled and monitored by programmable logic controllers (PLCs) interfaced with a personal computer (PC). The PLCs and PC also maintain a daily log of each batch of EAFD treated and can make adjustments for alkalinity, solids, or other factors as programmed. CSI claims that the weight addition of Super Detox treatment reagents is only approximately 25 to 45 percent, while volume increases approximately 10 to 15 percent.

The EAFD/treatment reagents mixture is then blended in a mixing apparatus for a precise period of time, ranging from 20 minutes to one hour depending on the chemistry of the specific batch of EAFD being processed. After mixing, the uncured treatment residue (CSEAFD) is poured from the mixing apparatus to a plastic-lined, roll-off container under cover. There are no side streams or discharges resulting from the Super Detox treatment process; washdown water generated from the maintenance and cleaning of the mixing apparatus is sent to a slop tank for reuse as an additive in the treatment process. The CSEAFD becomes fully cured in several weeks and hardens into the pozzolanic calcium-aluminum-silicate matrix of low permeability.

CSI collects a sample of the uncured CSEAFD as it is poured into the roll-off container in order to ensure that the EAFD has been sufficiently treated to meet the appropriate treatment standards. CSI, based on more than three years of operation at its Sterling, Illinois facility, claims that greater than 99.5 percent of all batches processed meet the appropriate treatment standards. CSEAFD that fails to meet the appropriate treatment standards is reprocessed using a special formulation and feed rate; 100 percent of retreated batches meet the appropriate treatment standards. CSI also claims that

nearly all first-time rejections are attributed to mechanical failures.

In support of its petition, CSI used a hollow tube sampler to obtain samples of dry EAFD from baghouses, baghouse hopper sampling ports, or storage silos and a scoop to randomly remove wet EAFD from vacuum filter presses. In both cases (*i.e.*, dry or wet EAFD), several grab samples were composited into a one-gallon container. CSI collected a total of 26 samples of untreated EAFD for total constituent analysis; one sample was from CSI's Sterling, Illinois facility and the other 25 were from the 12 steel mills at which CSI initially intends to build Super Detox treatment facilities. Of the 26 untreated EAFD samples, one sample was analyzed for the eight TC metals and zinc; one sample was analyzed for the eight TC metals, nickel, and zinc; four samples were analyzed for the eight TC metals and nickel; twenty samples (including the one sample from CSI's Sterling, Illinois facility) were analyzed for the eight TC metals, antimony, beryllium, nickel, thallium, vanadium, and zinc. Seven of the untreated EAFD samples also were analyzed for total cyanide, total sulfide, and total oil and grease (TOG) content.

CSI also collected one sample of untreated EAFD from a steel mill at which CSI intends to build a Super Detox treatment facility and analyzed the TCLP extract from the untreated sample for the eight TC metals.

CSI collected a total of 67 samples of uncured CSEAFD as the material was being poured out of the mixer and analyzed them using the Toxicity Characteristic Leaching Procedure (TCLP) (*i.e.*, mass of a particular constituent per unit volume of extract); 25 samples were from CSI's Sterling, Illinois facility and the other 42 were from the 12 steel mills at which CSI initially intends to build Super Detox treatment facilities. Of the

67 uncured CSEAFD samples, one was analyzed for arsenic, barium, cadmium, chromium, lead, mercury, and silver; two samples were analyzed for the eight TC metals and nickel; and 64 samples were analyzed for the eight TC metals, antimony, beryllium, nickel, thallium, vanadium, and zinc (including all 25 samples from CSI's Sterling, Illinois facility). Seven of the uncured CSEAFD samples were also analyzed using the Multiple Extraction Procedure (MEP)<sup>2</sup> to demonstrate the long-term leaching characteristics of the treatment residue. One sample was from CSI's Sterling, Illinois facility and the other six were from six steel mills at which CSI initially intends to build Super Detox treatment facilities. All seven samples were analyzed for the eight TC metals, antimony, beryllium, nickel, thallium, vanadium, and zinc.

C. Agency Analysis

CSI used SW-846 Methods 7041 through 7950 to quantify the total constituent concentrations of the TC metals, antimony, beryllium, nickel, thallium, vanadium and zinc in both the raw EAFD (*i.e.*, non-stabilized) and the uncured CSEAFD. CSI used SW-846 Method 9010 to quantify the total constituent concentrations of cyanide in the raw EAFD. CSI used SW-846 Method 1311 (TCLP) to quantify the extractable concentrations of the TC metals, antimony, beryllium, nickel, thallium, vanadium and zinc in the uncured CSEAFD. Table 1 presents the maximum, average, and 95% upper confidence limit (UCL) total constituent concentrations of the metals, cyanide, and sulfide for the untreated EAFD. Table 2 presents the maximum, average, and 95% upper confidence limit TCLP extract concentrations of the metals in the uncured CSEAFD.

TABLE 1.—MAXIMUM, AVERAGE, AND 95% UPPER CONFIDENCE LIMIT TOTAL CONSTITUENT CONCENTRATIONS [Untreated EAFD—Dry Weight]

Constituents	Concentrations (mg/Kg)		
	Maximum <sup>1</sup>	Average <sup>2</sup>	95% UCL <sup>2</sup>
Antimony .....	374	202	230
Arsenic .....	307	44	67
Barium .....	270	196	210
Beryllium .....	97	48	59
Cadmium .....	988	369	440
Chromium (Total) .....	5,740	1,107	1,500
Lead .....	28,500	15,381	17,000
Mercury .....	3.54	0.81	1.2
Nickel .....	635	219	270
Selenium .....	652	194	270
Silver .....	969	297	400
Thallium .....	94	32	46
Vanadium .....	304	73	100
Zinc .....	246,000	123,884	140,000

<sup>2</sup>The MEP is a test developed by the Agency to assist in predicting the long-term leachability of stabilized wastes. The MEP consists of the TCLP extraction, followed by nine sequential extractions on the same

sample using synthetic acid rain to simulate multiple washings of percolating rainfall in the field. It is estimated that these extractions simulate approximately 1,000 years of rainfall (see 47 FR 52687, November 22, 1982). Per

Agency instructions, CSI modified the MEP (SW-846 Method 1320) by substituting the TCLP for the Extraction Procedure (EP) in Step 7.1 of the MEP.

TABLE 1.—MAXIMUM, AVERAGE, AND 95% UPPER CONFIDENCE LIMIT TOTAL CONSTITUENT CONCENTRATIONS—  
Continued  
[Untreated EAFD—Dry Weight]

Constituents	Concentrations (mg/Kg)		
	Maximum <sup>1</sup>	Average <sup>2</sup>	95% UCL <sup>2</sup>
Total Cyanide .....	1.1	0.54	0.80
Total Sulfide .....	<50	<50	<50
Total Oil and Grease .....	1,700	640	1,000

< Denotes that the constituent was not detected at the detection limit specified in the table.

<sup>1</sup> These levels represent the highest concentrations of the constituents found in any samples of the untreated EAFD collected by CSI. These levels do not necessarily represent the specific levels found in one sample.

<sup>2</sup> The average was calculated by counting non-detectable measurements at the detection limits. 95% Upper Confidence Limit (UCL) is the estimated upper 95 percent confidence interval for the average of sample concentrations based on the Student-t distribution applied to random samples.

TABLE 2.—MAXIMUM, AVERAGE, AND 95% UPPER CONFIDENCE LIMIT TCLP EXTRACT CONCENTRATIONS  
[Uncured CSEAFD—Wet Weight]

Constituents	Concentrations (mg/l)		
	Maximum <sup>1</sup>	Average <sup>2</sup>	95% UCL <sup>2</sup>
Antimony .....	0.05	0.012	0.013
Arsenic .....	0.05	0.034	0.038
Barium .....	<1	<1.0	<1.0
Beryllium .....	0.002	0.001	0.0011
Cadmium .....	0.03	0.008	0.0094
Chromium (Total) .....	0.09	0.052	0.054
Lead .....	0.10	0.054	0.056
Mercury .....	<0.002	<0.002	<0.002
Nickel .....	<0.2	<0.084	<0.097
Selenium .....	0.1	0.042	0.047
Silver .....	<0.05	<0.050	<0.050
Thallium .....	<0.01	<0.010	<0.010
Vanadium .....	0.14	0.057	0.061
Zinc .....	0.61	0.076	0.097
Total Cyanide <sup>3</sup> .....	<0.055	<0.027	<0.040

< Denotes that the constituent was not detected at the detection limit specified in the table.

<sup>1</sup> These levels represent the highest concentration of each constituent found in any of the CSEAFD samples and do not necessarily represent the specific levels found in one sample.

<sup>2</sup> The average was calculated by counting non-detectable measurements at the detection limits. 95% Upper Confidence Limit (UCL) is the estimated upper 95 percent confidence interval for the average of sample concentrations based on the Student-t distribution applied to random samples.

<sup>3</sup> Calculated from the maximum total cyanide concentration of 1.1 mg/Kg, by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with two liters of water) and a theoretical worst-case leaching of 100 percent.

CSI used SW-846 Method 1320 (MEP method modified by replacing the extraction procedure with the TCLP in Step 7.1) to quantify the leachable concentrations of the TC metals, antimony, beryllium, nickel, thallium, vanadium and zinc in seven samples of the uncured CSEAFD. All MEP concentrations of the TC metals, antimony, beryllium, nickel, vanadium, and zinc were below or equal to the TCLP extract concentrations, except for one lead and one thallium extraction (0.16 and 0.014 mg/l, respectively).

Detection limits in Tables 1 and 2 represent the lowest concentrations quantifiable by CSI when using the appropriate SW-846 analytical method to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the “cleanliness” of waste matrices varies and “dirty” waste matrices may cause

interferences, thus raising the detection limits.)

Using SW-846 Method 9071, CSI determined that the untreated EAFD had a maximum oil and grease content of 0.017 percent; therefore, the TCLP for metals was not modified in accordance with the Oily Waste Extraction Procedure (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard TCLP, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW-846 Method 1330 for the Oily Waste Extraction Procedure.

CSI provided information, pursuant to § 260.22, indicating that the CSEAFD is not expected to demonstrate the characteristics of

ignitability or corrosivity. See § 261.21 and § 261.22, respectively.

CSI submitted a signed certification stating that, based on projected annual waste generation, the maximum annual generation rate of CSEAFD to be produced by any one of CSI's facilities will be 63,050 cubic yards. The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate the estimated waste generation rate. EPA accepts CSI's certified estimate of 63,050 cubic yards of CSEAFD per facility.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a

selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

*D. Agency Evaluation*

The Agency considered the appropriateness of alternative waste management scenarios for CSI's CSEAFD and decided, based on the information provided in the petition, that disposal in a Subtitle D landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated CSI's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground-water contamination from wastes that are landfilled. (See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting.) This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (*i.e.*, a receptor well serving as a drinking-water supply). Specifically, the model estimated the

dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The DAFs generated using the EPACML vary from a maximum of 100 for smaller annual volumes of waste (*i.e.*, less than 1,000 cubic yards per year) to DAFs approaching ten for larger volume wastes (*i.e.*, 400,000 cubic yards per year). The Agency requests comments on the use of the EPACML as applied to the evaluation of CSI's waste.

For the evaluation of CSI's petitioned waste, the Agency used the EPACML to evaluate the mobility of hazardous inorganic constituents detected in the extract from CSI's CSEAFD. Typically, the Agency uses the maximum annual waste volume to derive a petition-specific DAF. The 63,050 cubic yards/year to be generated by the Sterling facility would lead to a DAF of 17. The Agency, however, notes that in this particular case, CSI is requesting a "multiple-site" exclusion (*i.e.*, other sites may be added which will generate more CSEAFD).

CSI identified one existing and 12 planned sites in its petition, and stated that up to 400,000 tons (approximately 330,000 cubic yards) per year of EAFD may ultimately be treated. However, due to the uncertainty in

the number and location of the sites that may use CSI's treatment process, it is difficult for the Agency to estimate the volume of CSI's CSEAFD that might ultimately be disposed of in the same landfill.

The Agency assumed that a landfill containing CSI's CSEAFD may be as large as a landfill corresponding to the 95th percentile in size for the Subtitle D landfills contained in EPA's database. Based on a 20-year life, the 95th percentile Subtitle D landfill would receive approximately 400,000 cubic yards of waste per year (see the OSW Survey of Solid Waste Landfills in the docket for today's proposed rule). Therefore, in the absence of more specific information on maximum waste volume, the Agency used a DAF of 10 corresponding to 400,000 cubic yards/year as a worst-case assumption in this case.

The Agency used a DAF of 10 to evaluate the 95th percent upper confidence limit for the TCLP extract concentrations given in Table 2. Table 3 contains the compliance-point concentrations calculated, using a DAF of 10, for the constituents of concern. Table 3 also contains the results using the maximum TCLP levels for all constituents (except lead and thallium, for which the MEP extract concentrations were greater than the TCLP extract concentrations).

TABLE 3.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM)  
[Uncured CSEAFD]

Constituents	Compliance-point concentrations (mg/l)		Levels of regulatory concern (mg/l) <sup>1</sup>
	Maximum <sup>2</sup>	95% upper confidence limit	
Antimony .....	0.005	0.0013	0.006
Arsenic .....	0.005	0.0038	0.05
Beryllium .....	0.0002	0.00011	0.004
Cadmium .....	0.003	0.00094	0.005
Chromium (Total) .....	0.009	0.0054	0.1
Lead .....	0.016	0.0056	0.015
Selenium .....	0.01	0.0047	0.05
Thallium .....	0.0014	0.0010	0.002
Vanadium .....	0.014	0.0061	0.2
Zinc .....	0.061	0.0097	7

<sup>1</sup>See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22", July 1992, located in the RCRA public docket.

<sup>2</sup>Maximums correspond to maximum TCLP levels, except for lead and thallium, which are based on maximum MEP levels.

The uncured CSEAFD exhibited antimony, arsenic, beryllium, cadmium, chromium, lead, selenium, thallium, vanadium, and zinc levels at the compliance point below the health-based levels used in delisting decision-making. The Agency did not evaluate the mobility of barium, mercury, nickel, and silver from the uncured CSEAFD because they were neither detected in the TCLP nor MEP extracts using the appropriate SW-846 analytical test methods and adequate detection limits (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent

of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment. In addition, the Agency did not evaluate the maximum theoretical leachate concentration of cyanide using the EPACML model because the maximum theoretical leachate concentration of <0.055 mg/l (see Table 2) is less than the

health-based level of 0.2 mg/l used in delisting decision-making.

As shown in Table 3, only the maximum predicted compliance-point concentration of lead (0.016 mg/l) exceeded the health-based level (0.015 mg/l) used in delisting-decision making. The Agency, however, does not believe that this exceedance is significant for the following reasons. First, based on 67 TCLP tests on the uncured CSEAFD for lead, the 95% upper confidence limit extractable concentration was 0.056 mg/l. The predicted compliance-point concentration using the 95% upper confidence limit is 0.0056 mg/l,

which is well below the regulatory level of concern.

Second, the level of 0.16 mg/l was obtained from only one of the 63 extracts analyzed as part of the seven MEP analyses performed. The maximum concentration of 0.16 mg/l was obtained from day four of one of the seven MEP tests, and the concentration then fell to <0.05 mg/l on days five through nine of the same analysis; none of the other six samples analyzed with the MEP method exhibited a failing concentration for lead. Of the seven samples subjected to the MEP, lead was not detected at all in five samples (at a detection limit of 0.05 mg/l), and only one extract out of 63 failed for lead. Therefore, the one MEP data point does not appear to be significant.

Third, at the time when CSI stabilized these EAFD wastes, CSI assumed a target treatment level for lead of 0.315 mg/l (based on a previous health-based level and model used in delisting). Thus, at the time stabilization occurred, CSI was not aware that the maximum allowable leachable concentration would be 0.15 mg/l for its waste based on a DAF of 10. See Section F—*Verification Testing Conditions* below for a description of how the maximum allowable leachable concentrations are established. The preponderance of data demonstrates that the Super Detox treatment process can effectively immobilize lead so that CSI's uncured CSEAFD will exhibit leachable levels of lead below the maximum allowable level of 0.15 mg/l.

The Agency further notes that CSI performed both TCLP and MEP analyses on uncured CSEAFD samples. However, the CSEAFD will cure and solidify over time, and thus the levels of leachable constituents in fully cured (*i.e.*, fully stabilized) CSEAFD are expected to be lower than those detected in uncured samples.

As reported in Table 1, the maximum concentrations of total cyanide and total sulfide in the untreated EAFD are 1.1 mg/kg and <50 mg/kg, respectively. Because reactive cyanide and reactive sulfide are a specific subcategory of the general class of cyanide and sulfide compounds, the maximum level of reactive cyanide and reactive sulfide will not exceed 1.1 mg/kg and 50 mg/kg, respectively. Thus, the Agency concludes that the concentration of reactive cyanide and reactive sulfide will be below the Agency's interim standard of 250 mg/kg and 500 mg/kg, respectively. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency Memorandum in the RCRA public docket.

The Agency concluded, after reviewing CSI's processes that no other hazardous constituents, other than those tested for, are likely to be present in CSI's CSEAFD, and that the likelihood of migration of the hazardous constituents from the waste has been substantially reduced. In addition, on the basis of test results and information provided

by CSI, pursuant to § 260.22, the Agency concludes that the CSEAFD does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22, and § 261.23, respectively.

During its evaluation of CSI's petition, the Agency also considered the potential impact of the petitioned waste via non-ground-water routes. With regard to airborne dispersal of waste contaminants in particular, the Agency believes that exposure to airborne contaminants from this waste is not likely to occur since the resulting CSEAFD is wet initially and solidified when cured. Therefore, no appreciable air releases are likely from CSI's CSEAFD under any likely disposal conditions. Nonetheless, the Agency evaluated the potential hazards resulting from airborne exposure to waste contaminants from the CSEAFD using an air dispersion model, if releases from a landfill were to occur. The results indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from CSI's CSEAFD (see the docket for today's proposed rule).

The Agency also considered the potential impact of the petitioned wastes via a surface water route. Due to the stabilized/solidified form of the CSEAFD, contamination of surface water through run-off from the waste disposal area is unlikely. The Agency also believes that containment structures at municipal solid waste landfills can effectively control surface water run-off, as the recently promulgated Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters.

Furthermore, the leachable concentrations of any hazardous constituents in the run-off will tend to be lower than the extraction procedure test results reported in today's notice because of the aggressive acidic media used for extraction in the TCLP and the MEP. The Agency believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution/attenuation of hazardous constituents will also occur. Significant releases to surface water through erosion and runoff of landfilled CSEAFD are unlikely due to the stabilized/solidified form of the waste. Furthermore, in the unlikely event that CSEAFD reached surface water, the stabilized form of the waste would mitigate any impact. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituent that may be mobilized in surface water, as well as ground water. The reported TCLP and MEP extraction data show that the metals in CSI's CSEAFD are essentially immobile in aqueous solution. For example, the maximum leachable lead level was 0.16 mg/l, which is less than 0.01% of the lead present in the CSEAFD. Therefore, CSEAFD that might be released to surface water would be likely to

remain undissolved. Finally, any transported contaminants would be further diluted in the receiving surface water body due to relatively large flows of the streams/rivers of concern.

Nevertheless, the Agency evaluated the potential hazards resulting from releases of CSI's CSEAFD to surface water. The results indicated that the surface water concentrations of the hazardous constituents of concern are below the Agency's health-based levels as well as the chronic Water Quality Criteria for fresh water organisms (see the docket for today's proposed rule). The Agency, therefore, concluded that CSI's CSEAFD is not a significant hazard to human health or the environment via the surface water exposure pathway.

#### E. Conclusion

The Agency believes that CSI's operation of the Super Detox treatment process as modified by CSI, upon meeting certain verification testing requirements, can treat EAFD generated at both CSI's Sterling, Illinois facility and other facilities yet to be constructed nation-wide to produce non-hazardous CSEAFD. The Agency also believes that the sampling procedures used by CSI were adequate, and that the samples are representative of the typical variations in constituent concentrations found in EAFD. The Agency, however, believes that the concentration of the constituents of concern may vary somewhat depending on the type and quality of scrap metal charged in the steel-making process. Therefore, the Agency is proposing to require periodic analyses of CSI's CSEAFD to ensure that the Super Detox treatment system is effectively handling any potential variation in constituent concentrations (see Section F—*Verification Testing Conditions*).

The Agency, therefore, is proposing that the CSEAFD generated by CSI using the Super Detox treatment process, as modified by CSI and described in CSI's petition, be considered non-hazardous and not subject to regulation under RCRA Subtitle C, provided certain verification testing requirements are met. Each new Super Detox treatment facility, once constructed and brought on-line must also meet both initial verification testing and subsequent testing requirements in order for the CSEAFD generated at the new facility to be excluded.

The Agency proposes to grant a conditional multiple-site exclusion to CSI for CSEAFD when using the Super Detox treatment process described in its petition to treat EPA Hazardous Waste No. K061. The Agency's proposed decision to exclude CSEAFD is based on process descriptions, characterization of both untreated EAFD and uncured CSEAFD, and on the use of verification testing conditions as part of the exclusion. Under the proposed rule, the petitioned CSEAFD generated at CSI's current facility located in Sterling, Illinois, and future facilities to be constructed nation-

wide would no longer be subject to regulation as a hazardous waste under RCRA, provided the conditions of the exclusion are met.

The Agency proposes to add to CSI's delisting CSEAFD from all constructed Super Detox treatment facilities that meet the verification testing conditions. The Agency's proposed decision to delist these wastes is based on the analytical data obtained from both CSI's full-scale Sterling, Illinois facility, and CSI's laboratory-scale processing of EAFD from 12 other steel mills at its laboratory located in Horsham, Pennsylvania. If today's proposed rule is finalized, the delisting of wastes from new CSI treatment facilities will be conditioned on the ability of each new facility to meet the verification testing conditions of CSI's exclusion. If the Agency's review of the data for the new CSI treatment facility indicates that the new facility will consistently meet the conditional exclusion levels proposed in today's rule, the Agency will publish a notice amending the CSI's exclusion to include the new treatment facility. This notice would modify Table 2 of 40 CFR part 261, appendix IX such that the location of the Super Detox treatment facility and name of the steel mill contracting CSI's services is specified in CSI's multiple-site exclusion. If the Agency's review of the data for the new CSI treatment facility indicates that the new facility does not consistently meet the delisting levels established in today's rule, the Agency would notify CSI that the new facility would not be added to the exclusion.

#### F. Verification Testing Conditions

As stated earlier, the proposed multiple-site exclusion contains verification testing requirements. These testing requirements are to be conducted in two phases, initial and subsequent. The initial testing requirements apply to the first 20 days of full-scale operation of each newly constructed Super Detox treatment facility, and do not apply to CSI's existing facility located in Sterling, Illinois. The subsequent testing requirements for each CSI Super Detox treatment facility would apply, if the Agency has added the new facility to CSI's existing exclusion. The subsequent testing also would apply to CSI's existing facility located in Sterling, Illinois.

The initial testing requirements would have to be fulfilled by a newly constructed Super Detox treatment facility once it is operated as an on-line, full-scale system. CSI would collect and analyze composite samples of the CSEAFD (comprised of representative samples of every batch of CSEAFD generated) during the first 20 days of operation. These composite samples would be analyzed to verify that the new Super Detox treatment facility is operating as portrayed in the petition and can meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). CSI would submit the analytical test data to the Agency, including quality control information, obtained during this initial

period no later than 90 days after the generation of the first batch of CSEAFD from the full-scale system.

If EPA determines that the information submitted is complete and the delisting levels are consistently met, the Agency would publish a notice to add the location of the CSI's new Super Detox treatment facility and the name of the steel mill contracting CSI's services to CSI's exclusion. If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox treatment facility fails to consistently meet the conditions of the exclusion, the Agency will not publish a notice to add the newly constructed site.

The proposed exclusion for CSI's Sterling, Illinois Super Detox treatment facility and each new Super Detox treatment facility constructed and operated by CSI is conditioned upon the following requirements:

(1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies.

(A) *Initial Verification Testing:* During the first 20 operating days of full-scale operation of a newly constructed Super Detox treatment facility, CSI must analyze a minimum of four (4) composite samples of CSEAFD representative of the full 20-day period. Composites must be comprised of representative samples collected from every batch generated. The CSEAFD samples must be analyzed for the constituents listed in Condition (3). CSI must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 60 days after the generation of the first batch of CSEAFD.

(B) *Addition of New Super Detox Treatment Facilities to Exclusion:* If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox treatment facility consistently meets the delisting levels specified in Condition (3), the Agency will publish a notice adding to this exclusion the location of the new Super Detox treatment facility and the name of the steel mill contracting CSI's services. If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox treatment facility fails to consistently meet the conditions of the exclusion, the Agency will not publish the notice adding the new facility.

These proposed conditions are specific to the conditional multiple-site exclusion petitioned for by CSI. The Agency may choose to modify these proposed conditions based on comments received during the public comment period for this proposed rule. Because CSI has already generated data from a full scale Super Detox system (*i.e.*, the Sterling, Illinois facility), the Agency believes that 20 days are sufficient for new facilities to collect the appropriate data necessary to verify that the newly constructed Super Detox treatment process will operate correctly.

In order to ensure that CSI's Super Detox treatment process effectively handles possible variation in constituent concentrations in

EAFD, the Agency is proposing a subsequent verification testing condition. The proposed subsequent testing will verify that CSI's Super Detox treatment facilities (including the existing Sterling, Illinois facility) will continue to generate CSEAFD that does not exhibit unacceptable levels of toxic constituents. Therefore, the Agency is proposing to require CSI to analyze monthly composites of the CSEAFD.

(C) *Subsequent Verification Testing:* For the Sterling, Illinois facility and any new facility subsequently added to CSI's conditional multiple-site exclusion, CSI must collect and analyze at least one composite sample of CSEAFD each month. The composite samples must be composed of representative samples collected from all batches treated in each month. These monthly representative samples must be analyzed, prior to the disposal of the CSEAFD, for the constituents listed in Condition (3). CSI may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

The Agency believes that collecting monthly composite samples as proposed in Condition (1)(C) will ensure that CSI's Super Detox treatment process is able to handle the potential changes in constituent concentrations. Future conditional, multiple-site delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the manufacturing and treatment processes, the waste characteristics, waste variability, the volume of waste, and other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (*e.g.*, 51 FR 41323, November 14, 1986), may require more frequent continuous batch testing.

The Agency believes that collecting monthly composite samples will ensure that CSI's Super Detox treatment process is not adversely affected by the potential variability in concentrations of the constituents listed in Condition (3). These monthly representative samples must be analyzed, prior to the disposal of the corresponding residual solids, for the constituents listed in Condition (3) to verify that the CSEAFD continues to meet the Agency's delisting levels.

(2) *Waste Holding and Handling:* CSI must store as hazardous all CSEAFD generated until verification testing as specified in Conditions (1)(A) and (1)(C), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of CSEAFD do not exceed the levels set forth in Condition (3), then the CSEAFD is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the CSEAFD generated during the time period corresponding to this sample must be retreated until it meets these levels, or managed and disposed of in accordance with Subtitle C of RCRA. CSEAFD generated by a new CSI treatment facility must be managed as a hazardous waste prior to the addition

of the name and location of the facility to the exclusion. After addition of the new facility to the exclusion, CSEAFD generated during the verification testing in Condition (1)(A) is also non-hazardous, if the delisting levels in Condition (3) are satisfied.

The purpose of Condition (2) is to ensure that CSEAFD which contains hazardous levels of specific metals is managed and disposed of in accordance with Subtitle C of RCRA. Holding the CSEAFD until characterization is complete will protect against improper handling of hazardous material.

(3) *Delisting Levels:* All leachable concentrations for those metals must not exceed the following levels (ppm): antimony—0.06; arsenic or selenium—0.5; barium—20; beryllium—0.04; cadmium—0.05; chromium or nickel—1; lead—0.15; mercury or thallium—0.02; silver or vanadium—2; and zinc—70. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24.

Condition (3) provides the levels of constituents for which CSI must test the leachate from the CSEAFD, below which the CSEAFD waste would be considered non-hazardous. The Agency selected the set of inorganic constituents specified in Condition (3) after reviewing information about the composition of EAFD and CSEAFD, descriptions of CSI's Super Detox treatment process, and the health-based levels used in delisting decision-making.

The Agency established the proposed delisting levels for Condition (3) by back-calculating the maximum allowable leachate concentrations (MALs) from the health-based levels (HBLs) for the constituents of concern using the EPACML DAF of 10 (see previous discussions in Section D—*Agency Evaluation*), *i.e.*,  $MAL = HBL \times DAF$ . These delisting levels correspond to the allowable levels measured in the TCLP extract of the CSEAFD.

The Agency is also considering the option of applying the generic exclusion levels for K061 high temperature metals recovery (HTMR) nonwastewater residues specified in § 261.3(c)(2)(ii)(C) to establish the delisting levels for CSI's CSEAFD. In that rulemaking (see 56 FR 41164, August 19, 1991 and 57 FR 37194, August 18, 1992), the Agency established generic exclusion levels for HTMR residuals, which if met, allow the residuals to be handled as nonhazardous waste (*i.e.*, solid waste). If finalized as proposed, this "multiple-site" exclusion for CSI's CSEAFD would be similar in some ways to the industry-wide generic exclusion.

The Agency requests comments on whether the generic exclusion levels for leachable metals set under § 261.3(c)(2)(ii)(C) should apply to CSI's CSEAFD for the sake of national consistency. EPA also does not wish to discourage the use of HTMR technologies that effectively reclaim metals in K061 for further use. The Agency established the generic exclusion levels using an approach

similar to that used in today's proposed rule. That is, an EPACML-derived DAF of 10 was used to establish exclusion levels for the leachable metals of concern (see 57 FR 37194, August 18, 1992). However, because the generic exclusion was linked to HTMR as the Best Demonstrated Available Technology (BDAT) under the Land Disposal Restrictions, the Agency also established the exclusion levels for some metals using BDAT standards. For five of the metals, the technology-based standards were slightly lower than the EPACML-based levels, and EPA decided to use the slightly lower levels for the generic exclusion levels. (Note that CSI's process routinely meets these slightly lower standards as well as the EPACML-based levels, see Table 2.)

Therefore, if EPA chooses the option of using the generic exclusion levels for CSI's delisting, the delisting levels for seven of the constituents in Condition (3) would be replaced as follows: antimony—0.10; barium—7.6; beryllium—0.010; chromium—0.33; mercury—0.009; selenium—0.16; silver—0.30.

(4) *Changes in Operating Conditions:* After initiating subsequent testing as described in Condition (1)(C), if CSI significantly changes the stabilization process established under Condition (1) (*e.g.*, use of new stabilization reagents), CSI must notify the Agency in writing. After written approval by EPA, CSI may handle CSEAFD wastes generated from the new process as non-hazardous, if the wastes meet the delisting levels set in Condition (3).

Condition (4) would allow CSI the flexibility of modifying its stabilization process (*e.g.*, use of new stabilization reagents) to improve its treatment process. However, CSI must demonstrate the effectiveness of the modified process and request approval from the Agency. CSEAFD generated during the new process demonstration must be managed as a hazardous waste until written approval has been obtained and unless Condition (3) is satisfied.

(5) *Data Submittals:* At least one month prior to operation of a new Super Detox treatment facility, CSI must notify the Section Chief, Delisting Section (see address below) when the Super Detox treatment facility is scheduled to be on-line. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (5304), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State in which the CSI facility is located, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following

certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

To provide appropriate documentation that CSI's facilities are properly treating K061, all analytical data obtained through Condition (1), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State where the Super Detox treatment facility is located.

If made final, the proposed exclusion would apply to CSI's Super Detox treatment facility located at Northwestern Steel in Sterling, Illinois, and to other CSI facilities after successful verification testing. Specifically, CSI would be required to notify EPA at least one month prior to establishing a new Super Detox treatment facility. CSEAFD generated from a new Super Detox treatment facility would be excluded if and when the Agency publishes a notice adding the new site to CSI's exclusion as specified in Condition (1)(B). CSI would require a new exclusion if the treatment process specified for any treatment facility is significantly altered (except for changes in the process allowed as described in Condition (4)). In such a case, the facility would need to file a new delisting petition for a new process. The facilities must manage wastes generated from a changed process as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the

delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

**III. Effect on State Authorizations**

This proposed exclusion, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, may impose more stringent regulatory requirements than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are normally urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States (e.g., Georgia, Illinois) are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned CSEAFD will be transported to any State with delisting authorization, CSI must obtain delisting authorization from that State before the CSEAFD may be managed as nonhazardous in the State.

**IV. Effective Date**

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the

unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

**V. Regulatory Impact**

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as non-hazardous. There is no additional impact, therefore, due to today's proposed rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

**VI. Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

**VII. Paperwork Reduction Act**

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2050-0053.

**List of Subjects in 40 CFR Part 261**

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: October 18, 1993.

**Bruce R. Weddle,**

*Acting Director, Office of Solid Waste.*

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

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

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

**Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22**

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Conversion Systems, Inc. ...	Horsham, PA .....	Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Conversion Systems, Inc. (CSI) using the Super Detox treatment process as modified by CSI to treat EAFD (EPA Hazardous Waste No. K061) generated at the following sites: —Northwestern Steel, Sterling, Illinois after [insert date of final rule]. CSI must implement a testing program for each site that meets the following conditions for the exclusion to be valid: (1) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. (A) <i>Initial Verification Testing:</i> During the first 20 operating days of full-scale operation of a newly constructed Super Detox treatment facility, CSI must analyze a minimum of four (4) composite samples of CSEAFD representative of the full 20-day period. Composites must be comprised of representative samples collected from every batch generated. The CSEAFD samples must be analyzed for the constituents listed in Condition (3). CSI must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 60 days after the generation of the first batch of CSEAFD.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		<p>(B) <i>Addition of New Super Detox treatment facilities to Exclusion:</i> If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox treatment facility consistently meets the delisting levels specified in Condition (3), the Agency will publish a notice adding to this exclusion the location of the new Super Detox treatment facility and the name of the steel mill contracting CSI's services. If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox treatment facility fails to consistently meet the conditions of the exclusion, the Agency will not publish the notice adding the new facility.</p> <p>(C) <i>Subsequent Verification Testing:</i> For the Sterling, Illinois facility and any new facility subsequently added to CSI's conditional multiple-site exclusion, CSI must collect and analyze at least one composite sample of CSEAFD each month. The composite samples must be composed of representative samples collected from all batches treated in each month. These monthly representative samples must be analyzed, prior to the disposal of the CSEAFD, for the constituents listed in Condition (3). CSI may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are non-hazardous.</p> <p>(2) <i>Waste Holding and Handling:</i> CSI must store as hazardous all CSEAFD generated until verification testing as specified in Conditions (1)(A) and (1)(C), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of CSEAFD do not exceed the levels set forth in Condition (3), then the CSEAFD is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the CSEAFD generated during the time period corresponding to this sample must be retreated until it meets these levels, or managed and disposed of in accordance with Subtitle C of RCRA. CSEAFD generated by a new CSI treatment facility must be managed as a hazardous waste prior to the addition of the name and location of the facility to the exclusion. After addition of the new facility to the exclusion, CSEAFD generated during the verification testing in Condition (1)(A) is also non-hazardous, if the delisting levels in Condition (3) are satisfied.</p> <p>(3) <i>Delisting Levels:</i> All leachable concentrations for those metals must not exceed the following levels (ppm): Antimony—0.06; arsenic or selenium—0.5; barium—20; beryllium—0.04; cadmium—0.05; chromium or nickel—1; lead—0.15; mercury or thallium—0.02; silver or vanadium—2; and zinc—70. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24.</p> <p>(4) <i>Changes in Operating Conditions:</i> After initiating subsequent testing as described in Condition (1)(C), if CSI significantly changes the stabilization process established under Condition (1) (e.g., use of new stabilization reagents), CSI must notify the Agency in writing. After written approval by EPA, CSI may handle CSEAFD wastes generated from the new process as non-hazardous, if the wastes meet the delisting levels set in Condition (3).</p> <p>(5) <i>Data Submittals:</i> At least one month prior to operation of a new Super Detox treatment facility, CSI must notify the Section Chief, Delisting Section (see address below) when the Super Detox treatment facility is scheduled to be on-line. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (5304), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State in which the CSI facility is located, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:</p> <p>Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.</p> <p>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.</p>

[FR Doc. 93-26745 Filed 11-1-93; 8:45 am]

**BILLING CODE 6560-50-P**

# Notices

Federal Register

Vol. 58, No. 210

Tuesday, November 2, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4796-7]

### Clean Water Act Class II; Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding: Wichita, KS and Boeing Co.

**AGENCY:** Environmental Protection Agency ("EPA").

**ACTION:** Notice of proposed administrative penalty assessment and opportunity to comment regarding the city of Wichita, Kansas and the Boeing Company.

**SUMMARY:** EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order to participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 30, 1993, EPA commenced the following Class II proceedings for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7630, the following Complaint:

In the Matter of Wichita, Kansas and The Boeing Company, EPA Docket No. VII-93-W-0010.

The Complaint proposes a penalty of \$113,200 for discharging broken concrete, metal reinforcing bar, dirt, wood, metal and plastic conduit, and miscellaneous demolition rubble into the Arkansas River without a permit as required by the Clean Water Act.

**FOR FURTHER INFORMATION CONTACT:** Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaints or other documents filed in this proceeding, comment upon the proposed penalty assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above.

The administrative records for the proceedings are located in the EPA Regional Office at the address stated above, and the files will be open for public inspection during normal business hours. All information submitted by Wichita, Kansas and The Boeing Company is available as part of the administrative records, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final orders assessing penalties in these proceedings prior to thirty (30) days from the date of this notice.

Dated: October 18, 1993.

**William W. Rice,**

*Acting Regional Administrator.*

[FR Doc. 93-26895 Filed 11-1-93; 8:45 am]

**BILLING CODE 6560-50-M**

[FRL-4795-7]

### Hydrogen Fluoride Study; Report to Congress; Section 112(n)(6) of the Clean Air Act as Amended

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** Section 112(n)(6) of the Clean Air Act, as amended, required the Environmental Protection Agency to complete a study of the commercial and industrial uses of hydrofluoric acid (HF, hydrogen fluoride) and the hazards it may present to public health and the environment. The study has been completed and is now available to the public. The Agency is interested in continued dialogue on the study with interested members of the public and will consider preparing an addendum to this report if warranted.

**DATES:** Those who wish to express their views concerning the material contained in the report should contact Edward L.

Freedman by December 15, 1993 at the address below.

**ADDRESSES:** Edward L. Freedman, Chemical Emergency Preparedness and Prevention Office, OS-120, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** The Emergency Planning and Community Right-to-Know Information Hotline at (800) 535-0202. To order copies of the report, please FAX requests to the Hotline at (703) 412-3333. For technical information, contact Edward L. Freedman, (202) 260-7934, Chemical Emergency Preparedness and Prevention Office, OS-120, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dated: October 22, 1993.

**Elaine Davies,**

*Acting Director, Chemical Emergency Preparedness and Prevention Office.*

[FR Doc. 93-26896 Filed 11-1-93; 8:45 am]

**BILLING CODE 6560-50-P**

[FRL-4796-9]

### Clean Air Act; Final Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Final Permits.

**SUMMARY:** The U.S. Environmental Protection Agency [EPA] is issuing five-year Acid Rain permits, according to the Acid Rain Program regulations (40 CFR part 72), to the following 5 utility plants: Breed in Indiana; C P Crane, Conemaugh, and Martin's Creek in Pennsylvania; and Kammer in West Virginia.

**FOR FURTHER INFORMATION CONTACT:** For Breed: Patrick Gimino at (312) 353-8651. Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd. (A-18J), Chicago, IL 60604.

For C P Crane: Kimberly Peck at (215) 597-9839; for Conemaugh: Jim Topsale at (215) 597-6553; for Kammer and Martin's Creek: David Campbell at (215) 597-9781. Air, Radiation and Toxics Division, EPA Region 3 (3AT-22), 841 Chestnut Bldg., Philadelphia, PA 19107.

Dated: October 27, 1993.

**Brian J. McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 93-26894 Filed 11-1-93; 8:45 am]

**BILLING CODE 6560-50-P**

[FRL-4795-8]

**CWA 304(1); Approvals and Proposed Approvals of State Lists; Availability of State Lists****AGENCY:** Environmental Protection Agency, Region II.**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's final approval of the amended lists submitted to the U.S. Environmental Protection Agency (EPA) pursuant to Clean Water Act (CWA) sections 304(1)(A)(i), 304(1)(A)(ii), 304(1)(B), and 304(1)(C) by the State of New York and the State of New Jersey on January 17, 1990 and February 3, 1990, respectively. The amended lists and EPA's final approval documents, which include EPA's response to public comments, are available to the public.

This notice includes the schedule for completion of Total Maximum Daily Loads (TMDLs) and Waste Load Allocations (WLAs) for metals of concern in the New York/New Jersey Harbor and related Individual Control Strategies (ICSs).

Finally, this notice announces EPA's intent to approve and make available to the public, the lists submitted to EPA by the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands pursuant to the remand of EPA regulations interpreting section 304(1)(C) of the CWA on February 25, 1993, January 15, 1993, September 13, 1993, and August 6, 1992, respectively. EPA is soliciting public comment on its intent to approve these lists.

**DATES:** Comments on EPA's intent to approve the lists submitted pursuant to the remand must be submitted to EPA on or before December 2, 1993.

**ADDRESSES:** Copies of: (1) EPA's approval including Responsiveness Summaries; (2) amended lists; (3) a detailed schedule and summary of the New York/New Jersey Harbor TMDL/WLA process; and (4) lists submitted pursuant to the remand, can be obtained by writing to Mr. Wayne Jackson, Technical Evaluation Section, U.S. Environmental Protection Agency Region II, Jacob K. Javitz Federal Building, 26 Federal Plaza, New York, New York 10278 or calling (212) 264-5685.

EPA is soliciting comments on the lists submitted pursuant to the remand only. Comments on these lists should be sent to Mr. Wayne Jackson at the above address on or before December 2, 1993.

The administrative record containing EPA's documentation of its decisions of final approval of the list of waters and proposed approval of the new list of sources are on file and may be inspected at the U.S. EPA, Region II office between the hours of 9 a.m. and 4:30 p.m., Monday through Friday except holidays. Arrangements to examine the

administrative record may be made by contacting Mr. Wayne Jackson.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Wayne Jackson, telephone (212) 264-5685.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. History of original amended submissions pursuant to CWA sections 304(1)(A)(i), 304(1)(A)(ii), 304(1)(B), and 304(1)(C)
  - A. Comments regarding the State of New York's submission.
  - B. Comments regarding the State of New Jersey's submission.
- III. Schedule for completion of TMDLs/WLAs for metals of concern in the New York/New Jersey Harbor and associated ICSs
- IV. History of submissions pursuant to the remand of CWA section 304(1)(C)

**I. Background**

Section 304(1) of the CWA, as amended by the Water Quality Act of 1987, requires each state to submit to EPA lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impact, and to develop ICSs for each point source. The original deadline for submitting lists of waters, point sources, amounts of pollutants, and the ICSs was February 4, 1989.

The first list (the "B List" or "Short List") is of those waters that the state does not expect to achieve applicable water quality standards, after application of technology-based controls, due entirely or substantially to discharges of any toxic pollutants from point sources (section 304(1)(B), 33 U.S.C. 1314(1)(B)). The second, or "Mini" list, consists of waters that are not meeting the new state water quality standards developed under section 303(c)(2)(B) for toxic pollutants because of pollution from point and nonpoint sources (section 304(1)(A)(i), 33 U.S.C. 1314(1)(A)(i)). The third, or "Long" list, includes all waters on the other two lists, plus any waters, which are the implementation of technology-based controls, are not expected to meet the water quality goals of the Act (section 304(1)(A)(ii), 33 U.S.C. 1314(1)(A)(ii)).

For each water segment identified in the B list, the state was required, by February 4, 1989, to submit a "C List" specifying point sources discharging toxic pollutants believed to be preventing or impairing water quality. For each point source identified on the state's C List as discharging toxic pollutants into a water segment on the state's B List, the state was further required to submit to EPA an ICS that the state determined would reduce point source dischargers of toxic pollutants to the receiving water to a degree sufficient to attain water quality standards in that water within three years after the date of the establishment of the ICS (33 U.S.C. 1314(1)(D)).

**II. History of Amended Submissions Pursuant to CWA Sections 304(1)(A)(i), 304(1)(A)(ii), 304(1)(B), and 304(1)(C)**

The original deadline for submitting lists of waters, point sources, amounts of pollutants and ICSs by each state to EPA was February 4, 1989. The State of New York and the State of New Jersey submitted their original lists and ICSs to EPA on February 4, 1989. On June 5, 1989, EPA approved the original lists and ICSs submitted by New York and New Jersey. EPA subsequently public noticed these original lists and ICSs with a comment period extending from June 5, 1989 through October 4, 1989 (the "first comment period"). An additional sixteen day extension was granted to the Natural Resources Defense Council (NRDC) and the Environmental Defense Fund (EDF) in response to their written request for an extension of the public comment period; these respective parties submitted comments on October 20, 1989.

In response to public comments received following EPA's June 5, 1989 approval, the States made new submissions. On January 17, 1990 and February 3, 1990, respectively, the State of New York and the State of New Jersey submitted to EPA amended original 304(1) submissions, adding waters and point sources to the lists (the "amended lists"). On June 8, 1990 EPA issued its final approvals of those waters and point sources that were on the original lists, and responded to the public comments received during the comment period. On June 8, 1990 EPA public noticed its intent to approve these amended lists and ICSs and requested public comment on its decision. The public comment period extended from June 8, 1990 through August 1, 1990 (the second comment period).

**A. Summary of Comments Received by EPA Regarding the State of New York's Submission**

During the second comment period, which ended on August 1, 1990, EPA received comments or petitions from seven (7) parties. Four (4) of the responses were from parties associated with a particular point source discharge that appeared on the proposed additions to the "C list." These commenters stated that the listing of their particular point source was inappropriate and that the discharger should be removed from the state's "C list." Two (2) of the responses were from parties requesting that several toxic pollutants and sources (including combined sewer overflows (CSOs)) associated with the waters of the New York/New Jersey Harbor be added to the "B" and "C" lists, respectively. The remaining response was submitted by the New York State Department of Environmental Conservation (NYSDEC), requesting clarification regarding EPA's position on several actions taken by the Agency. A copy of EPA's final decision and Responsiveness Summary, which provides

specific responses to all comments received regarding the State of New York lists may be obtained by contacting Mr. Wayne Jackson at the above-mentioned address.

After review of the available information submitted during the public comment period, it is EPA's decision to approve the amended A(i), (B) and (C) lists as submitted to EPA by the State of New York on January 17, 1990. The New York State's (A)(i) list has been amended to include the waters of the Lower New York Bay and Raritan Bay. As part of its comments to the U.S. EPA during the second public comment period, NYSDEC indicated that the exclusion of these waters from the A(i) list was an oversight by both the State and the U.S. EPA. These waters have subsequently been added by NYSDEC, and approved by the U.S. EPA, based upon the fact that available data show exceedances of state water quality standards for certain heavy metals in these waters.

As outlined above, NYSDEC submitted its original section 304(l) lists and ICSs to EPA on February 4, 1989 for review and approval. On June 5, 1989 EPA approved the original NYSDEC 304(l) submittal, including the ICSs for those dischargers which discharged to the waters listed on the State's original section 304(l)(1)(B) list. The waters of the New York/New Jersey Harbor were not included on NYSDEC's original section 304(l)(1)(B) submittal because it was determined that there was not sufficient information to list these waters.

During the public comment period which followed the U.S. EPA's June 5, 1989 decision, information was submitted by NRDC and EDF which indicated that the waters of the New York/New Jersey Harbor should be included on the State's section 304(l)(1)(B) list. A subsequent analysis by the U.S. EPA and NYSDEC led to a joint decision to list the waters of and dischargers to the Harbor.

On January 17, 1990 NYSDEC added the waters of the New York/New Jersey Harbor to its section 304(l)(1)(B) list, and the appropriate point source dischargers, needing ICSs, to these waters to its 304(l)(1)(C) list. The actual ICSs were not submitted by the State of New York at that time, as it was agreed that the States of New York and New Jersey, and the U.S. EPA would need to work together in order to develop technically defensible water quality-based effluent limitations for incorporation into the Harbor ICSs.

On June 8, 1990 EPA issued and public noticed its intent to approve the (B) listing of waters of the New York/New Jersey Harbor and the (C) listing of the appropriate dischargers to these waters. ICSs for those dischargers included on the State's above-referenced section 304(l)(1)(C) list are currently being developed as outlined in Section III of this notice. Based upon the results of the current effort to develop TMDLs/WLAs for the waters of the New

York/New Jersey Harbor Complex, water quality based-effluent limits for the four metals of concern (copper, mercury, lead, and nickel) will be developed and ICSs will be established by September 15, 1994.

#### *B. Summary of Comments Received by EPA Regarding the State of New Jersey's Submission*

During the second comment period, which ended on August 1, 1990, EPA received comments or petitions from nine (9) parties. Seven (7) of the responses received were from parties associated with a particular point source discharge that appeared on the "C list." These commenters stated that the listing of their particular point source was inappropriate and that the discharger should be removed from the State's "C list." Two (2) comments were from parties requesting the addition of several toxic pollutants and sources (including CSOs) associated with the "B" listing of the waters of the New York/New Jersey Harbor. A copy of EPA's final decision and Responsiveness Summary, which provides specific responses to all comments received regarding the State of New Jersey lists, may be obtained by contacting Mr. Wayne Jackson at the above-mentioned address.

After review of the available information submitted during the public comment period, it is EPA's decision to approve the (b) and (c) lists and the associated ICSs, with the exception of those dischargers to the New York/New Jersey Harbor Complex, as submitted to EPA by the State of New Jersey on February 4, 1990.

As outlined above, NJDEPE submitted its original section 304(l) lists and ICSs to EPA on February 4, 1989 for review and approval. On June 5, 1989 EPA approved the original NJDEPE 304(l) submittal, including the ICSs for those dischargers which discharged to the waters listed on the State's original section 304(l)(1)(B) list. However, a portion of New Jersey's (C) list, and the associated ICSs, were disapproved on June 5, 1989 because the State was unable to submit a list of those point sources impacting several waters (Kings Creek, Raccoon Creek, Passaic River, and Newark Bay/Arthur Kill/Kill Van Kull) which were added to the State's original section 304(l)(1)(B) list at the deadline.

On February 3, 1990 NJDEPE submitted its revised section 304(l) lists. In this submittal, the State identified the point sources impacting the above waterbodies, and included ICSs for these dischargers. NJDEPE also added the Lower Hudson River to its (B) list, and five dischargers to the Hudson to the (C) list.

On June 8, 1990 EPA issued its intent to approve the (C) listing of the above-referenced dischargers, as well as the addition of the Lower Hudson River to the State's (B) list, and the associated dischargers to the (C) list.

On June 8, 1990 EPA public noticed its intent to approve the above-referenced lists. ICSs for those dischargers to the New York/New Jersey Harbor Complex are currently being developed as outlined in Section III of this notice. Based upon the results of the current effort to develop TMDLs/WLAs for the waters of the New York/New Jersey Harbor Complex, water quality based-effluent limits for the four metals of concern (copper, mercury, lead, and nickel) will be developed and ICSs will be established by September 15, 1994.

#### **III. Schedule for Completion of TMDLs/WLAs for Metals of Concern in the New York/New Jersey Harbor Pursuant to CWA Section 304(l)**

The waters of the New York/New Jersey Harbor were included on both the State of New York and State of New Jersey respective January 17, 1990 and February 3, 1990 304(l)(1)(B) lists and the associated point source dischargers were included on the states' (C) lists.

In order to develop technically defensible water quality-based effluent limitations for incorporation into the ICSs, an effort to develop TMDLs and WLAs for the New York/New Jersey Harbor was undertaken through the New York/New Jersey Harbor Estuary Program. A TMDL/WLA Workgroup was formed in May 1990, for the purpose of developing and implementing TMDL/WLA for all metals of concern.

The TMDL/WLA process required the Workgroup to assess all historic ambient and loading data and compare it with present ambient and loading data (collected using clean sampling and analytical techniques); identify the metals of concern, agree upon a uniform set of criteria for those metals of concern (copper, mercury, lead, and nickel), which resulted in the agreement to develop a site-specific copper criterion for the waters of NY/NJ Harbor; develop a toxic model capable of simulating conditions observed in the Harbor Complex; and develop and implement TMDL/WLAs for copper, mercury, lead, and nickel for the waters of the NY/NJ Harbor complex.

However, as the efforts of the workgroup progressed, it became apparent to EPA and the states that because of the unique technical issues associated with an estuarine system as complex as the Harbor, the development of meaningful TMDLs/WLAs would require a more resource intensive effort than had originally been expected. As a result, the original target date for establishing water quality-based effluent limits for the four metals of concern was not met.

The following is the schedule agreed to by all parties involved, of remaining activities necessary to complete the New York/New Jersey Harbor TMDL/WLA effort. Note that this schedule establishes final ICSs by October 15, 1994. It is the intent of all parties involved, including the states of New York

and New Jersey, to develop the necessary water quality-based effluent limits for the four metals of concern in the New York/New

Jersey Harbor, in accordance with the following schedule. In addition, EPA is prepared to take action consistent with its

legal authority to ensure that appropriate TMDL/WLA and ICSs are developed, established, and enforced for these four metals of concern pursuant to this schedule.

SCHEDULE OF REMAINING ACTIVITIES NECESSARY TO DEVELOP TMDL/WLAS FOR THE WATERS OF NY/NJ HARBOR

Site-specific water quality standard	TMDLs/WLAs	ICSs
8/31/93: Final results available for all site-specific copper criteria sampling events.	6/93: Begin TMDL/WLA development based on existing standards.	
9/30/93: Technical Agreement on site-specific criteria .....	9/30/93: Technical Agreement on TMDL/WLA ..  10/31/93: New Copper TMDL based on site-specific criteria.	9/30/93: States begin permit modification process.
11/30/93: New Jersey begins adoption process for site-specific criteria.	11/30/93: Joint Public Notice of TMDLs/WLAs ..	
5/31/94: New Jersey adopts the site-specific criteria. <sup>1</sup> .....	5/31/94: Public comment period on TMDLs/WLAs is closed.	5/31/94: States issue draft permits.
8/31/94: EPA approves the site-specific criteria for New Jersey. <sup>2</sup>	8/31/94: EPA approves TMDLs/WLAs. <sup>3</sup> .....	10/15/94: Final permits issued. <sup>4</sup>

<sup>1</sup> Assumes technical support information is available and NJDEPE's adoption process takes only 6 months.

<sup>2</sup> Requires EPA Headquarters depublication action which is estimated to take a minimum of 3 months.

<sup>3</sup> Approval may be delayed if unresolved issues are identified during the TMDL/WLA public comment period.

<sup>4</sup> If draft permits are contested, final permit issuance may be delayed.

A more detailed schedule and summary of the TMDL/WLA process may be obtained by contacting Mr. Wayne Jackson at the above-mentioned address.

**IV. History of Submissions Pursuant to CWA Section 304(l)(1)(C)**

EPA initially interpreted the statute to require states to identify on the "C List" only those facilities that discharge toxic pollutants at levels believed to contribute entirely or substantially to the waters listed as being impaired on the "B List." In *Natural Resources Defense Council v. EPA.*, 915 F.2d 1313, 1323-1324 (9th Cir. 1990), the Ninth Circuit Court of Appeals remanded that portion of the regulation and directed EPA to amend the regulation to require the states to identify all point sources, discharging any toxic pollutant regardless of the amount being discharged, that are believed to be preventing or impairing water quality of any stream segment listed on any of the three lists of waters, and to indicate the amount of the toxic pollutant discharged by each source. EPA amended 40 CFR 130.10(d)(3) accordingly. See 57 FR 33040

(July 24, 1992). EPA also amended 40 CFR 123.46 to clarify that ICSs are required only for point sources that discharge to waters identified on the "B list" or "Short List." The effect of this amendment is to clarify that no new ICSs may be required for facilities listed pursuant to the Ninth Circuit court remand, although, as directed by the Ninth Circuit, EPA is reconsidering that decision and is in the midst of rulemaking to determine whether and, if so, to what extent to require ICSs for newly listed point sources. See 57 FR 33051 (July 24, 1992).

Consistent with EPA's amended regulation, New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands have submitted to EPA for approval their listing decisions under section 304(l)(1)(C). EPA has determined that New York, New Jersey, Puerto Rico, and the Virgin Islands have adequately explained the bases for their decisions. Based on the information submitted by the states, EPA has determined that the lists satisfy the requirements of section 304(l)(1)(C) and is public noticing its intent to approve these lists.

EPA bases its proposed decision on the following information: Puerto Rico and New Jersey chose to use the *de minimis* approach to develop their 304(l) "C lists"; New York's listing is based upon the State's updated (A)(ii) list (also known as the 1991 Priority Water Problem Lists) in conjunction with an evaluation of dischargers of toxic pollutants causing water quality impairment and still requiring development of ICSs; the Virgin Islands' "C List" was based on Discharge Monitoring Report (DMR) data correlated with impairment of waterbodies.

EPA solicits public comment on its intent to approve the 304(l)(1)(C) lists, revised as a result of the remand and submitted to EPA by the State of New York, on February 25, 1993, the State of New Jersey on January 15, 1993, the Commonwealth of Puerto Rico on September 13, 1993, and the U.S. Virgin Islands on August 6, 1992.

Dated: September 28, 1993.

**William J. Muszynski,**  
*Acting Regional Administrator.*

[FR Doc. 93-26897 Filed 11-1-93; 8:45 am]

**BILLING CODE 6560-50-P**

**Federal Register**

---

Tuesday  
November 2, 1993

---

**Part III**

**Environmental  
Protection Agency**

---

**40 CFR Part 282**

**Underground Storage Tank Program;  
Approved Program for New Hampshire;  
Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 282

[FRL-4794-8]

#### Underground Storage Tank Program; Approved State Program for New Hampshire

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency to grant approval to states to operate their underground storage tank programs in lieu of the federal program. This action establishes part 282 for codification of the decision to approve a state program and for incorporation by reference of those provisions of state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. As part of this initial action, part 282 codifies the prior approval of New Hampshire's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

**DATES:** This regulation is effective January 3, 1994, unless EPA publishes a prior **Federal Register** rule withdrawing this immediate final rule. All comments on this regulation must be received by the close of business December 2, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of January 3, 1994, in accordance with 5 U.S.C. 552(a).

**ADDRESSES:** Comments may be mailed to the Docket Clerk (Docket No. UST 4-5), Office of Underground Storage Tanks (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments received by EPA may be inspected in the public docket, located in room 2616 (Mall), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free at (800) 424-9346 or in Washington, DC at (202) 382-3000. For technical questions on the part 282 rule, consult Jerry Parker, U.S. EPA, Office of Underground Storage Tanks, at (703) 308-8884. For technical questions on the New Hampshire codification, consult Susan Hanamoto, Underground Storage Tank Program, U.S. EPA Region I, JFK Federal Building, Boston, MA 02203-2211. Phone: (617) 573-5748.

## SUPPLEMENTARY INFORMATION:

### Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency (EPA) to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a **Federal Register** rule announcing its decision to grant approval to New Hampshire (56 FR 28089, June 19, 1991). Approval was effective on July 19, 1991.

EPA will codify its approval of state programs in a new 40 CFR part 282 and incorporate by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rule establishes part 282, reserves sections within part 282 for each state, and codifies EPA's approval of the New Hampshire underground storage tank program. This codification reflects the state program in effect at the time EPA granted New Hampshire approval under section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. The establishment of part 282 is an Agency procedure exempt from the notice and comment requirements of 5 U.S.C. 553, as is the codification of the New Hampshire UST program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the New Hampshire program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved New Hampshire program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in New Hampshire, the status of federally approved requirements of the New Hampshire program will be readily discernible. Only those provisions of the New Hampshire underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of New Hampshire's underground storage tank program, EPA has added § 282.79 to title 40 of the CFR. Section 282.79 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.79 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities and federal procedures, rather than the state authorized analogs to these provisions. Therefore, the approved New Hampshire enforcement authorities will not be incorporated by reference. Section 282.79 lists those approved New Hampshire authorities that fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA subtitle I program because they are "broader in scope" than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.79 simply lists for reference and clarity the New Hampshire statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

### Certification Under the Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the EPA hereby certifies that this action will not have any economic impact on any small entities. It establishes a new part 282 in 40 CFR and codifies the decision already made to approve the New Hampshire underground storage program and has no separate effect on owners and operators of underground storage tanks or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### Compliance With Executive Order 12291

This immediate final rule has been submitted to OMB for review under Executive Order 12291. The Agency has determined that it is a non-major rule because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The Office of Management and Budget has exempted individual state codifications from

the requirements of section 3 of Executive Order 12291.

### Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

### List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: October 13, 1993.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended by adding a new part 282 to read as follows:

### PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

#### Subpart A—General Provisions

Sec.

282.1 Purpose and scope.

282.2 Incorporation by reference.

282.3–282.49 [Reserved]

#### Subpart B—Approved State Programs

282.50–282.78 [Reserved]

282.79—New Hampshire.

282.80–282.105 [Reserved]

#### Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

**Authority:** 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

### PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

#### Subpart A—General Provisions

##### § 282.1 Purpose and scope.

This part sets forth the applicable state underground storage tank programs under section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c and 40 CFR part 281. “State” is defined in 42 U.S.C. 1004(31) as “any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.”

##### § 282.2 Incorporation by reference.

(a) Material listed as incorporated by reference in part 282 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material

is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**.

(b) Copies of materials incorporated by reference may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of materials incorporated by reference may be obtained or inspected at the EPA OUST Docket, 401 M Street, SW., Washington, DC 20460, and at the library of the appropriate Regional Office listed below:

(1) Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): JFK Federal Building, Boston, MA 02203–2211.

(2) Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands): Federal Office Building, 26 Federal Plaza, New York, NY 10278.

(3) Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia): 841 Chestnut St. Building, Philadelphia, PA 19107.

(4) Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): 345 Courtland St., NE, Atlanta, GA 30365.

(5) Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): 77 West Jackson Boulevard, Chicago, IL 60604.

(6) Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): 1445 Ross Avenue, Dallas, TX 75202–2733.

(7) Region 7 (Iowa, Kansas, Missouri, Nebraska): 726 Minnesota Avenue, Kansas City, KS 66101.

(8) Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): 999 18th Street, Denver, CO 80202–2405.

(9) Region 9 (Arizona, California, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Mariana Islands): 75 Hawthorne Street, San Francisco, CA 94105.

(10) Region 10 (Alaska, Idaho, Oregon, Washington): 1200 Sixth Avenue, Seattle, WA 98101.

(c) For an informational listing of the state and local requirements incorporated in part 282, see appendix A to this part.

#### §§ 282.3 through 282.49 [Reserved]

#### Subpart B—Approved State Programs

##### §§ 282.50–282.78 [Reserved]

##### § 282.79 New Hampshire.

(a) The State of New Hampshire is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State’s program, as administered by the New Hampshire Department of Environmental Services, was approved by EPA pursuant to 42 U.S.C. 6991c and part

281 of this Chapter. EPA’s approval was effective on July 19, 1991.

(b) New Hampshire has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other applicable statutory and regulatory provisions.

(c) To retain program approval, New Hampshire must revise its approved program to adopt changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If New Hampshire obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this section and notice of any change will be published in the **Federal Register**.

(d) New Hampshire has final approval for the following elements submitted to EPA in New Hampshire’s program application for final approval and approved by EPA on June 19, 1991, becoming effective on July 19, 1991. Copies may be obtained from the Underground Storage Tank Program, New Hampshire Department of Environmental Services, 6 Hazen Drive, Concord, NH 03302–0095.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) New Hampshire Statutory Requirements Applicable to the Underground Storage Tank Program, 1993.

(B) New Hampshire Regulatory Requirements Applicable to the Underground Storage Tank Program, 1993.

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: New Hampshire Revised Statutes Annotated (Supplement 1988) Sections 146–C:9a, 146–C:10, and 146–C:10a; 147 A:1 through 147–A:13; 541–A:1 through 541–A:10; 91–A:1 through 91–A:8.

(B) The regulatory provisions include: New Hampshire Code of Administrative Rules (1990) Part Env. C–602.08; Part He–P 1905.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: New Hampshire Revised Statutes Annotated (Supplement 1988) Section 146–C:1.XII, insofar as it refers to heating oil for consumptive use on the premises where stored.

(B) The regulatory provisions include: New Hampshire Code of Administrative Rules (1990) Sections Env-Ws 411.01 and 411.02, insofar as they refer to heating oil for consumptive use on the premises where stored.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of New Hampshire on November 1, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of New Hampshire to EPA, November 1, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures For Adequate Enforcement" submitted as part of the original application in December 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application in December 1990, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of agreement.* The Memorandum of Agreement between EPA Region I and the New Hampshire Department of Environmental Services, signed by the EPA Regional Administrator on August 8, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

#### §§ 282.80–282.105 [Reserved]

#### Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

The following is an informational listing of the state requirements incorporated by reference in part 282 of the Code of Federal Regulations:

#### New Hampshire

(a) The statutory provisions include New Hampshire Revised Statutes Annotated 1955, 1990 Replacement Edition, and 1992 Cumulative Supplement, Chapter 146-C, Underground Storage Facilities:

- Section 146-C:1 Definitions, except for the following words in 146-C:1. XII, "heating or."
- Section 146-C:2 Discharges Prohibited.
- Section 146-C:3 Registration of Underground Storage Facilities.
- Section 146-C:4 Underground Storage Facility Permit Required.
- Section 146-C:5 Records Required; Inspections.
- Section 146-C:6 Transfer of Ownership.
- Section 146-C:6-a Exemption.
- Section 146-C:7 New Facilities.
- Section 146-C:8 Prohibition Against Reusing Tanks.
- Section 146-C:9 Rulemaking.
- Section 146-C:11 Liability for Cleanup Costs; Municipal Regulations.
- Section 146-C:12 Federal Assistance and Private Funds.

(b) The regulatory provisions include:

- (1) New Hampshire Code of Administrative Rules (November 1990) Part Env-Ws 411, Control of Underground Storage Facilities:
  - Section 411.01 Purpose, except for the following words, "heating oils."
  - Section 411.02 Applicability, except for 411.02(d).
  - Section 411.03 Definitions.
  - Section 411.04 Registration.
  - Section 411.05 Change in Use.
  - Section 411.06 Information Required for Registration.
  - Section 411.07 Permit to Operate.
  - Section 411.08 Transfer of Facility Ownership.
  - Section 411.10 Financial Responsibility.
  - Section 411.11 Inventory Monitoring.
  - Section 411.12 Regulated Substance Transfers.
  - Section 411.13 Tightness Testing.
  - Section 411.14 Certification of Technicians Performing Tightness Tests.
  - Section 411.15 Tightness Test Failures.
  - Section 411.16 Unusual Operating Conditions.
  - Section 411.17 Temporary Closure.
  - Section 411.18 Permanent Closure.
  - Section 411.19 Prohibition Against Reusing Tanks.
  - Section 411.20 Requirements for Approval of Underground Storage Systems.
  - Section 411.21 Tank Standards for New Underground Storage Systems.
  - Section 411.22 Piping Standards for New Underground Storage Systems.
  - Section 411.23 Secondary Containment for New Tanks.

- Section 411.24 Secondary Containment for New Pressurized Piping.
- Section 411.25 Spill Containment and Overfill Protection.
- Section 411.26 Leak Monitoring for New Tanks.
- Section 411.27 Leak Monitoring for New Underground Piping Systems.
- Section 411.28 Installation of New Underground Storage Systems.
- Section 411.29 Release Detection for Tanks Without Secondary Containment and Leak Monitoring, except for the following words in 411.29(a), "With the exception of on premise use heating oil systems."
- Section 411.30 Release Detection for Piping.
- Section 411.31 Operation of Leak Monitoring Equipment.
- Section 411.32 Corrosion Protection for Steel Tanks.
- Section 411.33 Corrosion Protection for Piping.
- Section 411.34 Submission of Corrosion Protection Plan.
- Section 411.35 Relining Steel Tanks.
- Section 411.36 Repair of Fiberglass-Reinforced Plastic Tanks.
- Section 411.37 Repair and Replacement of Piping Systems.
- Section 411.38 Field Fabricated Tanks.
- Section 411.39 Secondary Containment for Hazardous Substance Systems.
- Section 411.40 Waivers.

(2) New Hampshire Code of Administrative Rules (November 1990) Part Env-Ws 412, Reporting and Remediation of Oil Discharges:

- Section 412.01 Purpose.
- Section 412.02 Applicability.
- Section 412.03 Definitions.
- Section 412.04 Notification.
- Section 412.05 Initial Response Action.
- Section 412.06 Abatement Measures.
- Section 412.07 Free Product Removal.
- Section 412.08 Initial Site Characterization.
- Section 412.09 Investigation Due to Discovery of Discharges from Unknown Sources.
- Section 412.10 Site Investigation.
- Section 412.11 Site Investigation Report.
- Section 412.12 Remedial Action Plan.
- Section 412.13 Public Notification.
- Section 412.14 Waivers.

[FR Doc. 93-26409 Filed 11-01-93; 8:45 am]

BILLING CODE 6560-50-P