

limits (MCLs): The 2,3,7,8-TCDD-based MCL—0.01 parts per trillion (ppt), sample weight of 1000 g, IS spiking level of 1 ppt, final extraction volume of 10–50 µL. For other congeners—multiply the values by 1 for TCDF/PeCDD/PeCDF, by 2.5 for HxCDD/HxCDF/HpCDD/HpCDF, and by 5 for OCDD/OCDF.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the plant;

(4) The equipment cleaning or replacement plan;

(5) The name and address of any persons who conducted the cleaning and replacement;

(6) The dates on which cleaning and replacement were accomplished;

(7) The dates of sampling and testing;

(8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 40 CFR 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

[55 FR 50482, Dec. 6, 1990, as amended at 56 FR 30195, July 1, 1991; 70 FR 34561, June 14, 2005]

Subpart E—Exclusions/Exemptions

SOURCE: 71 FR 42948, July 28, 2006, unless otherwise noted.

§ 261.38 Comparable/Syngas Fuel Exclusion.

Wastes that meet the following comparable/syngas fuel requirements are not solid wastes:

(a) *Comparable fuel specifications.*—(1) *Physical specifications.*—(i) *Heating value.* The heating value must exceed 5,000 BTU/lbs. (11,500 J/g).

(ii) *Viscosity.* The viscosity must not exceed: 50 cs, as-fired.

(2) *Constituent specifications.* For compounds listed in table 1 to this section the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1).

(b) *Synthesis gas fuel specification.*—Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:

(1) Have a minimum Btu value of 100 Btu/Scf;

(2) Contain less than 1 ppmv of total halogen;

(3) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N₂);

(4) Contain less than 200 ppmv of hydrogen sulfide; and

(5) Contain less than 1 ppmv of each hazardous constituent in the target list of appendix VIII constituents of this part.

TABLE 1 TO § 261.38—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION

Chemical name	CAS No.	Com- posite value (mg/kg)	Heating value (BTU/lb)	Con- centration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Total Nitrogen as N	NA	9000	18400	4900	.....
Total Halogens as Cl	NA	1000	18400	540	.....
Total Organic Halogens as Cl	NA	.....	.....	(¹)	.....
Polychlorinated biphenyls, total [Arocolors, total]	1336-36-3	ND	.....	ND	1.4
Cyanide, total	57-12-5	ND	.....	ND	1.0
Metals:					
Antimony, total	7440-36-0	ND	.....	12	.....
Arsenic, total	7440-38-2	ND	.....	0.23	.....
Barium, total	7440-39-3	ND	.....	23	.....
Beryllium, total	7440-41-7	ND	.....	1.2	.....
Cadmium, total	7440-43-9	.....	ND	.....	1.2
Chromium, total	7440-47-3	ND	.....	2.3	.....
Cobalt	7440-48-4	ND	.....	4.6	.....
Lead, total	7439-92-1	57	18100	31	.....
Manganese	7439-96-5	ND	.....	1.2	.....
Mercury, total	7439-97-6	ND	.....	0.25	.....
Nickel, total	7440-02-0	106	18400	58	.....
Selenium, total	7782-49-2	ND	.....	0.23	.....
Silver, total	7440-22-4	ND	.....	2.3	.....
Thallium, total	7440-28-0	ND	.....	23	.....
Hydrocarbons:					
Benzo[a]anthracene	56-55-3	ND	.....	2400	.....
Benzene	71-43-2	8000	19600	4100	.....
Benzo[b]fluoranthene	205-99-2	ND	.....	2400	.....
Benzo[k]fluoranthene	207-08-9	ND	.....	2400	.....
Benzo[a]pyrene	50-32-8	ND	.....	2400	.....
Chrysene	218-01-9	ND	.....	2400	.....
Dibenzo[a,h]anthracene	53-70-3	ND	.....	2400	.....
7,12-Dimethylbenz[a]anthracene	57-97-6	ND	.....	2400	.....
Fluoranthene	206-44-0	ND	.....	2400	.....
Indeno(1,2,3-cd)pyrene	193-39-5	ND	.....	2400	.....
3-Methylcholanthrene	56-49-5	ND	.....	2400	.....
Naphthalene	91-20-3	6200	19400	3200	.....
Toluene	108-88-3	69000	19400	36000	.....
Oxygenates:					
Acetophenone	98-86-2	ND	.....	2400	.....
Acrolein	107-02-8	ND	.....	39	.....
Allyl alcohol	107-18-6	ND	.....	30	.....
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117-81-7	ND	.....	2400	.....
Butyl benzyl phthalate	85-68-7	ND	.....	2400	.....
o-Cresol [2-Methyl phenol]	95-48-7	ND	.....	2400	.....
m-Cresol [3-Methyl phenol]	108-39-4	ND	.....	2400	.....
p-Cresol [4-Methyl phenol]	106-44-5	ND	.....	2400	.....
Di-n-butyl phthalate	84-74-2	ND	.....	2400	.....
Diethyl phthalate	84-66-2	ND	.....	2400	.....
2,4-Dimethylphenol	105-67-9	ND	.....	2400	.....
Dimethyl phthalate	131-11-3	ND	.....	2400	.....
Di-n-octyl phthalate	117-84-0	ND	.....	2400	.....
Endothall	145-73-3	ND	.....	100	.....
Ethyl methacrylate	97-63-2	ND	.....	39	.....
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	ND	.....	100	.....
Isobutyl alcohol	78-83-1	ND	.....	39	.....
Isosafrole	120-58-1	ND	.....	2400	.....
Methyl ethyl ketone [2-Butanone]	78-93-3	ND	.....	39	.....
Methyl methacrylate	80-62-6	ND	.....	39	.....
1,4-Naphthoquinone	130-15-4	ND	.....	2400	.....
Phenol	108-95-2	ND	.....	2400	.....
Propargyl alcohol [2-Propyn-1-ol]	107-19-7	ND	.....	30	.....
Safrole	94-59-7	ND	.....	2400	.....
Sulfonated Organics:					
Carbon disulfide	75-15-0	ND	.....	ND	39
Disulfoton	298-04-4	ND	.....	ND	2400
Ethyl methanesulfonate	62-50-0	ND	.....	ND	2400
Methyl methanesulfonate	66-27-3	ND	.....	ND	2400
Phorate	298-02-2	ND	.....	ND	2400
1,3-Propane sultone	1120-71-4	ND	.....	ND	100
Tetraethyldithiopyrophosphate [Sulfotepp]	3689-24-5	ND	.....	ND	2400

TABLE 1 TO § 261.38—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Com- posite value (mg/kg)	Heating value (BTU/lb)	Con- centration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Thiophenol [Benzenethiol]	108-98-5	ND	.....	ND	30
O,O,O-Triethyl phosphorothioate	126-68-1	ND	.....	ND	2400
Nitrogenated Organics:					
Acetonitrile [Methyl cyanide]	75-05-8	ND	.....	ND	39
2-Acetylaminofluorene [2-AAF]	53-96-3	ND	.....	ND	2400
Acrylonitrile	107-13-1	ND	.....	ND	39
4-Aminobiphenyl	92-67-1	ND	.....	ND	2400
4-Aminopyridine	504-24-5	ND	.....	ND	100
Aniline	62-53-3	ND	.....	ND	2400
Benzidine	92-87-5	ND	.....	ND	2400
Dibenz[a,j]acridine	224-42-0	ND	.....	ND	2400
O,O-Diethyl O-pyrazinyl phosphorothioate [Thionazin]	297-97-2	ND	.....	ND	2400
Dimethoate	60-51-5	ND	.....	ND	2400
p-(Dimethylamino) azobenzene [4-Dime thylaminoazobenzene]	60-11-7	ND	.....	ND	2400
3,3'-Dimethylbenzidine	119-93-7	ND	.....	ND	2400
α,α-Dimethylphenethylamine	122-09-8	ND	.....	ND	2400
3,3'-Dimethoxybenzidine	119-90-4	ND	.....	ND	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	ND	.....	ND	2400
4,6-Dinitro-o-cresol	534-52-1	ND	.....	ND	2400
2,4-Dinitrophenol	51-28-5	ND	.....	ND	2400
2,4-Dinitrotoluene	121-14-2	ND	.....	ND	2400
2,6-Dinitrotoluene	606-20-2	ND	.....	ND	2400
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88-85-7	ND	.....	ND	2400
Diphenylamine	122-39-4	ND	.....	ND	2400
Ethyl carbamate [Urethane]	51-79-6	ND	.....	ND	100
Ethylenethiourea (2-Imidazolidinethione)	96-45-7	ND	.....	ND	110
Famphur	52-85-7	ND	.....	ND	2400
Methacrylonitrile	126-98-7	ND	.....	ND	39
Methapyrilene	91-80-5	ND	.....	ND	2400
Methomyl	16752-77-5	ND	.....	ND	57
2-Methylactonitrile, [Acetone cyanohydrin]	75-86-5	ND	.....	ND	100
Methyl parathion	298-00-0	ND	.....	ND	2400
MNNG (N-Metyl-N-nitroso-N'-nitroguanidine)	70-25-7	ND	.....	ND	110
1-Naphthylamine, [α-Naphthylamine]	134-32-7	ND	.....	ND	2400
2-Naphthylamine, [β-Naphthylamine]	91-59-8	ND	.....	ND	2400
Nicotine	54-11-5	ND	.....	ND	100
4-Nitroaniline, [p-Nitroaniline]	100-01-6	ND	.....	ND	2400
Nitrobenzene	98-95-3	ND	.....	ND	2400
p-Nitrophenol, [p-Nitrophenol]	100-02-7	ND	.....	ND	2400
5-Nitro-o-toluidine	99-55-8	ND	.....	ND	2400
N-Nitrosodi-n-butylamine	924-16-3	ND	.....	ND	2400
N-Nitrosodiethylamine	55-18-5	ND	.....	ND	2400
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86-30-6	ND	.....	ND	2400
N-Nitroso-N-methylethylamine	10595-95-6	ND	.....	ND	2400
N-Nitrosomorpholine	59-89-2	ND	.....	ND	2400
N-Nitrosopiperidine	100-75-4	ND	.....	ND	2400
N-Nitrosopyrrolidine	930-55-2	ND	.....	ND	2400
2-Nitropropane	79-46-9	ND	.....	ND	30
Parathion	56-38-2	ND	.....	ND	2400
Phenacetin	62-44-2	ND	.....	ND	2400
1,4-Phenylene diamine, [p-Phenylenediamine]	106-50-3	ND	.....	ND	2400
N-Phenylthiourea	103-85-5	ND	.....	ND	57
2-Picoline [alpha-Picoline]	109-06-8	ND	.....	ND	2400
Propylthiouracil, [6-Propyl-2-thiouracil]	51-52-5	ND	.....	ND	100
Pyridine	110-86-1	ND	.....	ND	2400
Strychnine	57-24-9	ND	.....	ND	100
Thioacetamide	62-55-5	ND	.....	ND	57
Thiofanox	39196-18-4	ND	.....	ND	100
Thiourea	62-56-6	ND	.....	ND	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	ND	.....	ND	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	ND	.....	ND	57
o-Toluidine	95-53-4	ND	.....	ND	2400
p-Toluidine	106-49-0	ND	.....	ND	100
1,3,5-Trinitrobenzene, [sym-Trinitrobenzene]	99-35-4	ND	.....	ND	2400
Halogenated Organics:					
Allyl chloride	107-05-1	ND	.....	ND	39

TABLE 1 TO § 261.38—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Com- posite value (mg/kg)	Heating value (BTU/lb)	Con- centration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Aramite	140-57-8	ND	.....	ND	2400
Benzal chloride [Dichloromethyl benzene]	98-87-3	ND	.....	ND	100
Benzyl chloride	100-44-77	ND	.....	ND	100
bis(2-Chloroethyl)ether [Dichloroethyl ether]	111-44-4	ND	.....	ND	2400
Bromoform [Tribromomethane]	75-25-2	ND	.....	ND	39
Bromomethane [Methyl bromide]	74-83-9	ND	.....	ND	39
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101-55-3	ND	.....	ND	2400
Carbon tetrachloride	56-23-5	ND	.....	ND	39
Chlordane	57-74-9	ND	.....	ND	14
p-Chloroaniline	106-47-8	ND	.....	ND	2400
Chlorobenzene	108-90-7	ND	.....	ND	39
Chlorobenzilate	510-15-6	ND	.....	ND	2400
p-Chloro-m-cresol	59-50-7	ND	.....	ND	2400
2-Chloroethyl vinyl ether	110-75-8	ND	.....	ND	39
Chloroform	67-66-3	ND	.....	ND	39
Chloromethane [Methyl chloride]	74-87-3	ND	.....	ND	39
2-Chloronaphthalene [beta-Chloronaphthalene]	91-58-7	ND	.....	ND	2400
2-Chlorophenol [o-Chlorophenol]	95-57-8	ND	.....	ND	2400
Chloroprene [2-Chloro-1,3-butadiene]	1126-99-8	ND	.....	ND	39
2,4-D [2,4-Dichlorophenoxyacetic acid]	94-75-7	ND	.....	ND	7.0
Diallate	2303-16-4	ND	.....	ND	2400
1,2-Dibromo-3-chloropropane	96-12-8	ND	.....	ND	39
1,2-Dichlorobenzene [o-Dichlorobenzene]	95-50-1	ND	.....	ND	2400
1,3-Dichlorobenzene [m-Dichlorobenzene]	541-73-1	ND	.....	ND	2400
1,4-Dichlorobenzene [p-Dichlorobenzene]	106-46-7	ND	.....	ND	2400
3,3'-Dichlorobenzidine	91-94-1	ND	.....	ND	2400
Dichlorodifluoromethane [CFC-12]	75-71-8	ND	.....	ND	39
1,2-Dichloroethane [Ethylene dichloride]	107-06-2	ND	.....	ND	39
1,1-Dichloroethylene [Vinylidene chloride]	75-35-4	ND	.....	ND	39
Dichloromethoxy ethane [Bis(2-chloroethoxy)methane]	111-91-1	ND	.....	ND	2400
2,4-Dichlorophenol	120-83-2	ND	.....	ND	2400
2,6-Dichlorophenol	87-65-0	ND	.....	ND	2400
1,2-Dichloropropane [Propylene dichloride]	78-87-5	ND	.....	ND	39
cis-1,3-Dichloropropylene	10061-01-5	ND	.....	ND	39
trans-1,3-Dichloropropylene	10061-02-6	ND	.....	ND	39
1,3-Dichloro-2-propanol	96-23-1	ND	.....	ND	30
Endosulfan I	959-98-8	ND	.....	ND	1.4
Endosulfan II	33213-65-9	ND	.....	ND	1.4
Endrin	72-20-8	ND	.....	ND	1.4
Endrin aldehyde	7421-93-4	ND	.....	ND	1.4
Endrin Ketone	53494-70-5	ND	.....	ND	1.4
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106-89-8	ND	.....	ND	30
Ethylidene dichloride [1,1-Dichloroethane]	75-34-3	ND	.....	ND	39
2-Fluoroacetamide	640-19-7	ND	.....	ND	100
Heptachlor	76-44-8	ND	.....	ND	1.4
Heptachlor epoxide	1024-57-3	ND	.....	ND	2.8
Hexachlorobenzene	118-74-1	ND	.....	ND	2400
Hexachloro-1,3-butadiene [Hexachlorobutadiene]	87-68-3	ND	.....	ND	2400
Hexachlorocyclopentadiene	77-47-4	ND	.....	ND	2400
Hexachloroethane	67-72-1	ND	.....	ND	2400
Hexachlorophene	70-30-4	ND	.....	ND	59000
Hexachloropropene [Hexachloropropylene]	1888-71-7	ND	.....	ND	2400
Isodrin	465-73-6	ND	.....	ND	2400
Kepona [Chlordecone]	143-50-0	ND	.....	ND	4700
Lindane [gamma-BHC] [gamma-Hexachlorocyclohexane]	58-89-9	ND	.....	ND	1.4
Methylene chloride [Dichloromethane]	75-09-2	ND	.....	ND	39
4,4'-Methylene-bis(2-chloroaniline)	101-14-4	ND	.....	ND	100
Methyl iodide [Iodomethane]	74-88-4	ND	.....	ND	39
Pentachlorobenzene	608-93-5	ND	.....	ND	2400
Pentachloroethane	76-01-7	ND	.....	ND	39
Pentachloronitrobenzene [PCNB] [Quintobenzene]					
[Quintozene]	82-68-8	ND	.....	ND	2400
Pentachlorophenol	87-86-5	ND	.....	ND	2400
Pronamide	23950-58-5	ND	.....	ND	2400
Silvex [2,4,5-Trichlorophenoxypropionic acid]	93-72-1	ND	.....	ND	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746-01-6	ND	.....	ND	30
1,2,4,5-Tetrachlorobenzene	95-94-3	ND	.....	ND	2400

TABLE 1 TO § 261.38—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Com- posite value (mg/kg)	Heating value (BTU/lb)	Con- centration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
1,1,2,2-Tetrachloroethane	79-34-5	ND	.....	ND	39
Tetrachloroethylene [Perchloroethylene]	127-18-4	ND	.....	ND	39
2,3,4,6-Tetrachlorophenol	58-90-2	ND	.....	ND	2400
1,2,4-Trichlorobenzene	120-82-1	ND	.....	ND	2400
1,1,1-Trichloroethane [Methyl chloroform]	71-55-6	ND	.....	ND	39
1,1,2-Trichloroethane [Vinyl trichloride]	79-00-5	ND	.....	ND	39
Trichloroethylene	79-01-6	ND	.....	ND	39
Trichlorofluoromethane [Trichloromonofluoromethane]	75-69-4	ND	.....	ND	39
2,4,5-Trichlorophenol	95-95-4	ND	.....	ND	2400
2,4,6-Trichlorophenol	88-06-2	ND	.....	ND	2400
1,2,3-Trichloropropane	96-18-4	ND	.....	ND	39
Vinyl Chloride	75-01-4	ND	.....	ND	39

NOTES:
 NA—Not Applicable.
 ND—Nondetect.
 * 25 or individual halogenated organics listed below.

(c) *Implementation.* Waste that meets the comparable or syngas fuel specifications provided by paragraphs (a) or (b) of this section (these constituent levels must be achieved by the comparable fuel when generated, or as a result of treatment or blending, as provided in paragraphs (c)(3) or (4) of this section) is excluded from the definition of solid waste provided that the following requirements are met:

(1) *Notices.* For purposes of this section, the person claiming and qualifying for the exclusion is called the comparable/syngas fuel generator and the person burning the comparable/syngas fuel is called the comparable/syngas burner. The person who generates the comparable fuel or syngas fuel must claim and certify to the exclusion.

(i) State RCRA and CAA Directors in Authorized States or Regional RCRA and CAA Directors in Unauthorized States.—

(A) The generator must submit a one-time notice to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the comparable/syngas fuel will be burned, certifying compliance with the conditions of the exclusion and providing documentation as required by paragraph (c)(1)(i)(C) of this section;

(B) If the generator is a company that generates comparable/syngas fuel

at more than one facility, the generator shall specify at which sites the comparable/syngas fuel will be generated;

(C) A comparable/syngas fuel generator's notification to the Directors must contain the following items:

(1) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(2) The applicable EPA Hazardous Waste Codes for the hazardous waste;

(3) Name and address of the units, meeting the requirements of paragraph (c)(2) of this section, that will burn the comparable/syngas fuel; and

(4) The following statement is signed and submitted by the person claiming the exclusion or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all waste identified in this notification. Copies of the records and information required at 40 CFR 261.38(c)(10) are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(ii) *Public notice.* Prior to burning an excluded comparable/syngas fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information:

(A) Name, address, and RCRA ID number of the generating facility;

(B) Name and address of the unit(s) that will burn the comparable/syngas fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the comparable/syngas fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; and

(E) Name and mailing address of the Regional or State Directors to whom the claim was submitted.

(2) *Burning.* The comparable/syngas fuel exclusion for fuels meeting the requirements of paragraphs (a) or (b) and (c)(1) of this section applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable CAA MACT requirements:

(i) Industrial furnaces as defined in § 260.10 of this chapter;

(ii) Boilers, as defined in § 260.10 of this chapter, that are further defined as follows:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter or applicable CAA MACT standards.

(iv) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(3) *Blending to meet the viscosity specification.* A hazardous waste blended to meet the viscosity specification shall:

(i) As generated and prior to any blending, manipulation, or processing meet the constituent and heating value specifications of paragraphs (a)(1)(i) and (a)(2) of this section;

(ii) Be blended at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter; and

(iii) Not violate the dilution prohibition of paragraph (c)(6) of this chapter.

(4) *Treatment to meet the comparable fuel exclusion specifications.* (i) A hazardous waste may be treated to meet the exclusion specifications of paragraphs (a)(1) and (2) of this section provided the treatment:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this Chapter; and

(C) Does not violate the dilution prohibition of paragraph (c)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.

(5) *Generation of a syngas fuel.* (i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (b) of this section provided the processing:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter or is an exempt recycling unit pursuant to § 261.6(c) of this chapter; and

(C) Does not violate the dilution prohibition of paragraph (c)(6) of this chapter.

(ii) Residuals resulting from the treatment of a hazardous waste listed

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in subpart D of this part to generate a syngas fuel remain a hazardous waste.

(6) *Dilution prohibition for comparable and syngas fuels.* No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the exclusion specifications of paragraph (a)(1)(i), (a)(2) or (b) of this section.

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

(i) At a minimum, the plan must specify:

(A) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the waste to be analyzed;

(D) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the waste determination, any information prepared by the generator in making such determination.

(ii) The waste analysis plan shall also contain records of the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations

from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating that the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (c)(11) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of a syngas fuel as an excluded waste, a waste analysis plan containing the elements of paragraph (c)(7)(i) of this section to the appropriate regulatory authority. The approval of waste analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the waste analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(8) *Comparable fuel sampling and analysis.* (i) General. For each waste for which an exclusion is claimed, the generator of the hazardous waste must test for all the constituents on appendix VIII to this part, except those that the generator determines, based on testing or knowledge, should not be present in the waste. The generator is required to document the basis of each determination that a constituent should not be present. The generator may not determine that any of the following categories of constituents should not be present:

(A) A constituent that triggered the toxicity characteristic for the waste constituents that were the basis of the listing of the waste stream, or constituents for which there is a treatment standard for the waste code in 40 CFR 268.40;

(B) A constituent detected in previous analysis of the waste;

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste.

NOTE TO PARAGRAPH (c)(8): Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the waste above the exclusion specifications.

(ii) For each waste for which the exclusion is claimed where the generator of the comparable/syngas fuel is not the original generator of the hazardous waste, the generator of the comparable/syngas fuel may not use process knowledge pursuant to paragraph (c)(8)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(2) and (b) of this section have been met.

(iii) The comparable/syngas fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator must demonstrate that:

(A) Each constituent of concern is not present in the waste above the specification level at the 95% upper confidence limit around the mean; and

(B) The analysis could have detected the presence of the constituent at or below the specification level at the 95% upper confidence limit around the mean.

(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with their waste analysis plan developed under paragraph (c)(7) of this section.

(vii) Syngas fuel and comparable fuel that has not been blended in order to

meet the kinematic viscosity specifications shall be analyzed as generated.

(viii) If a comparable fuel is blended in order to meet the kinematic viscosity specifications, the generator shall:

(A) Analyze the fuel as generated to ensure that it meets the constituent and heating value specifications; and

(B) After blending, analyze the fuel again to ensure that the blended fuel continues to meet all comparable/syngas fuel specifications.

(ix) Excluded comparable/syngas fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change the chemical or physical properties of the waste.

(9) *Speculative accumulation.* Any persons handling a comparable/syngas fuel are subject to the speculative accumulation test under § 261.2(c)(4) of this chapter.

(10) *Records.* The generator must maintain records of the following information on-site:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA facility ID number of the person claiming the exclusion;

(B) The applicable EPA Hazardous Waste Codes for each hazardous waste excluded as a fuel; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the hazardous waste and process that generated the excluded fuel, if not the same;

(iii) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the hazardous waste as required under paragraph (c)(8)(i) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (c)(8) of this section;

(vi) If the excluded waste was generated through treatment or blending, documentation as required under paragraph (c)(3) or (4) of this section;

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(vii) If the waste is to be shipped off-site, a certification from the burner as required under paragraph (c)(12) of this section;

(viii) A waste analysis plan and the results of the sampling and analysis that includes the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (c)(11) of this section and also provides for the availability of the documentation to the claimant upon request; and

(ix) If the generator ships comparable/syngas fuel off-site for burning, the generator must retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the comparable/syngas fuel for burning;

(B) The quantity of comparable/syngas fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/

syngas fuel meets the specifications as required under paragraph (c)(8) of this section; and

(E) A one-time certification by the burner as required under paragraph (c)(12) of this section.

(11) *Records retention.* Records must be maintained for the period of three years. A generator must maintain a current waste analysis plan during that three year period.

(12) *Burner certification.* Prior to submitting a notification to the State and Regional Directors, a comparable/syngas fuel generator who intends to ship their fuel off-site for burning must obtain a one-time written, signed statement from the burner:

(i) Certifying that the comparable/syngas fuel will only be burned in an industrial furnace or boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (c)(2) of this section;

(ii) Identifying the name and address of the units that will burn the comparable/syngas fuel; and

(iii) Certifying that the state in which the burner is located is authorized to exclude wastes as comparable/syngas fuel under the provisions of this section.

(13) *Ineligible waste codes.* Wastes that are listed because of presence of dioxins or furans, as set out in Appendix VII of this part, are not eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.

[63 FR 33823, June 19, 1998, as amended at 64 FR 53070, Sept. 30, 1999; 64 FR 63213, Nov. 19, 1999; 65 FR 42302, July 10, 2000; 70 FR 34562, June 14, 2005; 71 FR 40270, July 14, 2006; Re-designated at 71 FR 42949, July 28, 2006]

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) *Prior to processing:* These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) *Storage.* The broken CRTs must be either: