

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL- ]

RIN 2060-AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Rule Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Amendments.

SUMMARY: On April 22, 1994 and June 6, 1994, the EPA issued the National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks. This rule is commonly known as the Hazardous Organic NESHAP or the HON. In June 1994, petitions for review of the April 1994 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised over 75 technical issues and concerns with drafting clarity of the rule.

On August 26, 1996, the EPA proposed correcting amendments to the rule to address the petitioners' issues. Among the proposed amendments were proposed revisions to definitions that apply to wastewater and wastewater treatment and revised control and compliance provisions for wastewater. A new compliance date of April 22, 1999, was

proposed for process wastewater, heat exchange systems, equipment subject to the provisions of §63.149, and maintenance wastewater. The EPA also proposed a separate compliance date for wastewater streams affected by the omission of nitrobenzene from the list of compounds subject to the wastewater provisions. The proposed revisions to the other provisions to the rule also included corrections and clarifications to ensure the rule is implemented as intended. The proposed amendments also included some additional compliance options that would reduce the burden associated with the recordkeeping and reporting requirements of the rule. Today's action takes final action on those proposed amendments.

These amendments to the rule will not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For general questions, contact Dr. Janet S. Meyer, Coatings and Consumer Products Group, at (919) 541-5254 or Mary Tom Kissell, Waste and Chemical Processes Group, at (919) 541-4516. For technical questions on wastewater provisions, contact Elaine Manning,

Waste and Chemical Processes Group, telephone number (919) 541-5499. The mailing address for the contacts is Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. REGULATED ENTITIES AND BACKGROUND INFORMATION

A. Regulated Entities

The regulated category and entities affected by this action include:

<u>Category</u>	<u>Examples of regulated entities</u>
Industry	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR part 63, subpart F.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F and are located at facilities that are major sources as defined in section 112 of the Clean Air Act (CAA). To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have

questions regarding the applicability of this action to a particular entity, consult one of the individuals listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. Background on Rule

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA published in the FEDERAL REGISTER the NESHAP for the synthetic organic chemical manufacturing industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. Readers should see the following FEDERAL REGISTER notices for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); December 12, 1995 (60 FR 63624); February 29, 1996 (61 FR 7716); June 20, 1996 (61 FR 31435); August 26, 1996 (61 FR 43698); and December 5, 1996 (61 FR 64571).

In June 1994, the Chemical Manufacturers Association (CMA) and Dow Chemical Company filed petitions for review of the promulgated rule in the U.S. Court of Appeals for the District of Columbia Circuit, Chemical Manufacturers

Association v. EPA, 94-1463 and 94-1464 (D.C. Cir.) and Dow Chemical Company v. EPA, 94-1465 (D.C. Cir). The petitioners raised over 75 technical issues on the rule's structure and applicability. Issues were raised regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rule. On August 26, 1996, the EPA proposed clarifying and correcting amendments to subparts F, G, H, and I of part 63 to address the issues raised by CMA and Dow on the April 1994 rule.

In the August 26, 1996 document, the EPA committed to taking final action on some portions of the proposed amendments to the rule as soon as possible after the close of the comment period in order to give sources as much lead time as possible. In the December 5, 1996 FEDERAL REGISTER, the EPA took final action on those portions of the proposed amendments that would eliminate the need for filing some implementation plans that would otherwise be due December 31, 1996, and would allow the filing of requests for compliance extensions up to 4 months before the April 1997 compliance date.

Today the EPA is taking final action on the remaining portions of the amendments proposed on August 26, 1996.

C. Public Comment on the August 26, 1996 Proposal

Eighteen comment letters were received on the August 26, 1996 FEDERAL REGISTER document that proposed

changes to the rule. All comment letters received were from industry representatives and trade associations. Most of the comment letters were supportive of the proposed amendments. A few of these comment letters also included suggested editorial revisions to further clarify some aspects of the proposed amendments or to address oversights in the proposed amendments. The EPA considered these suggestions and, where appropriate, made changes to the proposed amendments. The significant issues raised and the changes to the proposed amendments are summarized in this preamble. A memorandum containing the EPA's response to all comments can be found in Docket A-90-19, item number IX-C-1. The response to comments may also be obtained over the Internet at <http://ttnwww.rtpnc.epa.gov> or from the EPA's Technology Transfer Network (TTN). The TTN is a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The service is free, except for the cost of a phone call. Dial (919) 541-5742 for up to a 14,400 bits per second modem. Select TTN Bulletin Board: Clean Air Act Amendments and select menu item Recently Signed Rules. If more information on TTN is needed, contact the systems operator at (919) 541-5384.

#### D. Judicial Review

Under Section 307(b)(1) of the CAA, judicial review of this final action is available only on the filing of a petition for review in the U.S. Court of Appeals for the

District of Columbia Circuit within 60 days of today's publication of this final rule. Under Section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

## II. OVERVIEW OF AMENDMENTS TO RULE

With today's action, the EPA is issuing clarifying and correcting amendments to subparts F, G, H, and I of 40 CFR part 63 that were proposed on August 26, 1996. Readers should refer to the August 26, 1996 FEDERAL REGISTER document for a complete discussion of the background and the proposed changes to the rule. Today's revisions are intended to remove any ambiguity and clearly convey the EPA's intent, to make the rule easier to read and implement, and to increase flexibility for the source.

These amendments include an extension of the existing source compliance date to April 22, 1999 for process wastewater, heat exchange systems, maintenance wastewater, and equipment subject to the provisions of §63.149 and also establish a separate compliance date for wastewater streams affected by the omission of nitrobenzene from table 9 of subpart G. A three year compliance date is being established for process wastewater streams that are subject to control requirements due to the presence of nitrobenzene due to an error in the April 22, 1994 rule. Equipment subject to the other provisions of the rule must be in

compliance by April 22, 1997, unless a compliance extension is granted.

Today's amendments also include the revisions to the wastewater sections of subpart G, §§63.132 through 63.147. As discussed in the August 26, 1996 document, the wastewater sections have been redrafted to improve organizational structure and clarity. The revised wastewater sections reflect the concept that only when water is "discarded" from a process is it "wastewater," and thus subject to the HON wastewater provisions. The revised wastewater sections in subpart G also include provisions that: (1) ensure that streams traveling from one piece of process equipment to another are handled appropriately to avoid emissions to the environment, and (2) ensure that the changes in the wastewater definition do not permit sources to dilute their streams prior to the point the streams are considered wastewater, thus avoiding control requirements. The amendments to the wastewater provisions also include the provisions that would allow a HON source owner or operator to ship waste off-site for treatment. Under these revisions to the rule, the owner or operator choosing not to treat wastewater on-site may only ship to a facility that has certified that it will treat the waste to the standard required by the HON.

In contrast to the significant revisions of the wastewater provisions, only minor changes are being made to



other sections of the rule. In addition to removing ambiguity and increasing flexibility for the source, some revisions reduce the reporting and recordkeeping burden for sources. The reporting and recordkeeping revisions include changes that (1) reduce the number of copies of reports that must be submitted to the EPA and the States, and (2) provide for alternative, less frequent recordkeeping of monitoring data where sources are able to demonstrate that no violations have occurred for prolonged stretches of time.

### III. SUMMARY OF MAJOR COMMENTS AND CHANGES TO THE PROPOSED AMENDMENTS TO THE RULE

#### A. Applicability of Rule to Storage Vessels Located in a Tank Farm or Marine Terminal

In the August 26, 1996 document, the EPA proposed amendments to clarify the applicability of the rule to storage vessels located in tank farms and marine tank farms. Due to an oversight, the provisions currently in §63.100(g) of subpart F of the April 1994 rule did not include instructions regarding allocation of tanks in remote locations, such as tank farms. The proposed amendments, §63.100(g)(3), provided explicit procedures to be followed to assign the storage vessels to a process and then to determine the applicability of the rule.

Most commenters were supportive of the proposed amendment. However, one commenter requested clarification of the difference between a remote storage tank owned by a

chemical process facility and a remote storage tank owned by a for-hire, bulk liquid terminal. The commenter thought the proposed amendments to §63.100(g) could inappropriately cause a remote storage tank owned by a for-hire, bulk liquid terminal to be considered subject to the HON. The commenter requested that the rule specifically state that remote storage vessels at independent tank farm distribution facilities are not subject to the rule.

The EPA agrees with the commenter that the focus of this rule is on chemical manufacturing plants and not on for-hire terminals that store products for distribution. The EPA believes that the commenter's concern arose because the preamble description of this proposed change was not sufficiently clear that this assignment procedure was for allocation of storage vessels at remote locations within the plant site. The EPA believes that when the provisions of §63.100 (g)(3) are considered within context of all the applicability criteria in subpart F it is clear that this proposed assignment procedure for storage vessels in tank farms does not extend the applicability to for-hire terminals that are not part of the major source. For the amendments to affect any specific storage vessel (or transfer rack or distillation unit), it would have to be part of a chemical manufacturing process unit at a major source subject to the rule. In order for a storage vessel (or transfer rack or distillation unit) to be part of a

major source, it would have to be (among other things) under the control of the owner or operator of the chemical manufacturing process unit and located within the same contiguous area as the chemical manufacturing process unit. A storage vessel owned by a for-hire bulk liquid terminal could only be subject to the HON if it was under the control of the owner or operator of the HON chemical manufacturing process unit, and contiguously located, and therefore part of the same major source. The EPA believes that the applicability of the rule is clear and it is not necessary to add explicit language to the rule to specify that storage vessels at for-hire terminals that are not part of the major source are not subject to the rule.

B. Revision to Table 2 of Subpart F List of Regulated Organic Hazardous Air Pollutants

In the August proposal, the EPA proposed to revise table 2 of subpart F to list 21 specific compounds that are to be regulated as polycyclic organic matter (POM) in the HON. The specific compounds listed were identified as being consistent with the historical working definition of POM, which emphasizes emissions from incomplete combustion and pyrolysis processes (49 FR 31680). This change was proposed to address requests for clarification of the scope of the term POM in the HON.

Several commenters contended that 1,2-naphthylamine sulfonic acid, 1,4-naphthylamine sulfonic acid,  $\alpha$ -naphthol,

and  $\beta$ -naphthol should not have been included on the list of specific compounds proposed to be added to table 2 to replace the hazardous air pollutants category POM. These commenters all asserted that these compounds do not meet the historical working definition of POM, as claimed by the EPA in the August 26, 1996 document. In support of that view, the commenters stated that, in 1992, the EPA acknowledged the potential problems with the statutory definition of POM and stated that, although the definition would remain, the EPA would emphasize emissions from combustion and pyrolysis activities (letter from John Seitz to Larry Thomas, The Society of the Plastics Industry, March 3, 1992). The commenters also believe that, in 1994, the EPA announced a new POM definition in a response to comments Background Information Document (EPA-453/R-94-003d) for the HON that states:

Polycyclic organic matter is generally formed or emitted during thermal processes including 1) incomplete combustion, 2) pyrolysis, 3) the volatilization of fossil fuels or bitumens, or 4) the distillation or thermal processing of non-fossil fuels. (HON BID, Vol. 2D, p.4)

The commenters believe that these four compounds do not meet what they describe as the revised definitions of POM since the compounds are not produced by combustion processes and are not used in the types of processes intended to be covered by this listing. The commenters recommended that these specific compounds not be added to table 2 of subpart F. One commenter also argued that the EPA should

follow the listing process in section 112(b) of the CAA if the EPA wished to list these specific compounds as hazardous air pollutants.

The EPA does not agree with the commenter's that these four compounds do not meet the historical working definition of POM and thus, should not be added to table 2 of subpart F. The term POM, as defined in section 112(b) of the CAA, includes organic compounds with more than one benzene ring and which have a boiling point greater than or equal to 100° C. This definition is very broad and does not limit the term to the group of compounds which the EPA believes are principally responsible for mutagenicity and carcinogenicity in humans and animals. This arises because the current statutory definition includes any compound with more than one benzene ring and is not limited to fused ring compounds. Neither the March 1992 Seitz letter, nor the HON Background Information Document amend the statutory definition of POM. The August 26, 1996 proposal, to list 21 specific compounds on table 2 of subpart F instead of listing POM generally, is consistent with the molecular structures of concern in the historical definition. Specifically, the 21 compounds have molecular structures with two or more fused rings at least one of which is benzenoid in structure. These chemicals were identified as chemical products produced by the chemical manufacturing

processes considered to be within the definition of the SOCOMI source category. Whether these compounds were produced by extraction from materials produced by pyrolysis processes or derived from petroleum feedstocks, was not a consideration in the listing. The EPA does not agree with the commenter's interpretation that compounds can be considered POM only if formed by incomplete combustion and/or pyrolysis operations; the statutory definition of POM is not limited in that fashion.

The reason for including these specific compounds on table 2 instead of listing POM generally was to ensure that emissions of these compounds from the chemical manufacturing process unit producing these chemicals would be subject to the requirements of the rule. All of these compounds meet the definition of POM in section 112(b) of the CAA. Specification of these compounds on table 2 will not result in application of the rule to sources using these chemical products to produce other products. It will require that emissions of these substances from sources subject to this rule to be subject to the requirements of the rule. Before today's changes to table 2 of subpart F, emissions of the 21 substances were subject to the requirements of the rule. Today's changes merely clarify what the substances are rather than referring to POM generally.

Finally, the EPA disagrees with the commenter who argued that the EPA should follow the listing process in

section 112(b) to list these compounds as hazardous air pollutants. The specific hazardous air pollutants added to table 2 meet the definition of POM in section 112(b) and therefore are already subject to the requirements of section 112 without further listing action.

One commenter also asserted that listing 1,2-naphthylamine sulfonic acid and 1,4-naphthylamine sulfonic acid as Hazardous Air Pollutants has potential consequences under other statutes. The commenter noted that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 101(14)(e) incorporates by reference any hazardous air pollutant listed under the CAA. This, in turn, establishes Federal authority to respond to releases or threats of releases of hazardous substances and triggers notification requirements of releases to the National Response Center above the Reportable Quantity (RQ) and liability for costs associated with cleanup and any natural resources damages resulting from the release. Another possible result is under section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) that the owner or operator of a facility from which an RQ or more of a CERCLA hazardous substance has been released must immediately notify state and local emergency response authorities.

The EPA does not agree with the commenter's assessment of the potential consequences of the proposed listing of the

21 compounds in table 2 of 40 CFR 63, subpart F. The commenter's opinion that the listing of the chemicals of interest in table 2 in place of POM generally triggers new CERCLA and EPCRA reporting requirements is incorrect, as the requirements were effective upon enactment of the CAA by virtue of CERCLA section 101(14) and, in turn, section 102(b). The POM category was one of five broad generic categories of CAA section 112 hazardous air pollutants codified as a hazardous substance pursuant to CERCLA section 101(14) in 40 CFR 302.4. Section 101(14) of CERCLA states that the term "hazardous substance" includes "any hazardous air pollutant listed under section 112 of the Clean Air Act." Thus, the CAA categories automatically became hazardous substances under CERCLA when listed as hazardous air pollutants under Section 112 in 1990. In the June 12, 1995 FEDERAL REGISTER (60 FR 30926), the EPA stated that "All substances within the [CAA section 112 hazardous air pollutants] categories, as well as the categories themselves, are CERCLA hazardous substances" and that "CERCLA section 102(b) provides that an RQ of one pound applies to hazardous substances (which include the CAA hazardous air pollutants) until this RQ is adjusted by regulation. Therefore, the section 112 listing of POM in the CAA automatically triggers a one pound RQ for any chemical which falls within the section 112(b) definition of POM. Issuance of a MACT standard requiring control of



specific hazardous air pollutants has no additional effect on CERCLA coverage.

C. Compliance extension for new sources

The August 26, 1996 proposal included an extension of the compliance date to April 22, 1999 for heat exchange systems, maintenance wastewater, equipment subject to §63.149, and process wastewater for existing sources. This proposed change was in §63.100(k)(2)(ii) of the proposed rule.

Several commenters suggested that the compliance schedule should be extended for new sources to April 22, 1999 or initial startup, whichever is later. The commenter's did not state the basis for their belief that more than 2 additional years should be provided for new sources.

While the EPA believes that, in some limited instances new sources may need more time for compliance than was provided in the April 1994 rule, the EPA does not believe that 2 years is justified. In today's final rule the EPA has provided that, in general, new sources that commenced construction or reconstruction up to the date of proposal of the August 1996 amendments continue to have a compliance date of April 22, 1994, (the date of the original final rule) or start-up, whichever is later.

However, some exceptions have been added. Commenters had requested more compliance time for heat exchange

systems, maintenance and process wastewater streams, and equipment subject to §63.149 (those pieces of equipment for which a new, later compliance date has been set with respect to existing sources). In response to this request the EPA has decided that heat exchange systems, maintenance wastewater streams, process wastewater streams, and equipment subject to §63.149 that are part of new sources on which construction or reconstruction commenced before proposal of the August 1996 amendments will have a compliance date that is the later of start-up or 180 days from the date of today's final rule.

These exceptions will provide new sources that commenced planning for, or actually achieved compliance with, the April 22, 1994 rule, 6 months more time to allow any minor adjustments necessary to comply with the provisions of today's final rule applicable to the heat exchange system, maintenance and process wastewater streams, and equipment subject to §63.149.

In addition, today's final rule provides that new sources upon which construction or reconstruction commenced after the August 1996 proposal, must be in compliance upon the later of initial start-up or the date of today's final rule.

The EPA believes that 180 days from today is ample time for any new sources that are already in compliance with the April 1994 final rule to make the necessary adjustments to

their recordkeeping and reporting procedures to ensure compliance with today's rule. Those sources that commenced construction after December 31, 1992, but have not yet reached start-up will be able to adjust their start-up date to allow time to reach compliance as will any new sources commencing construction after the August 26, 1996 proposal.

D. Delay of repair for heat exchangers

The August proposal included new §63.104 requirements for monitoring heat exchange systems for leaks of process fluids into cooling water. The proposed §63.104 would replace the existing provisions in §63.104 of subpart F. The revisions were proposed to address issues with the existing provisions related to the availability of monitoring methods with sufficient analytical sensitivity, lack of flexibility in some of the requirements, and the burden associated with the monitoring requirements. The proposed §63.104 also included revisions to the delay of repair provisions to allow delay until the next shutdown if a shutdown is planned within 2 months of determination that delay of repair is necessary. The proposed revisions to §63.104 also provided that repair may be delayed up to a maximum of 120 days if the necessary parts or personnel were not available. These new provisions would replace the provisions in the April 1994 rule which only allows delay of repair when it can be demonstrated that immediate shutdown for repair would create more emissions than the emissions

that would result from delaying repair of the leaking heat exchanger until the next shutdown. In the August 26, 1996 document, it was explained that the proposed revisions to the delay of repair provisions of the rule were being made to make these provisions workable and to minimize debate over modeling of emissions from heat exchanger systems.

Several commenters objected to this change in the delay of repair provisions in §63.104. The commenters argued that it is inappropriate to require an unscheduled shutdown if it can be demonstrated that greater emissions would result than would occur if the leak were repaired at the next scheduled shutdown. The commenters thought that this change was an unintended result of other changes to the wording of the provision.

As a result of this comment, the EPA reconsidered the circumstances where delay of repair would be appropriate and the approach used to develop an enforceable provision. Based on further examination of situations that might arise in a facility subject to the standard, the EPA concluded that §63.104(e)(2) could be revised to allow delay of repair in situations where greater emissions would result than would occur if the leak were repaired at the next scheduled shutdown if the procedure for calculating emissions were specified in the rule. The revised §63.104(e)(2) includes delay of repair provisions for cases where the maximum potential emissions from the leaking heat exchanger are less

than the emissions that would result from an unscheduled shutdown. The proposed 120 day maximum delay due to unavailability of parts or personnel to effect the repair is also retained in the final provisions. The EPA believes that the added provision will address cases involving low flow rate heat exchangers that can not be isolated from the process and where process unit shutdowns may result in substantial emissions. The EPA believes that the revised §63.104(e)(2) provides the flexibility needed while maintaining the enforceability of the provision.

E. Wastewater issues

1. Point of determination

In the August 26, 1996 proposal, the EPA proposed to revise the wastewater provisions to base the determination of applicability of control requirements to a wastewater stream on its characteristics at the point where the wastewater stream exits the last recovery device instead of at the point of generation (POG). The new location for determining the characteristics of a wastewater stream was termed the point of determination (POD) to distinguish it from the POG concept used in other air rules for waste and wastewater such as the Benzene Waste NESHAP. This proposed revision was one of several changes proposed to address problems with the clarity and structure of the wastewater provisions in the April 1994 rule.

The public comment on the proposal was supportive of the new POD concept. Therefore, the proposed revision changing from a POG approach to the POD approach is being incorporated into the final rule without revision. However, some public inquiries on the proposal also indicated that confusion exists regarding some details of the concept. Specifically, some readers have mistakenly interpreted POD by confusing the meaning of "recovery device" and "treatment process." This section of the preamble sets forth the EPA's intent and emphasizes that key definitions and provisions should be used together to understand and correctly implement the POD concept in this rule.

The EPA's intent in developing the POD approach was to have a decision criterion that is replicable and clearly specifies the location for evaluation of a wastewater stream for the purposes of control. All equipment prior to the POD is considered to be part of the process and equipment downstream of the POD is not considered to be part of the process. The POD is defined as each point where process wastewater exits the chemical manufacturing process unit. To understand the POD approach, other portions of the rule must be understood, especially the definitions of wastewater, recovery device, and treatment process and the provisions in §63.149.

"Wastewater" is defined, inter alia, as water that is discarded from a chemical manufacturing process unit. Under

the revised approach for defining wastewater, a stream does not become wastewater until it exits the last recovery device. At that point, because the stream is no longer being processed or used, it is considered to be discarded.

"Recovery device" is defined as an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value, use, or reuse or for sale for one of these purposes.

A "treatment process" is defined in the HON as a specific technique that removes or destroys organics in a wastewater stream or residual. Examples of treatment processes are a steam stripper (which separate the organic material from the water) and a biological treatment process (which destroys the organic compounds).

The EPA recognizes that the same categories of equipment, such as oil-water separators or organic removal devices such as decanters or strippers, may be recovery devices or treatment devices depending upon the specific application in a particular process' operations. To determine whether a particular item of equipment should be considered a recovery device or a treatment process, it is necessary to consider the subsequent utilization or disposition of the materials that pass through the item of equipment. If the recovered materials are then used for the same general purpose for which chemicals are utilized within the facility (i.e., used for the chemical properties of the

material or for use as a fuel), then the equipment would be considered a recovery device. If the material is not recovered for use, reuse, or fuel value or for sale for use, reuse, or fuel value (under normal circumstances), the equipment can not be considered a recovery device. For example, an organic water separator, such as a steam stripper could not be considered to be a recovery device if the separated organic material is later sent to an incinerator for disposal. However, if the separated organic material were used in a process or incorporated into product, the steam stripper would be considered part of the process.

In developing the POD approach, the EPA assumed that organic hazardous air pollutants containing fluids within the process would be managed in closed systems to minimize losses of a recoverable material. The EPA based this assumption on information provided by industry representatives and the EPA's experience with the chemical industry. The provisions in table 35 of subpart G and the new §63.149 were designed to ensure that conveyance and handling of organic hazardous air pollutants containing process fluids would be handled in a manner consistent with the requirements for wastewater streams subject to control.

The EPA considers the POD approach as appropriate for this rule because the HON addresses the other emission points in the chemical manufacturing process unit. The EPA



does not believe that the POD approach would be appropriate for other rules that are not as comprehensive in the coverage of emission points. For example, the POD concept would not be appropriate in cases where it is known that other emission points would not be subject to any control requirements.

2. Clarification of safety relief device provisions for waste management units

The August proposed revisions to §63.132 included provisions to allow waste management units to be equipped with pressure relief devices needed for safety purposes, §63.132 (a)(2)(i) and (b)(3)(i). Although no comments were received on these proposed provisions, the EPA has received inquiries from some industry representatives and consultants requesting clarification of the intent of these provisions. The inquiries concerned whether these provisions prohibit the use of pressure-vacuum vents on wastewater tanks storing wastewater streams or whether these provisions would allow venting of emissions to the atmosphere of wastewater tanks storing Group 1 wastewater streams.

The intent of the pressure relief valve provisions in §63.132 (a)(2)(i) and (b)(3)(i) is to provide for safety releases in emergency situations only. These provisions provide that a pressure relief device on waste management units is allowed "provided the pressure relief device is not used for planned or routine venting of emissions." These

provisions should not be interpreted as providing for routine venting of emissions from waste management units.

Neither should these provisions be interpreted as prohibiting pressure-vacuum vents on fixed roof wastewater tanks allowed for tanks storing wastewater streams with a maximum true vapor pressure of less than: (1) 13.1 kPa if the tank capacity is greater than or equal to 75 m<sup>3</sup> but less than 151 m<sup>3</sup>; or (2) less than 5.2 kPa if the tank capacity exceeds 151 m<sup>3</sup> as specified in §63.133(a)(1). The rule requires that tanks meeting these criteria be equipped with a fixed roof and allows the roof to be equipped with openings necessary for operation, inspection, and maintenance. There is no requirement to control emissions from tanks meeting these criteria.

### 3. Issues associated with biological treatment processes

The August proposal included provisions that provided easier compliance demonstration options for well-mixed activated sludge systems that are used to control readily biodegraded compounds. In this proposed change to the April 1994 rule, the compounds listed in table 9 of subpart G were divided into three lists. In the proposal, a performance evaluation would not be required for activated sludge systems that met the definition of enhanced biological treatment system and the unit was controlling wastewater streams that contained only list 1 compounds.

The proposed revisions to Appendix C still required a performance demonstration for activated sludge systems used to treat a combination of list 1 and list 2 and/or list 3 compounds.

All comments on the proposed compliance demonstration provisions for biological treatment systems were supportive of this approach. However, based on conversations with industry representatives, the EPA has learned that some people are misinterpreting the proposed definition of "enhanced biological treatment system or biological treatment process." This section of the preamble sets forth the EPA's intent and reiterates the basis for the proposed compliance demonstration exemption for certain biological treatment units. Because of the potential for misinterpretation of the term, a clarifying change has been made to the proposed definition for "enhanced biological treatment system or enhanced biological treatment process."

The proposed revisions to the rule defined an enhanced biological treatment system as an aerated treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical

agitation. The EPA's intent in defining the enhanced biological treatment system was to reflect the modeling of an activated sludge system with a well-mixed biological treatment unit that was used to develop the three lists of compounds in table 36. (A well-mixed or completely mixed system is a biological treatment unit where particles entering the tank are dispersed immediately throughout the tank and the system has uniform characteristics (Docket A-90-23, item VII-B-8).) The requirement to recycle biomass indicated an activated sludge system. The requirement to have the biomass suspended and aerated indicated an aerobic biological unit. The phrase "throughout each aeration unit" was intended to mean that the unit was well-mixed. It is this phrase that is being misinterpreted or overlooked by readers. Therefore, the EPA has slightly revised the definition for enhanced biological treatment systems in today's rule to help clarify the intent. In today's rule the second sentence of the definition reads, "the mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter homogeneously distributed throughout each aeration unit." The additional phrase, "homogeneously distributed," was added to clarify the EPA's intent to define a uniformly well-mixed biological treatment unit. The EPA believes this revision clarifies the original intent and does not alter the meaning of the term.

An example of a system that would meet the enhanced biological treatment system definition would be a conventional well-designed, operated, and maintained activated sludge system. The biological treatment unit of this enhanced biological treatment system would contain a homogeneous mixture or, in other words, the biological treatment unit would have the same concentration, mixed liquor volatile suspended solids (MLVSS), and dissolved oxygen throughout the vessel where the biological reactions occur.

A plug-flow system is an example of a biological treatment system that does not meet the HON enhanced biological treatment system definition. Plug-flow systems typically occur in long tanks with a high length-to-width ratio in which longitudinal dispersion is minimal or absent (Docket A-90-23, item VII-B-8). Plug-flow systems are not considered acceptable units for the compliance demonstration exemption because they may tend to have higher air emissions at the front of the system where the concentration is higher. This is not to say that a well operated plug-flow system would not be an acceptable biological treatment system; however, the EPA was not as confident that the parameters required to operate an acceptable plug-flow system could be defined. These systems are required to demonstrate compliance through use of the procedures in Appendix C. Appendix C has been revised to state that the

calculation procedures (forms) in the appendix are for well-mixed systems and to include suggestions for ways to address systems that are not uniform well-mixed systems.

F. Miscellaneous changes

The EPA also made a number of clarifying changes to several sections of the August 1996 proposal. Examples of provisions that were revised to clarify requirements include §63.145(f)(5), §63.146(d)(1), and the oxygen control system requirements in section 2.1.6 of Methods 304A and 304B. The EPA believes that these revisions clarify the original intent and do not alter the effect of the rule.

In addition to clarifying changes to the August 1996 proposed amendments to the rule, the EPA also made minor revisions to provide consistency with other similar provisions elsewhere in the rule or in other rules. The EPA slightly revised the provisions in §63.144(b)(5)(i)(C) to provide consistency between the requirements for use of alternative methods allowed in the HON with similar requirements in 40 CFR part 265, subpart CC (61 FR 59932). One of the changes is to remove a requirement to perform the initial calibration of the analytical system with the compounds for which the analysis is being conducted for Methods 624 and 625. This requirement is already addressed in the procedures outlined in Methods 624 and 625. The other change is to reference a procedure that may be used to add compounds to a method's published list of approved

compounds for Methods 624, 625, 1624, and 1625. The record retention requirements for the heat exchanger monitoring plan in §63.104(c) were revised from the requirements in §63.103(c) to specify requirements that are similar to the proposed requirements in §63.152(g)(1)(vi)(D). The revised provisions require that the owner or operator maintain, at all times, the monitoring plan that is currently in use and retain copies of the most recently superseded plan for 5 years. This revision was made to ensure that there could be no misunderstanding that copies of the current plan must be maintained regardless of the duration of the retention period.

G. Technical Corrections

The following amendments are minor technical corrections that were not part of the August 26, 1996 proposal. These changes are being made as part of today's action as a matter of efficiency in rulemaking. Furthermore, these changes are noncontroversial and do not substantively change the requirements of the rule. By promulgating these technical corrections directly as a final rule, the EPA is foregoing an opportunity for public comment on a notice of proposed rulemaking. Section 553(b) of title 5 of the United States Code and Section 307(b) of the CAA permit an agency to forego notice and comment when "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules

issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The EPA finds that notice and comment regarding these minor technical corrections are unnecessary due to their noncontroversial nature and because they do not substantively change the requirements of the HON. The EPA finds that this constitutes good cause under 5 U.S.C. §553(b) for a determination that the issuance of a notice of proposed rulemaking is unnecessary.

1. Removal of Caprolactam from table 2 of 40 CFR part 63, subpart F

On June 18, 1996 (61 FR 30816), the EPA took final action deleting caprolactam from the list of hazardous air pollutants under in section 112(b) of the CAA. Accordingly, as caprolactam is no longer subject to regulation under section 112(d) of the CAA, the EPA is removing caprolactam from table 2 of 40 CFR part 63, subpart F.

2. Correction of §63.174 (h)(2)

On June 20, 1996 (61 FR 31440), the EPA amended §63.174(h)(1) of subpart H to replace references to "glass or glass-lined connectors" with the terminology "ceramic or ceramic-lined connectors." This change was made to use the more generic terminology for these connectors (60 FR 18074). The need to amend §63.174(h)(2) was overlooked at the time these amendments were issued. In today's action, the EPA is revising §63.174(h)(2) to use the terminology "ceramic or



ceramic-lined connectors" instead of "glass or glass-lined connectors" This change will remove an inconsistency in the drafting of §63.174(h).

#### IV. ADMINISTRATIVE REQUIREMENTS

##### A. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the rule under the Provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0282. An Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1414.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington DC 20460 or by calling (202) 260-2740.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The changes included in this rule will have no impact on the information collection burden estimates previously made. The changes consist of new definitions, alternative test procedures, and clarifications of requirements. The changes are not additional requirements. Consequently, the ICR has not been revised for this rule.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866, and a regulatory impact analysis was prepared. The amendments issued today clarify the rule and correct structural problems with the drafting of some sections. The amendments also provide additional flexibility for sources and provide opportunities to reduce the recordkeeping and reporting

burden. These amendments do not add any new control requirements. Therefore, this regulatory action is considered "not significant."

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. See the April 22, 1994 FEDERAL REGISTER (59 FR 19449) for the basis for this determination. The changes to the rule remove a reporting requirement and provide additional time to request compliance extensions. Therefore, the changes do not create a burden for any of the regulated entities.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's FEDERAL REGISTER. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate or to the private sector, of \$100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Carol M. Browner  
Administrator