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Environmental Protection
Agency

Solid Waste and
Emergency Response
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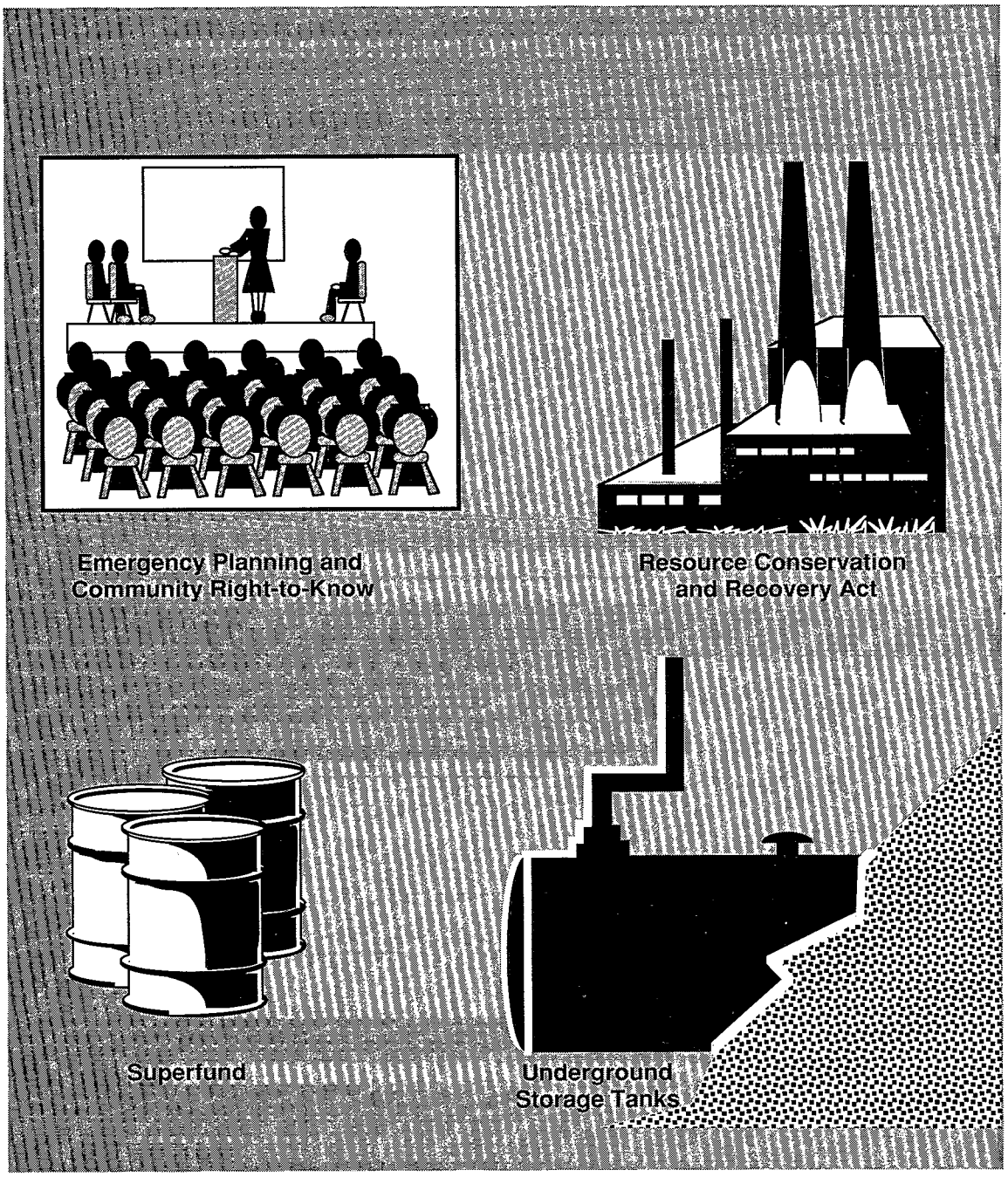
March 1995

EPA

Inside the Hotline

A Compilation of 1994 Monthly Hotline Reports



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This document is prepared by Booz, Allen & Hamilton and submitted in support of Contract No. 68-W0-0039

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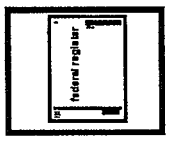

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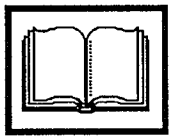

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INTRODUCTION

The Resource Conservation and Recovery Act (RCRA)/Underground Storage Tanks (UST), Superfund, and Emergency Planning and Community Right-to-Know Act (EPCRA) Hotline was established to respond to inquiries from the regulated community and the public concerning waste management, disposal, and emergency planning and response regulations. In addition, the Hotline serves as point of contact for the Radiation Sites Cleanup Program and the risk management program under the Clean Air Act §112(r). The Hotline also functions as a referral point on the availability and distribution of program related documents and published materials.

This document is a compilation of Questions and Answers and Federal Register summaries from individual Monthly Hotline Reports for the period of January to December 1994. It is divided into three parts: Questions and Answers, Federal Register summaries, and Indices to the questions, according to subject matter, regulatory and statutory citations.

It is important that the reader understand the purpose and limitations of the information in this document. Neither the questions nor the Federal Register summaries are intended to fully represent or be used in place of the regulations. This document can be used to explore the application of the regulations in different scenarios or to shed light on complex issues. For an understanding of the actual regulatory requirements in any given situation, the reader must consult the appropriate sections of Title 40 of the Code of Federal Regulations (CFR), pertinent Federal Registers and EPA guidance documents, as well as relevant State regulations.

AVAILABILITY

This document, *Inside the Hotline: A Compilation of 1994 Monthly Hotline Reports*, is available for purchase from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, 1 (800) 553-6847 or (703) 487-4650. The NTIS Order No. is: PB95-179 388

Other Hotline publications are also available from NTIS. Individual Monthly Hotline Reports from 1982 up through the current report and Monthly Hotline Report subscriptions are available, as well as the following:

Inside the Hotline: A Compilation of 1993 Monthly Hotline Reports	PB93-127 966
Inside the Hotline: A Compilation of 1992 Monthly Hotline Reports	PB93-159 572
Inside the Hotline: A Compilation of 1991 Monthly Hotline Reports	PB92-131 390
Index to the Monthly Hotline Report Questions (June 1982 to December 1994)	PB95-179 396

On-Line Availability

The Monthly Hotline Report Questions and Answers are also available for downloading at no charge from EPA's Cleanup Information BBS (CLU-IN). CLU-IN can be accessed via modem at (301) 589-8366 or via the Internet through the Fedworld.gov gateway. The systems operator for CLU-IN can be reached at (301) 589-8368 to provide help with downloading.

The complete text of the 1994 Monthly Hotline Reports may be accessed via the Internet using a gopher. From the EPA Core Server at gopher.epa.gov, follow this pathway: EPA Offices & Regions --> Office of Solid Waste & Emergency Response --> OSW (RCRA) --> RCRA: General --> RCRA/UST, Superfund & EPCRA Hotline Reports --> 1994 Hotline Reports.

PART 1: QUESTIONS AND ANSWERS

This section contains a compilation of all the questions and answers from individual Monthly Hotline Reports for the period of January to December 1994. The questions in these reports arise from actual Hotline calls. While the number of questions represent only a small fraction of the total questions received, they do represent commonly asked or significant questions received by the Hotline. During 1994 the Hotline responded to over 200,000 questions regarding EPA regulations, programs, guidance documents, and other related matters. Of the 225,717 questions received, over two thirds of the questions concerned regulatory information and nearly one quarter were requests for EPA documents. Seven percent of the queries were not within the Hotline's purview to answer and were referred to an appropriate information source. Figure 2 breaks down the questions by program area. The RCRA program received the highest number of questions, nearly 55 percent. The number and type of questions in this report reflect the percentages cited in Figure 2.

The questions and answers have undergone EPA technical and legal review and often reference other pertinent sources of information such as CFR citations, Federal Register notices, and Agency memoranda. These explanations and examples of regulatory application are for informational purposes only, and do not represent the issuance of formal policy or in any way affect the implementation of the regulations.

Keywords are provided in the left-hand margin at the beginning of each question. The month the question appeared in the Monthly Hotline Report is cited at the end of the entry. The questions in this section are grouped by EPA program area, then further grouped under broad, general regulatory areas and titles. To pinpoint a subject or topic more specific than the general regulatory area headings, please use the Indices in Part 3.

Figure 1*
Questions by Type

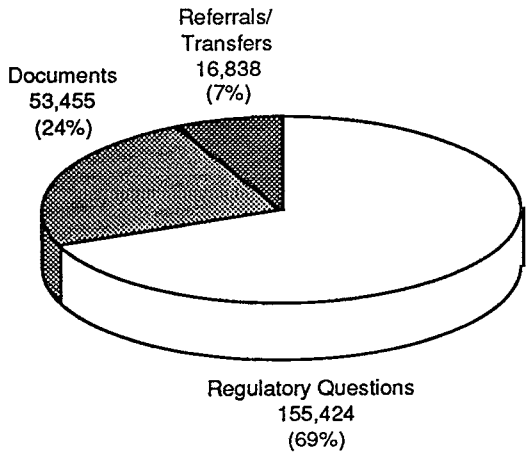
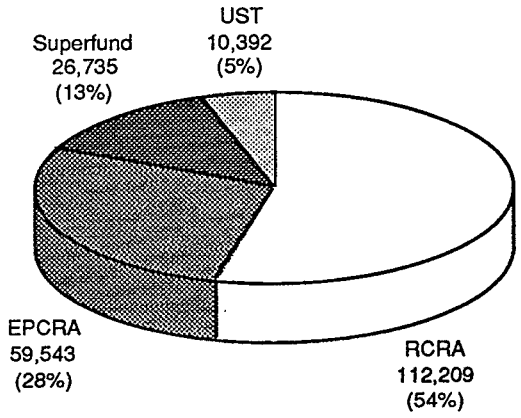


Figure 2**
Questions by Program



*Based on 225,717 questions received during 1994.
**Excludes 16,838 referrals and transfers made to other information sources.

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

Financial Assurance

"Financial Assurance Cost Adjustments On a Quarterly Basis"

Key Words:

Cost adjustment; financial assurance; implicit price deflator

QUESTION: The financial assurance regulations of §§264/5.142(b) require the owner/operator of a TSDF to annually adjust closure and post-closure costs. For a facility adjusting costs via implicit price deflator (IPD), the cost adjustments must be made within 60 days prior to the anniversary of the establishment of the facility's financial assurance (or within 30 days after the close of a facility's fiscal year for owner/operators using the financial test or corporate guarantee). If a facility's anniversary date of financial assurance (or fiscal year) does not coincide with the issuance of the annual IPD, how should the facility adjust its costs?

ANSWER: If a facility's financial assurance anniversary date or fiscal year does not coincide with the issuance of the annual IPDs, the owner/operator may use the latest IPD (for example, if a facility must update their financial assurance in February of 1994, the facility may use the 1992 annual IPD, despite the time lag). The U.S. Department of Commerce usually publishes the annual IPD based on Gross National Product (GNP) in March, and the Gross Domestic Product (GDP) IPDs in February; the owner/operator may use either figure. Alternatively, the owner/operator may use quarterly IPD figures published by the Department of Commerce, obtaining the inflation factor by dividing the current quarterly IPD by the IPD for the same quarter in the previous year (e.g., divide first quarter 1994 by first quarter 1993). If a facility's anniversary date or fiscal year does not coincide with the issuance of the annual IPD, the facility may use the most current annual or quarterly IPD, however owner/operators must be consistent in their use of either annual or quarterly IPDs to calculate the inflation factor. Some owner/operators may be required by their state regulations to update financial assurance cost estimates on a quarterly basis. **(June 1994 Hotline Monthly Report)**

"GNP v. GDP for Cost Adjustments Under RCRA"

Key Words:

Cost adjustment; financial assurance; implicit price deflator

QUESTION: The RCRA financial assurance regulations at §§264/5.142(b) require the owner or operator of a TSDF to provide financial assurance to cover closure and post-closure costs. The regulations require the owner or operator to calculate closure and post-closure cost estimates and adjust them annually by either recalculating the cost estimate in current dollars, or by multiplying the previous estimate by an inflation factor. The inflation factor is calculated by dividing the current Implicit Price Deflator (IPD) by the previous IPD. For those owner/operators who choose this method, must

"GNP v. GDP for Cost Adjustments Under RCRA" (cont'd)

the inflation factor be calculated using the IPD based on Gross National Product (GNP), or may the IPD based on Gross Domestic Product (GDP) be used instead?

ANSWER: Although §§264/5.142(b) specifies using an IPD based on GNP, EPA allows owners/operators to update cost estimates using the annual IPD based on GDP. The IPD based on GDP produces similar results to the IPD based on GNP, however, the IPD based on GDP is available to owners/operators two months before the IPD based on GNP. The IPD based on GDP was not available at the time this regulation was issued. When financial assurance regulations were originally promulgated, the Department of Commerce used GNP figures to calculate the IPD, but in recent years has favored GDP as a basis for the IPD because the data better represent national output. The IPD is a measure of the change in the relative nominal value of a dollar due to inflation as well as to changes in the composition of GNP or GDP. Because changes in inflation will affect the value of a dollar, IPDs are used to accurately compare costs over time. Whichever type of deflator is used, be it the IPD based on GNP or GDP, the owner/operator must use only that type for all cost estimates and adjustments, since each deflator is based on different data. An owner/operator may choose to switch deflators, but must adjust previous cost estimates accordingly. Annual IPDs based on GNP are usually published by the Department of Commerce each March; annual IPDs based on GDP are published each January. In the interest of maintaining as accurate records as possible, the Department of Commerce reviews IPDs for the previous three years each August, making any changes to previous figures as necessary. Facilities' cost adjustments should reflect as soon as practicable any changes to previous IPDs as a result of this review. Annual IPDs since 1987 are as follows:

	GNP	GDP
1987	100.0	100.0
1988	103.9	103.9
1989	108.5	108.5
1990	113.2	113.3
1991	117.7	117.7
1992	121.1	121.1
1993	124.1	124.2

(June 1994 Monthly Hotline Report)

Generator Requirements

"Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste Recycling Facilities"

Key Words:

Conditionally exempt small quantity generators (CESQGs); recycling facilities

QUESTION: Conditionally exempt small quantity generators (CESQGs) of hazardous waste must ensure delivery of their wastes to appropriate treatment, storage, recycling, or disposal facilities (see 40 CFR §§261.5(f)(3) and 261.5(g)(3)). Under 40 CFR §§261.5(f)(3)(v) and 261.5(g)(3)(v), one option CESQGs have for managing their waste is sending it to a facility which beneficially uses or reuses waste; legitimately recycles or reclaims waste; or treats waste prior to its beneficial use, reuse, legitimate recycling or reclamation. In order to be eligible to receive CESQG waste, must such recycling facilities comply with any federal or state permitting, licensing, or registration requirements?

ANSWER: Recycling facilities meeting the criteria of 40 CFR §§261.5(f)(3)(v) and 261.5(g)(3)(v) need not be permitted, licensed, or registered by EPA or the state in order to receive CESQG waste. While individual states may rule on the legitimacy of such CESQG waste recycling operations and may impose more stringent requirements such as permitting, federal regulations do not require any formal approval of a recycler in order for CESQGs to send their waste to the recycler. **(April 1994 Monthly Hotline Report)**

"Biennial Reporting for Wastes Treated in Exempt Units"

Key Words:

Biennial Report; generators; quantity determination

QUESTION: In February 1993, a site generated 2,000 kg of hazardous waste, of which 1,500 kg was a spent solvent classified as F001 and 500 kg was characteristically ignitable (D001). The F001 was accumulated on-site in accordance with the §262.34 generator standards and then shipped off-site for disposal. The D001 was piped directly to a wastewater treatment unit for subsequent discharge under a Clean Water Act permit (§270.1(c)(2)(v)).

In order to determine RCRA hazardous waste generator status, and applicable regulations, the site's owner/operator must count hazardous waste generated in every calendar month. For example, a site which generates greater than 1,000 kg of hazardous waste in a calendar month is deemed large quantity and is subject to full generator standards, whereas a site which generates less than 100 kg is subject to the reduced regulatory requirements of §261.5. In determining generator status, the site must count all wastes that are subject to the substantive standards related to storage, transportation, treatment, or disposal of hazardous wastes (51 FR 10153; March 24, 1986).

"Biennial Reporting for Wastes Treated in Exempt Units" (cont'd)

In this situation, the F001 was subject to substantive regulation under §262.34, therefore, the site counted the 1,500 kg in determining their generator status. The generator or owner/operator did not, however, count the 500 kg of D001 wastes, because this waste was not subject to substantive regulation (51 FR 10152; March 24, 1986). Therefore, in February, the site was classified as a large quantity generator for the month and subject to all of the standards of Part 262, including the biennial reporting requirements of §262.41. The Biennial Report requires a description of the characteristics and quantity of hazardous waste generated during the reporting year. Must the site's Biennial Report address only wastes which are counted toward the generation rate, or must other wastes generated at the site, such as the D001, also be included?

ANSWER: Although the D001 waste would not need to be counted in determining generator status, the owner/operator should identify this waste, as well as the F001 waste, on the Biennial Report form. The Biennial Report instructions specifically request generators to report on waste treated in exempt units, if the site is required to file a Biennial Report. The Biennial Report data is frequently used by states to analyze the adequacy of hazardous waste management capacity and must, therefore, be comprehensive (1993 Hazardous Waste Report Instructions and Forms). **(June 1994 Monthly Hotline Report)**

"Containment Buildings as Generator Accumulation Units"

Key Words:

Accumulation; containment buildings; small quantity generator

QUESTION: On August 18, 1992 (57 FR 37194), EPA promulgated regulations for treatment and storage of hazardous waste in containment buildings. Section 262.34(a) allows large quantity generators to use containment buildings as hazardous waste accumulation units without obtaining a permit or interim status. May small quantity generators (generators of 100-1,000 kg. per month of hazardous waste) accumulate hazardous waste in containment buildings and still be eligible for the reduced requirements of 40 CFR §262.34(d)?

ANSWER: A small quantity generator may not accumulate hazardous waste in containment buildings and remain eligible for the reduced requirements of §262.34(d). The provisions for small quantity generators in §262.34(d) and (e) allow accumulation of hazardous waste for 180 (or 270) days provided that the generator complies with the specific requirements of §§262.34(d)(1)-(5). The reduced requirements in §262.34(d) limit small quantity generators to accumulation in containers and tanks. Only those generators who comply with the requirements of §262.34(a) may use containment buildings as accumulation units without obtaining a permit

"Containment Buildings as Generator Accumulation Units" (cont'd)

or interim status. A small quantity generator who chooses to accumulate hazardous waste in containment buildings does not meet the conditions of §262.34(d). Therefore, in order to use containment buildings as accumulation units without a permit or interim status, the small quantity generator must comply with the more stringent requirements in §262.34(a). These include the personnel training requirements of §265.16; the contingency plan requirements of Part 265, Subpart D; and the closure requirements of §§265.111 and 265.114. These regulations also limit a generator's on-site accumulation without a permit or interim status to a maximum of 90 days. **(September 1994 Monthly Hotline Report)**

"Notification Requirements for Exported Wastes"

Key Words:

Exported wastes; manifest

QUESTION: In addition to other requirements, a primary exporter of hazardous waste must comply with the special requirements of 40 CFR Part 262, Subpart E, including providing notification of intent to export to EPA's Office of Enforcement and Compliance Assurance 60 days prior to the initial shipment (§262.53(a)), and originating the hazardous waste manifest (§262.54). If a waste is not regulated as a hazardous waste in the United States but is subject to Canadian regulations, must the exporter notify EPA of the intent to export? If the waste is a hazardous waste but exempt from regulation in the United States, must the exporter still notify EPA?

ANSWER: Part 262, Subpart E applies only to wastes which are subject to Part 262, Subpart B manifest requirements (see also 51 FR 28664; August 8, 1986). For example, if the waste intended for export is a solid waste according to §261.3 but is not regulated as a hazardous waste subject to manifest requirements, the exporter would not be required to notify EPA of the intent to export. Wastes which are hazardous but exempt from manifest requirements would also be exempt from Part 262, Subpart E. For example, scrap metal (§261.6(a)(3)(iii)) and lead-acid batteries (§261.6(a)(2)(iv)) sent for reclamation are exempt from Subtitle C hazardous waste regulations (including the manifest requirements), and would therefore not be subject to Subpart E export requirements. Although exporters may be exempt from the requirement to notify EPA, they are advised to check with their Canadian counterparts for any applicable regulations (for example, Canadian manifest requirements) before the waste crosses the border. **(December 1994 Monthly Hotline Report)**

Permits

Key Words:

Permit; permit renewal

"Permit Application and Renewal"

QUESTION: In order to treat, store, or dispose of hazardous waste, a facility owner or operator must apply for and receive a RCRA permit. Once a RCRA permit has been approved, it is valid for a period of up to ten years (40 CFR §270.50). If an owner/operator wishes to continue an activity regulated by the permit after its expiration date, the owner/operator must apply for and obtain a new permit (§270.30(b)). What are the application requirements for obtaining or renewing a hazardous waste permit?

ANSWER: To obtain the original hazardous waste permit, the owner/operator must submit a two part application, consisting of part A and part B. The part A (form 8700-23) requires owners/operators to supply basic information such as facility name and address, description of hazardous waste processes, and topographical maps. For the part B, owners/operators must fulfill the information requirements of §§270.14-29. These sections require an owner/operator to detail, in a narrative format, how they will demonstrate compliance with the general TSDF standards, as well as the unit-specific requirements (§270.1(b)).

When an owner/operator reapplies for a hazardous waste permit, the owner/operator must submit an permit application, including parts A and B, revised as necessary to reflect changed conditions since the previous application. The revised part B should: fulfill all the requirements of a new permit application; incorporate any new regulations that were promulgated or came into effect since the issuance of the permit; and include any approved permit modifications.

The owner/operator may continue operation under the existing permit beyond the permit's expiration date while the renewal application is being considered if the owner/operator submits the revised part B at least 180 days before the expiration date of the existing permit (§270.10(h)) and the Regional Administrator, through no fault of the permittee, does not issue a permit with an effective date on or before the expiration date of the existing permit (§270.51(a)). Failure to file a timely application would require the owner/operator to cease operations under the expired permit and apply, as a new applicant, for a new hazardous waste permit. **(September 1994 Monthly Hotline Report)**

Recycling

"Designating Exempt Recycling Facilities on the Manifest"

Key Words:

Designated facility; manifest; recycling facilities

QUESTION: A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a hazardous waste manifest and designate on the manifest one facility that is permitted to handle the shipment (§§262.20(a) and (b)). Does the requirement to designate a permitted facility preclude shipments of hazardous waste to recycling facilities that are exempt from RCRA permitting requirements?

ANSWER: No, the federal EPA requirement to designate on the manifest a destination for each hazardous waste shipment does not prohibit generators from sending waste to exempt recycling facilities. Box 9 on the Uniform Hazardous Waste Manifest (EPA Form 8700-22) is reserved for the name and site address of the "designated facility." As indicated in the definition of "designated facility" under §260.10, the universe of sites to which a generator may direct hazardous waste includes permitted facilities, facilities operating under interim status, facilities which reclaim precious metals from hazardous waste, and hazardous waste recycling facilities exempt from permitting requirements under §261.6(c)(2). (For further explanation of this provision see 50 FR 652; January 4, 1985.) Although the recycling process itself is exempt from RCRA regulation, owner/operators of facilities that recycle hazardous waste must obtain an EPA identification number and comply with the manifest requirements under §§265.71 and 265.72 (§261.6(c)(2)). **(April 1994 Monthly Hotline Report)**

"Waste Minimization and Recycling Activities That Resemble Conventional Waste Management Practices"

Key Words:

Burning for energy recovery; recycling; use constituting disposal; waste minimization

QUESTION: Large quantity generators of hazardous waste and treatment, storage, and disposal facilities who generate and manage hazardous waste on-site are required to certify that they have a waste minimization program in place. Do recycling activities classified as burning for energy recovery as defined in 40 CFR §261.2(c)(2) or use constituting disposal as defined in 40 CFR §261.2(c)(1) qualify as waste minimization?

ANSWER: Burning for energy recovery and use constituting disposal do not qualify as waste minimization. The scope of the waste minimization program encompasses source reduction and environmentally sound recycling practices (58 FR 31114; May 28, 1993). Source reduction involves decreasing the amount of any hazardous substance, pollutant, or contaminant entering any wastestream prior to recycling, treatment, or disposal, while recycling includes the use, reuse, or reclamation of hazardous waste. Recycling

"Waste Minimization and Recycling Activities That Resemble Conventional Waste Management Practices" (cont'd)

activities closely resembling conventional waste management activities do not qualify as waste minimization (58 FR 31115; May 28, 1993). Burning for energy recovery is considered a recycling process that closely resembles incineration, a conventional waste management practice. Much like incineration, burning for energy recovery disposes of hazardous constituents by destruction as well as by releasing toxic constituents into the air (53 FR 522; January 8, 1988). Similarly, any activity in which hazardous waste is recycled by being placed on the land, for example as a dust suppressant or soil conditioner, is considered use constituting disposal, and is analogous to conventional waste disposal in land-based units, such as landfills and surface impoundments (50 FR 628; January 4, 1985). Since burning for energy recovery and use constituting disposal are similar to conventional waste disposal practices, neither activity would qualify as waste minimization. **(July 1994 Monthly Hotline Report)**

"Regulatory Status of Metals Recovery Under RCRA"

Key Words:

Boilers and industrial furnaces (BIF); conditional exclusion; metals recovery

QUESTION: If an industrial furnace is burning or processing hazardous waste to recover metal values, how is the furnace regulated?

ANSWER: Industrial furnaces burning hazardous waste are generally subject to the boiler and industrial furnace (BIF) regulations in Part 266, Subpart H. Owners and operators of smelting, melting, and refining furnaces that process hazardous waste solely for metals recovery are conditionally exempt from the BIF regulations except for the requirements regarding management of wastes prior to burning (§266.101), management of residues (§266.112) and the alternative requirements outlined in §266.100(c). Specifically, the facility must: submit a one-time written notification; sample and analyze the waste; maintain appropriate records; and be engaged legitimate metals recovery. For purposes of this exemption, EPA established three criteria to determine if hazardous waste is processed solely for metal recovery: (1) the heating value of the waste cannot exceed 5,000 Btu/lb (if so, the waste is considered to be burned for energy); (2) the concentration of Part 261, Appendix VIII organic constituents cannot exceed 500 ppm (if so, the waste is considered to be burned partially for destruction); and (3) the waste must have recoverable levels of metals 56 FR 42504, 42507; August 27, 1991).

Certain industries process wastes for metals recovery, yet normally do not meet the criteria for legitimate metals recovery outlined above. For example, secondary lead smelters process spent lead acid battery parts that contain pieces of rubber or plastic, which generally have heating values over 5,000 Btu/lb. In response, EPA promulgated special regulations for lead, nickel-chromium furnaces, or metal recovery furnaces that burn

"Regulatory Status of Metals Recovery Under RCRA" (cont'd)

certain baghouse bags. EPA expanded the conditional exclusion to include specific mercury-bearing wastes processed in exempt mercury recovery furnaces (59 FR 47980; September 19, 1994). Provided the units comply with the alternative requirements of §266.100(c)(3), the metal recovery furnaces would only be subject to §§266.101 and 266.112. Specific requirements found in §266.103(c)(3) include: one-time written notification; restrictions on the type of material burned; sampling and analysis; and maintenance of records. In addition, EPA may subject the furnaces to full BIF regulation, if the emissions from the unit pose a hazard to human health and the environment.

Metal recovery units engaged in precious metals recovery are also conditionally exempt from Part 266, Subpart H. Precious metal recovery is defined as the reclamation of economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these metals (§266.70(a)). Provided the owner or operator of the unit complies with the alternative requirements of §266.100(f), the unit would be exempt from all BIF requirements except for the regulations regarding residue management (§266.112). Specific requirements include: one-time written notice, sampling and analysis, and maintenance of records (§266.100(f)). Management of precious metal wastes prior to recovery would be covered by Part 266, Subpart F. **(October 1994 Monthly Hotline Report)**

"Regeneration Versus Reclamation for Spent Lead-Acid Batteries"

Key Words:

Batteries; recycling; regeneration

QUESTION: In order to encourage environmentally sound recycling, EPA has promulgated special standards for some recyclable materials and exempted others from hazardous waste regulation. For example, reclaimed spent lead-acid batteries are subject to the special requirements of Part 266, Subpart G (§261.6(a)(2)(iv)). On the other hand, batteries returned to a battery manufacturer for regeneration are exempt from hazardous waste regulation (§261.6(a)(3)(ii)). Are spent lead-acid batteries returned to a battery manufacturer for regeneration regulated under Subpart G of Part 266, or are they exempt from all hazardous waste regulation?

ANSWER: Spent lead-acid batteries returned to a battery manufacturer for regeneration are not subject to Subpart G of Part 266, nor to any other Subtitle C regulations. While the term "reclamation," when used in a regulatory context, typically includes both materials recovery and regeneration (§261.1(c)(4)), the standards governing the reclamation of spent lead-acid batteries in Subpart G of Part 266 do not apply to the

"Regeneration Versus Reclamation for Spent Lead-Acid Batteries" (cont'd)

regeneration of these batteries. Subpart G regulates materials recovery, which involves the extraction from spent lead-acid batteries of distinct end-products, such as scrap metal, lead values, ammonium sulfide, and plastic. Regeneration, on the other hand, involves processing to remove contaminants in a way that restores a product to its original, usable condition. Because EPA determined that battery regeneration is similar to the recycling of a commercial chemical product and presents minimal risk to the environment (48 FR 14496; April 4, 1983), battery regeneration, including the regeneration of spent lead-acid batteries, is exempt from Subtitle C regulation (§261.6(a)(3)(ii)). **(November 1994 Monthly Hotline Report)**

TSDFs

"Surface Impoundment Leachate Collection and Removal Systems"

Key Words:

Construction Quality Assurance Program (CQAP); leachate collection and removal system; minimum technology requirement; surface impoundment

QUESTION: According to 40 CFR §265.221(a), owners or operators of new surface impoundments, lateral expansions of surface impoundments, and replacements of existing surface impoundments must install two or more liners and a leachate collection and removal system in accordance with §264.221(c), unless exempted under §§264.221(d), (e), or (f). When must an owner or operator complete installation of the leachate collection and removal system?

ANSWER: An owner or operator must complete installation of the leachate collection and removal system at least 30 days prior to receipt of waste. The installation completion date stems from the requirement for owner or operators to have a construction quality assurance (CQA) program. Surface impoundments required to comply with §265.221(a) must have a CQA program to ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit (§265.19). The CQA program addresses various physical components of surface impoundment construction including the leachate collection and removal system. An owner or operator of a surface impoundment must certify to the Regional Administrator that the CQA plan has been successfully carried out and that the unit meets the requirements of 40 CFR §265.221(a) at least 30 days prior to receiving waste. Therefore, an owner or operator must complete installation of the leachate collection and removal system at least by the date of this certification. **(April 1994 Monthly Hotline Report)**

"Elementary Neutralization Units Generating and Storing Non-Corrosive Hazardous Wastes"

Key Words:

Corrosive; elementary neutralization; F006

QUESTION: The operator of an electroplating facility neutralizes corrosive D002 wastewaters with lime in an on-site tank. The neutralization process causes a sludge to accumulate at the bottom of the tank. Although it does not exhibit the characteristic of corrosivity, this sludge from the treatment of electroplating wastewaters meets the definition of F006 listed hazardous waste (40 CFR §261.31). The neutralization process thus causes a non-corrosive hazardous waste to be generated and stored in the treatment tank. Can this tank meet the definition of an elementary neutralization unit?

ANSWER: This treatment tank at the electroplating facility meets the definition of an elementary neutralization unit, because the waste originally treated in the tank is hazardous only due to corrosivity. According to 40 CFR §260.10, an elementary neutralization unit is a device which: (1) is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic, or are listed only because of corrosivity; and (2) meets the definition of a tank, container, transport vehicle, or vessel. As long as the original influent waste is hazardous only due to corrosivity, generation of a new, non-corrosive listed or characteristic hazardous waste during the neutralization process does not automatically bar the tank from the elementary neutralization unit definition. This tank is therefore eligible for the exemption for elementary neutralization units found at 40 CFR §§264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v). Units qualifying for this exemption are not subject to permitting, generator on-site accumulation time limits, weekly inspections, or other technical RCRA standards. Since the elementary neutralization unit exemption applies only to the tank and does not attach to wastes that are removed from the unit, the F006 sludge formed during the neutralization process is subject to full regulation as a hazardous waste once it is removed from the tank for treatment and disposal. **(December 1994 Monthly Hotline Report)**

Used Oil

"Energy Recovery On-Site Constitutes Reuse for the Generator Processing Exemption"

Key Words:

Energy recovery; on-site; processing; used oil

QUESTION: A facility generates off-specification used oil that the used oil generator wants to burn on-site for energy recovery. The used oil generator filters the off-specification used oil in order to remove impurities. After filtering the used oil, the generator burns it in an on-site industrial furnace. Does the filtering activity meet the definition of processing in §279.1 and, therefore, subject the generator to the used oil processor standards in 40 CFR Part 279, Subpart F?

"Energy Recovery On-Site Constitutes Reuse for the Generator Processing Exemption" (cont'd)

ANSWER: While filtering can meet the definition of processing, used oil generators may filter, clean, or otherwise recondition their own used oil on-site for reuse on-site without meeting the processor requirements (59 FR 10560; March 4, 1994; §279.20(b)(2)(ii)(A)). The Agency believes that on-site energy recovery constitutes reuse for purposes of this provision. If, on the other hand, the generator filters the used oil for subsequent burning off-site, the generator would be subject to the processor requirements in Part 279, Subpart F.

Under the generator processing exemptions in §279.20(b), EPA allows on-site but not off-site burning of used oil generated from on-site activities. This approach best enables the Agency to encourage beneficial on-site reuse and recycling activities that pose limited risks. At the same time, the Agency ensures that activities undertaken primarily to make used oil amenable for shipment to an off-site burner are regulated under the more stringent processor standards (59 FR 10556; March 4, 1994). **(May 1994 Monthly Hotline Report)**

"Used Oil Storage Tank Bottoms: Hazardous Waste or Used Oil When Burned for Energy Recovery?"

Key Words:

Burning for energy recovery; used oil; used oil storage tank bottoms

QUESTION: A garage servicing automobiles and trucks generates significant quantities of used oil, which it manages in compliance with the federal regulations at 40 CFR Part 279. The used oil is not mixed with other wastestreams from the facility. Instead, the operator of the garage accumulates the oil in an on-site storage tank. A used oil transporter periodically empties the tank and delivers the used oil to another company that burns it for energy recovery. Over time, gravity causes solids and heavier fractions to settle out of the used oil stored in the tank at the garage. As a result, thick tar-like layers accumulate at the bottom of the storage tank. The garage operator wishes to remove these tank bottoms from the used oil storage tank and send them off-site to be burned for energy recovery. Although only used oil has been placed in the tank, the accumulated tank bottoms and the original used oil differ significantly in physical form. The garage operator is concerned that the tank bottoms may not qualify as used oil and may not be eligible for handling under 40 CFR Part 279. Laboratory analysis shows that the bottoms typically exhibit the toxicity characteristic for lead, cadmium, chromium, and benzene. When sent off-site to be burned for energy recovery, must these bottoms from the used oil storage tank be handled as used oil or as characteristic hazardous waste?

"Used Oil Storage Tank Bottoms: Hazardous Waste or Used Oil When Burned for Energy Recovery?" (cont'd)

ANSWER: When burned for energy recovery, these tank bottoms from the used oil storage tank qualify as used oil and may be handled in accordance with the used oil recycling regulations of 40 CFR Part 279. Under current EPA rules, residues or sludges resulting from the storage, processing, or re-refining of used oil are considered used oil when they are recycled through burning for energy recovery (40 CFR §279.10(e)(2)). EPA clarified the status of such residues in the preamble to the May 3, 1993, Federal Register (58 FR 26420, 26422). As is the case with all used oils sent for recycling, the fact that the tank bottoms from the garage exhibit one or more characteristics of hazardous waste identified in Part 261, Subpart C does not alter their status as used oil (§279.10(a)). The tank bottoms recycled through burning for energy recovery must be handled as hazardous waste only if they fail the rebuttable presumption described at §279.10(b)(1)(ii), or if they have actually been mixed with hazardous waste (§§279.10(b)(1) and (2)). If the tank bottoms are not being recycled, however, they must be handled as characteristic hazardous waste when disposed of or sent for disposal (§279.20(a)). **(September 1994 Monthly Hotline Report)**

Waste Identification

"Use of Total Waste Analysis in Toxicity Characteristic Determinations"

Key Words:

TCLP; test methods; toxicity characteristic

QUESTION: A generator suspects that his waste may exhibit the toxicity characteristic and thus be subject to regulation as a RCRA hazardous waste. Since he is unsure of the types and concentrations of hazardous contaminants present in the waste, he performs a total waste analysis. Can he use the results of the total waste analysis to make a toxicity characteristic determination, or must he perform Method 1311, the toxicity characteristic leaching procedure (TCLP), to determine the waste's regulatory status?

ANSWER: While a toxicity characteristic determination under §261.24 typically involves application of the TCLP followed by analysis of the TCLP extract, a generator may be able to use total waste analysis to demonstrate that a waste does not exhibit the toxicity characteristic. Section 1.2 of the TCLP states, "If a total analysis of the waste demonstrates that individual analytes are not present in the waste, or that they are present but at such low concentrations that the appropriate regulatory levels could not possibly be exceeded, the TCLP need not be run." This analysis can provide the generator with a convenient and cost-effective means of determining if he needs to run the TCLP in order to definitively characterize a waste.

"Use of Total Waste Analysis in Toxicity Characteristic Determinations" (cont'd)

The means for using total waste analysis results to make a toxicity characteristic determination reflect TCLP methodology and therefore vary depending on whether the waste is defined as a liquid, a solid, or a dual-phase waste. Under the TCLP, liquid wastes (i.e., those wastes that contain less than 0.5% dry solids) do not require extraction. The waste, after filtration, is defined as the TCLP extract (Part 261, Appendix II, §2.1). A generator can therefore characterize a liquid waste by filtering the waste, measuring total constituent concentrations in the resulting filtrate, and comparing these concentrations to the appropriate regulatory limits under §261.24.

Wastes which are either 100% solid (i.e., wastes that contain no filterable liquid (Part 261, Appendix II, §7.1.1.1)) or which contain both a liquid and a solid component require conversion of total waste analysis data to estimates of constituent concentrations in the TCLP extract, or maximum theoretical leachate concentrations. For instance, to evaluate the regulatory status of a 100% solid, a generator can simply divide each total constituent concentration by 20 and then compare the resulting maximum theoretical leachate concentration to the appropriate regulatory limit (the division factor reflects the 20-to-1 ratio of extraction fluid to solid used in the TCLP). If no maximum theoretical leachate concentration equals or exceeds the appropriate regulatory limit, the solid cannot exhibit the toxicity characteristic and the TCLP need not be run.

The generator of a dual-phase waste (i.e., a waste which has both a solid and a filterable liquid component) can perform a total waste analysis on the liquid and solid portions and calculate maximum theoretical leachate concentrations for the waste as a whole by combining results mathematically through use of the following formula:

$$\frac{[A \times B] + [C \times D]}{B + [20\,L/kg \times D]} = M$$

where:

A= concentration of the analyte in the liquid portion of the sample (mg/L)

B= volume of the liquid portion of the sample (L)

C= concentration of the analyte in the solid portion of the sample (mg/kg)

D= weight of the solid portion of the sample (kg)

"Use of Total Waste Analysis in Toxicity Characteristic Determinations" (cont'd)

M = maximum theoretical leachate concentration (mg/L)

For example:

A generator who receives the results of a total waste analysis wishes to determine if his waste exhibits the toxicity characteristic for lead. Since he knows the lead concentration in each phase of the waste (0.023 mg/L in the liquid phase, 85 mg/kg in the solid phase), the volume of the liquid phase (0.025 L), and the weight of the solid phase (0.075 kg), he can calculate the waste's maximum theoretical leachate concentration:

$$\frac{[A \times B] + [C \times D]}{B + [20\ L/kg \times D]}$$

$$\frac{[0.023\ mg/L \times 0.025\ L] + [85\ mg/kg \times 0.075\ kg]}{0.025\ L + [20\ L/kg \times 0.075\ kg}$$

$$= 4.18\ mg/L$$

Because the 4.18 mg/L maximum theoretical leachate concentration is below the 5.0 mg/L regulatory limit, the generator determines that the waste cannot exhibit the toxicity characteristic for lead.

If maximum theoretical leachate concentrations are less than the applicable limits under §261.24, the waste does not exhibit the toxicity characteristic and the TCLP need not be run. If, on the other hand, total waste analysis data yield a maximum theoretical leachate concentration that equals or exceeds the toxicity characteristic threshold, the data cannot be used to conclusively demonstrate that the waste does not exhibit the toxicity characteristic. The generator may have to conduct further testing to make a definitive toxicity characteristic determination. **(January 1994 Monthly Hotline Report)**

"K052: Bottoms from Tanks Storing Leaded Gasoline at Petroleum Refineries"

Key Words:

Gasoline; K052; petroleum refinery wastes

QUESTION: According to 40 CFR §261.32, the hazardous waste code K052 applies to "tank bottoms (leaded) from the petroleum refining industry." A variety of petroleum fractions including leaded gasoline are stored in product tanks at refineries. Bottoms from all of these tanks may contain lead. Does the K052 listing apply only to bottoms from tanks storing leaded gasoline, or does it apply to lead-containing bottoms from refinery tanks storing any petroleum fractions?

"K052: Bottoms from Tanks Storing Leaded Gasoline at Petroleum Refineries" (cont'd)

ANSWER: EPA intended the K052 listing to apply only to bottoms from tanks storing leaded gasoline at petroleum refineries. The listing does not apply to bottoms from tanks storing other petroleum fractions, like diesel, even if those bottoms contain lead. Tanks bottoms that do not carry the K052 code can still be regulated under RCRA Subtitle C if they exhibit one or more characteristics of hazardous waste. **(February 1994 Monthly Hotline Report)**

"Off-Specification Paraformaldehyde Meets Commercial Chemical Product Listing"

Key Words:

Commercial chemical product; U122

QUESTION: A manufacturer stores product formaldehyde (CAS No. 50-00-0) in containers before use in a manufacturing process. While in storage, some of the pure formaldehyde polymerizes to form paraformaldehyde (CAS No. 30525-89-4), which is unusable in the manufacturing process because it does not meet required specifications. The manufacturer separates the paraformaldehyde from the usable formaldehyde and sends the off-specification chemical for disposal. Unused commercial chemical products containing formaldehyde are listed as U122 when discarded (40 CFR §261.33(f)). Paraformaldehyde is not found on the P- or U-list (40 CFR §§261.33 (e) or (f)). When discarded, is the off-specification paraformaldehyde a listed hazardous waste?

ANSWER: In the above scenario, paraformaldehyde is an off-specification form of formaldehyde and meets the U122 listing (40 CFR §261.33(b)). When a commercial chemical product listed in §§261.33(e) or (f) undergoes a chemical change that renders the chemical off-specification, the applicable P- or U-listing for the original chemical applies, even in cases where the chemical composition has changed sufficiently to require assignment of a different CAS Number. **(March 1994 Monthly Hotline Report)**

"Technical Grade Solvent Formulations and the F003 Listing"

Key Words:

De Minimis; F003; hazardous waste definition ; spent solvents

QUESTION: The F003 listing in 40 CFR §261.31 includes "all spent solvent mixtures/blends containing, before use, only [certain specified] spent non-halogenated solvents." This language implies that, to meet the hazardous waste listing, the solvent mixture must be pure before use (i.e., contain 100% F003-listed solvents). In the process of manufacturing some of these solvents however, small amounts of chemical impurities or contaminants may be generated, and remain with the product when distributed for use. For example, incomplete chemical reactions which take place during xylene manufacturing commonly generate minute quantities of benzene and toluene; rather than being 100% pure, the distributed solvent

"Technical Grade Solvent Formulations and the F003 Listing" (cont'd)

product may therefore contain 99.98% xylene and 0.02% benzene and toluene, or other similar concentrations of impurities. Would a solvent formulation consisting of 99.98% xylene and 0.02% benzene and toluene meet the F003 listing when used for its solvent properties and discarded?

ANSWER: A solvent formulation consisting of 99.98% xylene and 0.02% benzene and toluene meets the F003 listing when used for its solvent properties and discarded. The F003 listing covers pure solvent mixtures, as well as technical grade solvent formulations, which are used for their solvent properties. The term "technical grade" refers to all grades of a chemical which are marketed or recognized for general usage by the chemical industry. Solvent formulations containing *de minimis* percentages of manufacturing contaminants or impurities are considered technical grade products, provided that they are available for purchase and use in this form. Therefore, when determining if a given spent solvent mixture contains "only" the solvents specified in the F003 listing, generators should include in their evaluation each solvent constituent present in a mixture before use, provided that a particular solvent constituent is not a contaminant or present in *de minimis* concentrations (50 FR 53317; December 31, 1985). In other words, a technical grade solvent could contain small concentrations of contaminants or manufacturing impurities and still meet the F003 listing after being used for its solvent properties.

In the example presented above, the commercially available solvent that contains 99.98% xylene and 0.02% benzene and toluene (as impurities from the manufacturing process) qualifies as a technical grade formulation. The technical grade solvent formulation, once spent, meets the F003 listing despite containing, before use, less than 100% of the non-halogenated solvents specified in the listing description.

The purity of a technical grade formulation will vary from compound to compound and may range from highly purified to very impure. EPA has not established specific percentages or other criteria for use in determining when contamination is considered *de minimis*; such a decision must be made on a case-by-case basis by the appropriate regulatory agency. **(June 1994 Monthly Hotline Report)**

"Unused Formulations Containing Sodium Pentachlorophenate are F027"

Key Words:

Chlorophenolic compounds; F027; unused formulations

QUESTION: The F027 hazardous waste listing includes discarded, unused formulations containing tri-, tetra-, or pentachlorophenol, as well as compounds derived from these chlorophenols (40 CFR §261.31). Does an unused chemical formulation that contains sodium pentachlorophenate meet the F027 listing when discarded?

ANSWER: Unused formulations containing sodium pentachlorophenate meet the F027 listing when discarded. Sodium pentachlorophenate, a wood surface protectant used to prevent sapstaining in freshly cut lumber, is a compound derived from pentachlorophenol by dissolving pentachlorophenol in sodium hydroxide (58 FR 25706, 25708; April 27, 1993).

Chlorophenolic compounds and their chlorophenoxy derivatives, such as sodium pentachlorophenate, have serious adverse health effects (48 FR 14514, 14516; April 4, 1983). Formulations containing these compounds also contain chlorinated dioxins and dibenzofurans. For these reasons, wastes meeting the F027 listing are designated as acutely hazardous (50 FR 1978, 1979-1982; January 14, 1985). **(August 1994 Monthly Hotline Report)**

"Status of Municipal Waste Combustion (MWC) Ash"

Key Words:

Ash; municipal solid waste; municipal waste combustion

QUESTION: In 1990, the United States generated approximately 196 million tons of municipal solid waste. Sixteen percent of this waste, over 31 million tons, was managed in about 150 municipal waste combustion (MWC) facilities which burned the waste for destruction or energy recovery. These facilities generate ash, which weighs approximately 25% of the weight of the original solid waste (59 FR 29372, 29373; June 7, 1994). This ash is primarily landfilled, with less than 10% used in building materials. How does EPA regulate the management of this MWC ash?

ANSWER: The regulatory history of MWC ash is complex. EPA first promulgated hazardous waste regulations under RCRA in May 1980. These regulations included an exemption from all RCRA Subtitle C hazardous waste regulations for household waste (40 CFR §261.4(b)(1)). In the preamble to this rule, EPA interpreted this provision to exempt all residues resulting from the treatment of household hazardous waste, such as MWC ash, from hazardous waste regulations (45 FR 33084, 33099; May 19, 1980). The preamble, however, did not address ash from the combined combustion of household hazardous waste and non-hazardous commercial or industrial waste.

In 1984, Congress amended RCRA by adding §3001(i), which states that a resource recovery facility recovering energy from the mass burning of

"Status of Municipal Waste Combustion (MWC) Ash" (cont'd)

municipal solid waste and non-hazardous commercial or industrial waste shall not be deemed to be treating, storing, disposing, or otherwise managing hazardous waste under certain circumstances. In 1985, EPA interpreted this provision to exempt certain municipal resource recovery facilities from RCRA permitting requirements but not to exempt MWC ash from RCRA regulation (50 FR 28702, 28725; July 15, 1985). In November 1990, Congress enacted an amendment to the Clean Air Act prohibiting EPA from regulating ash as a hazardous waste under §3001 of RCRA for a period of two years. On September 18, 1992, EPA Administrator William K. Reilly announced in a memorandum that EPA had reinterpreted §3001(i) to include an exemption for MWC ash.

The Environmental Defense Fund filed citizen suits to enforce the EPA's 1985 interpretation of the statute in two U.S. District Courts. On May 2, 1994, after a series of appeals, the Supreme Court ruled in the case of City of Chicago, et al. v. Environmental Defense Fund, et al., No. 92-1639 (511 U.S. __), that MWC ash is not exempt from RCRA regulation. The Court stated that §3001(i) only exempts resource recovery facilities from RCRA treatment, storage, and disposal facility (TSDF) regulations; it does not exempt the ash, nor does it exempt the facility from regulation as a generator of hazardous waste. The Supreme Court opinion makes ash generated at resource recovery facilities, whether generated from only household waste or a mixture of household and non-hazardous industrial or commercial solid waste, subject to RCRA regulation if the ash is found to be a hazardous waste. Therefore, facilities generating hazardous MWC ash are fully subject to the RCRA Subtitle C generator regulations, and facilities managing hazardous ash are subject to the RCRA TSDF regulations of Parts 264 and 265.

Although no hazardous waste listing applies to MWC ash, the ash would be a hazardous waste if it were to exhibit a characteristic of hazardous waste as defined in §§261.20-261.24. MWC facilities generally produce two kinds of ash: bottom ash and fly ash. Bottom ash is collected at the base of the combustion unit and generally accounts for 75 to 80% of ash generated at a facility. Fly ash is collected in air pollution control devices and accounts for the remaining 20 to 25% of ash at a facility. Studies have shown that fly ash, more than bottom ash, can exhibit the toxicity characteristic of a hazardous waste, typically for lead and cadmium.

The Agency recognizes that immediate compliance with the Supreme Court's decision may be difficult because many facilities have been operating consistent with the Agency's previous interpretation that MWC ash was excluded from regulation under Subtitle C and because of the financial investment required for full compliance with RCRA Subtitle C.

"Status of Municipal Waste Combustion (MWC) Ash" (cont'd)

Therefore, on May 27, 1994, the Agency issued an implementation strategy memorandum (Herman and Laws to Regional Administrators) outlining EPA's strategy for implementing the court's decision. In addition to the implementation strategy, the Agency has made available two other documents relevant to implementation of the court's decision.

On May 24, 1994, EPA began distributing copies of its draft guidance Sampling and Analysis of Municipal Refuse Incineration Ash (EPA530-R-94-020). This guidance includes recommended procedures for MWC facility owners and operators to follow for ash sampling and analysis. The Agency also published a Federal Register notice on June 23, 1994 (59 FR 32427), requesting comment on the draft guidance. The comment period ended on September 21, 1994. On June 7, 1994, the Agency published a Federal Register notice (59 FR 29372) that: (1) extends the deadline within which owners and operators of facilities that treat, store, or dispose of ash determined to be a hazardous waste can file their hazardous waste Part A permit applications; and (2) interprets ash from waste-to-energy facilities as a "newly identified" waste for the purposes of the RCRA land disposal restrictions (LDR), thereby delaying the application of these requirements for facilities that generate a hazardous ash. **(October 1994 Monthly Hotline Report)**

"Delisting Petitions for Hazardous Wastes From The Petroleum Industry"

Key Words:

Delisting petitions; petroleum refinery wastes; Skinner list

QUESTION: A petroleum refinery is submitting a delisting petition to EPA for its listed refinery hazardous waste. Does EPA provide a list of constituents typically found in petroleum refinery wastes that should be used in developing such a delisting petition?

ANSWER: The EPA publication, Petitions To Delist Hazardous Wastes: A Guidance Manual (EPA/530-R-93-007, March 1993) contains a list of constituents of concern for hazardous wastes from the petroleum industry (Exhibit 6-3). This list (referred to as the delisting "petroleum list") identifies the specific hazardous constituents of concern that typically may be found in petroleum wastes. As delisting is "generator-specific", individual petitioners should also investigate if other hazardous constituents are present in their particular wastes. The guidance manual provides details about developing an analytical plan.

EPA initially provided such a petroleum list in the first edition (1985) of the delisting guidance manual. This list was based on the "Skinner List" developed by OSW in 1984 for land treatment associated with petroleum refinery wastes. The 1985 version of the delisting petroleum list has since

"Delisting Petitions for Hazardous Wastes From The Petroleum Industry" (cont'd)

been modified based on new data from various sources. The current petroleum list in the 1993 delisting manual provides the most recent federal guidance for submitting a delisting petition. States that are authorized for delisting implement the RCRA delisting program in lieu of the Federal program; therefore, petitioners in these states may have additional requirements. Furthermore, facilities should consult with other appropriate EPA and/or state regulating authorities to determine if this list should be used in other aspects of the RCRA program, such as RCRA permitting. **(November 1994 Monthly Hotline Report)**

UNDERGROUND STORAGE TANKS (UST)

Financial Responsibility

"Occurrence Definition for Underground Storage Tank (UST) Financial Responsibility"

Key Words:

Financial responsibility; occurrence, underground storage tank (UST)

QUESTION: The financial responsibility requirements of Part 280 require owners or operators of USTs to demonstrate that they can pay for accidental leaks and spills of petroleum products on a per-occurrence, as well as an aggregate basis. For the purposes of the UST financial responsibility regulations, how is the term "occurrence" defined?

ANSWER: EPA interprets the term occurrence to refer to all contamination discovered during a single site investigation. For example, if two tanks are discovered to be leaking during the same site investigation, regardless of whether they are part of the same UST system or two separate tanks, EPA considers it to be one occurrence, with one cleanup conducted. This is consistent with the insurance industry's policy, which would require the owner or operator to pay only one deductible in such a situation. Leaks discovered at different times from the same UST system, as a result of unrelated investigations, however, would be considered two occurrences, with two deductibles paid by the owner/operator. **(April 1994 Monthly Hotline Report)**

"Leaking Underground Storage Tank Trust Fund"

Key Words:

LUST; Trust fund; UST

QUESTION: In 1986, the Superfund Amendments and Reauthorization Act (SARA) amended Subtitle I of RCRA and added RCRA §9003(h) which established a program to address releases from petroleum underground storage tanks (USTs). Congress created the Leaking Underground Storage Tank (LUST) Trust Fund to help ensure that money was available for the cleanup of petroleum releases at facilities which are unable to pay for the cleanup. How can EPA and states use the LUST Trust Fund to pay for cleanups at sites with leaking petroleum USTs?

ANSWER: The LUST Trust Fund program provides EPA with funding to initiate cleanup at sites contaminated by leaking petroleum USTs as necessary to protect human health and the environment. This program is similar to EPA's Superfund Program, which establishes a Fund for the cleanup of hazardous substance sites. As with Superfund, the LUST Trust Fund is available to EPA and states to help pay for the cleanup of releases when a responsible party capable of performing corrective action cannot be identified. The Fund is financed through a 0.1 cent per gallon excise tax on

"Leaking Underground Storage Tank Trust Fund" (cont'd)

gasoline, diesel, and aviation fuels, and is appropriated to EPA by Congress. EPA distributes Fund money to states who have signed Cooperative Agreements with the Agency. The Cooperative Agreements give states the authority to initiate corrective action at sites with leaking petroleum USTs and specify the actions states will take when responding to releases.

States play the primary role in implementing corrective action at UST sites, and determine when and how to utilize Trust Fund money. When states initiate corrective action at a particular site, they can use Fund money only for activities directly related to responding to actual or suspected releases from petroleum USTs subject to Subtitle I regulation. Such activities include inspecting the tank and identifying suspected releases, developing and enforcing corrective action orders, performing corrective action (including exposure assessment, cleanup, provision of safe drinking water to residents), and recovering costs of Fund-financed activities from responsible owners and operators. The Fund cannot be used for addressing releases from hazardous substance USTs or from USTs that are not subject to Subtitle I.

States will require responsible owners or operators to perform and pay for corrective action when petroleum releases are discovered. The LUST Trust Fund will be used to pay for corrective action in situations when a responsible owner or operator cannot be identified, when an owner or operator refuses to comply with a corrective action order, or when an owner or operator cannot afford the full cost of cleanup right away. When Fund money is used, states have the authority to recover corrective action costs from a responsible party that has the ability to pay for corrective action.

There are certain limitations on the use of the LUST Trust Fund at government facilities. The Fund may not be used to clean up actual releases from petroleum USTs at state and federal facilities. It may, however, be used for site investigations, enforcement actions, and to address emergency situations at these sites as necessary to protect human health and the environment. States can utilize the Trust Fund to initiate corrective action and pay for the cleanup of releases at local government UST sites, similar to other responsible party sites. **(December 1994 Monthly Hotline Report)**

Remediation Wastes

Key Words:

Carbon filters; corrective action; petroleum contaminated media and debris

"UST Remediation Wastes"

QUESTION: Petroleum contaminated environmental media and debris from an underground storage tank (UST) corrective action are excluded from the definition of hazardous waste if they only exhibit the characteristic of toxicity for TC constituents D018-D043, per §261.4(b)(10). When activated carbon filters are used to remediate these wastes, are the filters also eligible for the exclusion?

ANSWER: The exemption does not apply to spent carbon filters used to remediate petroleum contaminated UST corrective action wastes. The carbon filters are newly generated wastes. Whether disposed of or reclaimed for future reuse, the filters, once spent, would be considered solid wastes (§261.1(c)(3)). The filters would, therefore, need to be handled as hazardous waste if they exhibit any characteristic of hazardous waste. **(November 1994 Monthly Hotline Report)**

Tank Requirements

Key Words:

Annual; retesting; tank tightness testing; UST

"Definition of Annual and 'Every Five Years' for Purposes of Tank Tightness Testing"

QUESTION: Owners/operator of new and existing underground storage tank (UST) systems are required to provide release detection for spill and leaks of regulated substances (280.40(a)). As a temporary method of release detection, owners/operators can use a combination of tank tightness testing and manual monthly inventory to meet the release detection requirements (280.41(a)(1)-(2)). For USTs which have not met the performance standards of §280.20 or §280.21, the owner or operator is required to conduct monthly inventory control and annual tank tightness testing (§280.41(a)(2)). For USTs which have met the performance standards, owners/operators must conduct monthly inventory control and tank tightness testing every five years. For purposes of these requirements, how are annual and "every five years" defined?

ANSWER: As explained in a March 1993 memorandum, in terms of tank tightness testing, annual means once every 12 months, <u>not</u> once every calendar year (Regulatory Interpretation from Zielgle to UST/LUST Regional Program Managers, March 17, 1993). Further, the date to use when calculating the 12 month period is the tank tightness testing date and not the date by which the facility had to comply with release detection. Section 280.40(c) states that all UST systems must comply with the release

"Definition of Annual and 'Every Five Years' for Purposes of Tank Tightness Testing" (cont'd)

detection requirements by December 22 of the appropriate year. Therefore, the tank tightness test must be first conducted within the 12 month period before the compliance date, and again, on or before the anniversary date of the original test (§280.41(a)(2)). For example, if the deadline for meeting the release detection requirements was December 22, 1993, and the UST system was tested on January 1, 1993, the UST system was in compliance with the release detection requirements. To remain in compliance, the owner/operator needed to perform the next tank tightness test on or before January 1, 1994.

The definition of the phrase "every five years" is similar. "Every five years" means on or before the date five years later. For example, if a the UST system performed its initial tank tightness test on January 1, 1993, the owner/operator would be required to retest the UST system on or before January 1, 1998. **(July 1994 Monthly Hotline Report)**

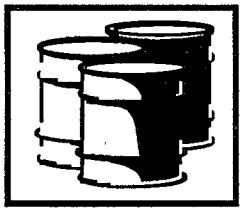
"The Definition of 'Routinely Contains Product' for UST Regulation"

Key Words:

Corrosion protection; release detection; routinely contains product; UST

QUESTION: Owners and operators of new and existing underground storage tank systems must provide one or more release detection methods that can detect a leak from any portion of the tank that routinely contains product (40 CFR §280.40). Similarly, underground components of a tank system that routinely contain product must be protected from corrosion (§§ 280.20, 280. 21, and 280.31). What parts of the tank are considered to "routinely contain product" for the purposes of these provisions?

ANSWER: EPA defines the areas of the tank that "routinely contain product" as those sections of the tank and/or piping that are typically filled. The parts of the tank that frequently carry regulated substances are susceptible to releases; therefore, leak detection equipment and corrosion protection are necessary to prevent leaks from these areas (58 FR 37127; September 23, 1988). The equipment at the top of the tank such as vent lines, fill pipes, and bungs is generally not required to be covered by release detection or corrosion protection, since these components of the tank system do not ordinarily hold the regulated substance and will rarely be the source of a leak, particularly if the spill and overfill requirements at §§280.20 and 280.30 are met (58 FR 37143). **(September 1994 Monthly Hotline Report)**



SUPERFUND (SF)

ARARs

Key Words:

ARARs; generators; hazardous waste generators; remedial action; satellite accumulation

"Satellite Accumulation Standards as ARARs"

QUESTION: During the planning of Superfund remedial activities, any applicable or relevant and appropriate requirements (ARARs) need to be identified (40 CFR §§300.400(g) and 300.430(d)(3)). Only the substantive provisions of the ARARs, however, must be complied with during the activity. The substantive provisions of an ARAR are generally those requirements that pertain directly to actions or conditions in the environment, such as incinerator performance standards, land disposal restrictions (LDR) treatment standards, or hazardous waste storage standards (OSWER Directive 9234.2-04FS). If the hazardous substance managed at a National Priorities List (NPL) site meets the definition of a RCRA hazardous waste, then any applicable substantive portions of the RCRA regulations will be ARARs.

During a remedial action at an NPL site, a RCRA hazardous waste may be generated. The generator may wish to accumulate the hazardous waste at the initial point of generation (i.e., a satellite accumulation area) to avoid moving small amounts of hazardous waste to the main waste storage area. Can hazardous waste generated at a Superfund site be kept in satellite accumulation areas prior to being moved into accumulation tanks or containers in the main waste storage area?

ANSWER: The substantive provisions of the hazardous waste accumulation regulations in §262.34, including the satellite accumulation standards of §262.34(c), are applicable to hazardous waste generated at Superfund sites (and may be relevant and appropriate for other wastes). Hazardous waste at Superfund sites may accumulate in satellite areas that meet the requirements specified in the satellite accumulation standards of §262.34(c). That rule allows a hazardous waste generator to accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste at or near the point of generation where wastes initially accumulate. When 55 gallons of hazardous waste or one quart of acute hazardous waste has accumulated at the satellite area, the generator has three days to move the hazardous waste to the main waste storage area at the NPL site (i.e., a storage area meeting the more stringent design and operation requirements specified in §262.34(a)). Once the waste leaves the satellite area by being placed in tanks or containers at the main waste storage area it becomes subject to the substantive waste storage requirements, such as the secondary containment standards, of 40 CFR Parts 264 and 265, Subparts I and J (and other requirements in §262.34(a)). **(August 1994 Monthly Hotline Report)**

"Waivers of ARARs and Permits by Private Parties in CERCLA Response Actions"

Key Words:

ARARs; permit waivers; private party responses

QUESTION: CERCLA provides authority for several different persons to take actions to mitigate or eliminate releases of hazardous substances. These include actions taken by EPA, states, or tribes under CERCLA §104(d)(1) response authority, as well as actions taken by persons pursuant to an administrative order or consent decree issued under CERCLA §§106 or 122. Any private party may also undertake a response action on its own initiative. While these private party actions are not carried out under CERCLA authority, the party undertaking the cleanup may seek to recover its response costs from those responsible for the release under the cost recovery provisions in CERCLA §107 if the party has complied with the procedures set forth in the NCP. May private parties conducting response actions take advantage of any of the regulatory waivers provided by the NCP?

ANSWER: Private party actions are not eligible for waivers of permits or applicable requirements. The NCP makes clear that only sites addressed under CERCLA authority are eligible for waivers (40 CFR §300.700(c)(5)(iii)). CERCLA requires that remedial actions comply with Federal cleanup regulations, as well as state environmental or facility siting laws that are deemed to be applicable or relevant and appropriate requirements (ARARs; CERCLA §121(d)). Actions at CERCLA sites must comply only with the substantive requirements of ARARs, which include cleanup standards and other environmental protection criteria. Administrative requirements, such as reporting, record keeping, or permitting, do not need to be complied with at sites, since these administrative requirements could unnecessarily delay cleanups. CERCLA §121(e)(1) specifically mandates that no federal, state, or local permits are required for response actions that occur entirely on-site. This permit waiver applies to any site addressed under CERCLA removal or remedial authority.

The National Contingency Plan (NCP) requires compliance with ARARs both during remedial actions, and, to the extent practicable considering the exigencies of the situation, during removal actions (40 CFR §300.430(f); §300.415(i)). ARARs may be waived only in certain circumstances specifically authorized under CERCLA §121(d)(4): if the remedial action selected is only part of the total remedial action; if compliance with the ARAR will result in greater risk to human health and the environment; if compliance is technically impracticable; if the remedial action selected will attain an equivalent standard of performance to the ARAR; if a state ARAR is identified that is not consistently applied to other sites; or if the cost of attaining the ARAR in relation to the added degree of protection provided would jeopardize remedial actions at other sites. Since private party actions (other than those subject to an order under CERCLA §106 or a

"Waivers of ARARs and Permits by Private Parties in CERCLA Response Actions" (cont'd)

consent decree under CERCLA §122) are not conducted under the authority of CERCLA, they are not eligible for permit waivers or waivers of applicable requirements. However, relevant and appropriate requirements may be waived if the criteria in CERCLA §121(d)(4) are met. **(December 1994 Monthly Hotline Report)**

Cleanup Agreements

Key Words:

Consent decree; financial assurance; PRP; remedial design/remedial response (RD/RA)

"Consent Decrees: Assurance of Ability to Complete Work"

QUESTION: A potentially responsible party (PRP) enters into a consent decree with EPA to perform the remedial design and remedial action (RD/RA) at a Superfund site. A consent decree is a legally binding agreement, approved by a judge, which outlines the actions or payments to be provided by the settling party. Is the PRP required to show that funds will be available to finance the remediation?

ANSWER: Section 104(a)(1) provides that EPA may allow a PRP to carry out a response action "[w]hen the President determines that such action will be done properly and promptly" by such PRP. One method that EPA utilizes to assure that a PRP will carry out the response action "properly and promptly" is to require the PRP to provide financial assurance of its ability to complete the work. For instance, pursuant to the terms of Section XIV of EPA's Model CERCLA Remedial Design/Remedial Action Consent Decree (56 FR 30096; July 8, 1991; OSWER Directive 9835.17), when EPA and a PRP enter into a consent decree for remedial design/remedial action (RD/RA), the settling defendants must provide a specified amount of financial assurance within 30 days of entry of the consent decree into court records.

The model RD/RA consent decree provides that the PRP may use:

- a surety bond guaranteeing performance of the work
- a letter(s) of credit equaling the total estimated cost of the work
- a trust fund
- a guarantee to perform the work by one or more parent corporations that have a substantial business relationship with at least one of the settling defendants
- a demonstration that one or more of the settling defendants satisfy the RCRA financial test requirements in 40 CFR §264.143(f).

The model RD/RA consent decree also provides that if EPA finds the financial assurances provided inadequate, the settling parties must obtain and present to EPA for approval one of the other forms of financial

"Consent Decrees: Assurance of Ability to Complete Work" (cont'd)

assurance listed above. Pursuant to Section XIV of the model, the inability of the settling defendants to demonstrate adequate financial assurance to complete the specified work, however, does not exempt them from performing any activities required under the consent decree (56 FR 31004).

Although the presumption is that Regions will use the model RD/RA consent decree provisions, Regions have the flexibility to modify provisions of the model in developing the proposed consent decree in a particular case; Headquarter concurrence is required for some modifications. **(June 1994 Monthly Hotline Report)**

"Public Participation Requirements for Administrative Settlements"

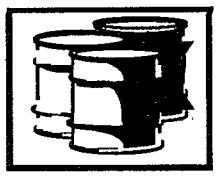
Key Words:

Administrative settlements; PRP; public participation

QUESTION: CERCLA authorizes EPA to enter into settlements requiring persons, including potentially responsible parties (PRPs), to conduct or pay for response actions. If EPA and a PRP enter into an administrative settlement, is the agreement subject to public notice and comment?

ANSWER: Different administrative agreements are subject to different public notice requirements. Settlements that are entered into pursuant to CERCLA §122(g) (de minimis settlements) or §122(h) (cost recovery settlements) are subject to the notice and comment requirements set out in §122(i). In order to allow adequate time for the public to submit comments, EPA must publish notice of the proposed settlement in the Federal Register at least 30 days before the settlement becomes final. The notice required under §122(i) must identify the facility concerned and the parties to the proposed settlement. EPA must consider all comments filed in determining whether to consent to the proposed settlement. If comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate, EPA may withhold consent on all or part of the settlement (OSWER 9230.0-03C). EPA guidance also directs Regional staff to provide notice of proposed settlements under §122 by publishing a press release, providing notice to affected persons, or advertising in the local newspaper to supplement the Federal Register notice (OSWER 9837.2B).

Section 122(i) is only applicable to settlements under §§122(g) and (h). Therefore, if a settlement for a response action, such as a removal or a remedial investigation and feasibility study, does not include a cost recovery claim pursuant to §122(h) and/or does not rely on §122(g) de minimis settlement authority, it is not subject to the notice and comment provisions of §122(i). The response activities themselves are, however,



"Public Participation Requirements for Administrative Settlements" (cont'd)

subject to the public participation requirements of CERCLA §117 that are set forth in the National Contingency Plan at 40 CFR §§300.415(m) and 300.430(c). **(September 1994 Monthly Hotline Report)**

Environmental Justice

Key Words:

Brownfields; Environmental Justice; Executive Order 12898

"OSWER's Environmental Justice Initiative"

QUESTION: From the time Carol Browner assumed her position as Environmental Protection Agency (EPA) Administrator in 1993, she has made the pursuit of environmental justice one of the Agency's top priorities. Although EPA has made considerable progress in protecting and cleaning up the environment, many poor and minority communities are burdened by pollution from threats such as landfills, municipal waste incinerators, and hazardous waste sites. In response to this problem, President Clinton signed Executive Order 12898 on February 11, 1994. This order requires each federal agency to develop an agency-wide environmental justice strategy to identify and address adverse human health and environmental effects that may result from its programs. How will EPA incorporate environmental justice issues into the Office of Solid Waste and Emergency Response's Superfund, RCRA, UST, and EPCRA programs?

ANSWER: Executive Order 12898 requires each federal agency to include environmental justice as an integral part of its work. An interagency federal Working Group on Environmental Justice has been created to advise, coordinate, and provide guidance to each federal agency as it develops its environmental justice strategy. The Working Group is composed of representatives from various federal agencies and designated government officials. Each federal agency is required to provide a copy of their final environmental justice strategy to the Working Group for review to ensure that the administration, interpretation, and enforcement of programs, activities, and policies are undertaken in a consistent manner.

To implement EPA's environmental justice goals, OSWER established an Environmental Justice Task Force to broaden the discussion of environmental justice issues and make recommendations specific to waste programs. The Task Force met with representatives from citizen groups, industry, Congress, and state, local, and tribal governments, to identify environmental justice issues and influence OSWER's environmental justice strategy. On April 28, 1994, OSWER announced the availability of the OSWER Environmental Justice Task Force Draft Final Report which identified key environmental justice issues and recommendations. The recommendations outlined in the report are divided into those which cut across all waste programs (OSWER-wide) and others primarily directed toward specific regulatory areas. To implement the environmental justice goals, Elliott Laws,

"OSWER's Environmental Justice Initiative" (cont'd)

Assistant Administrator of OSWER, issued a memorandum on September 21, 1994, directing Regional offices to integrate environmental justice into all stages of OSWER policy, guidance, and regulatory development (OSWER Directive 9200.3-17).

The major OSWER-wide environmental justice recommendations focused on the following categories: Title VI of the Civil Rights Act; communication, outreach, and training; economic redevelopment; cumulative risk; contract, grant, and labor issues; federal interagency issues; and Native American tribal issues. One of the most significant OSWER-wide recommendations made is to prevent and respond effectively to Title VI complaints affecting waste programs. The Task Force also focused substantially on ways to improve communications, develop trust and involve low-income and minority communities. Other recommendations applicable to all programs include assisting in economic redevelopment by expanding the current "brownfield" redevelopment pilot program aimed at identifying, decontaminating and redeveloping contaminated properties, identifying multiple sources of contamination through cumulative risk assessments, expanding employment of local labor in affected communities through the use of contractors, and identifying a mechanism to increase technical assistance to tribal governments and initiating environmental pilot programs on tribal lands.

The Task Force also made recommendations specific to each OSWER program area to assess communities affected by OSWER programs and ensure appropriate emphasis on public participation. The following sections address the recommendations developed for the Superfund, RCRA, UST, and EPCRA programs.

The Superfund program includes formal community relations provisions to encourage public participation throughout the decision making process. Community relations activities under Superfund include developing a site-specific community relations plan, establishing an information repository and administrative record, providing technical assistance, holding public meetings, and providing public comment periods. Although Superfund community relations provisions are in place, the Task Force identified recommendations to incorporate awareness of environmental justice issues into current procedures.

Under the Superfund program, one of the major environmental justice recommendations includes developing Community Advisory Groups. These groups would act as site information clearinghouses for the affected community, assist in establishing land use expectations, and provide community support for remedial decisions. The Task Force recommends that the Office of Emergency and Remedial Response (OERR) work with the

"OSWER's Environmental Justice Initiative" (cont'd)

Regions to develop proactive site assessment efforts and incorporate issues such as multiple exposures and unique risk scenarios into risk assessment protocol.

The most significant issue that the Task Force identified for the RCRA program concerned the siting of new hazardous waste facilities. Environmental justice groups have expressed concern that hazardous waste facilities may be sited disproportionately in low-income and minority communities. The Task Force found that under the current RCRA statute and regulations, EPA has limited authority to determine where a facility will be sited. Thus, OSWER established a Siting Workgroup in April 1994. The Workgroup is developing recommendations regarding issues that impact technical location standards for sensitive geologic areas, cumulative risk, and expanded public involvement.

The flexibility of the Underground Storage Tank (UST) program allows states to run programs based on the needs and demands of their own regulated communities. In the draft report, the Task Force recommends that states consider environmental justice as they set priorities for UST compliance programs and cleanup activities. States can apply for grants to develop outreach materials and compliance programs that address environmental justice issues specific to their state program.

The states also play a significant role in the implementation of EPCRA. EPCRA created state emergency response commissions (SERCs) and local emergency planning committees (LEPCs) to inform the public about the storage and use of chemicals in their community and to develop emergency response plans for dealing with accidental releases of chemicals. Specifically, EPCRA §301 requires that, at a minimum, each LEPC include representatives from community groups or organizations, elected state or local officials, law enforcement offices, health officials, hospitals, and transporters. To ensure that SERCs as well as LEPCs are representative of the designated areas, recommendations in the Task Force report encourage the Chemical Emergency Preparedness and Prevention Office (CEPPO) to issue letters to SERCs, LEPCs, and Tribal Emergency Response Commissions (TERCs) explaining ways to address areas with environmental justice concerns. It is also recommended that EPA expand the availability of LandView, a PC program that contains information on sources of pollution from six EPA databases and demographic and economic data from the Bureau of the Census. LandView can be used to identify geographic areas and populations that may be subject to a disproportionate burden of pollution.

The OSWER Environmental Justice Task Force establishes an ambitious timetable for the development of draft implementation plans in each of these program areas. The Task Force recommended that each OSWER program office and Region submit a draft implementation plan in June 1994,

"OSWER's Environmental Justice Initiative" (cont'd)

outlining an environmental justice strategy specific to its OSWER program. OSWER will coordinate the implementation of these plans with Agency-wide efforts to address environmental justice concerns in communities where OSWER-regulated facilities are located.

Executive Order 12898 requires EPA to submit its finalized environmental justice strategy to the interagency Working Group by February 1995. **(October 1994 Monthly Hotline Report)**

Hazardous Substances and Reportable Quantities

"Mineral Spirits and the CERCLA Definition of Hazardous Substance"

Key Words:

Hazardous substance; mineral spirits; petroleum derivatives

QUESTION: Are mineral spirits considered petroleum derivatives and therefore excluded from the CERCLA definition of hazardous substance?

ANSWER: CERCLA addresses cleanup of hazardous substance sites and response to emergencies involving releases of hazardous substances. CERCLA §101(14) specifically excludes petroleum from the definition of hazardous substance, consequently petroleum releases are not subject to CERCLA reporting and liability provisions. The petroleum exclusion includes "crude oil or any fraction" of petroleum unless the fraction is specifically listed or designated under the statute. Mineral spirits, also known as stoddard solvent, naphtha, or white spirits, are usually derived from refined petroleum distillates from the light end of crude oil but could possibly be derived from coal. Mineral spirits that are distilled from petroleum are considered petroleum for the purpose of CERCLA §101(14) and, therefore, are excluded from the definition of hazardous substance. Mineral spirits often contain substances, such as toluene, that are CERCLA hazardous substances. If these substances are present naturally or are added to petroleum-derived mineral spirits in the normal refining process, then they would be excluded as petroleum as well. However, hazardous substances added to mineral spirits outside the refinery process or which increase in concentration solely as a result of contamination during use are not part of the "petroleum" and, thus, are not excluded from CERCLA regulation. In such cases EPA may respond to releases of the added substance, but not the mineral spirits itself.

There are circumstances in which mineral spirits could be regulated as a hazardous substance. For instance, coal-derived mineral spirits would not qualify for the petroleum exclusion and potentially could be regulated as a

"Mineral Spirits and the CERCLA Definition of Hazardous Substance" (cont'd)

hazardous substance. In addition, the exclusion would not apply if the mineral spirits were "specifically listed or designated" under one of the provisions cited in §101(14) of CERCLA. **(February 1994 Monthly Hotline Report)**

"Reportable Quantity Adjustments Under CERCLA and the CWA"

Key Words:

Hazardous substance; release; reportable quantity

QUESTION: In CERCLA §102, Congress established reporting requirements for hazardous substances released to the environment, and directed EPA to assign and adjust their applicable reportable quantities. CERCLA's definition of hazardous substance includes any substances designated pursuant to §311(b)(2)(A) of the CWA. A substance designated pursuant to the CWA is assigned a reportable quantity (RQ) based on aquatic toxicity criteria. This substance is automatically included as a CERCLA hazardous substance, with the CWA RQ serving as the CERCLA statutory RQ. To determine the final RQ, EPA evaluates the possibility of harm from a release of the hazardous substance, and may adjust the CERCLA RQ based on scientific and technical criteria including ignitability, reactivity, chronic toxicity, and potential carcinogenicity. The adjustment of a CERCLA RQ could potentially cause a conflict between the CERCLA and CWA reporting thresholds. How is this conflict resolved?

ANSWER: When an RQ is adjusted under CERCLA the applicable RQ under the CWA is also adjusted so that the RQs under both programs are always consistent. In the April 4, 1985, final rule, EPA added specific regulatory language to the CWA regulations at 40 CFR §117.3 and the CERCLA regulations at 40 CFR §302.4 to ensure that RQs adjusted under CERCLA would be similarly adjusted for the CWA requirements (50 FR 13456, 13473). A release is reportable under CERCLA if an RQ of a hazardous substance is released to the environment within a twenty-four hour period. Reporting under the CWA is required when an RQ of a substance is released to navigable waters within a twenty-four hour period. Because "releases to navigable waters" is a subset of "releases to the environment" (CERCLA §101(8)), different RQs would render notification requirements more confusing for the regulated community.

EPA employs an RQ adjustment procedure to ensure that RQs are always consistent. An example of this procedure can be found in the rule that adjusted the reportable quantities (RQs) for lead metal, lead compounds, lead-containing hazardous wastes, and methyl isocyanate (58 FR 35314; June 30, 1993). Lead acetate, designated under CWA §311, received a CWA RQ of 5000 pounds. The 5000 pound RQ acted as the statutory CERCLA RQ until the June 30, 1993, rule adjusted it to 10 pounds (58 FR 35314). The 10

"Reportable Quantity Adjustments Under CERCLA and the CWA" (cont'd)

pound RQ is the final RQ for purpose of both CERCLA and CWA reporting. In the same rule, EPA adjusted the final CERCLA RQ for lead chloride. This substance had been evaluated using CERCLA criteria and received a final RQ of 100 pounds (51 FR 34535, 34542; September 29, 1986). New data on the chronic toxicity of lead, however, prompted EPA to readjust the RQ to 10 pounds. The same methodology for making RQs consistent between CERCLA and the CWA applies to this situation, so that the 10 pound RQ replaces the 100 pound RQ under both programs. When a hazardous substance is released to navigable waters, one report to the NRC will satisfy the reporting requirements of CERCLA and the CWA. **(May 1994 Monthly Hotline Report)**

National Priorities List

Key Words:

Hazard Ranking System (HRS); National Priorities List (NPL); response process

"National Priorities List Format"

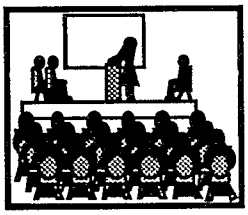
QUESTION: In accordance with §300.425(d)(4) of the National Contingency Plan (NCP) and CERCLA §105(a)(8)(B), at least once each year EPA must update the Federal Register notice containing the revised Superfund National Priorities List (NPL). Beginning in 1984, EPA proposed federal facility sites for the NPL, and in 1987 (56 FR 27620) EPA divided the NPL into federal and non-federal sections — each organized by rank according to Hazard Ranking System (HRS) scores. Sites in the General Superfund Section were listed sequentially by HRS score in groups of 50, with Group 1 containing the sites with the 50 highest HRS scores, while sites in the Federal Facilities Section were assigned numbers corresponding to the HRS-based groups delineated in the General Superfund Section (e.g., EPA assigned a "2" to any Federal site with an HRS score falling between the highest and lowest scores from Group 2 of the General Superfund Section). As of October 14, 1992 (57 FR 47180), EPA began to arrange both sections of the NPL alphabetically by state and ceased to list the sites by rank in Appendix B of the Federal Register. Why did EPA change the format of the NPL?

ANSWER: EPA altered the HRS-based format of the NPL primarily to make the list easier to use. Citizens typically want to know whether a given site in a certain state is on the list. As the NPL grew from the original 406 to over 1,200 sites, it became increasingly difficult to find sites based on name and location alone. EPA therefore opted to change the NPL format and publish the list alphabetically by state rather than sequentially by HRS score (57 FR 47180, 47184; October 14, 1992). The Agency has not, however, eliminated the HRS score information from NPL rulemakings. The preamble to each NPL proposal and final rule now identifies the HRS-based group into which each new site falls. For

"National Priorities List Format" (cont'd)

instance, a "2" would indicate that a site's HRS rank falls between 51 and 100.

In addition to making the NPL easier to use, the new format also more accurately reflects the roles of the HRS and the NPL in the Superfund program. EPA's Hazard Ranking System is one of the three methods used to determine a site's eligibility for inclusion on the Superfund National Priorities List. EPA uses the HRS to determine, based on the relative threat associated with actual or potential releases of hazardous substances from a site, whether or not the site should be placed on the NPL and thus qualify for a fund-financed remedial response (§300.425(b)). HRS scores alone do not determine the order in which sites will be addressed. The results of remedial investigation/feasibility studies (RI/FSs), the outcome of negotiations between EPA and potentially responsible parties, the relative urgency of response actions, and other factors also play a role in the establishment of funding and response priorities (57 FR 47183; October 14, 1992). EPA's decision to change the NPL format and list sites alphabetically by state instead of by HRS rank reflects the fact that the HRS simply serves as a preliminary screening device, and that the fundamental purpose of the NPL is to let the public know which sites may warrant a remedial action, rather than to indicate EPA's cleanup priorities or indicate absolute risk. Although the NPL updates printed in the Federal Register are now listed by state, the list of NPL sites by HRS rank is still available upon request to EPA. **(October 1994 Monthly Hotline Report)**



EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)

Emergency Planning and Release Notification

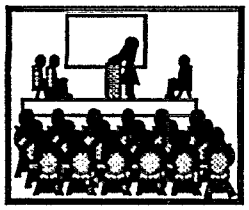
Key Words:

By-product; coincidental generation; produce; release

"Coincidental Production of Hazardous Chemicals Requires Reporting Under EPCRA §304"

QUESTION: Pursuant to EPCRA §304(a)(2), the owner or operator of a facility must report to the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) any releases of extremely hazardous substances (EHSs) or CERCLA hazardous substances which equal or exceed established reportable quantities (RQs). This requirement only applies, however, to owners and operators of facilities at which hazardous chemicals are produced, used, or stored. For purposes of EPCRA emergency release notification, is a hazardous chemical considered "produced" if it is generated solely as a by-product which is immediately released to the air? Does the facility become subject to release reporting requirements even if this by-product is the only hazardous chemical present on-site?

ANSWER: Generation of a hazardous chemical as a by-product is considered "production" under EPCRA §304(a)(2), and any facility generating a hazardous chemical in this manner must evaluate EHS and CERCLA hazardous substance releases for EPCRA notification purposes. EPA considers the term "produce" to be synonymous with "manufacture" under EPCRA §313, and according to the definition in 40 CFR §372.3, manufacturing includes coincidental generation of a chemical by-product during the production, processing, use, or disposal of another chemical substance or mixture. Releasing the chemical by-product to the air immediately following production in no way alleviates the facility's reporting burden. Further, when a facility produces substances which themselves are not hazardous chemicals, but which after release rapidly form hazardous chemicals in the environment, the hazardous chemicals are also considered "produced" for purposes of EPCRA emergency release notification (51 FR 34534; September 29, 1986). Therefore, facilities at which hazardous chemicals are produced as a by-product of facility operations, including those rapidly formed in the environment subsequent to their release, are required to notify the SERC and LEPC of any EHS or CERCLA hazardous substance release which equals or exceeds an RQ within a 24-hour period. **(April 1994 Monthly Hotline Report)**



EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)

"Notification Requirements for an Emergency Release on a Public Roadway"

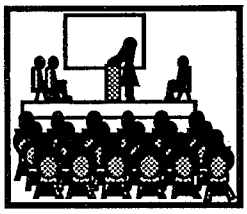
Key Words:

Emergency notification; facility; release

QUESTION: The EPCRA emergency notification regulations require facility owners and operators to immediately report releases into the environment of extremely hazardous substances or CERCLA hazardous substances if the releases exceed specific reportable quantities (40 CFR §355.40(a)). The notification must be provided to the appropriate State Emergency Response Commission and Local Emergency Planning Committee, except in the event of a transportation-related release where only 911 notification is required. The EPCRA emergency notification requirements do not apply when a release generates no potential for exposure to persons outside the boundaries of a facility (40 CFR §355.40(a)(2)(i)). If there is a release from a facility onto a public roadway that runs through the facility, will that release be reportable?

ANSWER: A release onto a public roadway must be reported under 40 CFR §355.40(a), since the release may result in exposure to persons outside the boundaries of the facility, (i.e., on the public roadway). A release is defined as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment" of designated substances (EPCRA §329(8)). The environment includes, "water, air and land" (EPCRA §329(2)). Therefore, a release into the environment, as defined in EPCRA §329, onto a public roadway is potentially a reportable release.

There is, however, a limited exemption under EPCRA that does not require reporting of any release which results in exposure to persons solely within the boundaries of a facility (40 CFR §355.40(a)(2)(i)). The definition of facility includes "all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned and operated by the same person" (40 CFR §355.20). Since the public roadway is not owned or operated by the facility that spans it, the roadway itself is not part of the facility. As a result there is exposure to persons outside the facility. Therefore, the exemption for the reporting of releases that result in exposure to persons solely within the boundaries of a facility does not apply. **(June 1994 Monthly Hotline Report)**



"Threshold Planning Quantity (TPQ) Determination for Substances in Molten Form"

Key Words:

Extremely Hazardous Substance (EHS); molten; TPQ

QUESTION: Facilities are subject to emergency planning and notification requirements under EPCRA (also known as SARA Title III) when an extremely hazardous substance (EHS) is present at a facility in an amount equal to or in excess of its TPQ. For some EHSs that are solids, two TPQs are given (e.g., 500/10,000 pounds). The lower quantity applies only if the solid exists in powder form or is handled in solution or molten form (40 CFR §355.30(e)(2)(i)). Otherwise, the 10,000-pound TPQ applies. The amount of substance in molten form must be multiplied by 0.3 to determine whether the lower TPQ is met (40 CFR §355.30(e)(2)(iv)). What is the significance of multiplying by the fraction 0.3 and how was this fraction chosen?

ANSWER: Emergency planning for EHSs under EPCRA is based on estimates of the quantity of an EHS released to the air. One of the factors that affect the quantity that actually becomes airborne is the physical state of the substance. At molten temperatures, significant amounts of vapor are not likely to be generated. The Agency examined the fraction of volatilization expected from the solids on the EHS list and found that the amount of chemical that actually volatilizes ranges from 0.008 to 0.3 pounds per minute per pound spilled. Since information was not available for all the solids on the EHS list, the Agency chose to incorporate the more conservative fraction of 0.3 for TPQ determination. As a result, a facility that handles an EHS in molten form must multiply the amount of molten material by 0.3 to determine the weight applied toward the TPQ. **(July 1994 Monthly Hotline Report)**

"Description of the Terms 'Molten' and 'In Solution' Under EPCRA §302"

Key Words:

Emergency planning; molten; solution

QUESTION: To assist state and local officials in the development of emergency response plans, EPA requires the owner or operator of each facility at which an extremely hazardous substance (EHS) is present in an amount equal to or exceeding its threshold planning quantity (TPQ) to notify the State Emergency Response Commission (EPCRA §302). The list of EHSs (found in 40 CFR Part 355, Appendices A and B) whose presence may trigger an emergency planning notification indicates each chemical's threshold planning quantity. EHSs which are in solid form under standard conditions have two TPQs: a lower threshold, which applies to powders with a particle size less than 100 microns, certain reactive solids, chemicals in molten form, and solids in solution; and an upper threshold, which applies to all other forms of the chemical (40 CFR §355.30(e)).

"Description of the Terms 'Molten' and 'In Solution' Under EPCRA §302" (cont'd)

What does EPA mean by the terms "molten" and "in solution" when used to describe extremely hazardous substances, and how are these forms quantified for comparison to the appropriate threshold planning quantity?

ANSWER: The term "molten" denotes the liquid form of an EHS which is a solid at standard temperature and pressure. EPA requires facilities to account for the potential volatility of molten chemicals by applying the lower of the two TPQs listed in 40 CFR Part 355, Appendices A and B, to EHSs present in molten form. Facilities need not, however, compare the entire weight of a molten chemical to the lower TPQ. The Agency examined the fraction of volatilization expected for the solids on the list and found that it ranges from 0.3 to 0.008 pounds/minute per pound spilled. Since data were not available for all solids and to be conservative, the Agency chose to incorporate the 0.3 fraction into the reporting requirements (59 FR 51819; October 12, 1994). To determine if the presence of a molten EHS triggers an emergency planning notification, the facility owner or operator should therefore multiply the weight in molten form by 0.3 and compare the resulting figure to the lower TPQ for the chemical in question (40 CFR §355.30(e)(2)(iv)).

A solid EHS is present "in solution" when dissolved in a liquid. When determining if the presence of a dissolved EHS triggers an emergency planning notification, the facility owner or operator should compare the weight of the solid in solution (rather than the entire weight of the solution) to the lower TPQ for the chemical in question (40 CFR §355.30(e)(2)(iii)). **(December 1994 Monthly Hotline Report)**

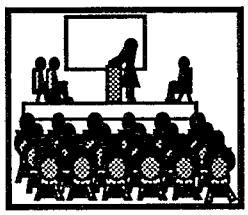
Hazardous Chemical Inventory Reporting

Key Words:

Hazardous chemical reporting; medical exclusion; technically qualified individual

"Medical Exclusion Under EPCRA §§311 and 312 as it Applies to Doctors' Offices and Pharmacies"

QUESTION: EPCRA §§311 and 312 require facility owners or operators to file inventory reports detailing the name, amount, and location of hazardous chemicals present at a facility in excess of the established threshold quantities. Hazardous chemicals are defined by OSHA's Hazard Communication Standard, found at 29 CFR §1910.1200(c), which requires facility owners or operators to maintain material safety data sheets for all hazardous chemicals present at the facility. EPCRA §311(e)(4) and 40 CFR §370.2 exclude from the definition of hazardous



"Medical Exclusion Under EPCRA §§311 and 312 as it Applies to Doctors' Offices and Pharmacies" (cont'd)

chemical, "any substance to the extent that it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual." The EPCRA program has adopted the definition of a technically qualified individual from the Toxic Substances Control Act (TSCA) regulations found at 40 CFR §720.3(ee); the term includes any person who, because of education, training, or experience is capable of understanding the health and environmental risks associated with the chemical under the individual's supervision. Does the EPCRA medical exclusion apply to chemicals stored and used at doctors' offices and pharmacies?

ANSWER:In order to be excluded from the definition of hazardous chemical, a substance must be both under the supervision of a technically qualified individual and present at a medical facility. EPA interprets technically qualified individual to refer to those persons who are adequately trained in the research or medical fields, including doctors, nurses, and pharmacists. Further, both doctors' offices and pharmacies are considered medical facilities. When a substance is used by a physician or a pharmacist at either a doctors' office or a pharmacy, it does not meet the definition of a hazardous chemical and therefore should not be included in threshold determinations under §§311 and 312. The exclusion also applies to the storage of chemicals at these facilities prior to their use. The medical exclusion applies only to the specific substances meeting the above criteria, and does not exempt the facility from the requirements of §§311 and 312; any hazardous chemicals not meeting an exclusion must be applied toward the inventory threshold. Other exclusions commonly applicable to doctors' offices and pharmacies include those found at EPCRA §311(e)(1) and (3) exempting chemicals which are present in consumer form or which are regulated by the Food and Drug Administration. **(February 1994 Monthly Hotline Report)**

"Aquaculture Exemption for EPCRA §§311 and 312"

Key Words:

Agricultural exemption; hazardous chemical reporting

QUESTION: EPCRA §§311 and 312 require facility owners or operators to submit Material Safety Data Sheets (MSDSs) and annual inventory reports for any hazardous chemical subject to OSHA's Hazard Communication Standard (29 CFR §1910.1200(c)) which is present at a facility above a reportable threshold (40 CFR §370.20(b)). An owner or operator does not have to count toward threshold determinations the amount of a chemical exempt from the definition of a hazardous chemical under EPCRA §311(e) and 40 CFR §370.2. Pursuant to 40 CFR §370.2, any substance used in routine agricultural operations is exempt from the definition of hazardous

"Aquaculture Exemption for EPCRA §§311 and 312" (cont'd)

chemical and therefore is not included in threshold determinations for reporting purposes. Would this agricultural exemption apply to chemicals used for fish farming (i.e., aquaculture)?

ANSWER: As defined by the National Aquaculture Act of 1980 in 16 U.S.C. §2802(1), aquaculture involves the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching. The agricultural exemption under EPCRA §§311 and 312 applies to a wide range of growing operations including livestock production, nurseries, and other horticultural operations (52 FR 38344, October 15, 1987). Because aquaculture involves livestock and vegetation production, EPA considers it a type of agriculture, and thus the chemicals used for growing and breeding fish and aquatic plants in an aquacultural operation are excluded from EPCRA §§311 and 312 reporting requirements. **(March 1994 Monthly Hotline Report)**

"MSDS Submission for Leaded and Unleaded Gasoline"

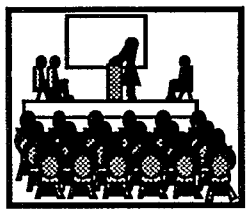
Key Words:

Gasoline; hazardous chemical reporting; mixtures; MSDS

QUESTION: A service station stores both leaded and unleaded gasoline on-site. For the purpose of EPCRA §311 hazardous chemical inventory reporting, is the owner/operator of the facility required to submit separate material safety data sheets (MSDS) for each type of gasoline, or is a single MSDS sufficient?

ANSWER: Section 311 of EPCRA requires the owner/operator of a facility to submit a MSDS to the state and local authorities for each hazardous chemical present at the facility above appropriate thresholds. A hazardous chemical is defined under Occupational Safety and Health Act (OSHA) regulations codified at 40 CFR §1910.1200(c) as any chemical which poses a physical or health hazard. This definition also applies to EPCRA §§311 and 312. A facility owner or operator is required under OSHA to prepare and maintain a MSDS for each hazardous chemical present on-site. The OSHA Hazard Communication Standard at 29 CFR §1910.1200(g)(4) specifies, however, that where complex mixtures have similar hazards and contents, it is sufficient to prepare one MSDS to apply to all similar mixtures. OSHA interprets this provision to permit the preparation of a single MSDS to cover all blends of leaded and unleaded gasoline, provided that hazards associated only with leaded gasoline, or only with unleaded gasoline, are identified separately on the MSDS. Consequently, the requirements under EPCRA §311 can be met either by submitting a separate MSDS for each type of gasoline if available, or by submitting one MSDS for all gasoline blends at the facility. **(April 1994 Monthly Hotline Report)**

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)



"Paint Mixing and the Consumer Product Exemption"

Key Words:

Consumer product exemption; hazardous chemical reporting; paint

QUESTION: A store sells paint in five-gallon cans to the general public. Customers may purchase the paint as received from the manufacturer, or they may request a custom shade of paint. To attain the customer's desired shade, store employees will mix two or more base colors. This process involves opening the cans, mixing the colors together, and pouring the custom-made shade into a five-gallon can. EPCRA §§311 and 312 require facility owners and operators to report all hazardous chemicals as defined by 29 CFR §1910.1200(c) that exceed the applicable thresholds found in 40 CFR §370.20(b). EPCRA §311(e)(3) excludes from the definition of hazardous chemical any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. For reporting under EPCRA §§311 and 312, will this paint qualify for the consumer product exemption found in EPCRA §311(e)(3), or must the store owner or operator report on the custom-mixed paint since it is processed to achieve the final form purchased by the consumer?

ANSWER: The paint is exempt from the definition of hazardous chemical under the consumer product exemption in 40 CFR §370.2 regardless of whether it is mixed on the premises or purchased by the consumer in the same form the store received it. Any substance that is found in the same form and concentration as a product packaged for general distribution qualifies for this exemption (52 FR 38344, 38348; October 15, 1987). Since both the manufacturer's premixed paint and the store's custom-made shades are in the same form and concentration as products packaged for distribution by the general public (indeed, they are in such products), none of the chemicals found in either type of paint are reportable under EPCRA §§311 and 312. **(June 1994 Monthly Hotline Report)**

"Submission of Data to On-Site Fire Departments under EPCRA §§311 and 312"

Key Words:

Hazardous chemical reporting; inventory reporting; local fire department; MSDS

QUESTION: EPCRA §§311 and 312 apply to owners or operators of any facility that is required to have available or prepare a material safety data sheet (MSDS) for an OSHA-defined hazardous chemical present at the facility at any one time in amounts equal to or greater than established thresholds. If a facility meets the criteria, its owners or operators must file MSDSs and Tier I and II inventory forms with their State Emergency Response Commission, their Local Emergency Planning Committee, and their local fire department. May a facility which maintains an on-site fire department provide the information to that entity in lieu of making it available to the public fire department?

"Submission of Data to On-Site Fire Departments under EPCRA §§311 and 312"

ANSWER: Whichever fire department may have responsibility for the facility, regardless of its affiliation, should receive the reports. The purpose of the requirement to provide local fire departments with MSDS and inventory information is to better enable them to respond to emergency situations. If the on-site fire department is primarily responsible for responding to such an incident, it is appropriate that covered facilities forward the required information to that department. Facility owners or operators should also forward copies of MSDSs and Tier forms to any other fire department that might be expected to respond to a chemical emergency at the facility. **(August 1994 Monthly Hotline Report)**

Toxic Chemical Release Inventory

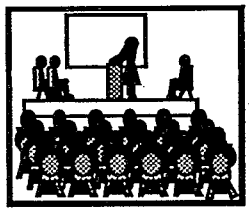
"Recycle/Reuse of Toxic Chemicals in Closed-Loop Refrigeration Systems under EPCRA §313"

Key Words:

Closed-loop refrigeration; recycling; toxic chemicals; TRI

QUESTION: Many facilities maintain recycle/reuse operations such as closed-loop refrigeration systems. If a facility utilizes 15,000 pounds of ammonia as a coolant in a closed-loop refrigeration system, this amount of the toxic chemical is considered otherwise used under EPCRA §313 because the ammonia is not incorporated into the final product. According to Directive #7 of Toxic Chemical Release Inventory Questions and Answers, Revised 1990 Version, only the amount of a toxic chemical added to a refrigeration system during the reporting year must be included in the threshold calculation. If the facility replaces its refrigeration system but uses the same ammonia to maintain the new system, must the transferred ammonia be considered otherwise used and therefore included in threshold determinations for EPCRA §313 reporting?

ANSWER: The amount of toxic chemical which must be applied toward the otherwise use threshold would include any quantity added as a result of start-up or total replacement of the contents of the recycle/reuse operation, regardless of whether the toxic chemical previously had been used on site in a closed-loop system. If a recycle/reuse system is completely empty and is started up during the year, a facility must base its threshold determination on the total amount initially needed to charge the system plus any amount which is subsequently added to the system during the year. Therefore, if a facility introduces 15,000 pounds of ammonia into a closed-loop system, regardless of the chemical's origin, the 10,000-pound threshold is exceeded and the facility would indicate in section 3.3 of the Form R that the ammonia is otherwise used. **(January 1994 Monthly Hotline Report)**



"Revisions to the Toxic Chemicals List under EPCRA §313"

Key Words:

Calendar year; Section 313; petitions; toxic chemical list; TRI

QUESTION: EPCRA §313(d) provides for the addition and deletion of chemicals to and from the list of toxic chemicals found at 40 CFR §372.65. According to EPCRA §313(d)(4), any revision to the list made on or after January 1 and before December 1 of any calendar year will take effect beginning with the next calendar year. Any revision made on or after December 1 and before January 1 of the next calendar year will take effect beginning with the calendar year following the next calendar year. While all additions to the list are subject to these provisions, the Agency has not applied the delayed effective dates specified in EPCRA §313(d)(4) for any rules deleting chemicals from the EPCRA §313 list. To date, the promulgated final rules delisting chemicals have been effective on the date of publication of the final rule in the Federal Register. Moreover, when EPA has issued the final rule before July 1, the Agency has relieved facilities of their reporting obligation for the previous calendar year in addition to obviating future reporting. Given the statutory language, why has EPA not promulgated a delayed effective date for those actions deleting substances from the list of toxic chemicals?

ANSWER: Although the statutory language outlines a delayed effective date provision, EPA interprets EPCRA §313(d)(4) to apply only to actions which add to the list of toxic chemicals. As explained in the final rule deleting di-n-octyl phthalate from the EPCRA §313 list, published on October 5, 1993 (58 FR 51785), the Agency believes that it may, in its discretion, make deletions effective immediately upon the determination that a chemical does not satisfy the listing criteria found at EPCRA §313(d)(2). Since a deletion from the list alleviates a regulatory burden, and 5 U.S.C. §553(d)(1) permits any substantive rule which relieves a restriction to take effect without delay, EPA is authorized to delete chemicals from the list effective immediately. The Agency believes that the purpose of EPCRA §313(d)(4) is to provide facilities with adequate time to incorporate newly listed chemicals into their data collection processes. Because facilities can immediately cease reporting on a delisted chemical, and since the chemical no longer satisfies the listing criteria, EPA has not specified a delayed effective date for deletions from the list of toxic chemicals under EPCRA §313. **(April 1994 Monthly Hotline Report)**

"Isomer Reporting Under EPCRA §313"

Key Words:

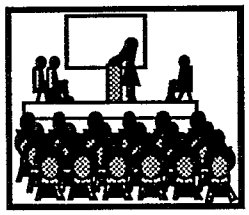
Isomer; toxic chemical list; toxic release inventory (TRI)

QUESTION: Xylene is a chemical that can exist as three different isomers: ortho-, meta-, and para-xylene. A facility processes two of the three isomers in separate streams, along with an additional stream containing a mixture of xylene isomers of unknown concentrations. For the purposes of reporting under EPCRA §313, how would the facility determine if an activity threshold has been exceeded? How would the facility report the xylene on the Form R?

ANSWER: The toxic chemical list at 40 CFR §372.65, contains four xylene listings (mixed isomers, ortho-, meta-, and para-xylene) which appear with their own CAS number. The CAS number specified for xylene (mixed isomers), 1330-20-7, apply to any combination of xylene isomers. The facility must make separate threshold determinations for each individual chemical listed in §372.65. If the thresholds are not exceeded for any of the individual xylene listings at §372.65, then the facility would not have to report on any releases of xylene at the facility. For example, if the facility processes, in separate streams, 10,000 pounds of ortho-xylene (CAS number 95-47-6), 10,000 pounds of para-xylene (CAS number 106-42-3), and 10,000 pounds of xylene where the isomers are mixed in unknown concentrations (CAS number 1330-20-7), a threshold is not exceeded for any of the xylene listings. Therefore, no reports for xylene would be required. The quantities of the individual xylene listings processed by the facility should not be aggregated for the purposes of making threshold determinations.

If the thresholds are exceeded for two or more of the individual isomer xylene listings, the facility has two choices when filling out the Form R. According to the Toxic Chemical Release Inventory Questions and Answers, the facility may file separate Form Rs for each isomer or unique isomer mixture listed in §372.65, or the facility may file one combined report. For example, the facility processes, in separate streams, 30,000 pounds of ortho-xylene (CAS number 95-47-6), 30,000 pounds of para-xylene (CAS number 106-42-3), and 30,000 pounds of xylene where the isomers are mixed in unknown concentrations. Because the activity threshold for each of the three xylene listings is exceeded independently, the facility can report releases from each of three listings separately on three different Form Rs (one for ortho-xylene, one for para-xylene, and one for the mixed isomers) or the facility can report all xylene releases on one Form R as xylene (mixed isomers). **(May 1994 Monthly Hotline Report)**

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)



"EPCRA §313 Reporting of Ammonia Processed in Cheese Products"

Key Words:

Distribution in commerce; process; TRI

QUESTION: According to EPCRA §313, facilities which manufacture, process, or otherwise use toxic chemicals listed at 40 CFR §372.65 above threshold amounts are required to report releases, transfers, and source reduction activities associated with such chemical activity. Ammonia (CAS No. 7664-41-7), an EPCRA §313 toxic chemical, is used at a manufacturing facility to adjust pH levels in cheese products. During this process, the ammonia is converted into a salt which remains with the final cheese product. The cheese is then distributed in commerce. Is this considered a covered activity under EPCRA §313 and, if so, how should it be reported on the Form R?

ANSWER: Ammonia used in this manner is considered processed under EPCRA §313 and must be applied toward that threshold. The definition of process found at 40 CFR §372.3 affirms that a toxic chemical prepared for distribution in commerce is a reportable activity even if it is distributed in a different form or physical state from that in which it was originally received. All of the ammonia incorporated into the cheese is processed as a reactant and should be reported as such on the Form R. **(October 1994 Monthly Hotline Report)**

PART 2: FEDERAL REGISTER SUMMARIES

The Federal Register summaries presented in this section include the major changes to 40 CFR regulations implementing RCRA, Superfund, UST, and the Emergency Planning and Community Right-to-Know Act during 1994. Both proposed and final rules with significant impact on these programs are included. This is not a complete list of all applicable FR notices for the year. For a comprehensive review of FR notices, the reader may wish to obtain FR reference materials or a subscription service. The summaries in this section are included to provide a convenient and easy-to-use overview.

The Federal Register summaries are grouped by program area and status (proposed, final) and presented chronologically within each section. Complete citations are provided for reference.

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

Proposed Rules

"General Services Acquisition Regulation; Contractor Identification of Products with Environmental Attributes"

Citation:

February 10, 1994
(59 FR 6231)

SUMMARY: EPA requested comments on a proposed revision to the General Services Administration Acquisition Regulation. The proposed revision requires multiple award schedule contractors to identify supplies containing recovered materials, and to describe the environmental benefits associated with them. Comments must be submitted on or before April 11, 1994.

"Carbamate Production Identification and Listing of Hazardous Waste"

Citation:

March 1, 1994
(59 FR 9808)

SUMMARY: EPA proposed to amend the regulations for hazardous waste management under RCRA by listing as hazardous six wastes generated during the production of carbamates. The Agency is also proposing to add four generic groups and 70 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded. These wastes proposed for listing as hazardous waste are also proposed to be listed as CERCLA hazardous substances. Comments must be submitted on or before May 2, 1994.

"Comprehensive Guideline for Procurement of Products Containing Recovered Materials"

Citation:

April 20, 1994
(59 FR 18852)

SUMMARY: EPA proposed a Comprehensive Procurement Guideline designating items that are or can be made with recovered materials. This proposed rule implements RCRA §6002(e). Comments must be submitted on or before June 20, 1994.

"Identification and Listing of Hazardous Waste; Organobromine Production Waste"

Citation:

May 11, 1994
(59 FR 24530)

SUMMARY: EPA proposed to amend RCRA regulations by listing as hazardous waste solids and filter cartridges from the production of 2,4,6-tribromophenol. The Agency also proposed to add 2,4,6-tribromophenol to the list of commercial chemical products that are hazardous wastes when discarded. Comments must be submitted on or before July 11, 1994.

Proposed Rules (cont'd)

"RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures"

Citation:
June 2, 1994
(59 FR 28680)

SUMMARY: EPA proposed to amend RCRA regulations governing the permitting of hazardous waste management facilities. The proposed rule expands the opportunities for public involvement by allowing public participation during more portions of the permitting process than are currently allowed. The rule also proposes to amend procedures for interim status combustion facilities. Comments must be submitted on or before August 1, 1994.

"Hazardous Waste Management System; Mercury-Containing Lamps"

Citation:
July 27, 1994
(59 FR 38288)

SUMMARY: EPA proposed two alternative approaches for the management of mercury-containing lamps. First is a proposal to conditionally exclude mercury lamps from regulation as hazardous waste. The second approach would add mercury lamps to EPA's Universal Waste Proposal (February 11, 1993; 58 FR 8102). Comments must be submitted on or before September 26, 1994.

"Financial Assurance Mechanisms"

Citation:
October 12, 1994
(59 FR 51523)

SUMMARY: EPA proposed to amend the financial assurance regulations under RCRA in two program areas. With regard to municipal solid waste landfills under Subtitle D, the Agency proposed to add a financial test for use by corporate owners and operators, and a guarantee for use by firms that wish to guarantee the costs for an owner or operator. Second, EPA proposed to modify the domestic asset component of the corporate financial test for hazardous waste TSD facilities under Subtitle C.

"Financial Assurance; Municipal Solid Waste Landfills"

Citation:
October 18, 1994
(59 FR 52498)

SUMMARY: EPA proposed to amend the federal criteria for municipal solid waste landfills (MSWLFs) under Subtitle D of RCRA by delaying the effective date of Subpart G, Financial Assurance, until April 9, 1996. Comments must be received by December 19, 1994.

Proposed Rules (cont'd)

Citation:

November 8, 1994
(59 FR 55778)

"Closed and Closing Hazardous Waste Management Facilities"

SUMMARY: EPA proposed to amend the regulations under RCRA in two areas. First, the Agency proposed to remove the current requirement for facilities to obtain a post-closure permit and instead to allow the Agency to use alternative authorities to address facilities with units requiring post-closure care. Second, EPA proposed to amend the regulations governing state authorization to require authorized states to adopt, as a component of an adequate enforcement program, authority to address corrective action at interim status facilities. This action also solicits comment on issues related to closure and corrective action at hazardous waste management facilities. Comments must be received by January 9, 1995.

Citation:

December 22, 1994
(59 FR 66072)

"Hazardous Waste Management System; Identification and Listing of Hazardous Wastes"

SUMMARY: EPA proposed to list as hazardous waste under RCRA, Subtitle C, five wastes generated during the production of dyes and pigments. The agency declined to list six other wastes from the dye and pigment industry, and deferred listing of three other wastes. The Agency also proposed to designate as CERCLA Hazardous Substances the wastes proposed for listing, without taking action to revise the statutory one-pound Reportable Quantity. Comments must be received on or before March 22, 1995. Comments received after that date will be marked "late" and may not be considered. Requests for a public hearing on this issue must be received on or before January 5, 1995.

Citation:

December 29, 1994
(59 FR 67256)

"Hazardous Waste Management; Slag Residues Derived from High Temperature Metal Recovery (HTMR) Treatment of K061, K062, and F006 Wastes"

SUMMARY: EPA proposed to allow materials resulting from the treatment of certain hazardous wastes to be used as product in road construction and as anti-skidding or deicing material on road surfaces. These materials are residues, or slags, generated from the treatment of pollution control dusts resulting from scrap metal recycling. This action would designate these treated materials as nonhazardous and allow the above uses, but only if the toxic metals in the waste are reduced to safe levels by treatment. EPA will accept public comments on this rule no later than February 13, 1995.

Final Rules

"Illinois; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program"

Citation:
January 3, 1994
(59 FR 86)

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of a final determination of full program adequacy for Illinois' municipal solid waste landfill permit program. The determination of adequacy is effective January 3, 1994.

"Identification and Listing of Hazardous Waste; Wastes from Wood Surface Protection"

Citation:
January 4, 1994
(59 FR 458)

SUMMARY: EPA issued a final hazardous waste listing determination for wastes generated from the use of chlorophenolic formulations in wood surface protection processes. In response to public comments on the proposed rule of April 27, 1993, EPA decided not to list wastes from the use of chlorophenolic formulations in wood surface protection processes. This final rule also added sodium and potassium salts of pentachlorophenol and tetrachlorophenol to 40 CFR Part 261, Appendix VIII. This rule is effective January 4, 1994.

"Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion"

Citation:
February 18, 1994
(59 FR 8362)

SUMMARY: EPA increased the quantity of contaminated media which are conditionally exempt from Subtitle C regulation when used in conducting treatability studies. This rule is effective February 18, 1994.

"Degradable Plastic Ring Rule"

Citation:
March 1, 1994
(59 FR 9866)

SUMMARY: EPA issued a final rule in response to Public Law 100-556, "Degradable Plastic Ring Carriers," which provides that EPA shall require plastic ring carriers be made of degradable material. This rule is effective September 1, 1994.

Final Rules (cont'd)

"Delaware; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program"

Citation:

March 4, 1994 (59 FR 10382)

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of a final determination of full program adequacy for Delaware's municipal solid waste landfill permit program. The determination of adequacy is effective March 4, 1994.

"Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards"

Citation:

March 4, 1994 (59 FR 10550)

SUMMARY: EPA clarified and expanded standards for the management of recycled used oil, which were originally published in the Federal Register on September 10, 1992 (57 FR 41566). The rule is effective April 4, 1994.

"Nevada; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program"

Citation:

March 7, 1994 (59 FR 10645)

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of a final determination of full program adequacy for Nevada's municipal solid waste landfill permit program. The determination of adequacy is effective March 7, 1994.

"Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities (TSDFs); Recordkeeping Instructions"

Citation:

March 24, 1994 (59 FR 13891)

SUMMARY: EPA amended recordkeeping instructions for owners and operators of hazardous waste TSDFs. The amendment will encourage the consistent recordkeeping and reporting of information by hazardous waste TSDFs. This rule is effective March 24, 1994.

Final Rules (cont'd)

"Missouri; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program"

Citation:
April 13, 1994
(59 FR 17526)

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of full program adequacy for Missouri's municipal solid waste landfill permit program. The determination of adequacy is effective April 13, 1994.

"Storage Prohibition at Facilities Generating Mixed Radioactive Hazardous Waste; Enforcement"

Citation:
April 20, 1994
(59 FR 18813)

SUMMARY: EPA announced an extension of its policy on the civil enforcement of the storage prohibition in RCRA §3004(j) at facilities which generate mixed radioactive hazardous waste. This action generally renews the August 1991 (56 FR 42730), policy for an additional two-year period. This rule is effective April 20, 1994.

"Land Disposal Restrictions (LDR); Clarification of the Dilution Prohibition and Combustion of Inorganic Metal-Bearing Hazardous Wastes"

Citation:
May 27, 1994
(59 FR 27546)

SUMMARY: EPA announced the availability of a memorandum setting out EPA's policy on the application of the LDR dilution prohibition to the combustion of inorganic metal-bearing hazardous wastes. Copies of the memorandum may be obtained by calling or visiting the RCRA Docket at EPA Headquarters.

"Hawaii, Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program"

Citation:
June 2, 1994
(59 FR 28523)

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of a final determination of full program adequacy for Hawaii's municipal solid waste landfill permit program. The determination of adequacy is effective June 2, 1994.

Final Rules (cont'd)

"Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Underground Storage Tanks, and Underground Injection Control Systems; Financial Assurance"

Citation:
June 10, 1994
(59 FR 29958)

SUMMARY: EPA amended the financial assurance regulations under RCRA Subtitles C and I. The rule modifies language required to secure a letter of credit to demonstrate financial assurance. The rule is effective August 9, 1994.

"Ohio; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program"

Citation:
June 13, 1994
(59 FR 30353)

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of a final determination of full program adequacy for Ohio's municipal solid waste landfill permit program. The determination of adequacy is effective June 13, 1994.

"Florida; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program"

Citation:
July 11, 1994
(59 FR 35340)

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of final determination of full program adequacy for Florida's municipal solid waste landfill permit program. The determination of adequacy is effective July 11, 1994.

"Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste"

Citation:
July 28, 1994
(59 FR 38536)

SUMMARY: EPA excluded from the RCRA regulatory definition of solid waste certain in-process recycled secondary materials utilized by the petroleum refining industry. This rule is effective July 28, 1994.

"Oklahoma; Amended Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program"

Citation:
August 16, 1994
(59 FR 42045)

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of an amended final determination of full program adequacy for Oklahoma's municipal solid waste landfill permit program. The determination of adequacy is effective August 16, 1994.

Final Rules (cont'd)

Citation:
August 23, 1994
(59 FR 43290)

"North Carolina; Final Authorization of Revisions to State Hazardous Waste Management Program"

SUMMARY: EPA responded to public comments regarding, and reaffirmed, its decision (59 FR 32177; June 23, 1994) to approve North Carolina's hazardous waste program revisions. Final authorization for North Carolina's program revisions is effective August 22, 1994.

Citation:
August 24, 1994
(59 FR 43496)

"Recyclable Materials Used in a Manner Constituting Disposal"

SUMMARY: EPA amended §266.20 so that certain uses of slag residues produced from the high temperature metal recovery (HTMR) treatment of electric arc furnace dust (K061), steel finishing pickle liquor (K062), and electroplating sludges (F006) are not exempt from Subtitle C regulations. EPA clarifies the definition of non-encapsulated uses of HTMR slags by specifying these uses to be the anti-skid/deicing uses. This action effectively prohibits anti-skid/deicing uses of HTMR slags derived from K061, K062, and F006 as waste-derived products placed on the land. This rule does not prohibit other uses of these slags that meet §266.20(b) requirements, nor does it prevent the disposal of HTMR slags in a Subtitle D unit if the residuals meet the risk-based exclusion levels specified in §261.3(c)(2).

Citation:
August 26, 1994
(59 FR 44144)

"Puerto Rico; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program"

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of a final determination of full program adequacy for Puerto Rico's municipal solid waste landfill permit program. The determination of adequacy is effective August 26, 1994.

Citation:
September 6, 1994
(59 FR 45986)

"Minnesota; Incorporation by Reference of Approved State Hazardous Waste Program"

SUMMARY: EPA intends to approve Minnesota's incorporation by reference of 40 CFR Part 272 into its authorized state RCRA program. Final authorization will be effective November 7, 1994, unless EPA publishes a prior action withdrawing this immediate final rule. Comments must be received on or before October 6, 1994.

Final Rules (cont'd)

"Hazardous Waste Management System; Testing and Monitoring Activities, Land Disposal Restrictions Correction"

Citation:

September 19, 1994
(59 FR 47980)

SUMMARY: EPA clarified that the regulations published on August 31, 1993 (58 FR 46060), which amended the RCRA hazardous waste regulations for testing and monitoring procedures inadvertently removed subparagraphs 40 CFR 268.7(a)(1)-268.7(1)(10). These regulations remain in effect and are regarded by EPA to have been in effect continuously in the form published in the CFR revised as of July 1, 1993.

"Land Disposal Restrictions Phase II; Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes"

Citation:

September 19, 1994
(59 FR 47982)

SUMMARY: EPA promulgated treatment standards under the LDR program for the newly identified organic toxicity characteristic (TC) wastes, except those managed in Clean Water Act systems, CWA-equivalent systems, or Class I Safe Drinking Water Act injection wells, and for all newly listed coke by-product and chlorotoluene production wastes. The Agency also established a single set of consistent treatment standards for each constituent regulated under the LDR program, referred to as universal treatment standards. EPA also published clarifying guidance regarding treatability variances, streamlined the hazardous waste recycling regulations, and reduced paperwork requirements associated with the LDR program. The rule is effective on December 19, 1994. Amendments to §266.100 are effective September 19, 1994.

"Arizona; Incorporation by Reference of Approved State Hazardous Waste Program"

Citation:

October 20, 1994
(59 FR 52918)

SUMMARY: EPA intends to approve Arizona's incorporation by reference of 40 CFR Part 272 into its authorized state RCRA program. Final authorization will be effective December 19, 1994, unless EPA publishes a prior action withdrawing this immediate final rule. Comments must be received no later than November 21, 1994.

"Solid Waste Disposal Facility Criteria"

Citation:

November 16, 1994
(59 FR 58789)

SUMMARY: EPA corrected a typographical error in the October 1, 1993, (58 FR 51536) final rule delaying the effective date for certain requirements issued under the authority of RCRA, Subtitle D.

Final Rules (cont'd)

"Hazardous Waste TSDFs and Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers"

Citation:

December 6, 1994
(59 FR 62896)

SUMMARY: EPA promulgated air standards in order to reduce organic emissions from hazardous waste management activities. Under the standards, air emission controls must be used for tanks, surface impoundments, and containers in which hazardous waste is placed on or after June 5, 1995 except under the certain conditions discussed in the rule. Air emission control requirements are also added to the RCRA permit terms and provisions specified for RCRA miscellaneous units. Finally, this action establishes a new EPA reference test method to determine the organic vapor pressure of a waste.

"Arizona; Final Determination of Full Program Adequacy of State Municipal Solid Waste Permit Program"

Citation:

December 19, 1994
(59 FR 65334)

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of a final determination approving the adequacy of Arizona's municipal solid waste landfill permit program. The effective date of this rule is December 19, 1994.

"New Mexico; Final Determination of Full Program Adequacy of State Municipal Solid Waste Permit Program"

Citation:

December 23, 1994
(59 FR 66306)

SUMMARY: Pursuant to RCRA §4005(c)(1)(C), EPA gave notice of a final determination approving the adequacy of New Mexico's municipal solid waste landfill permit program. The effective date of this rule is December 23, 1994.

UNDERGROUND STORAGE TANKS (UST)

Proposed Rules

"Underground Storage Tanks (USTs); Lender Liability"

Citation:
June 13, 1994
(59 FR 30448)

SUMMARY: EPA proposed to limit the regulatory obligations of persons maintaining indicia of ownership in a petroleum UST or UST system primarily to protect a security interest. The Agency proposed conditions under which certain security interest holders may be exempted from RCRA Subtitle I corrective action, technical, and financial responsibility regulatory requirements that apply to a UST owner and operator. Comments must be submitted on or before August 12, 1994.

"Utah; Approval of State Underground Storage Tank (UST) Program"

Citation:
October 27, 1994
(59 FR 53955)

SUMMARY: EPA intends to approve Utah's UST program. The State of Utah's application for final approval is available for public review. Comments must be submitted on or before November 28, 1994. A public hearing is tentatively scheduled for December 16, 1994.

Final Rules

"Underground Storage Tanks (USTs) Containing Petroleum; Financial Responsibility Requirements"

Citation:
February 28, 1994
(59 FR 9604)

SUMMARY: EPA extended the date by which federally-recognized Indian tribes need to comply with financial responsibility requirements for petroleum USTs on Indian lands. The compliance date for these USTs is December 31, 1998.

"Kansas; Final Approval of State Underground Storage Tank (UST) Program"

Citation:
June 6, 1994
(59 FR 29201)

SUMMARY: EPA gave notice that the State of Kansas has received final approval to operate its underground storage tank program under RCRA Subtitle I. Final approval will be effective July 6, 1994.

Final Rules (cont'd)

"Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Underground Storage Tanks, and Underground Injection Control Systems; Financial Assurance"

Citation:

June 10, 1994
(59 FR 29958)

SUMMARY: EPA amended the financial assurance regulations under RCRA Subtitle C and I. The rule modifies language required to secure a letter of credit to demonstrate financial assurance. The rule is effective August 4, 1994.

"Kansas; Codification and Incorporation by Reference of Approved State Storage Tank Program"

Citation:

September 27, 1994
(59 FR 49211)

SUMMARY: EPA intends to codify in Part 282 the prior approval of Kansas' underground storage tank program and incorporate by reference appropriate provisions of state statutes and regulations. This rule will be effective November 28, 1994, unless EPA publishes a prior action withdrawing this immediate final rule. Comments must be received on or before October 27, 1994.

SUPERFUND (SF)

Proposed Rules

"National Priorities List (NPL); Proposed Rule No. 16"

Citation:
January 18, 1994
(59 FR 2568)

SUMMARY: EPA proposed to add 26 new sites to the NPL, 16 in the General Superfund Section, and 10 in the Federal Facilities Section. Final and proposed sites now total 1289. Comments must be submitted on or before March 21, 1994.

"Carbamate Production Identification and Listing of Hazardous Waste"

Citation:
March 1, 1994
(59 FR 9808)

SUMMARY: EPA proposed to amend the regulations for hazardous waste management under RCRA by listing as hazardous six wastes generated during the production of carbamates. The Agency is also proposing to add four generic groups and 70 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded. These wastes proposed for listing as hazardous waste are also proposed to be listed as CERCLA hazardous substances. Comments must be submitted on or before May 2, 1994.

"Natural Resource Damage Assessments"

Citation:
May 4, 1994
(59 FR 23098)

SUMMARY: DOI proposed revisions of the CERCLA regulations for assessing natural resource damages resulting from a discharge of a hazardous substance as well as the Clean Water Act regulations for assessing natural resource damages resulting from a discharge of oil. Comments must be received on or before July 7, 1994.

"Natural Resource Damage Assessments"

Citation:
August 8, 1994
(59 FR 40319)

SUMMARY: The Department of the Interior proposed to amend the regulations for assessing natural resource damages resulting from a discharge of oil into navigable wasters under the Clean Water Act or a release of a hazardous substance under CERCLA. Comments must be received on or before November 7, 1994.

Proposed Rules (cont'd)

Citation:
August 23, 1994
(59 FR 43314)

"National Priorities List (NPL); Additions"

SUMMARY: EPA proposed to add 10 new sites to the NPL, 6 sites in the General Superfund Section and 4 sites in the Federal Facilities Section. Final and proposed sites now total 1,296. Comments on these additions must be submitted on or before October 24, 1994.

Citation:
October 19, 1994
(59 FR 52749)

"Natural Resource Damage Assessments"

SUMMARY: The Department of the Interior announced the commencement of a review of regulations for assessing natural resource damages under CERCLA and the Clean Water Act. The regulations provide procedures that natural resource trustees may use to obtain compensation from potentially responsible parties for injuries to natural resources. Comments on how the process should be revised must be received by January 17, 1995.

Final Rules

Citation:
January 3, 1994
(59 FR 25)

"CERCLA Administrative Hearing Procedures for Claims Asserted Against the Superfund"

SUMMARY: EPA promulgated a final rule to implement CERCLA §112, which outlines procedures for payments of claims authorized pursuant to CERCLA §111. This final rule is effective February 2, 1994.

Citation:
February 3, 1994
(59 FR 5109)

"National Priorities List; Monroe Township Landfill Site"

SUMMARY: EPA announced the deletion of the Monroe Township Landfill Site in Middlesex County, New Jersey, from the National Priorities List. This action was taken because EPA and the State of New Jersey determined that no further cleanup under CERCLA was appropriate. This action is effective February 3, 1994.

Final Rules (cont'd)

Citation:
February 23, 1994
(59 FR 8724)

"National Priorities List (NPL) for Uncontrolled Hazardous Waste Sites"

SUMMARY: With this final rule, EPA added one site to the NPL. The NPL now has 1,191 sites, 1,068 in the general Superfund section and 123 in the federal facilities section. This rule is effective March 25, 1994.

Citation:
March 25, 1994
(59 FR 14262)

"Natural Resource Damage Assessments"

SUMMARY: DOI amended regulations for assessing natural resource damages resulting from a Clean Water Act discharge of oil into navigable waters, or a CERCLA release. The Department will soon issue a new proposed rule to address assessment of lost nonuse values of injured resources. This rule is effective April 25, 1994.

Citation:
March 30, 1994
(59 FR 15020)

"Class II Civil Penalties Under CERCLA and the Federal Water Pollution Control Act (FWPCA)"

SUMMARY: The Coast Guard issued final regulations addressing practice and procedure for cases assessing Class II civil penalties under FWPCA §311(b) and CERCLA §109. This rule is effective March 30, 1994.

Citation:
April 19, 1994
(59 FR 18600)

"Acquisition Regulation Concerning Conflicts of Interest"

SUMMARY: EPA amended acquisition regulation coverage on organizational conflicts of interest for all EPA contracts. Under this rule, contracts funded through EPA's Superfund program will contain clauses requiring confidentiality agreements; requiring contractors to notify EPA immediately of conflicts of interest; and restricting future contracts. This rule is effective May 19, 1994.

Citation:
May 31, 1994
(59 FR 27989)

"National Priorities List (NPL) for Uncontrolled Hazardous Waste Sites"

SUMMARY: EPA announced the addition of 42 new sites to the NPL, 18 to the General Superfund Section and 24 to the Federal Facilities Section. This rule is effective June 30, 1994.

Final Rules (cont'd)

Citation:
July 1, 1994
(59 FR 34070)

"Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities"

SUMMARY: EPA amended the Oil Pollution Prevention regulation, promulgated under the Clean Water Act for transportation-related onshore and offshore facilities. The rule, pursuant to the proposed rule of February 17, 1993, requires certain facility owners and operators to prepare plans for responding to a worst case discharge of oil. This rule is effective August 30, 1994.

Citation:
July 14, 1994
(59 FR 35852)

"National Oil and Hazardous Substances Pollution Contingency Plan (NCP); Technical Revisions"

SUMMARY: EPA promulgated technical revisions to four sections of the NCP. In addition, EPA promulgated conforming revisions to two sections of the administrative requirements for CERCLA-funded Cooperative Agreements and Superfund State Contracts for Superfund Response Actions. This rule is effective August 15, 1994.

Citation:
August 23, 1994
(59 FR 43291)

"National Priorities List; Yakima Plating Company Site"

SUMMARY: EPA announced the deletion of the Yakima Plating Company Site in Yakima, Washington, from the National Priorities List. This action was taken because EPA and the State of Washington determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health, welfare, and the environment. The deletion is effective August 23, 1994.

Citation:
August 30, 1994
(59 FR 44633)

"National Priorities List; Wide Beach Development Site"

SUMMARY: EPA announced the deletion of the Wide Beach Development Site in Brant, New York, from the National Priorities List. EPA and the State of New York have determined that no further cleanup action under CERCLA is appropriate and that remedial actions conducted at the site to date have been protective of human health, welfare, and the environment. The deletion is effective August 30, 1994.

Final Rules (cont'd)

"National Priorities List; Revere Textile Prints Corporation"

Citation:
September 2, 1994
(59 FR 45628)

SUMMARY: EPA announced the deletion of the Revere Textile Prints Corporation Site in Sterling, Connecticut, from the National Priorities List. EPA and the State of Connecticut determined that no further cleanup under CERCLA is appropriate and the remedial actions at the site have been protective of public health, welfare, and the environment. This action is effective September 2, 1994.

"National Priorities List; North U Drive"

Citation:
September 8, 1994
(59 FR 46354)

SUMMARY: EPA announced the deletion of the North U Drive Site in Springfield Missouri, from the National Priorities List. EPA and the State of Missouri determined that no further cleanup under CERCLA is appropriate and that remedial actions at the site have been protective of public health, welfare, and the environment. This action is effective September 8, 1994.

"National Priorities List; Bioclinical Laboratories"

Citation:
September 9, 1994
(59 FR 46569)

SUMMARY: EPA announced the deletion of the Bioclinical Laboratories Site in Suffolk County, New York, from the National Priorities List. EPA and the State of New York determined that no further cleanup under CERCLA is appropriate and that remedial actions at the site have been protective of public health, welfare, and the environment. This action is effective October 11, 1994.

"National Oil and Hazardous Substances Pollution Contingency Plan (NCP)"

Citation:
September 15, 1994
(59 FR 47384)

SUMMARY: EPA published revisions to the NCP pursuant to the Oil Pollution Act and Clean Water Act. The revisions are intended to enhance the current framework, standards, and procedures for oil and hazardous substance spill response. This rule is effective October 17, 1994.

Final Rules (cont'd)

Citation:
September 20, 1994
(59 FR 48178)

"National Priorities List; C&J Disposal Site"

SUMMARY: EPA announced the deletion of the C&J Site in Eaton, New York, from the National Priorities List. EPA and the State of New York determined that no further cleanup under CERCLA is appropriate and that remedial actions at the site have been protective of public health, welfare, and the environment. This action is effective September 20, 1994.

Citation:
November 2, 1994
(59 FR 54830)

"National Priorities List; Ringwood Mines/Landfill Site"

SUMMARY: EPA announced the deletion of the Ringwood Mines/Landfill Site in Ringwood Borough, New Jersey, from the National Priorities List. The Agency published a notice of its intent to delete the site on December 8, 1993 (58 FR 64539). EPA and the State of New Jersey determined that no further cleanup under CERCLA is appropriate and that remedial actions at the site have been protective of public health, welfare, and the environment. The effective date of this action is November 2, 1994.

Citation:
November 14, 1994
(59 FR 56409)

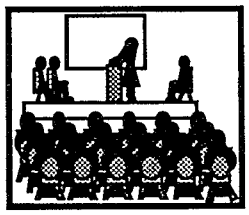
"National Priorities List; Allied Plating Site"

SUMMARY: EPA announced the deletion of the Allied Plating Site, in Portland, Oregon, from the National Priorities List. The Agency published a notice of its intent to delete the site on September 2, 1994 (59 FR 45675). EPA and the State of Oregon determined that no further cleanup under CERCLA is appropriate and that remedial actions at the site have been protective of public health, welfare, and the environment. The effective date of this action is November 14, 1994.

Citation:
December 16, 1994
(59 FR 65206)

"National Priorities List (NPL) for Uncontrolled Hazardous Waste Sites"

SUMMARY: EPA announced the addition of 18 new sites to the NPL, 14 to the General Superfund Section and 4 to the Federal Facilities Section. The entire NPL is printed. This rule is effective January 17, 1995.



EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)

Proposed Rules

"Toxic Chemical Release Reporting; Copper Monochlorophthalocyanine Pigment"

Citation:

June 6, 1994
(59 FR 29252)

SUMMARY: EPA proposed to grant a petition to delete Color Index (C.I.) Pigment Blue 15:1 from the "copper compounds" category of the list of toxic chemicals subject to reporting under §313. Comments must be submitted on or before August 5, 1994.

"Toxic Chemical Release Reporting; Acetone"

Citation:

September 30, 1994
(59 FR 49888)

SUMMARY: EPA proposed to delete acetone from the list of toxic chemicals subject to EPCRA §313 reporting requirements. This action is in response to a petition filed by Eastman Chemical Company and Hoechst Celanese. EPA is proposing Volatile Organic Compound (VOC) under the Clean Air Act. Finalization of this proposed rule is contingent upon the finalization of the proposed rule to exclude acetone from EPA's definition of a VOC. Comments will be received until November 29, 1994.

"Extremely Hazardous Substances List; Response to Petitions"

Citation:

October 12, 1994
(59 FR 51816)

SUMMARY: EPA responded to several citizens petitions to revise the list of extremely hazardous substances at 40 CFR Part 355, Appendices A and B. The Agency proposed a rule to delete from the list phosphorous pentoxide, dithlycarbamazine citrate, fenitrothion, and tellurium, and to revise the threshold planning quantity for isophorone diisocyanate from 100 to 1,000 pounds. EPA denied petitions to delete paraquat and isophorone diisocyanate from the list as well as to revise the threshold planning quantities for azinphos-methyl and fenamiphos.

Final Rules

"List of Regulated Substances and Thresholds for Accidental Release Prevention; Requirements for Petitions"

Citation:
January 31, 1994
(59 FR 4478)

SUMMARY: EPA promulgated this list of regulated substances and thresholds pursuant to CAA §112(r). The list contains 3 categories: 77 toxic substances, 63 flammable substances, and explosive substances as defined by DOT. Thresholds range from 500 to 20,000 pounds. This rule is effective March 2, 1994.

"Toxic Chemical Release Reporting; Barium Sulfate"

Citation:
June 28, 1994
(59 FR 33205)

SUMMARY: EPA deleted barium sulfate from the category "barium compounds" on the list of toxic chemicals subject to reporting under EPCRA §313. This rule relieves facilities of their obligation to report releases of barium sulfate that occurred during 1993, and releases that will occur in the future. This rule is effective June 28, 1994.

"Toxic Chemical Release Reporting; Glycol Ethers Category"

Citation:
July 5, 1994
(59 FR 34386)

SUMMARY: EPA redefined the glycol ethers category list of toxic chemicals subject to reporting under EPCRA §313. The glycol ethers category now excludes high molecular weight glycol ethers. This rule is effective June 28, 1994, and therefore affects the Form R reporting which is due July 1, 1994.

"Trade Secrecy Claims; Change of Address"

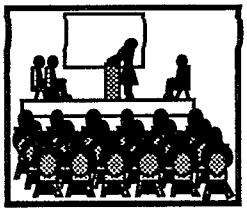
Citation:
August 22, 1994
(59 FR 43048)

SUMMARY: EPA announced a new mailing address to be used by facilities when submitting trade secrecy claims to EPA, and by petitioners when submitting petitions requesting disclosure of chemical identities claimed trade secret under §§303(d)(2) and (d)(3), 311, 312, and 313 of EPCRA. The change is effective August 15, 1994.

"Extremely Hazardous Substances List and Threshold Planning Quantities; Correction"

Citation:
October 12, 1994
(59 FR 51821)

SUMMARY: EPA published corrections to errors found in Appendices A and B to 40 CFR Part 355.



Final Rules (cont'd)

Citation:

November 30, 1994 (59 FR 61432)

"Toxic Chemical Release Reporting; Addition of Certain Chemicals"

SUMMARY: EPA added 286 chemicals and chemical categories to the list of toxic chemicals subject to reporting under EPCRA §313 and PPA §6607. Reporting for the newly listed chemicals and chemical categories will be required beginning with the 1995 reporting year. The first reports capturing releases of these chemicals will be due to the appropriate entities by July 1, 1996. The action is effective November 22, 1994.

Citation:

November 30, 1994 (59 FR 61488)

"Toxic Chemical Release Reporting; Alternate Threshold for Facilities with Low Annual Reportable Amounts"

SUMMARY: EPA established an alternate reporting threshold for those facilities with low annual reportable amounts of listed toxic chemicals that would otherwise meet the EPCRA §313 reporting requirements. A facility that meets the current EPCRA §313 reporting thresholds, but estimates that the total annual reportable amount of the toxic chemical does not exceed 500 pounds, can take advantage of an alternate manufacture, process, or otherwise use threshold of one million pounds per year for that toxic chemical. Facilities may take advantage of this alternative beginning with the 1995 reporting year. The rule is effective November 22, 1994, except for 40 CFR §§372.27 and 372.95, which will be effective upon OMB approval.

PART 3: INDICES

This section provides three indices to help you select and access the questions and answers in Part 1 and the Federal Register summaries in Part 2. The first index references the questions and FR summaries by subject. The questions and FR summaries that address that topic are listed below each key word. For example, to find information dealing with use constituting disposal, you would look in the key word index for that phrase and find a question entitled "Waste Minimization and Recycling Activities That Resemble Conventional Waste Management Practices" and a Federal Register notice from August 24, 1994, regarding materials used in a manner constituting disposal. The reference provides the page number for full text and is coded with a capital letter to indicate the relevant program (i.e., R=RCRA, S=Superfund, U=UST, and E=EPCRA).

The second index organizes the questions and FR summaries by regulatory citation, beginning with 40 CFR Part 238. This index is useful for identifying questions affecting specific portions of the regulations. For example, under the heading "40 CFR Part 302 - Designation, Reportable, Quantities, and Notification" is a question entitled "Reportable Quantity Adjustments Under CERCLA and the CWA."

Similarly, the third index organizes the questions by statutory citation. For example, the question entitled "Notification Requirements for an Emergency Release on a Public Roadway" is referenced under "Section 304 - Emergency Notification."

These three indices allow the reader flexibility in searching for a specific topic or getting an overview of the scope of the questions by selecting the approach most useful to the reader.

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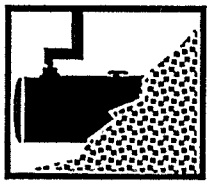

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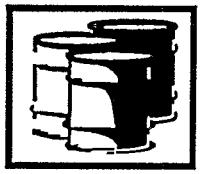

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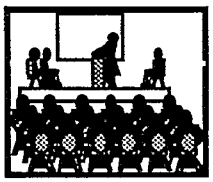

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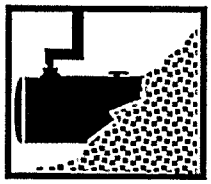

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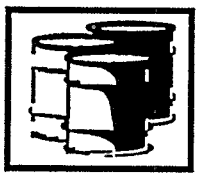

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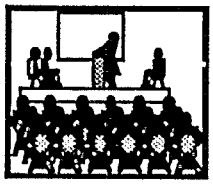

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