BACKGROUND DOCUMENT

RESOURCE CONSERVATION AND RECOVERY ACT
SUBTITLE C - HAZARDOUS WASTE MANAGEMENT

40 CFR PART 260
DEFINITIONS
AND
PROVISIONS FOR CONFIDENTIALITY

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF SOLID WASTE

APRIL 29, 1980

INTRODUCTION

The final Part 260 rules include all of the "definitions" pertaining to activities subject to control under Sections 3001 through 3004 of RCRA. In addition to these definitions, Part 260 also contains other provisions which are generally applicable to these activities. These provisions include: (1) regulations concerning the designation and handling of confidential information submitted to the Agency in accordance with the RCRA Sections 3001 through 3004 standards, (2) general procedures which the Agency will follow when acting on petitions to amend these standards, (3) special procedures applicable to petitions for the approval of equivalent testing and analytical methods and petitions to amend the Section 3001 standards, and (4) rules of grammatical construction which are generally applicable to the Sections 3001 through 3004 standards.

In issuing its proposed rules for hazardous waste in accordance with Sections 3001 through 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, the Environmental Protection Agency (EPA) published four discrete sets of rules corresponding to each of the four sections of RCRA. It was the Agency's intent that each of these sets of rules be self-contained so that people conducting activities regulated under one of these sections of RCRA need only look at one set of rules to determine which standards apply to his activities. In EPA's proposed regulations, each regulation had its own set of definitions (see §§250.11, 250.21, 250.31, and 250.41). To eliminate the unnecessary repetition this produced,

the Agency has placed them in Part 260.

Except for the definitions and the provisions for confidentiality, the Part 260 rules are self-explanatory, and require no further description other than that contained in the preamble which accompanies these rules. For this reason, this background document deals with only two aspects of the Part 260 rules: the definitions contained in Subpart B, and the provisions for confidentiality contained in §260.2 of Subpart A.

PART I

§260.10 DEFINITIONS

Proposed definitions of key terms used in the Section 3003 rules were published in the Federal Register on April 28, 1978 (43 FR 18510-1). The proposed definitions of key terms used in the Sections 3001, 3002, and 3004 rules were published in the Federal Register on December 18, 1978 (43 FR 58955, 58976-7, and 58996-9). Collectively, the Sections 3001 through 3004 rules contained 130 proposed definitions.

In response to comments received on the proposed definitions, and because of changes made to the regulations themselves, many of the final definitions have been modified considerably from their proposed form. Others have remained substantively the same. Still others have been deleted from the final rules. Some new definitions are now also required.

The Agency is deferring discussion of some of these 130 definitions until the regulations in which they are used are promulgated in either the Phase II or III final rules. For example, the definitions used in the proposed §250.43-1 "General Site Selection" standards will not be discussed until the background document supporting the final Phase II site selection standards is issued.

Table I of this document summarizes the status of the 130 proposed definitions and the 32 definitions which have been added to the final rules. For each definition, the table indicates whether (1) the definition is deleted from the final rules, or (2) discussion of the definition is deferred until the Phase II

or III rules are promulgated, or (3) the definition is being promulgated in the Phase I final rules. The table also identifies where each definition is discussed. Some of them are discussed in preamble sections and background documents related to the sections of the final rules where they are used. Definitions of more general interest are discussed in this document.

TABLE I

Proposed and New Subtitle C Definitions

Please note: New definitions are underlined.
"h.w." means hazardous waste.

Term	Deleted	Deferred	Promulgated	Background Document and/or preamble in which the term is discussed
Act or RCRA			X	260/B
Active fault zone		X		
Active portion			X	260/B
Administrator			X	260/B
Annular space	X			265/F
Aquifer			X	265/F
Authorized representative			X	45 FR 12722
Attenuation			X	265/M
Basin	X			265/J
Cell	X			265/N
Chemical fixation		X		
Close-out	X			265/G
Closed portion			X	265/G
Closing date	X			260/B
Closure	X			265/G
Closure procedures	X			265/G
Coastal high hazard area		X		
Combustion zone		X		
Common code				260/B; 262/A-5
Confined aquifer			X	122/A

TABLE I (cont.)

Term	Deleted	Deferred	Promul-gated	Background Document and/or preamble in which the term is discussed
Constituent or h.w. constituent			X	260/B
Container			X	265/I
Contamination	X			260/B
Contingency plan			X	264(5)/D
Cover material	X			265/N
Delivery document	X			260/B
Designated facility			X	260/B
Dike			X	265/K
Direct contact		X		
Discharge or h.w. discharge			X	263/M (45 FR 12723)
Disposal			X	260/B
Disposal facility			X	260/B
Endangerment	X			265/F
EPA	X			260/B
EPA hazardous waste number			X	261/D
EPA identification number			X	260/B
EPA Region			X	260/B
Equivalent method			X	260/B
Existing h.w. management facility or existing facility			X	260/B

TABLE I (cont.)

Term	Deleted	Deferred	Promul-gated	Background Document and/or preamble in which the term is discussed
Facility			X	260/B
Farm	X			260/B
Farmer	X			260/B
Federal agency			X	260/B
Fertilizer	X			265/M
Final cover	X			265/N
Five-hundred-year flood		X		
Flash point		X		
Food-chain crops			X	265/M
Floodplain		X		
Freeboard			X	260/B
Free liquids			X	265/N
Fugitive emissions		X		
Generator			X	260/B
Ground water			X	265/F
Hazardous material	X			260/B
Hazardous waste			X	261/A (§261.3)
Hazardous waste facility personnel	X			264(5)/B (§264(5).16)
Hazardous waste landfill	X			265/N
Hazardous waste management			X	260/B
Household refuse	X			261/A (§261.2)
Hydraulic gradient	X			265/F

TABLE I (cont.)

Term	Deleted	Deferred	Promul-gated	Background Document and/or preamble in which the term is discussed
Identification code	X			260/B
Inactive portion			X	260/B
Incinerator			X	265/O
Incompatible waste			X	260/B
Individual generation site			X	261/B
In operation			X	260/B
Injection well			X	122/A
Inner liner			X	265/J
International shipment			X	260/B
Interregional shipment		X		
Intraregional shipment		X		
Landfarming of a waste	X			265/M
Landfill			X	265/N
Landfill cell			X	265/N
Land treatment facility			X	265/M
Leachate			X	265/N
Leachate collection and removal system		X		
Leachate detection system		X		
Leachate detection and removal system		X		
Leachate monitoring system	X			265/F

TABLE I (cont.)

Term	Deleted	Deferred	Promul-gated	Background Document and/or preamble in which the term is discussed
Liner			X	265/N
Management or h.w. management			X	260/B
Manifest			X	260/B (45 FR 12723)
Manifest document number			X	260/B
Mining overburden returned to the mine site			X	261/A (§261.4)
Mode			X	260/B
Monitoring	X			260/B
Monitoring well	X			265/F
Motor vehicle	X			260/B
Movement			X	264/(5)/B (§264(5).13)
Navigable waters		X		
New h.w. management facility or new facility			X	260/B
On-site			X	262/J (45 FR 12723)
Open burning			X	265/P
Open dump	X			260/B
Operator			X	260/B
Owner			X	260/B
Owner/operator	X			260/B
Package or outside package	X			260/B
Packaging	X			260/B

TABLE I (cont.)

Term	Deleted	Deferred	Promulgated	Background Document and/or preamble in which the term is discussed
Partial closure			X	265/G
Partial closure procedures	X			265/G
Permitted h.w. management facility or permitted facility	X			260/B
Person			X	260/B (45 FR 12723)
Personnel or facility personnel			X	264(5)/B (§264(5).16)
Pile			X	265/L
Point source			X	260/B
Post-closure care	X			265/G
Publicly owned treatment works or POTW			X	260/B
Reactive hazardous waste	X			260/B
Recharge zone		X		
Regional Administrator			X	260/B
Regulatory floodway		X		
Reporting quarter	X			260/B
Reporting year	X			260/B
Representative sample			X	260/B
Retailer	X			261/A (§261.2)
Retention time	X			265/O
Run-off			X	265/N
Run-on			X	265/N

TABLE I (cont.)

Term	Deleted	Deferred	Promul-gated	Background Document and/or preamble in which the term is discussed
Sanitary landfill	X			260/B
Saturated zone (zone of saturation)			X	265/F
Scavenging	X			260/B
Secondary container	X			260/B
Sludge			X	261/A (§261.2)
Spill	X			263/M (45 FR 12723)
Soil barrier		X		
Soil conditioner	X			265/M
Sole source aquifers		X		
Solid waste			X	261/A (§261.2)
Solid waste management	X			260/B
Solid waste management facility	X			260/B
State			X	260/B
Storage			X	265/I
Storage facility	X			260/B
Storage tank	X			265/J
Surface impoundment			X	265/K
Tank			X	265/J
Thermal treatment			X	265/P
Totally enclosed treatment facility			X	265/J
Training	X			264(5)/B (§264(5).16)
Transportation			X	260/B (45 FR 12722)

TABLE I (cont.)

Term	Deleted	Deferred	Promul-gated	Background Document and/or preamble in which the term is discussed
Transporter			X	260/B
Transport vehicle	X			260/B
Treated area of a landfarm			X	265/M
Treatment			X	265/J
Treatment facility	X			260/B
Triple rinsed			X	261/D (§261.33)
True vapor pressure		X		
24-hour, 25-year storm		X		
Underground injection			X	122/A
Unsaturated zone (zone of aeration)			X	265/F
United States			X	260/B
Underground drinking water source (UDWS)		X		
Underground non-drinking water source		X		
Vapor recovery system		X		
Volatile waste		X		
Water (bulk shipment)			X	260/B (45 FR 12723)
Water table	X			265/F
Well			X	122/A
Well injection			X	122/A
Wetlands		X		
Zone of incorporation	X			265/M

The Proposed Definitions

The proposed definitions that have not been deferred or discussed in other background documents or preamble sections are presented next. The presentation will generally consist of:

(1) the proposed definition(s),

(2) the Section(s) of the proposed rules in which the definition was issued,

(3) a summary of the substantive comments (if any) received on the proposed definition,

(4) a response to comments (except in those cases where a proposed term has been deleted from the final rules and responding to the particular points raised by the commenters would be irrelevant),

(5) the rationale for modifications made to the proposed definition resulting from changes made either in the proposed rules or in a related EPA policy, and

(6) the final definition or other information concerning the final disposition of the definition.

For the following 18 proposed definitions, no presentation is necessary for the reasons indicated below:

A. No substantative comments were received on the following definitions issued in the proposed Section 3004 rules. The Agency is deleting these terms because they are not used in the final rules:

Closing date

Common code

Open dump

Reporting quarter

Reporting year

Sanitary landfill

Scavenging

Secondary container

Solid waste management

Solid waste management facility

* * *

B. No comments were received on the following definitions issued in the proposed Subtitle C rules. They have not been changed in the final rules and, therefore, are defined in Part 260 in their proposed form.

Act

EPA Region

Equivalent Method

Federal Agency

Management or hazardous waste management

Mode

State

United States

ACTIVE PORTION

A. Proposed Definition [Section 3004]:

"Active portion" means that portion of a facility where treatment, storage, or disposal operations are being conducted. It includes the treated area of a landfarm and the active face of a landfill, but does not include those portions of a facility which have been closed in accordance with the facility closure plan and all applicable closure standards.

B. Summary of Comments:

1. The definition should be reworded to make it clear that portions of facilities -- including those portions not closed in accordance with the proposed closure requirements -- closed prior to the effective date of the regulations are not active:
   - to clarify that previously closed portions will not have to be closed again in accordance with the closure requirements. Otherwise, owners or operators may close their entire facilities to avoid the cost of upgrading those portions of their facilities which have already been closed.
   - because the proposed definition is inconsistent with Congress' intent to apply RCRA regulations only to the future treatment, storage, or disposal of hazardous waste.
2. The definition of "active portion" is inappropriate for facilities which dispose of utility waste in strip mines because the Office of Surface Mining's closure requirements would then be inconsistent with those of EPA for these facilities.

C. Analysis of and Response to Comments:

1. The following statement in the Preamble to the proposed regulations stated the Agency's intent not to regulate portions of facilities closed before the effective date of the regulations:

> "RCRA is written in the present tense and its regulatory scheme is organized in a way which seems to contemplate coverage only of those facilities which continue to operate after the effective date of the regulations. The Subpart D Standards and Subpart E permitting procedures are not directed at inactive facilities." (43 FR 58984)

The Agency's intent might have been more clearly stated if the words "or inactive portions of active facilities" had been added to the above sentence. The Agency's intent is not to regulate under Subtitle C portions of facilities closed before the effective date of the regulations. The only exception to this is that owners and operator of facilities which continue to operate after the effective date of the regulations must ensure that portion of facilities closed before the effective date of these rules do not interfere with the monitoring or control of active portions. This requirement regulates the facility which operates under the RCRA regulations, although it may require the owner or operator, before he receives a permit, or as a permit condition, to take certain measures on portions of his facility closed before the effective date of these regulations.

2. The commenter's concern regarding the disposal of utility waste in strip mines stems from a discontent with the inclusion of these activities under the proposed Subtitle C regulations, rather than from a semantic objection to the proposed definition of "active portion." Presumably, the commenter is suggesting that where utility waste is placed in strip mines for reclamation purposes, this activity should not be regulated under RCRA as a disposal facility, because this would be inconsistent with the Office of Surface Mining's regulations requiring reclamation of strip mined land. The background document entitled " Closure and Post-Closure" explains EPA's policy regarding regulation, under Section 3004 of RCRA, of hazardous waste disposal in surface mines.

D. Final Definition:

"Active Portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of Part 261 of this Chapter and which is not a closed portion. (See also "closed portion" and "inactive portion".)

ADMINISTRATOR

A. Proposed Definition [Sections 3001/2/4]:

"Administrator" means the Administrator of the Environmental Protection Agency.

The proposed definition was adopted from Section 1004(1) of RCRA.

B. Summary of Comments:

No comments were received on the proposed definition.

C. Rationale for Modifications Made to the Proposed Definition:

The definition has been modified to indicate that a person designated by the Administrator to perform his duties is included in the definition.

D. Final Definition:

"Administrator" means the Administrator of the Environmental Protection Agency, or his designee.

CONSTITUENT OR HAZARDOUS WASTE CONSTITUENT

A. New Definition:

"Constituent" or "hazardous waste constituent" means a constituent which caused the Administrator to list the hazardous waste in Part 261, Subpart D, of this Chapter, or a constituent listed in Table 1 of §261.24 of this Chapter.

B. Rationale for the Definition:

This term is defined in the final rules to provide a concise way of referring to those constituents described more fully in the definition. The definition is limited in this way in order to make it clear that it is the hazardous attributes of a waste upon which EPA wishes to focus.

CONTAMINATION

A. Proposed Definition [Section 3004]:

"Contamination" means the degradation of naturally occuring water, air, or soil quality either directly or indirectly as a result of man's activities.

B. Summary of Comments:

1. The word "degradation" should be replaced by the phase "lowering of the quality", because the word "degradation" could be interpreted to mean a slight increase in the level of a pollutant.

2. The phrase "beyond allowable levels set forth in these regulations" should be added to the end of the definition.

C. Deletion of Proposed Definition:

The Agency believes that any degradation is contamination and, therefore, wrote the proposed definition to reflect this belief. However, EPA recognizes the commenters concerns that the release of insignificant levels of pollutants from a facility to the environment might cause an owner or operator to be in violation of these regulations. Because EPA is not ready to establish allowable levels of pollutants to make the definition specific, it is deleting the definition from the final rules. When the word "contamination" is used in the final rules (e.g., in the Subpart F ground-water monitoring standards), its meaning is clear from the context of the standard in which it is used.

DELIVERY DOCUMENT

A. Proposed Definition [Sections 3002/3/4]:

"Delivery Document" means a shipping paper (bill of lading, waybill, dangerous cargo manifest, or other shipping document) used in lieu of the original manifest to fulfill the recordkeeping requirements of §250.33.

B. Summary of Comments:

It is unclear when the "delivery document" would be used.

C. Deletion of Proposed Definition:

The delivery document was intended to be used as a record of delivery when a manifest did not accompany a movement of hazardous waste transported by rail or in bulk quantities by water (e.g., on a barge). The Agency is deleting this definition from the final rules because provisions other than a delivery document have been made in the final Section 3003 rules for the transportation of hazardous waste by rail or (in bulk) by water.

DESIGNATED FACILITY

A. New Definition:

"Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 CFR Parts 122 and 124 of this Chapter, or a permit from a State authorized in accordance with Part 123 of this Chapter, that has been designated on the manifest by the generator pursuant to §262.20.

B. Rationale for the Definition:

Sections 3002 requires the use of a manifest system to ensure that all hazardous waste transported off-site is destined for a permitted treatment, storage, or disposal facility. Section 3003 of RCRA requires transporters of hazardous waste to comply with the manifest system developed under Section 3002.

The final Part 262 rules (which correspond to Section 3002 of RCRA) require that generators designate the permitted facility to which their waste is destined. A definition of "designated facility" has been added to the final rules to provide a special term to refer to when describing the permitted facility to which the waste is to be transported.

DISPOSAL

A. Proposed Definition [Sections 3001/2/4]:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

This definition is adopted from Section 1004 of the Resource Conservation and Recovery Act (P.L. 94-580) of 1976.

B. Summary of Comments:

1. The definition should be reworded to clarify that an unplanned release or discharge of hazardous waste does not constitute "disposal". Otherwise, accidental discharges will have to be permitted before they are allowed to occur.

2. The proposed definition is inappropriate because it is dependent upon a "leaking test" and, therefore, is inconsistent with common usage of the word "disposal". The definition should be reworded as follows: disposal means to abandon, deposit, enter, or otherwise discard waste as a final action.

C. Analysis of and Response to Comments:

1. Regardless of whether a discharge of hazardous waste is intentional or not, the human health and environmental effects of both types of discharges are the same. Thus, the Agency believes that intentional and unintentional discharges should be included in the definition of disposal.

However, the Agency agrees that permits should only be required for intentional disposal of hazardous waste. Therefore, the definition of "disposal facility" has been modified to indicate that the term "disposal facility" does not apply to sites involving the accidental discharge of hazardous waste.

2. Congress, in defining "disposal" as including "leaking", clearly meant to make the definition all-encompassing. The Agency believes that the leakage of hazardous waste can pose a threat to human health and the environment and, therefore, sees no reason to modify the statutory definition of "disposal".

D. Final Definition:

Same as proposed.

DISPOSAL FACILITY

A. Proposed Definition [Section 3004]:

"Disposal facility" means any facility which disposes of hazardous waste.

B. Summary of Comments:

The proposed definition should be reworded to make it clear that the land on which an accidental discharge of waste has occurred (e.g., where a railroad tank car containing hazardous waste has overturned in a collision and spilled its cargo) is not considered to be a "disposal facility."

C. Analysis of and Response to Comments:

The Agency agrees with this comment and has therefore changed the definition of "disposal facility" to indicate that disposal facilities only include those operations at which hazardous waste is intentionally placed into or on the land or water.

In addition, the definition has been further modified to indicate that only facilities at which hazardous waste is to remain after closure are, for purposes of these regulations, disposal facilities. Thus, for example, a surface impoundment used for waste treatment from which the emplaced waste is to be removed before or during closure of the impoundment, is not both a treatment and a disposal facility, but rather, only a treatment facility. That doesn't mean it might not be "disposing" of wastes within the meaning of that term in Section 1004(3) of

RCRA. It merely means that EPA, for the purposes of reference in these regulations, will call it a "treatment facility".

D. Final Definition:

"Disposal Facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

EPA [Sections 3002/4]

A. Proposed Definitions:

"EPA" means the U.S. Environmental Protection Agency.

B. Summary of Comments:

No comments were received on the proposed definitions.

C. Deletion of the Proposed Definition:

The Agency has deleted this definition from the final rules because its meanings will be obvious to most people and, therefore, defining it is unnecessary.

EPA IDENTIFICATION NUMBER

(IDENTIFICATION CODE)

A. Proposed Definition [Section 3002/3/4]

"Identification code" means the unique code assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility, pursuant to regulations published in §250.24, .32, and .40(c) and Subpart G.

"Identification code" was defined in the proposed Sections 3002, 3003, and 3004 rules. These definitions were essentially the same, except that they were tailored to either generators, transporters, or owners/operators of treatment, storage or disposal facility. The definition in the Section 3003 rules did, however, contain an additional provision which would have allowed States, as well as EPA, to issue identification codes.

B. Summary of Comments:

If both States and EPA issue identification codes, it is possible that more than one identification code could be issued to the same generator, transporter, or owner/operator.

C. Analysis of and Response to Comments:

When the Section 3003 rules were proposed, they specified that States could be allowed to issue identification codes. Since that time, the Agency has determined that allowing States to conduct the EPA notification program [Section 3010] -- wherein EPA identification codes are issued -- is not authorized by RCRA. The only parties authorized in RCRA to issue EPA identification codes are the Administrator of EPA and States that have authorized hazardous waste permit programs.

Section 3010 of RCRA requires that each person who handles hazardous waste to notify the Agency within 90 days after the Part 261 rules are initially promulgated. By so notifying, these people will obtain an EPA identification number. However, no States will be issuing these numbers because it will take longer than 90 days for States to be authorized to administer the hazardous waste program (see the final Parts 122 & 124 rules). Accordingly, the final definition has been revised to reflect this fact.

The Agency has replaced the proposed term with "EPA identification number" because people who notify in accordance with Section 3010 of RCRA are assigned numbers.

The Agency is re-promulgating the definition of "EPA identification number" which appeared in the Part 260 rules issued on February 26, 1980 (45 FR 12724). The word "unique" has been deleted from that definition because it is obvious that the number which will be assigned to people complying with the Section 3010 notification requirements will be unique.

D. Final Definition:

"EPA Identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

EXISTING FACILITY

A. Summary of Comments:

1. The definition of "facility" should distinguish between new and existing facilities.

2. The term "in operation" should be defined because correct interpretation of several standards (e.g., proposed §250.43-2(b)) in which the term is used is necessary for owners or operators to determine whether they should comply with these standards. "In operation" should be defined as follows: "In operation" means, when applied to hazardous waste management facilities, that the facility is actively treating, storing, or receiving hazardous waste for disposal.

B. Analysis of and Response to Comments:

1. Definitions for new and existing facilities were contained in the proposed Consolidated Permit Regulations (44 FR 34269), which are the standards with which owners or operators must comply to obtain a permit for their facilities.

   However, to minimize the need to refer to the Consolidated Permit Regulations to understand the Parts 264 and 265 standards, the Agency has published definitions of "new facility" and "existing facility" in Part 260 of the final rules.

2. The proposed Consolidated Permit Regulations also contained a definition of "in operation". It too has been included in the list of terms defined in Part 260 in order to:

   1. promote the understanding of the term "existing facility" (in which the term "in operation" is used), and
   2. respond to the commenters' request for a definition of the term. The definition in Part 260 is comparable to that suggested by the commenter.

* * *

See the preamble discussion accompanying the Part 260 rules for the Agency's rationale for altering the definition of "existing facility" contained in the proposed Consolidated Permit Regulations.

C. Final Definitions:

"Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction had commenced, on or before October 21, 1976. Construction had commenced if:

(1) The owner or operator has obtained all necessary Federal, State, and local preconstruction approvals or permits; and either

(2a) A continuous physical, on-site construction program has begun, or

(2b) The owner or operator has entered into contractual obligations -- which cannot be cancelled or modified without substantial loss -- for construction of the facility to be completed within a reasonable time.

FACILITY

A. Proposed Definition [Section 3004]:

"Facility" means any land and appurtenances, thereon and thereto, used for the treatment, storage, and/or disposal of hazardous waste.

B. Summary of Comments:

1. The definition should distinguish between facilities on the generator's property for his own use, and facilities to which generators send their waste for treatment, storage, or disposal.
2. It should be made clear that multiple separate treatment, storage and/or disposal sites at one industrial complex constitute a single facility. To this end, the word "any" should be changed to "all" in the definition.
3. The word "facility" is used ambiguously throughout the regulations because sometimes it refers to landfills, sometimes to storage facilities, sometimes to all types of hazardous waste facilities, and sometimes even to non-hazardous waste facilities. The Agency should be more careful in its use of the term, and should designate, where appropriate, the specific type of facility affected by each standard.
4. The regulations refer to both hazardous and solid waste facilities. To preclude any confusion that may arise from using the term "facility", §250.41(b) should include a definition of "hazardous waste facility," rather than "facility"; the term "facility" should not be used in the Section 3004 standards to

refer to hazardous waste facilities.

5. The phrase: "but does not include a steam electric generating plant which is fueled wholly or partially by refuse - derived fuel" should be added to the end of the definition of "disposal facility". The reason for this is to clarify that a utility boiler fueled wholly or partially by waste oil is not required to be licensed as a solid waste disposal facility and, therefore, is not included in the definition of "facility".

C. Analysis of and Response to Comments:

1. For the most part, the standards applicable to facilities on a generator's property (on-site facilities) also apply to facilities to which generators send their waste for treatment, storage, or disposal (off-site facilities). Thus, it is unnecessary to differentiate, in most of the standards, between the two types of facilities. In those few standards which are applicable to only one type of facility, the scope of the standard is indicated by placing "off-site" or "on-site" before the term "facility." Therefore, there is no need to differentiate in the definition of "facility" between generator-operated facilities and facilities to which generators send their waste for management.

2. The Agency agrees that the final rules should make

it clear that a facility may consist of several storage, treatment, and/or operational units. To this end, the Agency has substituted the word "all" for "any" in the revised definition, and has added the following sentence to the definition: "A facility may consist of several treatment, storage, and/or disposal operational units, (e.g., one or more landfills, surface impoundments, or combinations of them)."

3 & 4. The Agency uses the term "facility" to refer to any one of a number of types of hazardous waste facilities, or combinations of them, because it is cumbersome to list the individual types of facilities to which a standard pertains. The Agency believes that the context in which the term is used makes its meaning sufficiently clear to avoid ambiguity.

The Agency recognizes that the use of the term "facility" in Section 3004 to refer to hazardous waste management facilities, and in Section 4004 to refer to solid waste management facilities, may be somewhat confusing when comparing the two sets of regulations. However, the Agency has been careful to use the unmodified word "facility" in the final Section 3004 standards only when speaking about hazardous waste facilities. Solid waste

facilities are always prefaced by an adjective which connotes solid, as opposed to hazardous, waste: (e.g., sanitary landfill). Likewise, in the final Section 4004 standards, the unmodified word "facility" is used only to describe solid waste facilities.

The Agency believes that using the term "hazardous waste facility", in lieu of the word "facility", throughout the Section 3004 standards would be unnecessarily cumbersome.

5. Resource recovery operations excluded from regulation under the Phase I rules have been specified in §261.3, Definition of Hazardous Waste. The purpose of the suggested amendment to the definition regarding waste oil-fired boilers has been achieved in this fashion rather than by revising the definition of "facility".

D. Final Definition:

"Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

FARM
FARMER

A. Proposed Definitions [Section 3002]:

"Farm" means a piece of land on which crops or animals are raised.

"Farmer" means a person whose principal business is operating a farm.

B. Summary of Comments:

A comment was received on the proposed definitions, suggesting that the definition of farmer should not be restricted to those persons whose "principal" occupation was farming.

C. Deletion of Proposed Definitions:

EPA has decided that the dictionary definitions of "farm" and "farmer" adequately define these terms and, therefore, has chosen to delete these definitions from the final rules.

FREEBOARD

A. Proposed Definition [Section 3004]:

"Freeboard" means the vertical distance between the average maximum level of the surface of waste in a surface impoundment, basin, open tank, or other containment and the top of the dike or sides of an impoundment, basin, open tank, or other containment.

B. Summary of Comments:

The word "average" or "average maximum" should be deleted from the proposed definition because using the term "average maximum level":

- Will enable operators to comply with freeboard restrictions without maintaining adequate freeboard at all times;
- Will render freeboard requirements in permits legally ineffective and unenforceable;
- Is meaningless without a reference to time (e.g., 24 hours).

C. Analysis of and Response to Comments:

The Agency's intent in including the words "average maximum" in the proposed definition was to convey the idea that, even in closely monitored facilities, the level of waste in a containment device fluctuates somewhat from day to day. The Agency believed that this tendency for unavoidable fluctuation should be reflected in the definition of freeboard to assure owners or operators that EPA will not subject them to penalties if they are unable to maintain the exact vertical distance (e.g., 2 feet) specified in the standards.

As the comment suggests, the proposed definition poses the problem that it could permit operation for at least some period of time with less than 2 feet of freeboard. If an emergency occured at this time, (e.g., a malfunction in the treatment process, or a severe storm), then the freeboard might have been inadequate to prevent the impounded waste from overflowing. It is just this sort of problem that the freeboard requirement is intended to avoid. The phrase "average maximum" has therefore been deleted from the definition, and it is intended that owners and operators manage their facilities so that they maintain at least 2 feet of freeboard at all times during normal operations. The Agency now believes that the appropriate place to address unavoidable fluctuations in freeboard is in the enforcement process, or in the facility's permit, and not in the definition of "freeboard."

D. <u>Final Definition</u>:

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

GENERATOR

A. Proposed Definition [Section 3002/3/4]:

"Generator" means any person or Federal Agency whose act or process produces hazardous waste identified or listed under Subpart A; provided, however, that certain producers may or may not be generators depending on whether they meet the criteria specified in §250.29 of this Subpart.

B. Rationale for the Definition:

§1004(6) of RCRA defines "hazardous waste generation" as "the act or process of producing hazardous waste". EPA used this language as the basis for its proposed definition of "generator".

C. Summary of Comments:

1. The definition should exclude:

a. people who do not intentionally produce hazardous waste (e.g., manufacturers of hazardous materials who spill some of their product at their plant).

b. waste oil haulers. The preamble to the proposed Section 3002 rules states that the reason why accumulation of hazardous waste is considered to be generation is because "the process of accumulation results in a hazardous waste disposal problem". However, this is not the case with people who only accumulate hazardous waste in order to transport it.

c. owners and operators of treatment facilities who produce hazardous residues (and, therefore, hazardous waste) as a result of treating hazardous waste. Otherwise, these facilities will have to send manifests to themselves.

2. In the drilling industry, sub-contractors are often hired to supply drilling mud, and to dispose of it after it is used. Even though the sub-contractor is hired to dispose of the mud, the regulations should make it clear that the company who obtained the right to drill off-shore is the generator of the mud and, hence, is responsible for disposing of it.
3. The definition should specify that for corporations which have plants in several locations,:
   a. each plant is considered to be a separate entity for the purpose of determining whether it is a generator;
   b. the corporate headquarters is the generator. This will reduce the number of manifests and records that must be maintained.
4. The definition of generator is insufficient because it fails to say that States may be generators.
5. People may not know they are generators because of the broad, encompassing definition of "hazardous waste".

D. Analysis of and Response to Comments:

1a. People who spill a hazardous material -- either while it is being transported, or while at the manufacturing plant -- are subject to the Subtitle C rules only if the material is listed in §261.33.

§263.30 provides that people who spill these listed materials while they are being transported, may be exempted from the requirements to (1) obtain an EPA Identification Number, and (2) initiate a manifest for the spilled material -- if they are acting under the authority or instruction of the on-scene coordinator.

If a person spills one of these materials while at a manufacturing plant, the spilled material is a hazardous waste and the person who spills it is a generator. There are presently no exemptions from any of the Subtitle C rules for this type of hazardous waste generation.

1b. The Agency is deferring regulation of non-listed wastes associated with reuse or recycling until the second phase of the Part 261 rules are issued. Because virtually all waste oil haulers collect waste oil in order that it can be reused or recycled, they will not be generators of hazardous waste when the Part 261 rules are initially promulgated.

In deciding how waste oil should be regulated when the Phase II Part 261 rules are issued, the Agency will be assessing the adminstrative impact of subjecting waste oil haulers to the Subtitle C rules. However, since this decision will not be made for several months, the Agency is deferring response to this comment until these subsequent rules are promulgated.

1c. Owners and operators of treatment facilities which produce hazardous residues should not be excluded from the definition of "generator". Such residues, if hazardous, require the same careful treatment as other hazardous waste. The final Part 261 rules specify that all residues generated from hazardous waste treatment facilities are hazardous wastes (unless the owner or operator can demonstrate in accordance with §261.39 that the residue is not a hazardous waste). Therefore, the owners and operators of these facilities are generators.

However, owners and operators are not required to fill out manifests for waste generated and managed on the site of generation. Thus, if an owner or operator manages the residue which he generates and does not transport it off-site, he is not required to fill out a manifest. He is required to fill out a manifest only if the residue he generates is transported off-site for treatment, storage, or disposal.

2. If a company sub-contracts another firm to perform any of its duties required under the Subtitle C regulations, it is the company who is <u>responsible</u> for complying with the regulations, and it is the company who is the generator. Thus, if the sub-contractor fails to perform its contracted duties, EPA may bring enforcement actions against the generator. The generator may, in turn, sue the sub-contractor for failing to carry out the terms of the contract.

The Agency believes that it is inappropriate to include provisions in the regulations concerning assumptions of duties contracts. Contract law already provides an adequate mechanism for third parties to assure the performance of a principal's responsibility.

3. The Agency agrees that the regulations should make it clear that for corporations which have plants in several locations, if their plants generate hazardous waste, each is a generator. This is necesary because RCRA directs the Agency to monitor and control the movement of hazardous waste. The only way that the Agency can do so is to know the source of the waste. If the reports EPA received on hazardous waste identified the corporate headquarters as the generator, EPA would not know which of the corporation's plants produced the waste and, thus, would be unable to monitor the waste's movement. For this reason, the final definition has been modified to make it clear that the plant, and not the parent company, is the generator. However, corporate headquarters may prepare and submit separate reports for each of the corporation's facilities.

4. The regulations define a "generator" as any <u>person</u> ... (emphasis added). Section 1004(15) of RCRA states that "the term 'person' means an individual, trust ... <u>State</u> ..." (emphasis added). Because the definition of "generator" includes the term person, it includes States.

5. The Agency agrees that the definition of "hazardous waste" given in Section 1004(5) of RCRA is broad. For this reason, the Agency has included a definition of "hazardous waste" in §261.3 of the final rules which provides specificity to the statutory definition of the term.

In addition, the Agency has included an Appendix in the final Part 260 rules which diagrams the definition in §261.3. This diagram was designed to help people unfamiliar with the RCRA rules to determine if they are generators of hazardous waste.

D. Final Definition:

> "Generator" means any person, by site, whose act or processs produces hazardous waste identified or listed in Part 261 of this Chapter.

Note: The proposed definition excluded certain producers (i.e., farmers and small generators) from the definition of "generator". Because these exclusions were specifically dealt with in the proposed regulations, it was unnecessary to attempt to include the substance of these regulations in the definition of "generator".

HAZARDOUS MATERIAL

A. Proposed Definition [Section 3003]:

"Hazardous material" means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated under 49 CFR 171.8 and 173.

B. Summary of Comments:

No comments were received on the proposed definition.

C. Deletion of Proposed Definition:

The proposed definition was adopted from the Department of Transportation's (DOT's) regulations for the transportation of hazardous materials (Title 49 CFR 171.8). The Agency now believes that it was unnecessary to include this definition in the proposed RCRA rules because anyone interested in knowing how DOT uses the term can look at its definition in DOT's regulations. Therefore, it has been deleted from the final RCRA rules.

INACTIVE PORTION

A. New Definition:

"Inactive portion" means that portion of a facility which is not operated after the effective date of Part 261 of this Chapter. (See also "active portion" and "closed portion".)

B. Rationale for the Definition:

This definition has been added to the final Part 260 rules to emphasize that "inactive portions" of facilities will be regulated differently than "active portions" of facilities. See the discussion of the definition of "active portion" for a synopsis of the commenters' concerns regarding "inactive portions" of facilities.

INCOMPATIBLE WASTE

A. Proposed Definition [Section 3004]:

"Incompatible waste" means a waste unsuitable for commingling with another waste or material, because the commingling might result in:

(i) Generation of extreme heat or pressure,
(ii) Fire,
(iii) Explosion or violent reaction,
(iv) Formation of substances which are shock sensitive, friction-sensitive, or otherwise have the potential of reacting violently,
(v) Formation of toxic (as defined in Subpart A) dusts, mists, fumes, gases, or other chemicals, and
(vi) Volatilization of ignitable or toxic chemicals due to heat generation, in such a manner that the likelihood of contamination of groundwater, or escape of the substances into the environment, is increased, or
(vii) Any other reactions which might result in not meeting the Air Human Health and Environmental Standard. (See Appendix I for more details).

B. Summary of Comments:

1. The key to incompatibility, as set forth in Appendix I is that a waste "can potentially produce adverse human health and environmental effects through means such as the following: (1) heat generation..." To be consistent with Appendix I, this phrase should be substituted for the introductory language in the proposed definition.

2. Since "incompatible wastes" are prohibited in basins, landfills and surface impoundments, the phrase "or other chemicals" should be deleted from part (v) of the definition because the mixing of hazardous waste for the purpose of treatment almost always generates toxic chemicals, such that the proposed definition

will prevent the treatment of most hazardous waste.

3. The definition should be reworded to indicate that only hazardous waste unsuitable for commingling with another hazardous waste... is included in the category of "incompatible waste."

4. Because a waste cannot be incompatible with "another waste or materials" unless that waste is specifically named, the definition should be reworded as follows: "Incompatible Waste" means any one of the pairs of waste listed in Appendix I.

B. Analysis of and Response to Comments

1. The definition, the Appendix (now Appendix V to Part 265) and the substantive regulations have been coordinated in the final rules, largely along the lines of the proposed Appendix.

2. The Agency agrees that the phrase "or other chemical" in paragraph (v) of the definition, should be deleted. The concern of paragraph (v) was with toxic materials that were likely to escape as gases, dusts, mists, or fumes; other chemicals which do not escape into the air were not the focus of this paragraph.

3. The Agency does not agree that the definition of "incompatible waste" should be restricted to the commingling of hazardous waste with another hazardous waste. The commingling of hazardous waste with a non-hazardous waste or material can produce hazardous

situations (e.g., excessive heat, fire, explosion, etc.) and, thus, this commingling should also be included in the category of incompatible waste.

4. Because of the numerous types of wastes and the many new types of chemicals produced each year, it is impossible for EPA to compile, and to keep up-to-date, an exhaustive list of all incompatible waste. The proposed Appendix I (now Appendix V) was only intended to serve as a guide to alert owners or operators that special precautions should be taken when mixing the listed wastes or materials. However, because Appendix I could not contain all incompatible wastes, the Agency specified in the definition and the regulations, the characteristic outcomes of mixing waste and/or materials which are incompatible. The burden is on owners and operators to know the wastes they are handling well enough to avoid these outcomes.

C. Rationale for the Final Definition:

Example (iv) of the proposed definition -- "Formation of substances which are shock sensitive, friction-senstive, or otherwise have the potential of reacting violently" -- has been deleted from the definition. This has been done because reactive substances are adequately covered in the sections of the final rules dealing directly with them, and there are few or no damage incidents resulting from the production of such substances from non-reactive wastes.

Example (vi) of the proposed definition -- "Volatilization of ignitable or toxic chemicals due to heat generation, in such a manner that the likelihood of contamination of groundwater, or escape of the substances into the environment, is increased" -- has in part been deleted from the final Phase I definition of "incompatible waste", because the Agency is deferring regulation of the emission of volatile waste to the environment. It has in part been subsumed in other examples of incompatible wastes which involve emissions of toxic or flammable waste to the air.

Example (vii) of the proposed defintion -- "Any other reactions which might result in not meeting the Air Human Health and Environmental Standard" -- has been deleted from the final definition of "incompatible waste" because the proposed Air Human Health and Environmental Standard has been deleted from the final rules (see the Parts 264/265 preamble discussion entitled "Performance vs. Operating and Design Standards"). However, a related requirement now appears in §264/5.17(b); it is discussed in the preamble section on "Ignitable, Reactive, and Incompatible Wastes."

A new provision has been added to the final definition. It specifies that wastes are incompatible if, when mixed and placed in a containment device or facility, they would cause corrosion or decay of the construction materials of the device or facility (e.g., container

inner liners or tank walls). The Agency added this provision to the definition because many of the final Section 3004 standards are intended to prevent the rapid deterioration of a facility due to adverse reactions between wastes and the materials which contain them.

D. Final Defintion

"Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(See Part 265, Appendix V, of this Chapter for examples.)

IN OPERATION

A. New Definition:

"In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

B. Rationale for the Definition:

See the discussion on the definition of "Existing Facility".

INTERNATIONAL SHIPMENT

A. Proposed Definition [Section 3002]:

"International shipment" means the transportation of hazardous waste between a generator located in the United States and a treatment, storage, or disposal facility located outside the jurisdiction of the United States.

B. Summary of Comments:

No significant comments were received on the proposed definition.

C. Rationale for Modifications Made to the Proposed Definition:

The proposed definition only applied to generators in the United States shipping hazardous waste to a foreign country for treatment, storage, or disposal. The Agency had also intended for the term to encompass the shipment of hazardous waste from foreign generators to facilities in the United States. The final definition of the term has been revised to better reflect the Agency's original intent.

D. Final Definition:

"International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

MANIFEST

A. Proposed Definition [Sections 3002/3/4]:

Sections 3002 and 3004 - The proposed definitions of "manifest" in these Sections were substantively the same; the Section 3002 regulation stated:

> "Manifest" has the meaning given in Section 1004(12) of the Act as further defined and specified in §250.22 herein.

Section 3003 - The proposed definition in this Section incorporated the text of the statutory definition of the term given in Section 1004(12) of RCRA, rather than referencing it, as was done in the Sections 3002 and 3004 defintions of the term.

> "Manifest" means the form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste as specified in regulations under §250.22, Subpart B of this Part.

B. Summary of Comments:

No substantive comments were received on any of the proposed definitions.

C. Rationale for Modifications Made to the Proposed Definition:

The Agency has simplified the final RCRA definition of "manifest" by deleting the reference to the statutory definition of that term. Only the substance of the statutory definition has been incorporated into the RCRA definition, as was done in the proposed Section 3003 version of the term.

D. Final Definition:

"Manifest" means the shipping document originated and signed by the generator which contains the information required by Part 262, Subpart B, of this Chapter.

MANIFEST DOCUMENT NUMBER

A. Proposed Definition [Sections 3002/4]:

"Manifest document number" means the serially increasing number assigned to the manifest by the generator for recordkeeping and reporting purposes. [3004]

The definition in the proposed Section 3002 rules also included the words "or delivery document" to indicate that a serially increasing number could also be assigned to a delivery document if one was used instead of a manifest.

B. Sumary of Comments:

No comments were received on the proposed definition.

C. Rationale for Modifications Made to the Proposed Definition

The final definition is the same as that proposed in the Section 3004 rules. The phrase "or delivery document" has not been included in the final definition because the term "delivery document" is no longer used in the RCRA regulations. (See "DELIVERY DOCUMENT" on page 22 of this document.)

D. Final Definition:

"Manifest document number" means the serially increasing number assigned to the manifest by the generator for recording and reporting purposes.

MONITORING

A. Proposed Definition [Section 3004]:

"Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, groundwater, surface water, or soils.

B. Summary of Comments:

No comments were received on the proposed definition.

C. Deletion of the Proposed Definition:

The definition has been deleted from the final rules because the proposed meaning of the term was not unique to these regulations. The term was used as it is normally used in everyday language and, therefore, a definition of it was unnecessary. Where "monitoring" is used, the regulations give a reasonable indication of what "monitoring" means. It is not used as a term of art.

MOTOR VEHICLE

A. Proposed Definition [Section 3003]:

"Motor vehicle" means a vehicle, machine, tractor, trailer, or semi-trailer, or any combination thereof, propelled or drawn by mechanical power and used upon the highways in transportation. It does not include a vehicle, locomotive, or car operated exclusively on a rail or rails.

B. Summary of Comments:

No comments were received on the proposed definition.

C. Deletion of Proposed Definition:

The term "motor vehicle" was used in the proposed Section 3003 rules in the context of marking requirements for these vehicles. The proposed RCRA marking requirements have been replaced in the final RCRA rules by DOT's marking requirements. Because "motor vehicle" is defined in DOT's regulations (49 CFR 171.8), it is unnecessary to define the term in the RCRA rules.

NEW FACILITY

A. New Definition:

"New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after October 21, 1976. (See also "Existing hazardous waste management facility".)

B. Rationale for the Definition:

See the discussion on the definition of "Existing Facility".

NON-POINT SOURCE

A. Proposed Definition [Section 3004]:

"Non-point source" means a source from which pollutants emanate in an unconfined and unchannelled manner, including, but not limited to, the following:

> (i) For non-point sources of water effluent, this includes those sources which are not controllable through permits issued pursuant to Sections 301 and 402 of the Clean Water Act. Non-point source water pollutants are not traceable to a discrete identifiable origin, but result from natural processes, such as nonchannelled run-off, precipitation, drainage, or seepage.
>
> (ii) For non-point sources of air contaminant emissions, this normally includes any landfills, landfarms, surface impoundments, and basins.

B. Summary of Comments:

1. This definition should not be limited to non-channelled run-off, precipitation, drainage, and seepage.
2. The reference to "non-channelled run-off" should be deleted to be consistent with the Federal Water Pollution Control Act (FWPCA).

C. Deletion of Proposed Definition:

The Agency has deleted the definition from the final rules to be consistent with its decision not to define the term in any of its regulations prescribed under other Acts (e.g., the Clean Water Act (CWA), the Clean Air Act, etc.). Non-point sources are generally understood to be sources of pollution other than point sources. The term is only used in the RCRA rules when referring to non-point source controls under the CWA. Accordingly, in the RCRA rules, the term has the same meaning as that term has under the CWA programs.

OWNER OR OPERATOR

A. Proposed Definition [Section 3004]:

"Owner/operator" means the person who owns the land on which a facility is located and/or the person who is responsible for the overall operations of the facility.

B. Summary of Comments:

1. The definitions and responsibilities of owners and of operators should be distinguished and delineated separately because:
   - the complexities of some ownership and operator relationships may make it difficult or contractually impossible for both the owner and the operator to jointly comply with all of the requirements.
   - the owner of the facility, or the land on which the facility is built, often has nothing to do with the operation of the facility, and therefore, should not be subject to the regulations.
2. The person owning the land should not be included in the definition of owner/operator because the Act specifically indicates that the permit requirements of Section 3005(a) of RCRA apply to persons owning or operating a facility, not the land on which the facility is located. The proposed definition is inappropriate because it indicates that an absentee owner of land, who has leased the land to a person who constructs and operates a facility, could be held responsible for the operation of the facility

despite a legally binding contractural agreement to the contrary.

3. Because the owner or operator may not be physically on-site at all times, the language "owner/operator" of some of the standards (e.g., the visual inspection requirements) should be changed to "owner/operator or responsible designee(s)".

4. The Section 3002 definition of "generator" should be combined with the Section 3004 definition of "owner/operator".

C. Analysis of and Response to Comments

1. The Agency agrees that the definitions of "owner" and "operator" should be separate, but not for the reasons given by the commenters.

Although for most of the proposed and final requirements, the tasks that must be carried out can be performed by either the owner or the operator, there are a few standards with which only the owner can comply (e.g., recording certain information in the deed to the facility property). In the final rules, responsibility for complying with these standards has been assigned to the owner, and a definition has been added to Part 260 which describes who are owners of facilities.

Responsibility for complying with most of the final standards has been assigned to the "owner or operator".

(A definition has also been added to Part 260 which describes who are operators of facilities.) Owners and operators are jointly and severally responsible for complying with the requirements of these standards. (RCRA's legislative history indicates that this was Congress' intent*.) They are free to decide among themselves who will perform these tasks and, they can draw up a contract which describes the agreed-upon division of labor. If a task is not performed, the Agency may bring enforcement actions against the owner, the operator, or both. If a contract between the owner and operator exists, one of the parties is then free to bring an action against the other for not complying with the terms of the contract.

The Agency rejects the argument that because facility owners often have nothing to do with facility operations they should not be subject to the regulations. The Agency believes that unless facility owners are held accountable for environmental damage resulting from their facilities, unscrupulous facility owners may lease their property to people who will run the facility, for a retainer, in an environmentally unsound manner, reap a quick profit, and abandon the operation. If this were to occur, EPA would have no means to obtain funds from either the owner or the operator to clean up the site. To preclude this

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* H.R. Rep. No. 94-1491, 2d. Sess., at 28 (1976).

type of incident, the Agency believes that absentee land owners should be subject to the regulations. Owners must also be subject to RCRA because enforcement actions for equitable relief will necessarily involve the owners.

2. The Agency agrees that the phrase "the person owning the land" should be excluded from the final definition of "owner", but not for the reason given by the commenter. The definition of "facility" includes the land on which the waste management operation (e.g., incinerator) is located, so that the owner(s) of the facility includes the owner of the land. Thus, it is unnecessary to list both types of owners in the definition.

   The Act gives EPA the authority to define "facility" as it deems necessary. Because EPA includes the land on which the waste management operation is located in the definition of "facility", the commenter's statement regarding the Section 3005(a) permitting requirements is irrelevant.

3. The Agency believes that it is obvious that owners or operators are not required to personally perform most of the tasks assigned to them, and that they may designate their employees to carry out these tasks. The situation is comparable to requiring people to file tax returns.

Although each person is responsible to file a return, it is generally understood that people may hire tax specialists to file the return for them, even though this is not explicitly stated in the regulations. Similarly, it should be obvious that, although owners or operators are responsible for complying with the regulations, they can assign employees to perform these tasks for them. Therefore, the Agency has not amended the regulations as the commenter suggested.

4. The definitions of "generator" and "owner" or "operator" have not been combined in the final rules because the "owner" or "operator" may not always be the "generator". For example, at a disposal facility, the "operator" is the "disposer", not the "generator".

D. Final Definition:

"Owner" means the person who owns a facility or part of a facility.

"Operator" means the person responsible for the overall operation of a facility.

PACKAGING
PACKAGE or OUTSIDE PACKAGE

A. Proposed Definitions [Section 3002]:

"Packaging" means the assembly of one or more containers and any other components necessary to assure compliance with the minimum packaging requirements under 49 CFR 173, 178, and 179 and includes containers (other than freight containers or over-packs), portable tanks, cargo tanks, tank cars and multi-unit tank car tanks.

" Package" or "outside package" means a packaging plus its contents.

B. Summary of Comments:

No comments were received on the proposed definitions.

C. Deletion of Proposed Definition:

The proposed definitions of the above terms have been deleted from the final RCRA rules because they are defined in DOT's Transportation Regulations (49 CFR 171.8). Because all transporters of hazardous waste are subject to these DOT regulations, they will already be familiar with DOT's definitions of these terms. Therefore, the Agency believes that it is unnecessary to repeat them in the final RCRA Subtitle C rules.

PERMITTED HAZARDOUS WASTE MANAGEMENT FACILITY
or PERMITTED FACILITY

A. Proposed Definition [Sections 3002/3/4]:

"Permitted hazardous waste management facility" or "permitted facility" means a hazardous waste treatment, storage, or disposal facility that has received an EPA permit in accordance with the requirements of Subpart E of this Part or a permit from a State agency authorized in accordance with Subpart F of this Part. [3002]

The definitions in the proposed Sections 3002, 3003, and 3004 rules were substantively the same.

B. Summary of Comments:

The following underscored changes were suggested by the commenters:

"Permitted hazardous waste management facility" or "permitted facility" means a hazardous waste treatment, storage, and/or disposal facility that has received an EPA permit in accordance with the requirements of Subpart E of this Part or a permit or other specific written authorization from a State agency authorized in accordance with Subpart F of this Part.

C. Deletion of Proposed Definition:

The Agency has deleted the definition from the final rules because, under this definition, a "permitted facility" is merely a facility that has received a permit under these regulations. Thus, the term is self-explanatory to those familiar with the final Parts 122 and 123 rules.

PERSON

A. Proposed Definition [Sections 3001/2/4]:

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

This definition was adopted from Section 1004(15) of the Resource Conservation and Recovery Act of 1976, as amended (Pub.L. 94-580).

B. Summary of Comments:

The meaning of "person" and "Federal Agency" in RCRA, and the use of these terms in the Subtitle C regulations should be clarified. Because they are defined separately in RCRA, and because the definition of "person" does not include Federal Agencies, it would appear that the two terms are not intended to be used interchangeably.

C. Analysis of an Response to Comments:

The Agency included "Federal Agency" in the definition of "person" issued on February 26, 1980 (45 FR 12724) because this allows EPA to refer to 'any person' -- rather than the cumbersome term 'any person or Federal Agency' -- when speaking of a requirement applicable to everyone.

The Agency is re-promulgating that definition to restore the proposed phrase: "(including a government corporation)". The Agency mistakenly deleted the phrase from the definition in the February rule.

D. Final Definition:

"Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

POINT SOURCE

A. Proposed Definition [Section 3004]:

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, the following:

(i) For point sources of water effluent, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated feeding operation, vessel, or other floating craft from which pollutants are or may be discharged; and

(ii) For point sources of air contaminant emissions, any stack, duct, or vent from which pollutants are or may be discharged.

B. Summary of Comments:

The definition should be deleted because it is already defined in the Clean Water Act (CWA).

C. Analysis of and Response to Comments:

The Agency agrees that the definition should be the same as that prescribed in the CWA. That definition has been repeated in the RCRA rules to reduce the need to refer to the regulations under the CWA.

D. Final Definition:

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

PUBLICLY OWNED TREATMENT WORKS or POTW

A. Proposed Definition [Sections 3001(4)]:

"Publicly Owned Treatment Works" or "POTW" means a treatment works as defined in Section 212 of the Clean Water Act (CWA), which is owned by a State or municipality (as defined by Section 502(4) of the CWA). This definition includes any sewers that convey wastewater to such a treatment works, but does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. This term also means the municipality as defined in Section 502(4) of the CWA, which has jurisdiction over the indirect discharges to, and the discharges from, such a treatment works.

B. Summary of Comments:

1. The definition should include any "pipes, sewers, or other conveyances not connected to the facility providing treatment". This should be done because, under Section 212 of the CWA, a POTW includes "interceptor sewers, outfall sewers, sewage collection systems, pumping, power and other equipment and their appurtenances".
2. The definition should include privately-owned treatment works which treat municipal waste.
3. The definition should be reworded to eliminate the implied discrimination against privately-owned treatment works.
4. The definition of POTW should be expanded to include municipally-owned facilities other than municipally-owned treatment works (e.g., municipal hazardous waste landfills and incinerators). This will allow these other facilities to be exempted from the financial liability requirements.

C. Response to Comments:

1-4. Under these regulations, the term "publicly-owned treatment works" is only used in the exclusion (§261.4(a)(1)) of wastes mixed with domestic sewage from regulation as solid waste. Mixtures of domestic sewage with other wastes that pass through a sewer system to a publicly-owned treatment works (POTW) for treatment are excluded from regulation as solid wastes under these regulations. The exclusion is based on the legislative history of the Solid Waste Disposal Act, which indicated that such waste streams were adequately regulated under the Federal Water Pollution Control Act's construction program for treating municipal sewage. In its current form, the Agency's construction grants program makes grants to publicly-owned treatment works.

Because the exclusion of "domestic sewage" under RCRA is based on the Agency's capacity to address the environmental problems presented by such wastes through its grant program for POTWs, it is appropriate to rely on the definition of POTW used in regulations issued under the CWA to define the term. This definition is meant to cover all devices and systems included under the CWA §212 definition of "treatment works" and which are part of a system for the treatment of waste or the

conveyance of waste to a point of treatment. Thus, RCRA maintains the limitation built into the last sentence of the CWA definition. Conveyances which do not lead to treatment are not parts of the defined POTW and, thus, they do not qualify for exclusion from RCRA.

The CWA does not include privately-owned treatment works, municipal landfills, or municipal incinerators within the construction grant program. Thus, it would be inappropriate to include such facilities within the RCRA definition of POTW.

D. Final Definition:

> "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality" (as defined by Section 502(4) of the CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

REACTIVE HAZARDOUS WASTE

A. Proposed Definition [Section 3004]:

"Reactive hazardous waste" means hazardous waste defined by §250.13(c)(1) of Subpart A.

B. Summary of Comments:

No comments were received on the proposed definition.

C. Deletion of the Proposed Definition:

The definition is unnecessary because the Subpart C Part 261 rules characterize reactive hazardous waste.

REGIONAL ADMINISTRATOR

A. Proposed Definition [Sections 3002/4]:

"Regional Administrator" means the Regional Administrator for the Environmental Protection Agency Region in which the facility concerned is located, or his designee.

B. Summary of Comments:

No comments were received on the proposed definition.

C. Rationale for Modifications Made to the Proposed Definition:

The word "concerned" is extraneous and, therefore, it has been deleted from the final definition.

D. Final Definition:

"Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

REPRESENTATIVE SAMPLE

The Agency provided two different definitions of the term "representative sample" in the proposed rules, one in the Section 3001 rules, and the other in the Section 3004 rules. The proposed Section 3001 definition will be discussed first.

A. Proposed Definition [Sections 3001]:

> "Representative sample" means any sample of the waste which is statistically equivalent to the total waste in composition, and in physical and chemical properties. Representative samples may be generated using the methods set out in Appendix I of this Subpart.

B. Summary of Comments:

1. The aspect of the definition requiring that the sample be "statistically equivalent" to the total waste would be very difficult and expensive to obtain because statistical equivalence implies a legal standard of mathmatical proof. In order to determine if a sample is statistically equivalent to the total waste, the entire waste stream would have to be sampled, or a statistical data base would have have to be established for it, in order to ensure that every constituent of the waste stream was known to some level of accuracy and precision. Requiring this kind of sampling would be particularly inappropriate for people handling heterogeneous waste.
2. The phrase "statistical equivalence" should be quantified (e.g., number of samples to be taken, allowable deviation, etc.).

3. Strict statistical equivalence should not be required of "representative samples". The term should be redefined to mean a sample of combined randomly selected portions of the total waste which can reasonably be expected to exhibit the physical and chemical properties of the waste.
4. The definition of "representative sample" should be related to the method of sampling.
5. Obtaining representative samples of certain heterogeneous wastes can be prohibitively expensive and extremely difficult. While industry personnel are skilled at obtaining representative samples of such heterogeneous wastes, EPA personnel may be less skilled. Accordingly a provision should be placed in the regulations which would provide for joint sampling, or for appeals in those cases where there is a discrepancy between the sampling results of the generator and the EPA. Such a provision would help defray the generator's expenses.

C. Analysis of and Response to Comments:

1-3. The Agency agrees that requiring a representative sample to be statistically equivalent to the waste is currently infeasible for most waste streams. This is particularly true for "composite" or heterogeneous wastes. The Agency may, in the future, develop practical procedures for obtaining statistically equivalent representative samples

of hazardous waste. However, until they are developed, the Agency agrees that the definition of "representative sample" should not require that the samples be statistically equivalent to the total waste. Therefore, the definition has been changed to require that the representative samples exhibit the average properties of the universe or whole (e.g., waste or ground water).

4. The Agency sees no reason why the definition should be different depending on the type of sampling method used. Regardless of the method being used, the end result must be the same; i.e., that the sample exhibit the average properties of the whole.

5. The final §261.29 rules state that:

> a representative sample may be obtained using either the appropriate sampling method specified in Appendix I of Part 261, or another method which has been demonstrated to provide an equally representative sample (as defined in Part 260). This demonstration is the responsibility of the generator, or the owner or operator of the treatment, storage, or disposal facility.

If a person obtains his sample in accordance with the above provision, the Agency will consider the sample to be representative of the total waste. In most cases, the Agency will not be checking individual samples to determine if they are indeed "representative samples". Rather, EPA will concentrate its resources in evaluating the alternate sampling methods proposed by petitioners under §260.21, in order to ensure that these methods

provide equally representative samples to those provided by the corresponding methods specified in Appendix I.

The Agency recognizes that the procurement of a representative sample can be expensive. However, it is the obligation of the generator, or owner or operator, to fund the sampling procedures as a cost of doing business safely. The Agency is not required to defray these costs. The generator, or owner or operator, are free to allocate such costs among themselves as they choose.

Most EPA sampling will be done in an enforcement context. If a generator, or owner or operator, disagrees with EPA's sampling results, appropriate measures may be pursued in courts.

D. Final Definition:

"Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

A. Proposed Definition [Section 3004]:

"Representative sample" means a sample having average characteristics of all groundwater in the aquifer beneath the facility.

B. Summary of Comments:

1. The definition should be expanded to include all gas, liquid, semi-solid, or solid hazardous waste.

2. The following underscored words should be added to the definition:

"Representative sample" means a sample having average characteristics of all groundwater in the uppermost continuous aquifer directly beneath the facility.

The commenters provided the following reasons for these additions:

- To clarify that only continuous aquifers are of concern, and not perched water tables.
- In situations where there are successive aquifers, only the uppermost aquifer will be affected by leachate from a disposal site.

C. Deletion of Proposed Definition [Section 3004]:

The Agency agrees that the definition of "representative sample" should not be restricted to ground water samples. The Agency has restructured the final ground-water monitoring regulations so that a definition of "representative sample" specific to ground water is no longer needed. It has therefore been deleted from the final rules. The revised definition of "representative sample" originally proposed in Section 3001 is now uniformly used throughout these rules.

STORAGE FACILITY

A. Proposed Definition [Section 3004]:

"Storage facility" means any facility which stores hazardous waste, except for generators who store their own waste on-site for less than 90 days for subsequent transport off-site, in accordance with regulations in Subpart B.

B. Summary of Comments:

Virtually all of the comments received on this definition concerned the 90 day exemption for on-site storage. The commenters recommended extending the time period to 120, 180, and 270 days.

C. Analysis of and Response to Comments:

The maximum period of time for which waste is allowed to remain on-site, without the generator's facility being classified as a "storage facility", is called "accumulation time". The "accumulation time" issue is discussed in the background documents supporting the Part 262 rules promulgated on February 26, 1980.

D. Deletion of Proposed Definition:

"Storage facility" has been deleted from the final definitions because the first part of the proposed definition is obvious, and the remainder of that definition is a substantive regulatory provision which belongs in the text of the regulations rather than in the definitions.

TRANSPORTATION

A. New Definition:

"Transportation" means the movement of hazardous waste by air, rail, highway, or water.

B. Rationale for the Definition:

The definition of "transportation" was promulgated on February 26, 1980 (45 FR 12724) to make it clear that the act of conveying waste through a pipeline is not "transportion".

TRANSPORTER

A. Proposed Definition [Section 3003/4]:

"Transporter" means a person or Federal agency engaged in the transportation of hazardous waste by air, rail, highway, or water.

B. Summary of Comments

No comments were received on the proposed definition.

C. Rationale for Modifications Made to the Proposed Definition

1. The phrase "Federal agency" has been deleted from the final definition because Federal agencies are included in the revised definition of "Person".
2. "Off-site" has been added to the final definition to make it clear that the term "transporter" includes only people engaged in off-site transportation of hazardous waste.

D. Final Definition:

"Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

TRANSPORT VEHICLE

A. Proposed Definition [Section 3003]:

"Transport vehicle" means a motor vehicle, rail freight car, freight container, cargo tank, portable tank, or vessel (as defined in 49 CFR 171.8) used for the transportation of hazardous waste.

B. Summary of Comments:

The EPA definition of transport vehicle includes more vehicles than does the DOT definition of the term (49 CFR 171.8). Because of this discrepancy, EPA should adopt the DOT definition.

D. Deletion of Proposed Definition:

The term "transport vehicle" was only used in one proposed regulation (§250.36, 43 FR 18511). This phrase has been deleted from the final rules. Therefore, the term need no longer be defined in the Subtitle C rules.

TREATMENT FACILITY

A. Proposed Definition [Section 3004]:

"Treatment facility" means any facility which treats hazardous waste.

B. Summary of Comments:

No substantive comments were received on the proposed defintion.

C. Deletion of Proposed Definition:

The definition has been deleted from the final definitions because its meaning is obvious.

WATER (BULK SHIPMENT)

A. New Definition:

"Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

B. Rationale for New Definition:

The proposed Section 3003 rules did not specify special manifest requirements for hazardous waste transported by water in bulk (i.e., as opposed to it being transported by water in individual containers). However, the final rules do and, therefore, a definition of "water (bulk shipment)" has been added to the final rules in order to differentiate between the two types of shipments of hazardous waste transported by water.

(See the background document supporting the final Part 263 rules for the Agency's rationale for issuing special manifest requirements for hazardous waste transported by water in bulk.)

PART II

§260.2 CONFIDENTIALITY

A. Summary of the Proposed Regulation

The Agency expressed its basic stance towards confidentiality in §250.27 of the proposed rules, which stated that all information obtained under Subtitle C would be made available to any person to the extent and in the manner authorized by Section 3007(b) of the Act, by the Freedom of Information Act (FOIA, 5 U.S.C. Section 552), and by the EPA regulations adopted to implement FOIA (40 CFR Part 2). This general provision applied also to the record-keeping and reporting systems under Section 3004 of the proposed regulations because they were designed to use information supplied on the manifest as the data base to be compiled.

B. Rationale for Proposed Regulation

The Agency included this statement on confidentiality in the proposed rules in response to suggestions (made during public review of earlier drafts of the regulations) that the confidentiality issue should be addressed in the regulations. Section 250.27 is essentially a restatement of Congressional intent, as expressed in RCRA Section 3007(b) and the Freedom of Information Act, and of established EPA policy, as expressed in 40 CFR Part 2, regarding public disclosure of information. A similar provision was not included in the Section 3004 regulations because the Agency belived it would be redundant, since the same data base was involved in both cases.

C. Summary of Comments:

Comments concerning confidentiality were received regarding both the proposed Sections 3002 and 3004 rules. The summary of, and response to, comments on confidentiality regarding the proposed Section 3004 rules are contained in the background documents corresponding to the particular Section 3004 standard addressed in each comment. For example, comments concerning the confidentiality of the training records required in §250.43-4 of the proposed rules, are addressed in the background document which supports the final Part 264/265 personnel training standards.

On the other hand, the comments received on confidentiality regarding the proposed Section 3002 rules are analyzed and responded to below. The Agency did not respond to these comments in the background documents which support the final Section 3002 rules because the proposed standards on confidentiality have been transferred from the Section 3002 standards to the Part 260 standards. Because the Part 260 standards are being issued two months later than the final Section 3002 standards (were issued February 26, 1980), it would have been inappropriate to respond to these comments until the commenters could see the final standards. Accordingly, a summary of these comments follows:

1. All RCRA reports and information should be made available to the public because public involvement and scrutiny would ensure better implementation of the Act and the regulations.

2. The regulations should provide broader availability for treating information as confidential because:

- much of the information required in the RCRA reports will warrant confidential treatment;
- detailed information on the chemical composition of wastes and associated volumes could reveal both secret products and processes, whose disclosure would substantially impair the competitive position of a company.

3. Section 3007(b) expands the scope of confidential treatment provided in RCRA.

4. Contractual secrecy agreements should be allowed, and a mechanism should be provided which allows the generator to provide management facilities with waste analyses.

5. EPA should adopt from the regulations prescribed under the Toxic Substances Control Act (TSCA):
   - the check-off format used for asserting claims of confidentiality;
   - the use of generic names to mask the identity of chemical substances.

D. Analysis of and Response to Comments:

1-2. EPA is inclined to provide the public the greatest amount of information that it can, consistent with the obligation to provide protection to proprietary information whose disclosure would harm a person's competitive position. EPA's general regulations, set forth in 40 CFR Part 2, reflect this position, and provide for public disclosure in all cases, except those in which the regulated party can provide the required substantiation. To

the extent that the regulated party can satisfactorily comply with this burden, EPA believes that protection of that information is warranted. (See also the background document supporting the final Parts 264/265 Subpart E standards for Manifest, Recordkeeping and Reporting, for a further response to a similar comment received on the proposed Section 3004 standards.)

3. Section 3007(b) does not extend the ambit of confidential protection potentially available to the regulated community, but rather simply recognizes that such claims may be made. It says they shall be honored if "entitled to protection under Section 1905 of title 18 of the United States Code"; the same standard that already underlies 40 CFR Part 2.

4. Contractual secrecy agreements are not forbidden. Indeed, if a party wants to maintain the secrecy of information that is transmitted to other parties, such agreements may be necessary to preserve the right to claim confidentiality subsequently (see 40 CFR §2.208). Such agreements, however, do not relieve a person from reporting information covered by such agreements to EPA.

   For example, a generator may provide waste analysis to a permitted facility, subject to a contractual secrecy agreement. Such agreements do not, however, prevent submission of that information to EPA. (See the background document supporting the final Parts 264/265.13 General Waste Analysis standards, for a further response

to a similar comment received on the proposed Section 3004 standards).

5. EPA determined that the TSCA provisions were unnecessary for the proper functioning of the assertion and protection of confidential information. The RCRA reports do not require specific check-off boxes to ensure that the claims of confidentiality are properly directed. If a claim is attached to a report, the entire report will be handled as if confidential until a FOIA request is received, at which time the submitter will be required to substantiate the claim. If the claim cannot be supported the information will be released.

The use of generic names to mask the identity of substances also seemed unwarranted. If the name of the substance deserves confidential treatment, i.e. its disclosure would cause substantial harm to the competitive position of a company and satisfies the other criteria listed in 40 CFR §2.208, it will be accorded confidential treatment and will not be disclosed. There is, accordingly, no reason to provide for the use of generic names. Identification of chemical substances will help the Agency in evaluating incompatibility, contingency response, waste analysis plans, permit applications, and other important functions.

E. Final Regulation:

The final rule remains essentially unchanged from the proposed rule:

§260.2 Availability of information; confidentiality of information

(a) Any information provided to EPA under Parts 260 through 265 of this Chapter will be made available to the public to the extent and in the manner authorized by the Freedom of Information Act, 5 U.S.C. §552, and EPA regulations implementing the Freedom of Information Act, Part 2 of this Chapter.

(b) Any person who submits information to EPA in accordance with Parts 260 through 265 of this Chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in §2.203(b) of this Chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in Part 2, Subpart B, of this Chapter. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.

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