

B. SIP Requirements for Serious CO Areas

CO nonattainment areas reclassified as serious under section 186(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. The serious CO area planning requirements are set forth in section 187(b) of the CAA. EPA has issued two general guidance documents related to the planning requirements for CO SIPs. The first is the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" that sets forth EPA's preliminary views on how the Agency intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The second general guidance document for CO SIPs issued by EPA is the "Technical Support Document to Aid the States with the Development of Carbon Monoxide State Implementation Plans," July 1992.

If the Phoenix area is reclassified to serious, the State would have to submit a SIP revision to EPA that, in addition to the attainment demonstration, includes: (1) a forecast of vehicle miles travelled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Upon reclassification, contingency measures in the moderate area plan for the Phoenix area must be implemented.

III. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action"

finding of failure to attain based on the 1994 and 1995 data, are relevant to today's proposal in only one respect. If EPA were to conclude that the Phoenix area qualified for a one year extension of the attainment date, the 1996 exceedances, if validated as a NAAQS violation, would prevent the area from obtaining a second one year extension. As stated above, EPA does not believe the Phoenix area can qualify for the first extension. Moreover, EPA does not believe that the 1996 exceedances were affected by exceptional events. See letter from David P. Howekamp, EPA to Russell Rhoades, ADEQ, April 12, 1996. Therefore, the 1996 data are not addressed further in this notice.

as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

IV. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed in section III of this notice, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in-and-of-themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of \$100 million or more

to the private sector, or to State, local or tribal governments in the aggregate.

Clean Air Act Reclassification;

Arizona-Phoenix; Carbon Monoxide 14 EPA believes, as discussed above, that the proposed finding of failure to attain and reclassification of the Phoenix nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide.

Authority: 42 U.S.C. sections 7401-7671q.

Dated: April 29, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96-11739 Filed 5-9-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 148, 261, 268, 271

[FRL-5503-4]

RIN 2050-AE05

Land Disposal Restrictions Phase IV Proposed Rule—Issues Associated With Clean Water Act Treatment Equivalency, and Treatment Standards for Wood Preserving Wastes and Toxicity Characteristic Metal Wastes; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: Since publication of the Land Disposal Restrictions (LDR) Phase IV proposal (60 FR 43654, August 22, 1995), EPA has received additional information which will be considered in developing its final rule. The public has 30 days from publication of this notice to comment on that additional information. Readers should note that only comments about the new information discussed in this notice will be considered during the comment period; issues proposed in the August 22, 1995 Phase IV rule, and in the Phase IV Supplemental Proposal on mineral processing wastes (61 FR 2338, January 25, 1996), that are not discussed in this Notice of Data Availability, are not open for further comment.

DATES: Comments are due by June 10, 1996.

ADDRESSES: To submit comments, the public must send an original and two copies to Docket Number F-96-P42A-

FFFFF, located at the RCRA Docket. The mailing address is: RCRA Information Center, U.S. Environmental Protection Agency (5305W), 401 M. Street, SW, Washington, D.C. 20460. RCRA Information Center is located at 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RCRA Information Center is open for public inspection and copying of supporting information for RCRA rules from 9:00 am to 4:00 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information or to order paper copies of this Federal Register document, call the RCRA Hotline. Callers within the Washington, Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). Long-distance callers may call 1-800-424-9346 or TDD 1-800-553-7672. The RCRA Hotline is open Monday-Friday, 9:00 a.m. to 6:00 p.m., Eastern Standard Time. For other information on this notice, contact Sue Slotnick (5302W), Office of Solid Waste, 401 M Street, SW, Washington, DC 20460, phone (703) 308-8462.

SUPPLEMENTARY INFORMATION:

Paperless Office Effort

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. This expedited procedure is in conjunction with the Agency "Paperless Office" campaign. For further information on the submission of diskettes, contact Sue Slotnick of the Waste Treatment Branch at (703) 308-8462.

This Federal Register notice is available on the Internet System through EPA Public Access Server at gopher.epa.gov or through

WWW.epa.gov. For the text of the notice, choose: Rules, Regulations, and Legislation; the FR-Waste; finally, Year/Month/Day.

Notice of Data Availability

On August 22, 1995, EPA proposed the LDR Phase IV rule (60 FR 43654), containing proposed treatment standards for newly listed and characteristic wastes, among other issues. In a supplemental proposal (61 FR 2338, January 25, 1996), EPA proposed treatment standards and changes to the definition of solid waste for mineral processing wastes. The two proposals will form the basis for a single rule due to be promulgated later this year, referred to as the Phase IV final rule. Today's Notice of Data Availability pertains primarily to the original Phase IV proposal of August 22, 1995. Also, some possible changes discussed in this notice could affect the Universal Treatment Standards for metals in general, and could affect the current treatment standard for F024. Finally, additional comments on capacity for treating mineral processing wastes are solicited.

Since publication of the Phase IV proposal, EPA has received comments and data, available in RCRA docket number F-95-PH4P-FFFFF, on many issues, including the following:

- (1) Treatment standards for toxicity characteristic (TC) metal wastes;
- (2) Treatment standards for wood preserving wastes;
- (3) Solid waste exclusion for recycled wood preserving wastewaters; and,
- (4) Capacity issues.

These issues, and a discussion of the data the Agency has received on each issue, are presented below.

(1) Treatment Standards for Toxicity Characteristic (TC) Metal Wastes

a. Lead-Bearing Smelter Wastes

Comments were received from several trade organizations (see comments from Swidler & Berlin for the Association of Battery Recyclers, PH4P-00038; Battery Council International, PH4P-00045; Collier, Shannon, Rill & Scott, PH4P-00077; and, Resource Consultants, PH4P-00078.A), expressing concern about the proposed application of Universal Treatment Standard to metal TC wastes generated from the recycling of lead-acid batteries (lead slags and sludges containing lead).

The Resource Consultants comment contained limited data which included concentrations of lead, selenium, and barium in untreated and treated (stabilized) secondary lead smelter slag and soils. These data may indicate that

their stabilized lead smelter slag cannot achieve the Universal Treatment Standard limits. In addition, limited data were submitted to show how these lead wastes differ in composition from K061. These data will be further assessed by the Agency to determine whether they may be used to revise the treatment standards for these constituents, or to identify particular treatability groups for which revised treatment standards may be promulgated. The Agency is also reviewing data submitted by the Exide Corporation on HTMR for the treatment of lead slags.

In addition, the Agency is reviewing information from East Penn Manufacturing Company, Inc., that seems to indicate that slag can be returned to the furnace until the metals are no longer present at hazardous concentrations. (If slag is reclaimed, it is not a solid waste during the reclamation process because it is a "byproduct" under 40 CFR 261.2(c). If the resulting discarded slag is below the toxicity characteristic levels, the slag is not a hazardous waste and so would not be subject to the LDRs.)

EPA also at this time wishes to clarify an issue raised with respect to the applicability of the Land Disposal Restriction Standards to slags resulting from smelting of lead acid batteries. The LDR standard for lead acid batteries is specified as RLEAD, or recovery of lead. (See 40 CFR Section 268.42.) Once the batteries are smelted, the LDR requirements have been satisfied, and therefore the slag resulting from this smelting need not be treated further. The standards proposed under Phase IV (i.e., compliance with UTS) would not apply to this slag, even if the slag exhibits a characteristic of hazardous waste. (However, if the slag exhibits a characteristic of hazardous waste, it must of course be managed under all other applicable, i.e., non-LDR, hazardous waste requirements.) EPA notes also that if a secondary smelter accepts materials other than lead acid batteries, then LDR requirements could apply to the slag, as with any other waste. The Agency understands, however, that secondary lead smelters routinely accept some materials closely related to lead acid batteries. EPA does not think that LDR status of the slags should be affected by these additional, but closely related lead-bearing items, i.e., the slag would remain exempt from LDR requirements. The Agency requests comment on this issue. EPA dealt with a very similar issue in the Boiler and Industrial Furnace (BIF) regulations (see 56 FR 42517, August 27, 1991). In that rule, the Agency published a list of

materials that secondary lead smelters may process and still remain exempt from the BIF regulations, codified at 40 CFR Part 266, Appendix XI. The Agency requests comment on using this same list for purposes of defining those materials secondary smelters may accept without changing the LDR status of their resulting slags.

b. Lead-Bearing Foundry Wastes

The metal foundry industry generates emission control dust and foundry sand containing cadmium, chromium, lead and selenium. The American Foundryman's Society submitted comments to the Phase IV Rule stating that foundry sand is different from K061 and that HTMR is not demonstrated or available, and stabilization has not been demonstrated as meeting Universal Treatment Standards for foundry sands. The comments referred the Agency to data which the Agency is now reviewing.

c. Treatment Standard for D011 Silver TC Wastes

EPA is considering alternative options for the treatment standard for D011. In comments to the Phase IV rule, the Silver Coalition and the Eastman Kodak Company each stated that silver should be removed from the Toxicity Characteristic list of constituents, based on low risk, or at least EPA should not promulgate a treatment standard for silver below the TC level of 5.0 mg/l. The regulation of silver as a TC metal is indeed a subject of concern for EPA. While human health effects are not major, concern about aquatic toxicity remains. The Agency is not yet prepared to make a decision on the removal of silver from the TC list (at 40 CFR 261.24). However, given the low risk to human health, EPA is considering two possibilities for the treatment standard, in addition to the proposed treatment standards of 0.43 mg/l for wastewaters and 0.30 mg/l TCLP for nonwastewaters. One new option is to revise the Universal Treatment Standard for silver at a higher value, e.g. the TC regulatory level of 5.0 mg/l. This change would affect all wastes subject to UTS. The second option is to set the standard for D011 at the higher level, maintaining the current Universal Treatment Standard levels for all other wastes containing silver as a regulated constituent. Comments are requested on these two new options.

(2) Treatment Standards for Wood Preserving Waste F032, and Potentially, F024

EPA proposed in the Phase IV proposal to require wood preserving

waste F032 to meet the Universal Treatment Standard for a specific list of hazardous constituents (see 60 FR 43680; August 22, 1995, and its Correction Notice, 60 FR 546451, October 25, 1995). The F032 constituents include dioxin and furan (D/F) constituents (Id. at 43681). Most comments on the proposed treatment standards for F032 centered on the need to establish numeric limits for D/F as a means to ensure proper treatment. As described below, EPA also received new data. The Agency requests comment on the new data, and on options presented below. Also, commenters should note that a change in the proposed treatment standard for F032 may dictate changes in the F024 (a group of chlorinated aliphatic wastes) treatment standard (see 55 FR 22580–22581, June 1, 1990), as discussed below.

The Penta Task Force's comment (which also included a characterization study from Vulcan Chemicals) and the comment from the American Wood Preserving Institute (AWPI) expressed concerns that promulgation of concentration limits for D/F hazardous constituents in F032 may discourage commercial incineration facilities from treating this waste. As a result of this concern, commenters have asked EPA to consider alternatives to setting D/F concentration limits in its final rule. The Agency is considering options that would provide F032 generators flexibility, provided that adequate treatment of the waste is still ensured. Comments are requested on the options and information discussed below. Under all the options discussed below, the treater would still have to measure compliance with the proposed Universal Treatment Standard levels for the non-D/F constituents in the waste.

New Option: Alternative Treatment Standard

This option calls for EPA to establish an alternative treatment standard that sets incineration as a treatment method for D/F constituents, in lieu of actually measuring the D/F concentrations in the treated residues. F032 wastes treated via incineration would have met the treatment standard for D/F, and disposal would be allowed so long as the Universal Treatment Standard limits promulgated for other organic constituents were also met. Under this option, Treatment Standard levels for each D/F constituent would still be codified so that compliance with these levels can be monitored in cases when F032 is treated by nonincineration technologies.

This option, suggested by the Penta Task Force and AWPI, is patterned after

a treatment standard promulgated for F024. The commenters believe that the concentrations of D/F in untreated F032 are similar to those found in untreated F024, therefore, these two wastes can be adequately regulated in a similar manner.

a. Preliminary Review of Vulcan's Characterization Study.

Vulcan Chemical submitted a characterization study in an attachment to the Penta Task Force's comment. This commenter pointed out that the commercial grade tolerances of pentachlorophenol (PCP) allowed domestically have D/F levels well below than those EPA reported in the Listing Background Document for F032, F034, and F035. The commenters also submitted data on D/F measured in several F032 waste streams from six wood preserving plants (see comment number PH4P-00032.J). EPA is currently reviewing these characterization data, however, they appear to support Vulcan and AWPI's claim that D/F concentrations in F032 have been reduced in commercial oils and subsequently, in F032 wastes.

The new F032 characterization data do not appear to support a determination that F032 and F024 are exactly alike. F024 has the following D/F maximum concentrations: up to 2 ppb for penta-PCDD, 10 ppb for hexa-PCDD, 10 ppb of tetra-PCDF, 30 ppb for penta-PCDF, 50 ppb for hexa-PCDF, and tetra-PCDD was not detected above 1 ppb. It appears that F032 may have concentrations of D/F of up to 4.3 ppb for tetra-PCDD, 590 ppb for hexa-PCDD, 78 ppb for penta-PCDF (estimated), 1,500 ppb for hexa-PCDF, and penta-CDD was not detected. Based on these data, it appears that the maximum concentrations of penta-PCDD, tetra-PCDF, and penta-PCDF in F032 are within the same or lower order of magnitude as those in F024. In contrast, tetra-PCDD and hexa-PCDF maximum concentrations in F032 diverge by two orders of magnitude with those in F024. Also, hexa-PCDD maximum concentrations in F032 may exceed by one order of magnitude those found in F024. However, neither of these wastes were identified as 'acutely toxic' in 40 CFR 261, Subpart D, so in this sense they are in a similar class.

b. Feasibility of setting "INCIN" or "CMBST" as an Alternative Treatment Standard

In spite of some differences between these two wastes, EPA believes that a treatment standard allowing incineration (or 'combustion,' see discussion below) as an alternative

standard for D/F in F032 may be technically feasible. One reason is that incineration is BDAT for dioxin-containing wastes. EPA also believes that incineration, and in fact, combustion technologies generally, are among the least matrix-dependant technologies capable of treating the diverse range of residues that comprise F032. Various types of incineration have been demonstrated to treat high and low level D/F constituents below detection limits in incineration residues.

Suboptions under consideration. EPA has identified, however, three regulatory suboptions for the implementation of Vulcan's proposed alternative treatment method. Each suboption is discussed below. The Agency notes that suboptions 2 and 3 would also change the F024 treatment standard. Also, suboptions 2 and 3 are not mutually exclusive, and both could be selected by the Agency.

Suboption 1: Apply existing F024 alternative combustion treatment standard to F032.

The treatment standard for F024 was originally limited to incineration units. In the Phase III final rule (April 8, 1996), EPA amended the incineration treatment standard (see 40 CFR 268.42, Table 1, 'INCIN') to include additional combustion devices (see 'CMBST' in the Phase III final rule). EPA believes that well-operated and well-designed combustion units can meet the treatment standard for F024 and F032. Setting CMBST as the treatment standard for D/F in F032 would allow wider access to a variety of combustion practices.

Suboption 2: Establish F032's and revise F024's CMBST alternative standard to require the combustion unit to achieve a dioxin emission standard. One concern with the CMBST treatment standard is that D/F can be reformed in the post-combustion zone if favorable conditions exist. Thus, controls may be needed to minimize the potential for forming and emitting D/F emissions into the atmosphere, and to minimize the potential for such products of incomplete combustion to be adsorbed onto wastes. The Agency is concerned that until combustion units are regulated under the proposed MACT standards discussed below, a simple CMBST standard for either F024 or F032 could actually lead to increased air emissions of D/F, or increased concentrations adsorbed onto combustion wastes, if these F024 and F032 wastes were combusted in units that foster the formation of D/F. (It also must be remembered that treatment standards that result in unsafe cross-media transfers of pollutants do not

satisfy the requirements of RCRA section 3004(m)). See *Chemical Waste Management v. EPA*, 976 F.2d 2, 17 (D.C. Cir. 1992). Studies (see discussion below) show that effective controls to inhibit D/F formation may include one or more of the following: (1) rapid quench of combustion gases; (2) air pollution control device's inlet temperatures of less than 400 F for the flue gas; (3) good combustion practices (e.g. like higher temperatures, proper mixing in the combustion zone, and appropriate chemical residence time); and, finally, (4) activated carbon injection scrubbing, if dioxin emissions remain high.

Based on studies conducted at various domestic incineration units such as light weight aggregate kilns and cement kilns, EPA has proposed regulations that set a maximum toxicity equivalent (TEQ) D/F emission standard of 0.20 ng/DSCF (corrected to 7% O₂) for combustion units burning RCRA hazardous wastes. (See Proposed Rule (signed March 20, 1996)—Revised Technical Standards Waste Combustion Facilities (<http://www.epa.gov/epaoswer/combust.html>.) EPA's studies show that at least 50% of the facilities tested for the proposed combustion rule meet this MACT limit. EPA is requesting comments on whether this D/F emission standard should also be codified as a requirement of a CMBST alternative treatment standard. [For background information regarding the development and implementation of such an air emission standard, see the following documents: (1) Proposed Rule (signed March 20, 1996)—Revised Technical Standards Waste Combustion Facilities <http://www.epa.gov/epaoswer/combust.html>); (2) Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards and Technologies, (see pages 5-1 through 5-6); (3) Combustion Emission Technical Resource Document (CETRED) (see pages A-54 through A-56) (OSW: EPA 530-R-94-014, May 1994); and, (4) Performance of activated carbon injection on dioxin/furan and mercury emissions, February 23, 1996, memorandum from Shiva Garg of EPA's OSW to DOCKET # F-96-RCSP-FFFFF.] Compliance would have to be documented at least every 18 months.

Under this suboption, any RCRA permitted or interim status combustion device capable of demonstrating achievability in meeting the dioxin (TEQ) air emission discharge limit would be allowed to combust F032 and F024. Should EPA ultimately select a standard other than 0.2 ng/DSCF, the

Agency would of course revisit the LDR standard for F024 and F032.

Suboption 3: Revise F024's CMBST alternative standard (and set F032's standard) to limit the combustion of F024 and F032 to combustion devices that have been permitted. A final option would be to limit combustion of F024 and F032 to combustion devices (i.e., incinerators, boilers, and industrial furnaces) that have been evaluated as part of the RCRA permitting process, including potential evaluation under the omnibus permitting authority set out in RCRA section 3005(c)(3). This could involve a site-specific evaluation of whether permit conditions more stringent than those required by the regulations are necessary to assure that the facility's combustion practices are sufficiently controlled to be protective of human health and the environment. Since only permitted facilities are subject to omnibus evaluation, this option would necessarily limit the eligible combustion devices to those that have received permits.

A complete list of related references is available in the RCRA docket for this notice. It is called 'Reference List for F032.'

(3) Solid Waste Exclusion of Recycled Wood Preserving Wastewaters

In the Phase IV proposal, EPA announced that it would consider granting a conditional exclusion from the definition of solid waste for recycled process wastewaters used in the wood preserving industry, provided that the Agency received adequate information to grant such an exclusion. The proposal solicited this information, and specified that it would have to be sufficient to make an industry-wide determination that the reclamation operation was an essential part of production, and that the secondary materials being reclaimed were not likely to be a part of the waste disposal problem.

In response to this solicitation for information, comments were submitted from the American Wood Preservers Institute (AWPI), the State of Oregon Department of Environmental Quality, Universal Forest Products, Inc., Remediation Technologies, Inc., J.H. Baxter & Company, the Environmental Defense Fund (EDF), Beazer East, Inc., and Covington & Burling, pertaining to a possible solid waste exclusion for recycled wood preserving wastewaters. EPA will review this information to determine whether this information is adequate.

Specifically, EPA will be reviewing these comments to evaluate the extent to which they establish that the reclamation of production wastewaters

from the wood preserving industry meet the variance criteria found in 40 CFR 260.31(b). As was stated in the Phase IV proposal, if these criteria can be demonstrated on an industry-wide basis, the Agency may grant a conditional exclusion from the definition of solid waste for reclaimed production wastewaters from the wood preserving industry. The comments from AWPI address each of the 40 CFR 261.31(b) criteria in some detail. EPA will also review other comments, such as those submitted by EDF, that question the basis and desirability of granting the variance on an industry-wide basis. EPA solicits replies to these particular comments.

EPA has also added to the docket a bill being considered by Congress that would exempt from regulation wastewaters provided the materials are "contained, collected, and reused in an on-site production process that prevents releases to the environment." In discussions of this issue, representatives of the American Wood Preservers Association stated that they were not seeking to eliminate the existing Subpart W standards for drip pads used to collect and manage drippage from wood preserving. EPA solicits comments on whether the record supports a national exclusion from the definition of solid waste for recycled process wastewaters from wood preserving operations that are returned to the process from which they originated, with the condition that drippage from the wood is collected and managed on drip pads that are in compliance with Subpart W drip pad standards and that there is no release of the wastewaters to the environment.

(4) Capacity Issues

a. Request for More Information on Amounts of TC Metal Wastes and TC-contaminated Soil

EPA has received comments on the Phase IV proposed rule stating that application of Universal Treatment Standards to TC metal wastes will significantly increase the demand for, and costs of, treatment. As stated in the Supplemental Proposal on mineral processing wastes, EPA has limited information on quantities of TC metal wastes with which to analyze available treatment capacity. Comments also indicated that there may be TC metal-contaminated soil that would require treatment to meet LDR treatment standards. These commenters argue that there will be a need for a capacity variance for TC metal-contaminated soils. Commenters submitted very little data, however, to support their

arguments. EPA requests data to potentially support capacity variances for TC metal wastes and TC metal-contaminated soils.

Furthermore, as stated in the Supplemental proposal, EPA solicits information on quantities of characteristic mineral processing wastes, in order to determine whether adequate capacity exists to treat these wastes (61 FR 2360). Because data do not exist to support a capacity variance at this time, EPA is once again urging commenters to provide information on the quantities, characteristics, and management of the newly identified mineral processing wastes.

b. Potential Capacity Variance for FMC Corporation

Representatives of FMC Corporation met with EPA to present their argument that they need a two-year national capacity variance for three large volume TC metal wastewater streams (Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown) that are generated at its Pocatello, Idaho facility. (A memorandum summarizing this meeting is part of the record for this rulemaking.) FMC believes that these three wastewaters pose unique treatability problems because of elemental phosphorous contamination and naturally occurring radioactive material. They argue that the logistics and costs to ship these wastestreams off-site for treatment are impractical and prohibitive. FMC also stated that a survey of off-site treatment facilities shows that no permitted TSDF can currently handle these wastestreams. As such, FMC believes it will need a two-year national capacity variance to develop and construct treatment capacity for these wastewater streams and thus comply with Phase IV. FMC intends to submit detailed documentation supporting its claim for a two-year national capacity variance. If it is submitted in a timely fashion, EPA will make it available to the public during the comment period for this notice, and will potentially use this information in determining whether a capacity variance is needed.

Summary

In conclusion, the Agency is making available to the public new data it has received since the Phase IV proposal (or alerting the public to data it expects to receive immediately). Comments are requested on the data and their possible use, as discussed in this notice. In addition, the Agency is requesting data on TC metal wastes, TC metal-contaminated soil, and mineral

processing wastes and contaminated soils, that could be used to determine the need for capacity variances, since the Agency currently lacks such data.

Dated: May 3, 1996.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 96-11740 Filed 5-9-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 300

[FRL-5502-2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Marathon Battery Company site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Marathon Battery Company site from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Marathon Battery Company site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Marathon Battery Company site from the NPL may be submitted on or before June 7, 1996.

ADDRESSES: Comments concerning the deletion of the Marathon Battery Company site from the NPL may be submitted to: Pamela Tames, P.E., Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th floor, New York, NY 10007-1866.

Comprehensive information on the Marathon Battery Company site is contained in the EPA Region II public docket, which is located at EPA's Region II office (the 18th floor), and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding