

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 261**

[FRL-6127-9]

RIN 2050-AD88

**Hazardous Waste Management
System; Identification and Listing of
Hazardous Waste; Petroleum Refining
Process Wastes; Land Disposal
Restrictions for Newly Identified
Wastes; and CERCLA Hazardous
Substance Designation and Reportable
Quantities; Notice of Data Availability**AGENCY: Environmental Protection
Agency.ACTION: Proposed rule; notice of data
availability and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is making available for public comment information relating to its Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on November 20, 1995 (60 FR 57747). That NPRM proposed to amend EPA regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous wastes certain petroleum refining waste streams, and to apply universal treatment standards under the Land Disposal Restrictions program to the wastes proposed for listing. That NPRM also proposed to broaden existing RCRA exclusions for the recycling of oil-bearing residuals in petroleum refineries.

Several weeks before the date of signature of the final rule published elsewhere in this issue of the **Federal Register**, EPA received specific information from one company that owns and operates non-hazardous waste landfills, some of which received one or more of the petroleum wastes which the Agency was proposing to list. This company realized belatedly that, after the effective date of the new listings for these petroleum wastes, the leachate generated from these landfills would carry the waste code for one or more of the newly-listed hazardous wastes, and could be subject to Subtitle C regulation if collected and actively managed.

EPA is not reopening its settled position that when a waste is listed as hazardous, all wastes meeting the listing description, including those disposed before the listing effective date, are now classified as the listed hazardous waste. The same applies to wastes derived from the treatment, storage, or disposal of those wastes (again, a settled position not being reopened). Subtitle C regulation can apply to such wastes, and to residues derived from such wastes, if

active management occurs after the date the listings become effective (likewise a settled position not being reopened).

However, the late information does present a legitimate issue as to whether, under limited circumstances, the listings should apply to leachate derived from management of these particular wastes. This is because to the extent these leachates are being adequately managed under the Clean Water Act (CWA) program, the EPA would prefer to minimize any possible disruptions to the management of this leachate, and try to integrate the RCRA and CWA regulatory schemes if possible. There is also an ongoing rulemaking activity under the Clean Water Act that directly addresses pretreatment standards and effluent limitations for indirect and direct discharges of such leachates. Because this issue was brought to EPA's attention so late, and for other reasons discussed in this document, EPA believes it needs more time to determine how best to coordinate these programs with respect to this leachate. Therefore, EPA is presenting the pertinent information it has received on this question and soliciting comment on the general issue of whether the Agency should temporarily defer application of these four new petroleum waste codes (published elsewhere in today's **Federal Register**) to leachate from previously disposed wastes that now meet the listing description, provided the leachate is treated at Publicly Owned Treatment Works (POTW) or treated to meet effluent limitations for direct discharge, pending further study of this issue.

DATES: The Agency is reopening the comment period only for the limited purpose of obtaining information and views on the new data and information described in this document. Comments on the additional data will be accepted through September 8, 1998. This document does not reopen the comment period for the recently proposed rulemaking on effluent guidelines and pretreatment standards for landfills (63 FR 6426; February 6, 1998).

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F-98-PR3A-FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcradocket@epamail.epa.gov.

Comments in electronic format should also be identified by the docket number F-98-PR3A-FFFFF.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. For information on accessing paper and/or electronic copies of the document, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For information on specific aspects of this document, contact Ross Elliott or Robert Kayser, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street comment, SW, Washington, DC 20460. (E-mail addresses and telephone numbers: elliott.ross@epamail.epa.gov, (703) 308-8748; kayser.robert@epamail.epa.gov, (703) 308-7304).

SUPPLEMENTARY INFORMATION: All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. If comments are not submitted electronically, 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.

The official record for this action will be kept in paper form, and will be maintained at the address in **ADDRESSES** at the beginning of this document. The index to the docket is available on the Internet. Follow these instructions to access the information electronically: [www: http://www.epa.gov/epaoswer/osw/hazwaste.htm#id](http://www.epa.gov/epaoswer/osw/hazwaste.htm#id)
FTP: <ftp://ftp.epa.gov>
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

In addition, the document entitled *Development Document for Proposed Effluent Limitations Guidelines and Standards for the Landfills Point Source Category*, EPA-821-R-97-022, January 1998, placed in the docket for this document, can be obtained through the internet at www.epa.gov/OST/Rules/2lndfls/techdev.html. EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record.

EPA responses to comments, whether the comments are written or electronic, will be in a document published in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking at the same time this document is published in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Background

Very late in the rulemaking process, the Agency was alerted to the concern (not raised by any commenter during the comment period) that any new hazardous waste listings for petroleum wastes may have potentially significant (but as yet undetermined) impacts on the management of leachate collected from certain non-hazardous waste landfills. Specifically, one company that owns and operates non-hazardous waste landfills expressed concern that because some of their facilities have historically received and disposed of some or all of the waste streams listed in the final rulemaking (*i.e.*, K169, K170, K171, and K172) (published elsewhere in today's **Federal Register**), the leachate that is collected and managed from these landfills would be classified by these same waste codes after the effective date of the new petroleum waste listings.

However, if Subtitle C regulation were to apply to leachate generated from such landfills, leachate now trucked to POTWs (a practice of particular concern with this company) would, as a practical matter, no longer be managed by POTWs, since POTWs would not wish to become facilities subject to RCRA Subtitle C regulation. This company argued that this could lead to vastly increased treatment and disposal costs without necessarily any environmental benefit. EPA is considering whether it would be appropriate to defer temporarily the application of the new petroleum waste codes to such leachate in order to avoid disruption of ongoing leachate management activities while the Agency decides how to integrate the two regulatory schemes, consistent with RCRA section 1006(b)(1) (which requires EPA to integrate regulations under RCRA with those of the other statutes implemented by EPA in a manner that avoids duplication to the maximum extent possible, consistent with the goals and policies of RCRA and the other statutes).

Applicability of New Listings to Landfill Leachate

Leachate that is derived from the treatment, storage, or disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the "derived-from" rule in 40 CFR 261.3(c)(2). The Agency has been very clear in the past on the applicability of hazardous waste listings to wastes disposed of prior to the effective date of a listing, even if the landfill ceases disposal of the waste when the waste becomes hazardous. 53 FR at 31147 (August 17, 1988). EPA also has a well-established interpretation that listings likewise apply to leachate derived from the disposal of listed hazardous wastes, including leachate derived from wastes disposed before a listing effective date which meet the listing description. *Id.* EPA's interpretations were emphatically upheld by the Court of Appeals for the District of Columbia Circuit in *Chemical Waste Management, Inc. v. EPA*, 869 F.2d 1526, 1536-37 (D.C. Cir. 1989). None of these issues is reopened by the present Notice.

Of course, as set out in detail in the August 1988 notice, this does not mean that landfills holding wastes which are now listed as hazardous become subject to Subtitle C regulation. However, previously disposed wastes now meeting the listing description, including residues such as leachate which are derived from such wastes, which are actively managed do become subject to Subtitle C regulation. 53 FR

at 31149. In many, indeed most circumstances, active management of leachate would be exempt from Subtitle C regulation because the usual pattern of management is discharge either to POTWs via the sewer system, where leachate mixes with domestic sewage and is excluded from RCRA jurisdiction (see RCRA Section 1004(27) and 40 CFR 261.4(a)(1)), or to navigable waters, also excluded from RCRA jurisdiction (see RCRA Section 1004(27) and 40 CFR 261.4(a)(2)). In addition, management of leachate in wastewater treatment tanks prior to discharge under the CWA is also exempt from RCRA regulation (40 CFR 264.1(g)(6)).

The company indicated, however, that these exemptions do not apply to its current prevalent means of managing its leachate: collection followed by transport by truck to a POTW (rather than discharge to a POTW by a sewer system, where leachate would mix with domestic sewage, which would not trigger Subtitle C, as just explained). The company also alleged that it would incur large costs because POTWs would no longer accept the leachate in order to remain outside the Subtitle C regulatory system. (The company is probably correct as to POTWs' reaction, although the potential costs the company could incur have not yet been verified.)

Proposed Clean Water Act Requirements for Leachate from Non-Hazardous Waste Landfills

EPA's Office of Water recently proposed national effluent limitations guidelines and pretreatment standards for wastewater discharges (*e.g.*, leachate) from certain types of landfills. 63 FR 6426 (February 6, 1998). In support of this proposal, EPA conducted a study of the volume and chemical composition of wastewaters generated by both Subtitle C (hazardous waste) and Subtitle D (non-hazardous waste) landfills, including treatment technologies and management practices currently in use. EPA did not propose pretreatment standards for Subtitle D landfill wastewaters sent to POTWs because the Agency's information indicated that such standards were not required due to several factors, including: (1) Raw leachate data was below published biological inhibition levels, and (2) lack of pass-through of toxics (including lack of showing of adverse impact on POTW sludge quality). 63 FR at 6444. For example, the EPA determined, among other things, that "the majority of pollutants typically found in raw [non-hazardous landfill] leachate were at levels comparable to wastewater typically found at the headworks of a POTW." *Id.* EPA also

proposed effluent limitations for direct discharges of leachate from nonhazardous waste landfills. After examining various pollutants of concern (including conventional, nonconventional, metal, and organic pollutants), EPA proposed limitations for nine pollutants. 63 FR at 6463. EPA believes that the proposed rules, if promulgated, will help ensure that leachate is managed effectively while any temporary exemption is in effect.

Consideration of Temporary Deferral of Applying New Petroleum Waste Codes to Leachate

Because EPA received this information very late in the rulemaking process (indeed, the information is not even part of the administrative record for the final rule), EPA needs more time to evaluate the potential impacts of the newly-listed waste codes (published in a final rule elsewhere in today's **Federal Register**) on the classification of landfill leachate, and to carefully consider whether or not it is appropriate to apply the waste codes from one or more of the four newly-listed petroleum wastes to landfill leachate which is either sent for treatment at POTWs under circumstances not excluded by Section 261.4(a)(1)(ii), or is directly discharged under Section 402 of the CWA. As mentioned above, EPA believes it would be appropriate to defer temporarily the application of the new petroleum waste codes to such leachate in order to avoid disruption of ongoing leachate management activities while the Agency decides how to integrate the two regulatory schemes, consistent with RCRA section 1006(b)(1) (regarding integrating RCRA regulations with other EPA statutes). See *Edison Electric Inst. v. EPA*, 2 F. 3d 438, 451–53 (D.C. Cir. 1993) (temporary deferral of regulation to determine how best to integrate RCRA rules with another EPA regulatory system is permissible); see also *Military Toxics Project v. EPA* (No. 97–1342 (D.C. Cir. June 30, 1998) (slip op. pp. 18–20) (permanent deferral to another regulatory system also may be appropriate). As stated above, it appears that leachate derived from these newly-listed wastes will be adequately regulated under the CWA. The Agency is publishing this document in order to make this information available, and to receive comment on EPA temporarily deferring, while EPA assesses the permanent integration of the two

regulatory schemes, the application of the new waste codes (K169, K170, K171, and K172) to landfill leachate that is generated and actively managed after the effective date of the four new petroleum listings, as long as all of the following conditions apply.

First, the Agency is considering only whether to temporarily defer from RCRA regulation leachate from landfills that received and disposed one or more of the newly-listed petroleum wastes prior to the effective date of the listing (*i.e.*, landfills that have historically disposed of these petroleum wastes, which if generated today would meet the new listing descriptions, but no longer accept these wastes). Second, this temporary deferral would apply to leachate that is defined as hazardous waste only by application of one or more of the new petroleum waste codes, *i.e.*, leachate that is only defined as hazardous waste because it is derived from K169, K170, K171, or K172, and is not derived from any other listed waste, and does not exhibit any characteristic of hazardous waste. Third, the Agency would only temporarily defer from RCRA regulation leachate that is managed such that discharge is subject to regulation under 307(b) or 402 of the Clean Water Act (*i.e.*, for indirect or direct discharges). This temporary deferral would apply to leachate from point of generation (*i.e.*, when the leachate is first collected or “actively managed”) to when it is discharged in compliance with 307(b) or 402 of the Clean Water Act.

EPA is also considering whether to add a condition that would prohibit the placement of leachate on the land prior to discharge to a POTW or to other wastewater treatment systems. EPA is concerned that the storage of untreated leachate in land-based units, such as surface impoundments, may be of concern. On the other hand, the Agency does not wish to discourage effective treatment of the leachate in wastewater treatment systems that employ secure impoundments prior to discharge to surface water. To resolve this question, the Agency is seeking comment on the potential impact of such a condition on the treatment of leachate at landfills and other treatment facilities.

Should the Agency proceed with a temporary deferral, such a deferral would most likely be implemented as a new exemption from the definition of hazardous waste under 40 CFR 261.4(b).

The duration of a temporary deferral would probably be at least until the Agency completes the pending rulemaking under the Clean Water Act described in this document. After completion of the Clean Water Act rulemaking, EPA will consider whether to initiate a rulemaking for a permanent deferral (*i.e.*, exemption), or alternatively, to remove the exemption and subject the leachate to Subtitle C regulation.

Information in the Docket and Request for Comment

The EPA has placed in the docket summary information on leachate characterization submitted by one company that owns and/or operates over sixty non-hazardous waste landfills, and estimated costs reflecting Subtitle C management of the leachate (*i.e.*, centralized waste treatment of leachate diverted from current management at POTWs). The EPA has also put into the docket a copy of the Office of Water background document entitled *Development Document for Proposed Effluent Limitations Guidelines and Standards for the Landfills Point Source Category*, EPA–821–R–97–022, January 1998.

The Agency is interested in any comments on the narrow issue of the classification and management of leachate generated from landfills that disposed of one or more of the newly-listed petroleum wastes (K169–K172) prior to the effective date of those listings, where the leachate is not defined as hazardous under RCRA for any other reason, and is (in particular) being managed pursuant to Clean Water Act requirements. The Agency also seeks comment on the possibility of the temporary deferral described in this document. EPA will not respond to comment regarding the general proposition that hazardous listings apply to previously disposed wastes that meet the listing description, nor will EPA reopen comments on the listings of these wastes, which are issued in a final rule elsewhere in today's **Federal Register**.

Dated: July 17, 1998.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 98–19930 Filed 8–5–98; 8:45 am]

BILLING CODE 6560–50–P