

the preparation of a Federalism Assessment.

### Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of \$100 million (adjusted annually for inflation). If so, the act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of \$100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

### Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under paragraph 2-1, paragraph 34(f), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR 110

Anchorage grounds.

### Regulation

For the reasons discussed in the preamble, the Coast guard proposes to amend 33 CFR Part 110 as follows:

### PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. In § 110.155, add paragraph (c)(6) to read as follows:

#### § 110.155 Port of New York.

\* \* \* \* \*

(c) \* \* \*

(6) Anchorage No. 19-A. An area located west of Hyde Park enclosed by the coordinates starting at 41° 48' 35"N, 073° 57' 00"W; to 41° 48' 35"N, 073° 56' 44"W; to 41° 47' 32"N, 073° 56' 50"W; to 41° 47' 32"N, 073° 57' 10"W; thence back to 41° 48' 35"N, 073° 57' 00"W (NAD 1983).

(i) No vessel may anchor in Anchorage 19-A from December 16 to

the last day of February without permission from the Captain of the Port, New York.

(ii) No vessel less than 20 meters in length may anchor in Anchorage 19-A without prior approval of the Captain of the Port, New York.

\* \* \* \* \*

Dated: March 22, 1999.

**R.M. Larrabee,**

*Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.*

[FR Doc. 99-7838 Filed 3-30-99; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[OPPTS-400136; FRL-6051-1]

### Combustion for Energy Recovery Toxic Release Inventory Reporting; Notice of Receipt of Petition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of receipt of petition and request for comments.

**SUMMARY:** This document announces the receipt of a petition from Safety Kleen Corporation (Safety Kleen) requesting that EPA modify its current interpretation of combustion for energy recovery under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). The petition was submitted pursuant to sections 553(e) and 555(e) of the Administrative Procedure Act (APA). Also, as part of this document, EPA is publishing the main text of the petition. Finally, EPA is seeking comments from interested or potentially affected parties concerning issues associated with the current interpretation of combustion for energy.

**DATES:** Written comments in response to this request for comments must be received on or before June 1, 1999.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of this document.

**FOR FURTHER INFORMATION CONTACT:** For specific information regarding this document contact: Sara Hisel McCoy at (202) 260-7937, e-mail: hisel-mccoy.sara@epa.gov. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St. SW., Washington

DC 20460, Toll-free: 1-800-424-9346, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 800-553-7672.

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does This Document Apply To Me?

This document does not make any changes to existing regulations, however you may be interested in this document if you combust toxic chemicals in waste on-site or transfer these toxic chemicals off-site for this purpose. Potentially interested categories and entities may include, but are not limited to the following:

Category	Examples of Potentially Interested Entities
Industry; facilities that manufacture, process, or otherwise use certain chemicals	Manufacturing, Metal mining, Coal mining, Electric utilities, Commercial hazardous waste treatment, Chemicals and allied products-wholesale, Petroleum bulk terminals and plants wholesale, and Solvent Recovery services
Facilities with hazardous waste incinerators	Facilities regulated under Subtitle C of the Resource Conservation and Recovery Act

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this document. Other types of entities not listed in this table may also be interested in this document. Additional businesses that may be interested in this document are those covered under 40 CFR part 372, subpart B. If you have any questions regarding whether a particular entity is covered by this section of the CFR, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

##### B. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

1. **Electronically.** You may obtain electronic copies of this document as well as the appendices to the petition from the EPA Internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. You may also obtain electronic copies of the complete

petition and appendices at <http://www.epa.gov/opptintr/tri/>.

2. *In person or by phone.* If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. Copies of a complete petition including the appendices to the Safety Kleen petition are also available by calling the EPCRA Hotline at 1-800-424-9346, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 800-553-7672. In addition, the official record for this document, including the public version, has been established under docket control number OPPTS-400136. This record includes not only the documents physically contained in the docket, but all of the documents included as references in those documents. A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460. The TSCA Nonconfidential Information Center telephone number is 202-260-7099.

## II. How Can I Respond To This Document?

### A. How and To Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPPTS-400136, in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Rm. G-099, East Tower, Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G-099, East Tower, Waterside Mall, 401 M St., SW., Washington, DC, Telephone: 202-260-7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: [oppt.ncic@epa.gov](mailto:oppt.ncic@epa.gov). Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment

and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS-400136. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

### B. How Should I Handle CBI Information That I Want To Submit To the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

## III. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in amounts above reporting threshold levels, to report their releases of such chemicals annually. These facilities must also report other waste management activities for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Specifically, these facilities must report the quantities of toxic chemicals in wastes that are released (including disposed), treated for destruction, combusted for energy recovery or recycled on-site or transferred off-site for such purposes.

In the final industry expansion rule (62 FR 23891, May 1, 1997) (FRL-5578-3), EPA interpreted combustion for energy recovery to include the combustion of a section 313 chemical that is (1)(a) a Resource Conservation and Recovery Act (RCRA) hazardous waste or waste fuel, (b) a constituent of a RCRA hazardous waste or waste fuel, or (c) a spent or contaminated "otherwise used" material; and that (2) has a significant heating value and is combusted in an energy or materials recovery device. Also, currently EPA defines an energy recovery device as a boiler or industrial furnace as defined in 40 CFR 372.3.

On March 18, 1998, the Environmental Protection Agency received a petition from Safety Kleen Corporation requesting EPA to modify its guidance regarding EPA's

interpretation of the term "combustion for energy recovery" under section 313 of the EPCRA and section 6607 of the PPA. (Note: At the time of the submission of this petition, the company that petitioned EPA was known as Laidlaw Environmental Services. Subsequent to this submission, the company has changed its name to Safety Kleen Corporation. Therefore the references in the text of the petition to Laidlaw Environmental Services refer to Safety Kleen Corporation).

EPA is reproducing Safety Kleen's petition in its entirety (except for the appendices and the table of contents) in Unit IV. of this document, to solicit public comment on its content. In addition, in Unit V. of this document, EPA is soliciting comment on specific issues associated with the petition on combustion for energy recovery.

## IV. Safety Kleen's Petition

### STATEMENT OF INTEREST

Laidlaw Environmental Services Inc., and its wholly-owned subsidiary companies, is a full service company engaged in the blending, incineration, treatment, disposal, destruction, and transportation of hazardous and toxic wastes. Our interests are directly affected by the issues addressed in this petition.

#### I. EXECUTIVE SUMMARY

In 1991, the EPA designated "Energy Recovery" as an acceptable method of handling toxic organic chemicals under the Toxic Release Inventory program. To receive credit for "Energy Recovery" a generator has to transfer energetic (> 5,000 Btu/lb) toxic organic chemicals to an "energy or materials recovery device". The Agency defines an "energy or materials recovery device" as a Boiler or Industrial Furnace.

Present guidance on "Energy Recovery" does not allow a generator to claim credit for the energy recovered when energetic toxic chemicals are used to destroy other toxic organics in a hazardous waste incinerator. This two-tiered approach to the recognition, or lack of recognition, of the process of "Energy Recovery", depending on the type of unit combusting the toxic organic chemicals has led to a situation where globally there is no reduction in the use of fossil fuel.

TRI data for 1991-95 show that annually larger quantities of energetic toxic organic chemicals are being transferred to EPA designated "energy or materials recovery devices", while reduced percentages of these same chemicals are being shipped to hazardous waste incinerators. While "energy or materials recovery devices" may be using less fossil fuel because they may be utilizing the energy from these toxic chemicals in their processes, incinerators have had to substitute fossil fuels on a Btu for Btu basis for every Btu of energetic toxic organic chemicals they have lost.

This situation has led to a game where a preferential designation has provided "energy or materials recovery devices" with an advantage in procuring high energy

organic chemicals, and incinerators have been placed at a comparative disadvantage in procuring these same chemicals. However, this is a "zero-sum game" because both EPA designated "energy or materials recovery devices" and incinerators utilize the energy from these chemicals in their process, and the movement of waste energy from one type of unit to the other also necessitates the movement of fossil fuel from one type of unit to another. In reality, there are no global net energy savings.

Laidlaw maintains that in light of the data presented in this petition, EPA should recognize that:

- Sufficient energy input is necessary to properly destroy all forms of toxic organic chemicals in a hazardous waste incinerator;
- Hazardous waste incinerators harness the Btus from high energy organics to destroy less energetic toxic organic chemicals;
- Incinerators are forced to use fossil fuels to supplement the energy input as the highest Btu energetic wastes are diverted from incinerators; and
- Hazardous waste incinerators perform "Energy Recovery" in the process of using high energy toxic organic chemicals to destroy low energy organics.

Laidlaw requests and recommends in this petition that the EPA modify its guidance on "Energy Recovery" to include the combustion of high energy toxic organic chemicals for the purpose of destroying low energy toxic organic chemicals in a hazardous waste incinerator.

## II. THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT

The Emergency Planning and Community Right to Know Act ("EPCRA") was signed into law in 1986. The law was designed to prevent an occurrence in the U.S. of the type of tragedy that befell Bhopal, India just a couple of years prior to its passage. EPCRA was a comprehensive statute that greatly enhanced the knowledge of the states, local governments, workers, and citizens about the chemicals handled at facilities around the nation. This statute also put into place the mechanisms to handle unplanned releases of chemicals from a facility, so that threats to the local community, and workers would be minimized.

EPCRA, for the first time, provided minimum reporting requirements for facilities handling one or more "extremely hazardous substances" (defined in 40 CFR, Part 355, Appendices A and B) above a threshold limit. Depending on the specific section of EPCRA, a facility had to notify its State Emergency Response Commission ("SERC"), Local Emergency Planning Committee ("LEPC"), Local Fire Department, and/or the EPA about the extremely hazardous substances on-site. More Specifically, under EPCRA<sup>1</sup> a facility must report:

- EPCRA Sections 302-303: If a facility has one or more extremely hazardous substances on-site in quantities greater than a threshold level, it must notify its SERC and LEPC that it is subject to the emergency planning requirements of these sections, a facility representative must be designated to participate in the local emergency planning process, and the facility must provide

information necessary for the development and implementation of a local emergency plan;

- EPCRA Section 304: The facility must notify the LEPC and SERC immediately after the release of any extremely hazardous substance, or CERCLA hazardous substance, at or above the Reportable Quantity ("RQ") established for the substance, the facility must furnish a written statement with details of the release after the initial notification;

- EPCRA Section 311: The facility must submit to the LEPC, SERC, and local fire department a list, or copies, of Material Data Safety Sheets ("MSDSs") for any Occupational Safety and Health Administration ("OSHA") defined hazardous chemicals or extremely hazardous substances that are present on-site above defined threshold limits;

- EPCRA Section 312: The facility must submit annually to the LEPC, SERC, and the local fire department a report on the hazardous chemicals or extremely hazardous substances on-site that includes the type of hazard the material may pose, quantities of the material stored on-site, and the location and type of storage for the materials; and

- EPCRA Section 313: Facilities in certain EPA defined SIC codes, meeting size and threshold requirements, are required to report annually to the EPA (and some states) the amounts of chemicals listed in EPCRA's Section 313 released or otherwise managed.

EPCRA's Section 313 (a copy of this section is included in this submission as Appendix 1) is more commonly known as the Toxic Release Inventory ("TRI") and is the subject of the information in this petition (the issues addressed in this petition are specific to TRI, and do not pertain to the other facets of EPCRA.)

## III. THE TOXIC RELEASE INVENTORY

EPCRA established the legal framework for the Toxic Release Inventory. The TRI program was designed to provide information to the public and regulators about the fate of designated toxic chemicals (chemicals referenced in Section 313) at a facility, local, state, and national level. The EPCRA statute required that this collected TRI information be maintained in a computer database, and be readily available to "any person" requesting it.

EPCRA outlined, at a minimum, the types of facility that had to submit TRI reports and the information to be contained on those reports. The statute provided discretion to the Environmental Protection Agency as to what types of facility they can require to report TRI information in the future, and the types of information they can require on the TRI report in the future. EPCRA also allowed the Agency, but to a lesser extent than in other areas, discretion to add or subtract chemicals from the Section 313 list.

TRI reporting by facilities was initially required for the calendar year 1987, with subsequent reports required annually on a calendar year basis. While TRI reporting was initially required only for facilities with SIC codes between 20 and 39 (these facilities also had to meet employee size and threshold limits for the quantity of Section 313 chemicals to qualify for reporting requirements), in May of 1997 the EPA

finalized rulemaking that expanded the types of industries to be included in TRI reporting. At the time of this petition the facilities<sup>1</sup> meeting the following criteria are required to report TRI information:

- The facility must be in SIC code 10 (except 1011, 1081, and 1094), or 12 (except 1241), or 20-39 (manufacturing facilities), or 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce), 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) and 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce), or 4953 (limited to facilities regulated under RCRA subtitle C), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis) hereafter "covered SIC codes"; and,

- Facility must have 10 or more full-time employees (or the total hours worked by all employees is greater than 20,000 hours), and

- The facility manufactures (defined to include importation), or processes, or otherwise uses any Section 313 chemical in quantities greater than the established threshold in the course of a calendar year.

In addition to the recent industry expansion, other facets of the TRI program have changed over the years. The list of chemicals to be tracked for TRI purposes changes almost annually, and today this number is almost double the starting number. Also, the type of information required to be reported has changed over the years. Originally the EPCRA<sup>2</sup> statute required, at a minimum, the following information be included on each TRI report:

### (g) Form

#### (1) Information required

Not later than June 1, 1987 the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall -

- (A) provide for the name and location of, and principal business activities at, the facility;

- (B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

- (C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

- (i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

- (ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

- (iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency

typically achieved by such methods for that wastestream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

The data outlined in sections i-iv was the basic TRI data mandated by EPCRA and these sections formed the basis for the original Form R (TRI reporting form) until reporting year 1991. In 1991 the next statute to impact TRI, the Pollution Prevention act of 1990, modified some of the reporting requirements for TRI.

#### IV. THE POLLUTION PREVENTION ACT OF 1990

In November, 1990 the Pollution Prevention Act of 1990 ("PPA") was signed into law (a copy of this Act is included in this submission as Appendix 2). This statute established pollution prevention as a "national objective", and noted<sup>3</sup>:

"There are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use... The opportunities for source reduction are often not realized because existing regulations, and the industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction... Source reduction is fundamentally different and more desirable than waste management and pollution control."

The Pollution Prevention Act established a hierarchy of methods for dealing with real or potential pollutants. Following is an outline of this hierarchy in order of preference:

- Wherever feasible, pollution should be prevented or reduced at the source;
- Pollution that cannot be prevented should be recycled in an environmentally sound manner;
- Pollution that cannot be prevented or recycled should be treated; and
- Pollution that cannot be prevented, recycled, or treated should be disposed or released into the environment as a last resort.

In addition to this hierarchy, the Act<sup>4</sup> authorized a state grant program to promote source reduction by businesses, established the Office of Pollution Prevention and Toxics, an independent office to carry out the functions required by the PPA, and directed the EPA to:

- Facilitate the adoption of source reduction techniques by businesses and federal agencies;
- Establish standard methods of measurement for source reduction;
- Review regulations to determine their effect on source reduction;
- Investigate opportunities to use federal procurement to encourage source reduction;
- Develop improved methods for providing public access to data collected under federal environmental statutes;
- Develop a training program on source reduction opportunities, model source reduction auditing procedures, a source reduction clearinghouse, and an annual award program; and
- Report to Congress within 18 months, and biennially afterwards, on actions needed to implement a strategy to promote source reduction, and an assessment of the clearinghouse and grant program.

Finally, the PPA made the first statutorily mandated changes to the TRI reporting requirements since EPCRA established the requirement for TRI reporting in 1986. Under the Pollution Prevention Act, facilities already required to report TRI information to the EPA were now required to provide information on pollution prevention and recycling for each TRI chemical reported. Specifically, Section 6607 of the PPA<sup>3</sup> established the following requirements for source reduction and recycling data collection:

(a) Reporting Requirements- Each owner or operator of a facility required to file an annual toxic chemical release form under section 313 of the Superfund Amendments and Reauthorization Act of 1986 ("SARA") for any toxic chemical shall include with each such annual filing a toxic chemical source reduction and recycling report for the preceding calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under section 313(c) of that Act. This section shall take effect with the annual report filed under section 313 for the first full calendar year beginning after the enactment of this subtitle.

(b) Items Included in the Report- The toxic chemical source reduction and recycling report required under subsection (a) shall set forth each of the following on a facility-by-facility basis for each toxic chemical:

(1) The quantity of any chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year for which the report is filed and the percentage change from the previous year. The quantity reported shall not include any amount reported under paragraph (7). When actual measurements of the quantity of a toxic chemical entering the waste streams are not readily available, reasonable estimates should be made based on best engineering judgment.

(2) The amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year, and the process of recycling used.

(3) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless the Administrator finds other categories to be more appropriate:

- (A) Equipment, technology, process, or procedure modifications.
- (B) Reformulation or redesign of products.
- (C) Substitution of raw materials.
- (D) Improvement in management, training, inventory control, materials handling, or other general operational phases of industrial facilities.

(4) The amount expected to be reported under paragraph (1) and (2) for the two calendar years immediately following the calendar year for which the report is filed. Such amount shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2).

(5) A ratio of production in the reporting year to production in the previous year. The

ration should be calculated to most closely reflect all activities involving the toxic chemical. In specific industrial classifications subject to this section, where a feedstock or some variable other than production is the primary influence on waste characteristics or volumes, the report may provide an index based on that primary variable for each toxic chemical. The Administrator is encouraged to develop production indexes to accommodate individual industries for use on a voluntary basis.

(6) The techniques which were used to identify source reduction opportunities. Techniques listed should include, but are not limited to, employee recommendations, external and internal audits, participative team management, and material balance audits. Each type of source reduction listed under paragraph (3) should be associated with the techniques or multiples of techniques used to identify the source reduction technique.

(7) The amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one-time event, and is not associated with production processes during the reporting year.

(8) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year. For the first year of reporting under this subsection, comparison with the previous year is required only to the extent such information is available.

(c) SARA Provisions- The provisions of sections 322, 325 (c), and 326 of the Superfund Amendments and Reauthorization Act of 1986 shall apply to the reporting requirements of this section in the same manner as to the reports required under section 313 of that Act. The Administrator may modify the form required for purposes of reporting information under section 313 of that Act to the extent he deems necessary to include the additional information required under this section.

(d) Additional Optional Information- Any person filing a report under this section for any year may include with the report additional information regarding source reduction, recycling, and other pollution control techniques in earlier years.

(e) Availability of Data- Subject to section 322 of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall make data collected under this section publicly available in the same manner as the data collected under section 313 of the Superfund Amendments and Reauthorization Act of 1986.

The new requirements of the PPA mandated that EPA make changes to the TRI reporting form and the program. EPA incorporated these changes in to the Form R for the 1991 reporting year. Although it was not specifically covered in the PPA, the Agency formalized the category of Energy Recovery at this time.

#### V. STRUCTURE OF TRI DATA REQUIREMENTS

Data for TRI reporting is submitted to the EPA on a completed "Form R" (a copy of the

1996 Form R is included in this submission as Appendix 3). Regulated facilities must submit a completed Form R to the EPA that summarizes activity for the previous calendar year by July 1 of the subsequent calendar year.

Form R is available both in electronic and hard copy form. The hard copy form is accompanied by a set of instructions<sup>5</sup> that include guidance on the most common TRI issues. TRI data requirements are listed on the Form R. The Form R is broken into two parts, Part I: Facility Identification Information, and Part II: Chemical Specific Information.

Part I is one page in length consisting of five sections that identify the reporting year; any trade secret information; the facility; the parent company; and a certification by a responsible official of the reporting entity.

Part II is specific to each chemical a facility is reporting. It is four pages long, and is broken into eight sections that identify the toxic chemical; the mixture it may be in; the activities and use(s) of the chemical at the facility; the maximum amount of the chemical on-site during the year; the quantity of the chemical released to each environmental media during the year; the quantity of the chemical transferred in waste to off-site locations; on-site treatment, energy recovery, or recycling processes for the chemical; and source reduction and recycling activities.

This petition is concerned with the definition of the information required in Part II of the Form R. Specifically this petition is requesting EPA reevaluate its definition of "Energy Recovery" and various types of "Incineration" that are used in Section 6: Transfers to Off-Site Locations in light of the data provided within this petition.

#### VI. TRI CATEGORIZATION OF OFF-SITE TRANSFERS

Data on transfers of toxic chemicals to off-site locations must be reported in Part II, Section 6 of Form R. Section 6 is itself composed of two primary subsections: 6.1 Discharges to Publicly Owned Treatment Works (POTWs); and 6.2 Transfers to other Off-Site Locations. This petition is concerned with the categorization of some of the data in subsection 6.2, specifically 6.2C "Type of Waste Treatment/ Disposal/ Recycling/ Energy Recovery" for transfers to other off-site locations.

In the instructions<sup>5</sup> for completing Form R, methods and codes are listed that are applicable to completing subsection 6.2C (a list of these methods and codes is included in this submission as Appendix 4). There are eight codes listed for Disposal, six codes listed for Waste Treatment, five codes for Recycling, and two codes for Energy Recovery. Within the method "Waste Treatment" there are two codes designated for Incineration:

- M50 Incineration/Thermal Treatment; and
- M54 Incineration/Insignificant Fuel Value

listed under the method of waste treatment. There is another code that could include toxic chemicals eventually bound for incineration, M95 Transfer to Waste Broker-Waste Treatment, however this code also

includes toxic chemicals that are bound for several other types of treatment.

The method "Energy Recovery" contains two codes and they are solely for Energy Recovery:

- M56 Energy Recovery; and
- M92 Transfer to Waste Broker-Energy Recovery.

This method of "Energy Recovery" and its corresponding codes were not specifically mandated by either EPCRA or the PPA. In subsection 6.2C of Form R the EPA decided to go beyond the statutory mandates of the Pollution Prevention Act of 1990 and the Emergency Planning and Community Right to Know Act of 1986 and create a method of off-site transfer, Energy Recovery, that implies a positive connotation in comparison to Incineration, which is considered Waste Treatment.

Under the PPA, Waste Treatment is the third method in order of preference for dealing with toxic chemicals, behind source reduction and recycling. Energy Recovery is not listed in the PPA, or in EPCRA, but due to its recognition in TRI it is marketed by service providers and treated by generators and many states with hazardous waste taxes as a form of Recycling.

In the recent final rule<sup>6</sup> on the expansion of industries required to report TRI information, the Agency provided its general interpretation of what Energy Recovery is (page 23852):

"EPA believes that for the purposes of the PPA, reporting quantities "combusted for energy recovery" should be restricted to devices where energy is produced from the combustion of the toxic chemical and harnessed."

Several lines after this broad definition, the Agency becomes more specific:

"Specifically, EPA interprets "combustion for energy recovery" as the combustion of a toxic chemical that (1) is (i) a RCRA hazardous waste or waste fuel, (ii) a constituent of a RCRA hazardous waste or waste fuel, or (iii) a spent or contaminated "otherwise used" material; and that (2) has a heating value greater than or equal to 5,000 Btus per pound in an "energy or materials recovery device." . . . EPA considers an "energy or materials recovery device" to be an industrial furnace or boiler as defined in 40 CFR 372.3."

However, a toxic chemical combusted in an "energy or materials recovery device" can also be considered as being "treated for destruction" if the chemical contained less than 5,000 Btus per pound:

"EPA considers any toxic chemical that is burned and meets the criteria described in part (1) of the interpretation, but which has a heating value less than 5,000 Btus per pound, as provided in part (2) of the definition interpretation, to be "treated for destruction" rather than "combusted for energy recovery." This is regardless of the type of device in which it is combusted."

Therefore under EPA's guidance, an "energy or materials recovery device" can perform both Energy Recovery and Treatment for Destruction depending on the energy value of the toxic chemical being combusted.

In this same final rule EPA defines Treatment for Destruction as:

"Treatment for destruction means the destruction of the toxic chemical in waste such that the substance is no longer the toxic chemical subject to reporting under EPCRA section 313. This does not include the destruction of a toxic chemical in waste where the toxic chemical has a heat value greater than 5,000 British thermal units and is combusted in any device that is an industrial furnace or boiler as defined at 40 CFR 260.10."

Under this guidance on Treatment for Destruction and Energy Recovery, the determinant of whether the energy from a toxic chemical is "recovered" is the type of unit that performs the combustion, not whether the energy from the combustion is actually harnessed and used to replace fossil fuel.

#### VII. DESCRIPTION OF AN "ENERGY OR MATERIALS RECOVERY DEVICE"

EPA defines an "energy or materials recovery device" to be an industrial furnace or boiler as it is described in 40 CFR 372.3:

"(1) Boiler means an enclosed device using controlled flame combustion and having the following characteristics:

(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery sections(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in Sec. 260.32 of this chapter.

Industrial furnace means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (1) Cement kilns.
- (2) Lime kilns.
- (3) Aggregate kilns.
- (4) Phosphate kilns.
- (5) Coke ovens.
- (6) Blast furnaces.
- (7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces).
- (8) Titanium dioxide chloride process oxidation reactors.
- (9) Methane reforming furnaces.
- (10) Pulping liquor recovery furnaces.
- (11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid.

(12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(13) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more of the following factors:

- (i) The design and use of the device primarily to accomplish recovery of material products;
- (ii) The use of the device to burn or reduce raw materials to make a material product;
- (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
- (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
- (v) The use of the device in common industrial practice to produce a material product; and
- (vi) Other factors, as appropriate."

The present guidance that the EPA uses for an "energy or materials recovery device" for the purposes of TRI reporting does not include the hazardous waste incinerator.

#### VIII. DESCRIPTION OF A HAZARDOUS WASTE INCINERATOR

A typical hazardous waste incinerator consists of a primary combustion chamber, secondary combustion chamber, and an air pollution control system.

The primary combustion chamber can be a rotary kiln, fluidized bed, fixed hearth, or liquid injection assembly. Typically, commercial incinerators utilize a rotary kiln as the primary combustion chamber, and this form of primary combustion chamber will be the one described in greater detail in this section.

Both solid and liquid wastes are introduced into the rotary kiln, in which the temperature is typically above 1800° F. Liquid wastes generally are pumped into the kiln through nozzles which atomize the waste into fine droplets for optimal combustion. Solid wastes are fed into the kiln either in bulk or containers (drums).

While the kiln is brought up to operating temperature utilizing fossil fuels such as natural gas or fuel oil, once the permitted temperature is reached operators try to maintain this temperature by feeding energetic liquid and solid wastes. If the wastes do not contain sufficient energy to maintain the permitted temperature the operator must supplement the waste feed with fossil fuels.

The kiln is set on an incline and rotates during operation causing the solid wastes fed into it to slowly migrate from the feed end to the discharge end utilizing gravity. The rotation and incline of the kiln tumbles the solid wastes inside assuring they are exposed on all sides to the high temperature and airflow in the kiln. A large fan draws excess air (containing oxygen) over the rotating solids and towards the secondary combustion chamber. The high temperature of the kiln causes the some of the organics in the waste feed to combust and be destroyed, while others volatilize and migrate with the combustion gas and excess air toward the secondary combustion chamber for combustion and destruction. Inorganic material that has not been volatilized is fed out of the discharge end of the kiln as ash into awaiting containers.

The secondary combustion chamber, often known as an afterburner, is brought up to permitted temperature along with the primary combustion chamber utilizing fossil fuels. Typically temperatures in the secondary combustion chamber are maintained at 2200° F. Once permitted temperature is achieved, the operator can begin feeding atomized energetic liquid wastes to maintain this temperature. If the liquid waste feed does not contain sufficient energy to maintain the permitted temperature, the operator will supplement this waste feed with fossil fuel.

The volatilized organics and excess air from the kiln are mixed with air and passed through the hot flame<sup>1</sup> of the secondary combustion chamber. Generally all feeds into the secondary combustion chamber are retained within it for 2.5–3 seconds. While the organic vapors are in the secondary combustion chamber the temperature, air turbulence, and excess oxygen work to break the chemical bonds of the organics to form primarily carbon dioxide, water, and acid gasses. In addition to these byproducts, some inorganic particulate matter is also mixing with the turbulent air of the secondary combustion chamber.

The combustion gas from the secondary combustion chamber flows to the air pollution control system (APCS) for cooling and cleansing prior to discharge to the atmosphere. APCSs have a variety of configurations, but their purpose is to cool and remove the acid gasses, particulate, and volatilized inorganics contained in the secondary combustion chamber off gasses.

#### IX. ENERGY REQUIREMENTS OF A HAZARDOUS WASTE INCINERATOR

Hazardous waste incinerators thermally decompose organic compounds. They do this

by introducing the organic material into an environment where the temperature, residence time, air turbulence, and oxygen level are designed and controlled to achieve strict destruction and removal efficiencies ("DRE") for each permitted organic.

Hazardous waste incinerators are permitted to burn toxic chemicals after a lengthy and comprehensive permitting process. This process is overseen by the state and/or federal environmental agency. Towards the end of this process, a trial burn for the permitted incineration unit is conducted. The purpose of the trial burn is to verify that the unit meets state and federal guidelines, and to set the operating parameters the unit must operate under while destroying toxic chemicals. Once a trial burn is successfully completed and a permit is issued the incineration facility is allowed to combust hazardous waste under the terms of the permit and operating parameters of the trial burn.

As mentioned earlier, temperature, time, turbulence, and oxygen are four of the key conditions needed to properly destroy organic compounds. Generally to achieve good combustion of organics, incinerators must maintain a minimum temperature of greater than 2,000° F in the secondary combustion chamber, a residence time greater than a couple of seconds, and a minimum oxygen level of 3% in the post combustion zone. All permitted hazardous waste burning incinerators have operating parameters set around these numbers (there are many other operating parameters that must be met to combust toxic chemicals; however, for the purpose of this petition, these other parameters do not need to be listed).

An incinerator does not combust toxic chemicals until it is operating within the permitted parameters. To reach the temperature required for toxic chemical combustion the incinerator will burn fossil fuel, generally a combination of fuel oil and natural gas. Once the minimum temperature is reached (and all other parameters are within permitted levels), operators begin feeding toxic organic chemicals to the incinerator for combustion.

Just like the fossil fuel they are replacing, these toxic chemicals have energy content and provide energy to the incinerator to maintain the permitted temperature. However, waste toxic chemicals are significantly more variable than refined fossil fuels in their energy content and composition. The BTU content of toxic organic chemicals varies greatly depending on the composition of the compounds. The BTU content also varies depending on the purity of the organic and what impurities it is mixed with (soil, water, etc.).

Ideally, the incinerator operator tries to blend a mixture of relatively pure, high energy waste, with other lower energy wastes (highly chlorinated or fluorinated wastes, contaminated media, etc.) so that combustion of all toxic chemicals is achieved without the addition of fossil fuel. Remember, to combust wastes a minimum temperature must be maintained within the incinerator. The amount of energy required to do this is dependent on the size of the incinerator;

<sup>1</sup>The flame of the secondary combustion chamber is derived from the combustion of energetic liquid wastes, fossil fuel, or a combination of the two.

however, once the minimum temperature is achieved this energy can come from fossil fuel or the waste organic chemicals (if the waste has sufficient energy content).

Since the advent of the "Energy Recovery" designation for off-site transfers, data indicate that incinerators are using increasing quantities of fossil fuel to combust the less energetic organic wastes they are receiving. The "Energy Recovery" designation is not available for toxic chemicals shipped to incinerators, and because of this a distortion has occurred that preferentially directs high energy wastes to go to "energy or materials recovery devices". Incinerators are not considered "energy or materials recovery devices", and must replace these high energy wastes with fossil fuel to be able to burn the less energetic wastes they still receive.

#### X. IMPACT OF "ENERGY RECOVERY" DESIGNATION

The impact of providing the "Energy Recovery" designation for the transfer of TRI regulated toxic organic chemicals shipped to an "energy or materials recovery device" was steady and predictable. The favorable connotations of "Energy Recovery" has induced manufacturers to transfer their high energy wastes to "energy or materials recovery devices" from incinerators.

This shifting of waste to "energy or materials recovery devices" allows the manufacturer to achieve some of the recycling goals they have established. Also, the "Energy Recovery" designation has led, in some instances, to regressive state tax structures that tax waste going to an incinerator at a higher rate than waste going to "Energy Recovery"

With all of these incentives to ship high energy wastes to "energy or materials recovery devices", and what experience

indicated was occurring in the marketplace and at incineration facilities, it appeared that larger quantities of organic TRI chemicals were going to "Energy Recovery". To test our hypothesis we queried the TRI database for trends in the Off-Site Transfer of organic chemicals. We queried the database for the total of all chemicals going to each type of off-site transfer for the years 1991-95 (1991 was the first year the "Energy Recovery" designation was formally available, and 1995 is the last year TRI data is now available.) For consistency and comparability of data, we searched for information only on the "core chemicals" that were listed for all five years.

The database we searched was the TRI database available through RTKnet. Following is the concluding data (a spreadsheet summarizing all of the data from this search is included as Appendix 5) we queried from this database.

### Chart 1

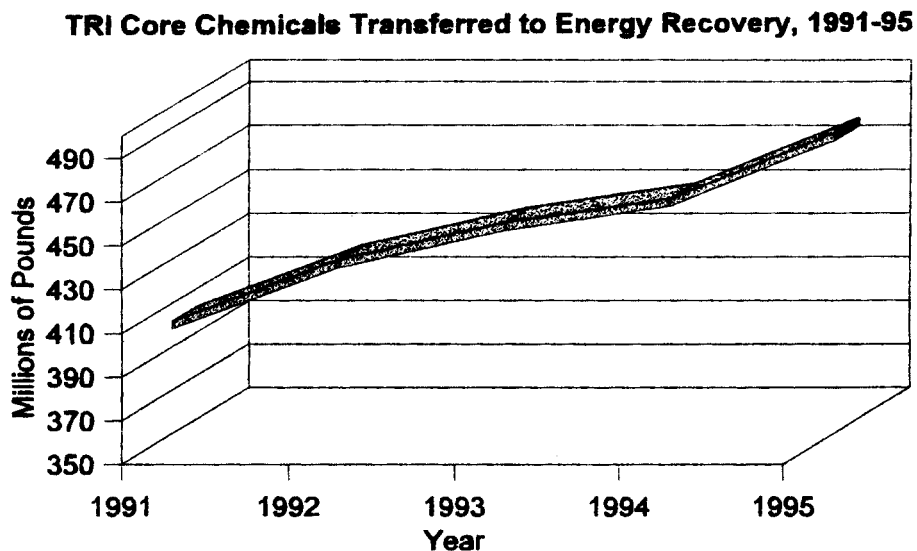


Table 1

YEAR	TOTAL POUNDS TRANSFERRED TO EN- ERGY RECOVERY
1991	400,285,225
1992	427,987,876
1993	445,839,753
1994	455,895,352
1995	486,366,712

As you can see from the above chart and table, there has been a steady increase in the quantity of TRI toxic chemicals being transferred off-site to energy recovery. Now lets contrast this to the data for TRI toxic chemicals being transferred to incineration.

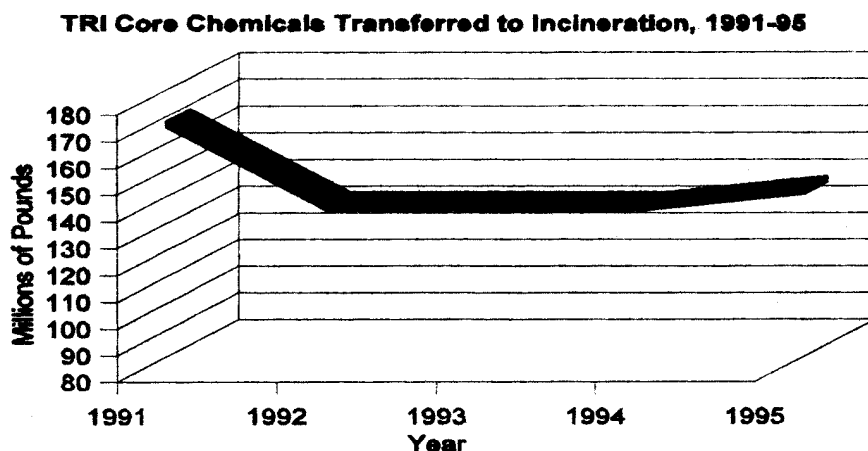
**Chart 2**

Table 2

YEAR	TOTAL POUNDS TRANSFERRED TO INCINERATION
1991	166,532,302
1992	135,767,217
1993	136,025,939

Table 2—Continued

YEAR	TOTAL POUNDS TRANSFERRED TO INCINERATION
1994	136,423,218
1995	141,932,667

In contrast to the data for Energy Recovery, the quantity of TRI toxic chemicals going to incineration has dropped significantly over the 1991-95 time frame. Most of this drop occurred in the 1991-92 time frame.

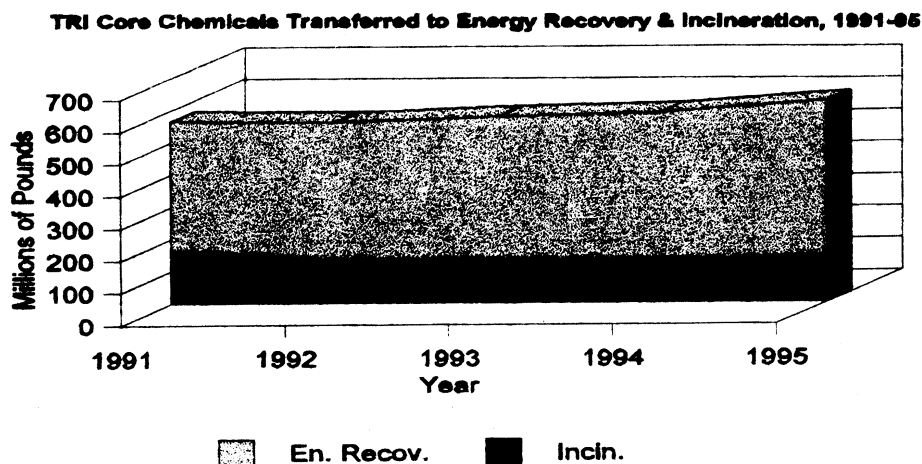
**Chart 3**

Table 3

YEAR	TOTAL POUNDS TRANSFERRED TO ENERGY RECOVERY AND INCINERATION	PERCENTAGE OF TOTAL POUNDS TRANSFERRED FROM ENERGY RECOVERY	PERCENTAGE OF TOTAL POUNDS TRANSFERRED FROM INCINERATION
1991	566,817,527	70.6%	29.4%
1992	563,755,093	75.9%	24.1%



Table 3—Continued

YEAR	TOTAL POUNDS TRANSFERRED TO ENERGY RECOVERY AND INCINERATION	PERCENTAGE OF TOTAL POUNDS TRANSFERRED FROM ENERGY RECOVERY	PERCENTAGE OF TOTAL POUNDS TRANSFERRED FROM INCINERATION
1993	581,865,692	76.6%	23.4%
1994	592,318,570	77.0%	23.0%
1995	628,299,379	77.4%	22.6%

Finally, combining the data for off-site transfers to incineration and energy recovery show that in every year but one (1992) the quantity of TRI toxic chemicals going to some form of combustion is increasing. While the total quantity going to combustion is increasing, the share, and total quantity, of these toxic chemicals going to incineration is decreasing and the share, and total quantity, going to energy recovery is increasing.

The data indicates that the positive connotation of the "Energy Recovery" designation has shifted large quantities of toxic chemicals away from incineration and into EPA classified "energy or materials recovery devices". This data then leads to a question of whether this movement of high energy wastes from incinerators to "energy or materials recovery devices" actually saves energy on a net basis, or just transfers the need for fossil fuel from "energy or materials recovery devices" to incinerators.

#### XI. INCINERATORS NEED HIGH ENERGY WASTE FUEL TO REPLACE FOSSIL FUEL

As stated in Section VIII of this petition, once an incinerator is operating within its permitted levels it can begin combusting toxic organic chemicals. Just like the fossil fuel they are replacing, these toxic chemicals have energy content and provide energy to the incinerator to maintain the permitted temperature. Ideally, the incinerator operator tries to blend a mixture of relatively pure, high energy waste, with other lower energy wastes (highly chlorinated or fluorinated wastes, contaminated media, etc.) so that combustion of all toxic chemicals is achieved without the addition of fossil fuel. Unfortunately, since the EPA designation of "Energy Recovery" is not available to incinerators, large quantities of high energy toxic chemicals have migrated from incinerators to "energy or materials recovery devices". This movement of energetic wastes away from incinerators forces the incinerator operator to find other sources of energy to maintain the unit within its permitted limits.

The only other source of energy available is fossil fuel.

The data in this area confirms that from 1991–95 fossil fuel usage has increased at incineration sites (Laidlaw Environmental Services, Inc. raw data is attached as Appendix 6). Laidlaw combined supplemental energy use data from its subsidiaries that had the type of data needed, for the years 1991–95. These subsidiaries include Laidlaw Environmental Services (Bridgeport), Inc. located in Bridgeport NJ, and Laidlaw Environmental Services (Deer Park), Inc. located in Deer Park, TX. Together these facilities represent about 20% of the available commercial incineration capacity in the U.S. for the years 1991–95. What was found is entirely predictable based on the information already in this petition. Following is data on the Btus of fossil fuel that had to be added to the incinerator to fully combust a pound of toxic chemicals for the years 1991–95.

Chart 4

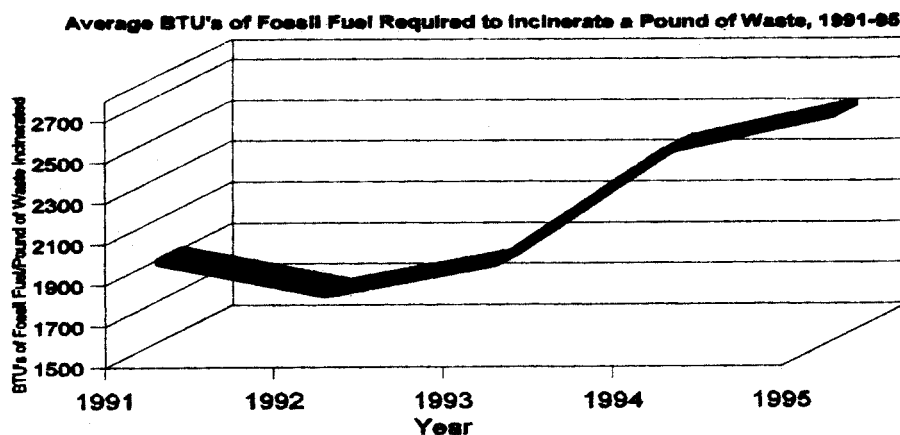


Table 4

YEAR	BTUs OF FOSSIL FUEL ADDED TO COMBUST 1 POUND OF TOXIC CHEMICALS
1991	1,894
1992	1,734
1993	1,882

Table 4—Continued

YEAR	BTUs OF FOSSIL FUEL ADDED TO COMBUST 1 POUND OF TOXIC CHEMICALS
1994	2,432
1995	2,605

The Btus of Fossil Fuel Added to Combust 1 Pound of Toxic Chemicals can also be converted into the total barrels of oil (equivalents) that are needed to combust waste at these facilities.

Chart 5

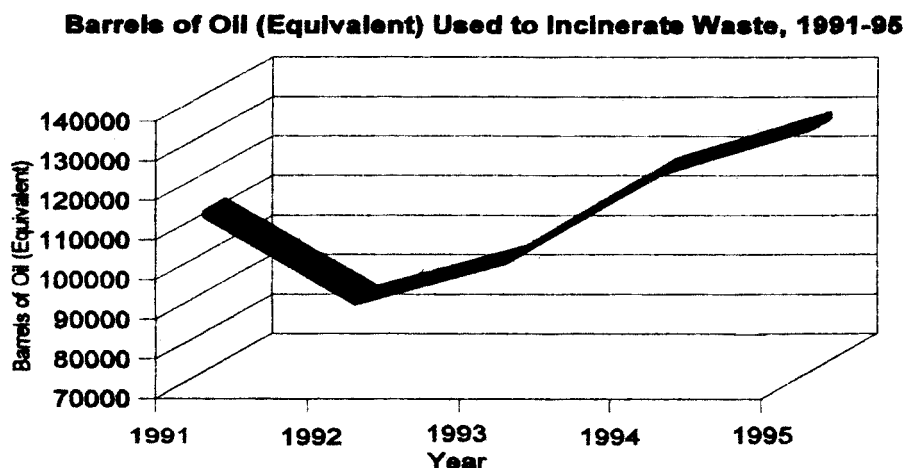


Table 5

YEAR	BARRELS OF OIL (EQUIVALENTS) USED TO COMBUST TOXIC CHEMICALS
1991	109,925
1992	87,931
1993	98,213
1994	120,398
1995	131,962

The above graphic and table indicate that the cited incineration facilities were utilizing 22,037 more barrels of oil (equivalent) to combust toxic chemicals in 1995 than in 1991. Due to their geographical location and size, the cited facilities should be fairly representative of the commercial hazardous waste incineration industry<sup>2</sup>. Therefore, extrapolating this data<sup>3</sup> would mean that in 1995 the entire commercial hazardous waste incineration industry needed a little over 110,000 more barrels of oil to combust the toxic chemicals they were receiving than they needed in 1991.

To compare the change in fossil fuel needs for incinerators between 1991 and 1995, a model was constructed that kept incineration's share of the TRI toxic chemical market the same in 1991 and 1995 we find:

<sup>2</sup>To determine the Barrels of Oil Equivalents multiply the BTUs from Table 4 times the total lbs. in Appendix 6, divide this number by 19,000 BTUs/lb oil, divide again by 7lbs/gallon, and divide again by 42 gallons/barrel.

<sup>3</sup>The cited facilities represented approximately 20% of the commercial incineration capacity, to extrapolate to the entire capacity the cited numbers are multiplied by five.

Table 6

INCINERATION'S 1991 SHARE	29.4%
INCINERATION'S 1995 SHARE	22.6%
INCINERATION'S 1995 POUNDS OF TRI TOXIC CHEMICALS	141,932,667
INCINERATION'S PROJECTED 1995 POUNDS OF TRI TOXIC CHEMICALS USING 1991 SHARE	184,720,017
DIFFERENCE IN POUNDS	42,787,350
ENERGY VALUE OF DIFFERENCE ASSUMING 15,000 BTU/LB	641,810,000,000 BTU's
BARRELS OF OIL EQUIVALENT OF ENERGY VALUE <sup>4</sup>	114,899

<sup>4</sup>Assumes oil is 19,000 Btus/lb, and has a density of 7 lbs./gal

This model is hypothetical, and only looks at the quantity of energetic toxic chemicals incinerators would receive if they maintained their 1991 share of the market.

However, the results are very interesting. The model's energy from toxic chemicals, 114,899 barrels of oil (equivalents), incinerator's lost because of the "Energy Recovery" designation given to "energy or materials recovery devices" is almost exactly equal to the additional amount of fossil fuel, 110,000 barrels of oil (equivalents), that incinerators had to burn in 1995.

This information strongly indicates that the "Energy Recovery" designation did not actually reduce the use of fossil fuels. It only shifted the high energy toxic chemicals from incinerators to "energy or materials recovery devices". The incinerators then had to replace the lost energy with fossil fuels of similar energy content.

#### **XII. RECOMMENDATION TO EPA: EXPAND ENERGY RECOVERY TO INCLUDE COMBUSTION OF HIGH BTU WASTE AT INCINERATORS**

The treatment method of "Energy Recovery" is not mandated by either EPCRA or the PPA. It was a designation that was created without statutory requirement. Unfortunately, while the idea of "Energy Recovery" is a noble one, the unintended impact over its first five years was to shift the high energy toxic chemicals from incinerators to "energy or materials recovery devices" designated by the EPA.

To properly destroy the remaining toxic chemicals they received, incinerators had to backfill the unit with an amount of fossil fuel comparable to the quantity of high energy toxic chemicals that were lost to "energy or materials recovery devices". On a global basis, there was no "Energy Recovery", only a shifting of demand for fossil fuel.

The main issue is what is an "energy or materials recovery device"? The EPA's guidance defines it primarily as a boiler or industrial furnace. However, this definition overlooks the fact that an incinerator requires energy to perform its designed task—the destruction of many of the most toxic organic chemicals known to humanity. In destroying these toxic chemicals, the incinerator is providing a valuable service to the environment, economy, and the nation, every bit as important as the manufacture of cement or steam.

To maintain, as the Agency does today, that energy from waste toxic chemicals is "Recovered" if it is used to manufacture steam or cement, but is "Treated for Destruction" if it is used to destroy other

toxic chemicals infers that harnessing energy for the proper destruction of organic chemicals is not recognized by the EPA as a valuable service.

We do not believe this is the Agency's position, only one that is implied by their present guidance on this issue. We believe it is important, both from a philosophical and a business point, that the EPA recognize that their present interpretation of "Energy Recovery" devalues the important service hazardous waste incinerators provide by destroying all forms of toxic organic chemicals, and only shifts the burden for fossil fuels from one type of thermal device to another. In light of the information provided in this petition, we strongly urge the EPA to address this matter by issuing guidance allowing the combustion of energetic toxic organic chemicals in an incinerator to be considered "Energy Recovery"

#### Endnotes

1. "Emergency Planning and Community Right to Know Act Section 313, Guidance for RCRA Subtitle C TSD Facilities and Solvent Recovery Facilities (Version 1.0)", United States Environmental Protection Agency, October, 1997

2. "The Emergency Planning and Community Right to Know Act of 1986", Public Law 99-499, Title III, Section 11023, Toxic Chemical Release Forms, October 17, 1986

3. "The Pollution Prevention Act of 1990", Public Law 101-508, Title VI, Sections 6601-6610, November 5, 1990

4. "Pollution Prevention Fact Sheet, Pollution Prevention Act of 1990", United States Environmental Protection Agency, September, 1993

5. "Toxic Chemical Release Inventory Reporting Form R and Instructions, Revised 1996 Version" United States Environmental Protection Agency, May 1997

6. "Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting; Community Right to Know; Final Rule" Federal Register, V 62, #84, May 1, 1997 Pages 23834-23892

#### V. Request for Comment

With regard to this interpretation of combustion for energy recovery and Safety Kleen's petition, EPA is requesting comment on several issues. These issues include:

1. Whether EPA should include incinerators as energy recovery units.
2. Whether EPA should include other types of combustion units under this designation.
3. Whether toxic chemicals with high British thermal units/pound values in wastes should be considered as replacements for fossil fuels in incinerators when the toxic chemical is in waste.
4. Whether EPA should distinguish between toxic chemicals in waste used to start up incinerators and toxic chemicals in waste used for maintaining combustion.

EPA is in the process of reproposing rulemaking pursuant to section 6607 of

the PPA. When reviewing comments relating to a regulatory definition of "combustion for energy recovery," EPA will consider comments submitted in response to this document.

#### List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund, Toxic chemicals.

Dated: March 19, 1999.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 99-7915 Filed 3-30-99; 8:45 am]

BILLING CODE 6560-50-F

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 648

[I.D. 032299B]

##### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a 2-day public meeting on April 14 and April 15, 1999, to consider actions affecting New England fisheries in the exclusive economic zone.

**DATES:** The meeting will be held on Wednesday, April 14, 1999, at 9:30 a.m. and on Thursday, April 15, 1999, at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the Providence Biltmore Hotel, 11 Dorrance Street, Kennedy Plaza, Providence, RI; telephone (401) 421-0700. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036; telephone: (781) 231-0422.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422.

#### SUPPLEMENTARY INFORMATION:

##### Wednesday, April 14, 1999

The meeting will begin with consideration of final action on Framework Adjustment 11 to the Fishery Management Plan (FMP) for the

Atlantic Sea Scallop Fishery in conjunction with Framework Adjustment 29 to the Northeast Multispecies Fishery FMP. Management measures being considered would allow sea scallop dredge vessels in Closed Area II and possibly the Nantucket Lightship Closed Area—areas in which scallop fishing is now prohibited because of an associated groundfish bycatch. The Council will consider decisions/recommendations regarding groundfish and scallop conservation, habitat impacts, gear conflicts, enforceability, and the mandates of the Sustainable Fisheries Act. Measures may include, but are not limited to: A target scallop total allowable catch (TAC) in Closed Area II and the Nantucket Lightship Closed Area; trip allocations; days-at sea (DAS) adjustments for fishing inside versus outside the closed areas; trip limits, with trip declaration and notice of landing requirements; area restrictions on scallop fishing within Closed Area II and the Nantucket Lightship Area; gear restrictions to reduce bycatch, such as dredge twine top regulations; a demarcation line for counting DAS; a TAC set-aside for research and observation of fishing activity; and an adjustment to the 300-lb (136-kg) regulated species possession limit to reduce discards. Once this matter is concluded, the Sea Scallop Committee will identify and the Council will seek approval of issues to be addressed in Amendment 10 to the Sea Scallop FMP. Amendment 10 will be developed later this year and is expected to go into effect on or about March 1, 2000.

##### Thursday, April 15, 1999

The second session will begin with reports from the Council Chairman; the Executive Director; the Acting Regional Administrator, Northeast Region, NMFS (Acting Regional Administrator); the Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons; and representatives of the Coast Guard, the Atlantic States Marine Fisheries Commission, and the U.S. Fish and Wildlife Service. Following reports, the Chairman of the Groundfish Committee will seek approval of final action on Framework Adjustment 30 to the Northeast Multispecies FMP. Management measures would reduce fishing effort on Georges Bank cod by 22 percent in the 1999 fishing year through any of the following measures: DAS reductions, trip limits, closed areas, reductions in the amount of hook gear and gillnets