STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules Governing the Classification of Waste as Hazardous, Minn. Rules Parts 7045.0135 and 7045.0214 and the Denial of Interim Status for Hazardous Waste Facilities Minn. Rules Part 7001.0650

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the revision of rules of the Minnesota Pollution Control Agency ("Agency") governing the classification of wastes as hazardous, Minn. Rules pts. 7045.0135 and 7045.0214, and governing the administration of hazardous waste facility permits, Minn. Rules pt. 7001.0650. These rules are proposed for amendment pursuant to the Agency's authority under Minn. Stat. § 116.07, subd. 4 (1984).

The proposed amendments change the status of warfarin, its chemical form and salts, and zinc phosphide from being listed as acute hazardous wastes to being listed as toxic hazardous wastes unless the concentration exceeds certain limits and exclude lime stablized pickle liquor sludge from the iron and steel industry from regulation as a hazardous waste. The amendments also provided a 30 day response period to owners and operators of hazardous waste treatment, storage or disposal facilities to correct or explain any deficiencies which caused the Agency to reject an application for interim status for the facility.

This Statement of Need and Reasonableness is divided into several parts. Part II contains the Agency's explanation of the need for the proposed amendments. Part III contains the Agency's explanation of the reasonableness of the proposed amendments. Pursuant to the requirements of Minn. Stat. § 14.115 (1984), Part IV documents how the Agency has considered the methods of reducing the impact of the proposed amendments on small businesses. Part VI contains a list of the exhibits relied on by the Agency to support the proposed amendments. The exhibits are available for review at the Agency's offices at 1935 West County Road B-2, Roseville, Minnesota 55113.

II. NEED FOR THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

Minn. Stat. ch. 14 requires an agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms this means that an agency must set forth the reasons for its proposal and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention and reasonableness means that the solution proposed by the agency is appropriate.

Need is a broad test that does not easily lend itself to an evaluation of each proposed revision. In this broad sense the need for amendments to the Agency's rules governing the classification of waste as hazardous and the rule governing the admin-

istration of facility permits has two bases, the need for consistency with the federal hazardous waste regulations and the need for the rules to accurately reflect the most current information available on the management of hazardous waste.

In 1976, Congress adopted the Resource Conservation and Recovery Act ("RCRA") to regulate the management of hazardous waste, 42 U.S.C. §§ 6901 et seq. In adopting RCRA, Congress provided for eventual state control of the hazardous waste program and set up the mechanism for the United States Environmental Protection Agency ("EPA") to grant authority to states to operate the program. In states that receive authorization, the state program operates in lieu of the federal program. To receive and maintain authorization the state program must be "equivalent" to the federal program and consistent with federal or state programs applicable in other states. EPA has defined equivalent to mean that the state requirements are at least as stringent as federal requirements. In terms of consistency, EPA's goal is to achieve an integrated national program which requires that final state programs do not conflict with each other or with the federal program.

Minnesota received final authorization for its hazardous waste program from EPA effective February 11, 1985. See 50 F.R. 3756 (Jan. 28, 1985). A state with final authorization administers its hazardous waste program entirely in lieu of the EPA. When new more stringent federal requirements are promulgated by EPA,

the State is required to enact equivalent authority within specified time frames. However, until they are adopted as state requirements, the federal requirements do not take effect in an authorized state. 1/ States are not required to adopt new federal requirements which are less stringent than state requirements, however they are urged to consider adopting those amendments to maintain consistency among the state and federal programs.

Although a state program may be more stringent than the federal program and authorized states are not required to adopt less stringent federal standards, the Agency believes that it is important to maintain as much consistency as possible. Much of the hazardous waste generated in Minnesota must be sent to other states for treatment or disposal because Minnesota has no commercial disposal facilities and only very limited commercial treatment facilities. This means that even though Minnesota has received authorization for its hazardous waste program, many Minnesota generators must be knowledgeable about the requirements of both the state and federal hazardous waste programs. The need to comply with two or more different sets of standards makes compliance with any set of standards more difficult. This is particularly true when the differences affect the classification

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1/ The Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) make some changes in the federal-state relationship in authorized states with respect to EPA regulatory changes adopted pursuant to that act. None of the proposed amendments fall into that category. Therefore, the procedures outlined are the applicable requirements.

of what wastes are hazardous. Therefore, the Agency has determined that to the extent that it can be accomplished without harming human health or welfare or the environment, it is preferrable to incorporate amendments to EPA's hazardous waste regulation into the Agency's hazardous waste rules.

The three proposed amendments reflect recent changes to federal hazardous waste requirements. These amendments would impose new requirements which are somewhat less stringent than existing Agency rules. However, as discussed below, the amendments made by EPA are reasonable. In order to avoid confusion, it is necessary to amend the Agency's rules to be consistent with the federal regulations. In addition, the proposed amendments are needed to provide more accurate regulation consistent with the current state of knowledge regarding hazardous wastes. The two proposed amendments which address the classification of waste as hazardous are proposed in response to new information which was not available at the time the currect rules were adopted. The amendment of the permitting standards merely incorporates into the rules a longstanding federal administrative practice.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

The Agency is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the rules or amendments proposed. Reasonableness is the opposite of arbitrariness and capriciousness. It means that there is

a rational basis for the Agency's action.

As discussed above, the amendments proposed in this proceeding are proposed in response to revisions to the EPA hazardous waste regulations. In proposing these amendments, the Agency is relying on EPA's rationale for adopting the amendments to its regulations. EPA's rationale is discussed in the documents listed in Part VI of this Statement of Need and Reasonableness. Those documents are hereby incorporated into this document by reference.

A. Minn. Rule Part 7045.0135, Subpart 4.

The Agency is proposing to amend Minn. Rule pt. 7045.0135, subp. 4, to change the status of three listed wastes. Minn. Rule pt. 7045.0135, subp. 4, lists commercial chemical products or manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates which are hazardous wastes if and when they are discarded or intended to be discarded. Item E of Subpart 4 lists those commercial chemical products and manufacturing chemical intermediates which are acute hazardous wastes. Item F of Subpart 4 lists those commercial chemical products and manufacturing intermediates which are toxic hazardous wastes.

Warfarin, its chemical form of 3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts, and zinc phosphide are currently listed as acute hazardous wastes under Minn. Rule pt. 7045.0135, subp. 4, item E. In the May 10, 1984 Federal Register, EPA published

final rules which changed the status of these wastes under the federal regulations. Prior to that amendment, these wastes were also listed as acute hazardous wastes under the federal regulations.

As a result of the original listing, EPA was petitioned to exclude commercial chemical products containing warfarin and its chemical form and zinc phosphide from the list of acute hazardous wastes. Acute hazardous wastes are those wastes which meet the criteria for lethal dosage as specified under Minn. Rules pt. 7045.0129, subp. 1, item B. Acute hazardous wastes must have an acute oral LD_{50} (rat) value of less than 50 mg/kg. Acutely hazardous wastes are lethal at lower dosages than toxic wastes and thus are considered more of a threat to human health and the environment. Toxic wastes are those those which meet the criteria in Minn. Rules pt. 7045.0129, subp. 1, item C.

The petitioners submitted data to EPA showing that below certain concentrations, warfarin and its chemical form, and zinc phosphide do not have an acute oral LD_{50} value of less than 50 mg/kg. In light of the data submitted by the petitioners to support their claim, EPA tentatively concluded that warfarin and its chemical form at concentrations of 0.3 percent or less and zinc phosphide at concentrations of 10 percent or less do not meet the criteria for listing as an acute hazardous waste. The EPA proposed a rule amendment stating that concentrations of warfarin and its chemical form, and zinc phosphide below these limits

would be listed as a toxic waste and that higher concentrations would be listed as acute hazardous wastes. See 48 F.R. 7714 (Feb. 23, 1983) and 48 F.R. 21098 (May 10, 1983). This proposed amendment and the data to support it were not contested and the amendments were adopted as proposed. See 49 F.R. 19922 (May 10, 1984).

The Agency proposes to adopt the federal amendment and retain warfarin and its chemical form 3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts, and zinc phosphide on the list of acute hazardous wastes only if they are present at the concentrations discussed above. If these materials are present in a less concentrated form, they will be listed as toxic wastes under Minn. Rules pt. 7045.0135, subp. 4, item F. This is reasonable because the evidence submitted to EPA demonstrates that unless warfarin or its chemical form is present at concentrations above 0.3 percent and unless zinc phosphide is present at concentrations above 10 percent, commercial chemical products or manufacturing chemical intermediates containing these materials do not meet the criteria of Minn. Rule pt. 7045.0129, subp. 1, item B, for acute hazardous wastes.

B. Minn. Rules Part 7045.0218, subpart 3.

The second amendment being proposed will exempt lime stabilized waste pickle liquor sludge from the iron and steel industry ("LSWPLS") from regulation as a hazardous waste. In the June 5, 1984 Federal Register, EPA published a final rule which

exempted LSWPLS from the definition of hazardous waste. LSWPLS is generated from the treatment of spent pickle liquor from steel finishing operations which is a listed hazardous waste. Prior to this amendment LSWPLS was a hazardous waste because the federal hazardous waste regulations provided that any waste generated from the treatment, storage or disposal of a listed hazardous waste is also a hazardous waste.

EPA received a petition from the American Iron and Steel Institute requesting that its regulations be amended to provide an industry-wide exclusion of LSWPLS. The petitions were accompanied by data to support the petitioners' claim that toxic constituents are present in LSWPLS only at levels well below the EP toxicity limits contained in the regulations. Therefore, the presumption in the regulations that all wastes generated by the treatment of listed hazardous wastes are hazardous wastes was in this case erroneous.

EPA reviewed the data provided, investigated additional data, and made a detailed review of the site specific delisting petitions submitted for LSWPLS. In all cases, EPA found that the maximum leachate values for the metals of concern, hexavalent chromium and lead, were well below the maximum permissible EP toxicity limits. Based on this review, EPA promulgated a rule excluding LSWPLS generated from the iron and steel industry from the "derived-from" rule. See 49 F.R. 427 (Jan. 4, 1984) and 49 F.R. 23284 (June 5, 1984). However, LSWPLS will still be a

hazardous waste if it exhibits any characteristic of a hazardous waste.

The Agency is proposing to make the same amendment to the State rules. Under the revised federal regulations, LSWPLS is exempted from the definition of hazardous waste. Because the Agency rules define hazardous waste in a different manner than the federal regulations, the Agency believes it is more appropriate to provide this exclusion under the generator standards of the Agency's rules. Minn. Rules part 7045.0214 addresses the generator's responsibility to evaluate all wastes. Subpart 3 of this rule provides that any waste generated from the treatment, storage, or disposal of hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate, is a hazardous waste if it is derived from a waste that is listed in Minn. Rules part 7045.0135. Spent pickle liquor from steel finishing operations is listed as a hazardous waste in Subpart 3, Hazardous Wastes from Specific Sources, of Minn. Rule part 7045.0135, because of its corrosive and toxic properties.

The Agency is proposing to amend Minn. Rules part 7045.0214, subpart 3, to specifically exclude LSWPLS from the presumption that any waste generated from the treatment, storage or disposal of a listed hazardous waste is a hazardous waste. This amendment is reasonable because the data provided by EPA demonstrates that LSWPLS does not contain hazardous levels of hexavalent chromium or lead and that the low levels of these metals that are present

are in an essentially immobile form. This amendment would not affect the classification of other wastes as hazardous or alter the regulation of any other spent pickle liquor as a hazardous waste.

C. Minn. Rule part 7001.0650.

The Agency is proposing to amend Minn. Rules pt. 7001.0650 to provide for a response period for applicants who have been denied interim status for a hazardous waste facility. EPA has revised its permit regulations to give an applicant 30 days to correct or explain any deficiencies which caused an application for interim status to be rejected. EPA has stated that this change merely makes specific in its regulations what is already standard operating procedure with respect to deficient interim status permit applications. See 49 F.R. 17716 (April 24, 1984). The Agency agrees with EPA that it is reasonable to give applicants for interim status an opportunity to cure deficient applications before interim status is denied.

As discussed above, in February 1985, the Agency received final authorization from the EPA for the hazardous waste program in Minnesota. As a result of this authorization the Agency reviews applications for hazardous waste facility permits in lieu of the EPA. The Agency's permitting rules are equivalent to the federal permit regulations and the Agency has attempted to provide consistency between the two programs whenever possible. It is reasonable to extend this consistency to the addition of the

30 day response period, especially since such a response period already exists in practice under both programs. It is also reasonable to provide for the response period in the rules so that all parts of the regulated community are aware that it is available and therefore able to make use of it to provide the information necessary to make correct decisions regarding the granting of interim status.

IV. CONSIDERATION OF SMALL BUSINESS

Minn. Stat. § 14.115 (1984) requires Minnesota agencies, when proposing amendments to existing rules which may affect small businesses, to consider reducing the impact of the rule on small businesses. The objective of Minn. Stat. ch. 116 is to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. In most instances, the application of less stringent requirements to the hazardous waste generated by small businesses would be contrary to the Agency's mandate.

Although the amendments proposed in this proceeding do not impose requirements on small business which are different than those imposed on other businesses, these amendments will have a beneficial impact on many small businesses. The amendment regarding the re-classification of warfarin and zinc phosphide will have a beneficial impact on small businesses which are also small quantity generators of those wastes. Under the current rules, small quantity generators

are those generators who generate less than 1,000 kilograms per month of toxic hazardous waste or 1 kilogram per month of acutely hazardous waste. As a result of the amendment, small quantity generators of zinc phosphide and warfarin below the acutely hazardous concentration limits will be able to generate up to 1,000 kilograms of the waste per month without being considered full scale generators.

The exclusion of LSWPLS from regulation as a hazardous waste will represent a significant benefit to those small businesses which are regulated as hazardous waste generators because they generate LSWPLS. As a result of the amendment these generators may be entirely exempted from the program if LSWPLS is the only hazardous waste which they generate or else they will have significantly reduced management costs as a result of the exclusion of the LSWPLS portion of their waste stream.

The addition of the thirty day response period will provide small businesses the opportunity to respond to a notification of denial of interim status, which should better enable them to give a fair and accurate presentation of the facts relating to their interim status application.

V. CONCLUSION

The Agency has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minnesota's hazardous waste and permit rules. This document constitutes the Agency's

Statement of Need and Reasonableness for the proposed amendments to the hazardous waste and permit rules.

VI. LIST OF EXHIBITS

In drafting the proposed amendments, the Agency relied on documents prepared by EPA to explain the rationale for each of the amendments and present the supporting technical data. The Agency is relying on the following documents to support these amendments.

MPCA Ex. No.	Title
1	Federal Register, Volume 48, Number 37, pages 7714 - 7716, February 23, 1983
2	Federal Register, Volume 48, Number 91, pages 21098 - 21101, May 10, 1983
3	Federal Register, Volume 49, Number 2, pages 427-430, January 4, 1984
4	Federal Register, Volume 49, Number 80, pages 17716 - 17719, April 24, 1984
5	Federal Register, Volume 49, Number 92, pages 19922 - 19923, May 10, 1984
6	Federal Register, Volume 49, Number 109, pages 23284 June 4, 1984

Dated:

Thomas J. Kalitowski
Executive Director

Bonnie Tinn
Legal

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 2249-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed amendment to rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend its regulations under the Resource Conservation and Recovery Act to change the hazard class under which commercial chemical products containing low concentrations of warfarin and zinc phosphide are listed. Products containing warfarin at concentrations of 0.3% or less will be listed under 40 CFR 261.33(f). Products containing zinc phosphide at concentrations of 10% or less will henceforth be listed under 40 CFR 261.33(f). This change specifically delineates the categorization of waste warfarin and zinc phosphide.

DATES: EPA will accept public comments on this proposed rule until April 25, 1983. Any person may request a hearing on this amendment by filing a request with John P. Lehman, whose address appears below, by March 25, 1983. This change is being made because these lower concentration formulations of warfarin and zinc phosphides do not meet the criteria for actively hazardous waste.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460. Comments should identify the regulatory docket number "Section 3001, 40 CFR 261.33." Requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460.

The public docket for this proposed rule is located in Room S-269C, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Wanda LeBleu-Biswas, Office of Solid Waste (WH-565B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, (202) 382-4798.

SUPPLEMENTARY INFORMATION:

I. Background

Under the authority of section 3001 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the Agency promulgated as 40 CFR 261.33 of the regulations a list of commercial chemical products or manufacturing chemical intermediates which are hazardous wastes if they are discarded or intended to be discarded. The phrase "commercial chemical product of manufacturing chemical intermediate" refers to a chemical substance which is manufactured or foumulated for commercial or manufacturing use, and which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. This does not pertain to dilutions or other adulterations of the commercial product. 40 CFR 261.33 also lists as hazardous wastes off-specification variants and the residues and debris from the clean-up of spills of these chemicals, if discarded or intended to be discarded (§ 261.33 (b) and (d)). Finally, § 261.33 lists as hazardous wastes the containers that have held those chemicals listed in § 261.33(e), if they are discarded or intended to be discarded, unless the containers have been decontaminated in an equivalent manner.

A chemical substance is listed in 40 CFR 261.33(e), and is subject to a small quantity generator exclusion limit of 1 kilogram per month, if it meets the criteria of § 261.11(a)(2); that is, it acutely hazardous because it has been shown in animal studies to have an oral LD_{50} (rat) toxicity value of less than 50 milligrams per kilogram, a dermal LD_{50} (rabbit) toxicity value of less than 200 milligrams per kilogram, an inhalation LC_{50} (rat) toxicity value of less than 2 mg/l, or is otherwise capable of causing or otherwise significantly contributing to serious illness.

Chemical substances are listed in § 261.33(f), and are subject to the small quantity generator exclusion limit of 1,000 kilograms per month,[1] if they satisfy § 261.11(a)(1), exhibiting identified characteristics of EP toxicity, reactivity, corrosivity, or ignitability; or § 261.11(a)(3), satisfying the criteria for listing as toxic, *i.e.*, they have been shown in scientific studies to be toxic, mutagenic, teratogenic, or carcinogenic to humans, other mammals or aquatic animals, or to be phytotoxic.

In listing wastes in either § 261.33(e) or (f), the Agency intended to encompass those hazardous chemical products which for various reasons are sometimes thrown away in pure or diluted form. The regulation was intended to dedsignate chemicals themselves as hazardous wastes, if discarded. The reasons for discarding these materials might be that the materials did not meet required specifications, that inventories were being changed or that the product line had changed.

The National Pest Control Association (NPCA), Vienna, VA has petitioned the Agency, pursuant to the provisions in § 260.22,[2] to exclude warfarin and zinc phosphide containing commercial chemical products used for pest control from the list of acute hazardous waste (those chemicals listed in § 261.33(e)). Petitions have also been received from Sterling Drug Company, New York, NY and the Ralston Purina Company, St. Louis, MO, requesting that certain warfarin containing products be excluded.

II. Basis for Original Listing

A. *Warfarin.* The Agency listed warfarin in 40 CFR 261.33(e) based on its oral LD_{50} (rat) toxicity value of 3 mg/kg for the technical grade form (99 percent pure). The Agency includes in the acute hazardous waste category any wastes that have been shown to have an oral LD_{50} (rat) value of less than 50 mg/kg.

B. *Zinc Phosphide.* The agency listed zinc phosphide in 40 CFR 261.33(e) based on its published oral LD_{50} (rat) toxicity value of 27 mg/kg for the technical grade form (94 percent pure). As previously stated, the Agency includes in the acute hazardous waste category any wastes that have been shown to have an oral LD_{50} (rat) value of less than 50 mg/kg.

[1] EPA publicly committed to reexamine the small quantity generator exclusion limit, and these products may be subject to a revised small quantity generator exclusion limit at a later date. In fact, there is an act in the Congress at this time (H.R. 6307) which, if passed, will decrease the small quantity generator exclusion limit to 100 kilograms per month.

[2] Section 260.22 only allows an individual facility to delist their waste if they can show that the waste is fundamentally different from the waste the Agency has listed. Since NPCA requests that zinc phosphide be removed from the acute hazardous waste category and thus seeks relief on a generally applicable basis, their petition is being processed under § 260.20 of the hazardous waste regulations.

III. Reason and Basis for Today's Amendment

A. *Warfarin.* The National Pest Control Association (NPCA), Vienna, VA has petitioned the Agency, pursuant to the provisions in § 260.22, to exclude warfarin from the list of acute hazardous wastes. The NPCA stated in its petition that technical grade warfarin is not readily available to pest control formulators and operators. They further stated that the most commonly used formulations for grain-based rodenticidal baits contain warfarin in concentrations of 0.025–0.05%. They also stated that the low solubility of warfarin precludes the potential for migration through solids to groundwater. The NPCA expressed concern that pest control operators who must discard baits are subject to increased economic burdens and reporting requirements as a result of RCRA regulation. In addition, the Agency has received comments from several pest control operators who requested that warfarin be removed from the acute hazardous waste listing in § 261.33(e), citing the NPCA petition as a basis for their request.

Sterling Drug, Incorporated, New York, NY and the Ralston Purina Company, St. Louis, MO have also petitioned to exclude specific rodenticidal baits containing 0.025%, 0.054% and 0.3% warfarin as the sole active ingredient. Sterling Drug, Inc. submitted oral LD_{50} (rat) toxicity data showing that formulations containing 0.025%, 0.054%, and 0.3% warfarin exhibit acute oral LD_{50} (rat) values of >5000 mg/kg, 2,100 mg/kg, and 2,140 mg/kg respectively.

Ralston Purina, based on calculations, but not actual laboratory data, claimed an acute oral LD_{50} (rat) value of 360,000 mg/kg for their rat and mouse control products. Ralston Purina cited Chemical Week, April 26, 1969 as stating that the acute oral LD_{50} (rat) value for 100 percent warfarin is 90 mg/kg. Ralston used this value to extrapolate acute LD_{50} toxicity for its products. Although there is no scientific basis for the values used in their claim, their products contain concentrations of warfarin within the range of the products described in Sterling Drug's petition, and so can be evaluated on the basis of Sterling's data.

The toxicological data submitted by Sterling indicates that products, manufacturing chemical intermediates, and off-specification chemical products containing warfarin at concentrations of 0.3% or less exhibit acute oral LD_{50} (rat) values of >50 mg/kg, and consequently do not meet the criteria for acute hazardous wastes. In fact, as shown by Sterling's data, the acute toxicity of such formulations is well in excess of 50 mg/kg. However, the Agency has no information to conclude that commercial formulations containing warfarin in concentrations greater than 0.3% are not acutely toxic and, because both the 0.054% formulation and the 0.3% formulation have oral (rat) LD_{50} values of about 2100 mg/kg, the Agency does not believe that linear extrapolations can be used to conclude that such formulations are not acutely toxic.

Based on the foregoing, EPA has concluded that warfarin formulations containing concentrations of 0.3% or less are not acutely hazardous and should not be listed in § 261.33(e). However, the Agency cannot conclude that these formulations present no toxicity potential and should be removed completely from listing under § 261.33. Rather, the Agency believes that these formulations should be listed under § 261.33(f) because of their chronic toxicity.

Warfarin poses a toxicity hazard upon chronic low level exposure and it appears to be a weak teratogen. Warfarin exhibits toxic effects in humans and animals by inhibition of prothrombin (a clotting factor) formation and dilation or engorgement of blood vessels with subsequent fatal internal hemorrhaging. In addition to its anticoagulant action, direct capillary damage has also been attributed to warfarin (Lisella *et al.*, 1971, cited in Doull *et al., Casarett and Doull's Toxicology,* 2nd ed., Macmillan Publishing Co., Inc., New York, 1980). These effects which are the basis of warfarin's effectiveness as a rodenticide, do not contribute to acute toxicity because multiple doses of warfarin are required to maintain prothrombin inhibition until all of the body's prothrombin reseves are depleted. However, they do indicate a potential threat from chronic exposure.

Additionally, an excerpt from the *Warfarin and its Sodium Salt Pesticide Registration Standard* (U.S. EPA, Office of Pesticides and Toxic Substances, Washington, D.C., 1981) indicates that warfarin poses a chronic hazard as well:

> Data also indicate that warfarin is a weak teratogen (1. Sherman, S. and B. D. Hall. Warfarin and fetal abnormality. Lancet. 1:692. 2. Shaul, W. L., H. Emery and J. G. Hall. 1975. Chondrodysplasia punctata and maternal warfarin use during pregnancy. Am. J. Dis. Child. 129:360–362. 3. Holzgreve, W., J. C. Carey and B. D. Hall. 1976. Warfarin induced fetal abnormalities. Lancet. 2:914. 4. Warkany, J. 1976. Warfarin embryopathy. Teratology. 14:205.), and the FDA, therefore, requires the following label warning on products used during pregnancy:
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> "Pregnancy—COUMADIN passes through the placental barrier, and the danger of hemorrhage to the fetus exists even to the point of fatal hemorrhage in utero even in the accepted therapeutic range of maternal prothrombin level. Close observation and laboratory control are essential. The newborn may be particularly sensitive to sodium warfarin. There have been reports of birth malformations in children born to mothers who have been treated with warfarin during the first trimester of pregnancy. Whether warfarin was in fact the responsible agent has not been established. Therefore, women of childbearing potential who are candidates for anticoagulant therapy should be carefully evaluated and the indications critically reviewed. If COUMADIN must be used during pregnancy, or if the patient becomes pregnant while taking this drug, the patient should be apprised of the potential risks to the fetus, and the possibility of termination of the pregancy should be discussed in light of those risks."
>
> The Agency finds this statement to be a reasonable summary of the scientific data on warfarin's teratogenic potential in humans.

In view of this information, and the Agency's lack of comprehensive toxicity data for the commercial products containing warfarin, EPA cannot at the present time justify removing such materials from regulation under § 261.33. Therefore, the Agency is proposing to amend § 261.33(e) to revise the listing for warfarin to include only those products which contain more than 0.3% warfarin, and is also proposing to amend § 261.33(f) to add warfarin when present at concentrations of 0.3% or less (as EPA Hazardous Waste No. U248).

B. *Zinc Phosphide.* The NPCA states in its petition that technical grade zinc phosphide is not readily available to pest control formulators and operators. They state further that zinc phosphide used by pest control operators in vector control is most commonly formulated as a bait of 2% or a tracking powder of 10% zinc phosphide (high value), and it is this product which is disposed of by pest control operators. The NPCA submitted the following toxicity values in their petition and in subsequent data:

- acute oral LD_{50} (rat) = 27 mg/kg (94% active Zn_3P_2),
- acute oral LD_{50} (rat) = 160–300 mg/kg (10% Zn_3P_2),
- acute dermal LD_{50} (rabbit) = 2000–5000 mg/kg (94% Zn_3P_2) and
- acute inhalation LC_{50} (rat) $<$ 19.6 mg/1 (10% Zn_3P_2).

The NPCA expressed concern that pest control operators who must dispose of spoiled baits and tracking powders are subject to increased economic burdens and reporting requirements as a result of RCRA regulation.

In the presence of moisture, zinc phosphide evolves phosphine gas (PH_3) which, when inhaled in sufficient quantities, can cause fatal pulmonary

edema, the probable mode of action of Zn_3P_2. In addition, severe gastrointestinal irritation results from the reaction of Zn_3P_2 with water and HCl in the stomach producing phosphine gas (Lisella *et al.*, 1971, cited in Doull *et al., Casarett and Doull's Toxicology*, 2nd ed., MacMillan Publishing Co., Inc., New York, 1980). It has been reported by Lisella *et al.* (1971) and Marshall (1981) that Zn_3P_2 causes vomiting in dogs and cats, thus reducing the extent of toxic effects through a shorter retention time in the animals' stomachs. However, the emetic qualities of Zn_3P_2 are not sufficient to prevent the possibility of significant harm.

In light of the data submitted by the National Pest Control Association, EPA has concluded that commercial chemical products or manufacturing chemical intermediates or any off-specification chemical product containing zinc phosphide at concentrations of 10% or less are not acutely hazardous since the acute oral LD_{50} (rat) value exceeds 50 mg/kg, and therefore should not be listed in § 261.33(e). However, the same data show that formulations containing concentrations over 10% are quite toxic, and should not be completely removed from regulation under § 261.33. Rather, the Agency believes that formulations containing zinc phosphide at concentrations of 10% or less should be listed under § 261.33(f) because of their toxicity. Therefore, the Agency is proposing to amend § 261.33(e) to revise the listing for zinc phosphide to include only those products which contain more than 10% of the active substance and is also proposing to amend § 261.33(f) to add commercial chemical products, manufacturing chemical intermediates or spill residues containing zinc phosphide at concentrations of 10% or less (as EPA Hazardous Waste No. U240).

IV. Request for Comments

The Agency invites comments on all aspects of this proposed rule and on the issues. In particular, we request information concerning the toxicity of warfarin and zinc phosphide, as well as of formulations where these compounds are the sole active ingredient. Comments will be accepted until April 25, 1983.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. In fact, this regulation will reduce the overall costs and economic impact of EPA's hazardous waste management regulations. There will be no adverse impact on the ability of U.S. based-enterprises to compete with the foreign-based enterprises in domestic or exports markets. Because this amendment is not a major regulation no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments form OMB to EPA and any EPA response to those comments are available for public inspection in Room S-269C at EPA.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small business, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a signficant economic impact on a substantial number of small entities.

This amendment will generally have no adverse economic impact on small entities. Rather, since many small pesticide applicators will not have to dispose of small quantities of certain waste zinc phosphide or warfarin pesticides as hazardous wastes, today's action will result in a savings to small business. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: February 9, 1983.

Anne M. Gorsuch,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 and 6922).

§ 261.33 [Amended]

2. It is proposed to amend § 261.33(e) by revising the listings for warfarin, 3-(alpha-acetonylbenzyl)-4-hydroxycoumarin and zinc phosphide to read as follows:

Hazardous waste No.	Substance
P001	Warfarin, when present at concentrations greater than 0.3%.
P001	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin, when present at concentrations greater than 0.3%.
P122	Zinc phosphide, when present at concentrations greater than 10%.

3. It is proposed to amend § 261.33(f) by adding the following waste streams:

Hazardous waste No.	Substance
U248	Warfarin, when present at concentrations of 0.3% or less.
U248	3(alpha-Acetonylbenzyl)-4-hydroxycoumarin, when present at concentrations of 0.3% or less.
U249	Zinc phosphide, when present at concentrations of 10% or less.

[FR Doc. 83-4478 Filed 2-22-83; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124 and 270

[SWH-FRL 2251-6]

Hazardous Waste Management System: The Hazardous Waste Permit Program; Procedures for Decisionmaking

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency is proposing to amend its hazardous waste permit regulations today. These regulations were promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act (RCRA), and were included in the Consolidated Permit Regulations. The Agency is proposing to allow owners and operators of existing hazardous waste management facilities who submit an incomplete Part A of the RCRA permit application to receive a notice of the deficiency and an opportunity to explain or cure the deficiency before the owner or operator is subject to EPA enforcement for operation without a permit. The Agency also is proposing to amend the regulations to require that if the Administrator denies a request for a panel hearing on an initial permit for an existing hazardous waste management facility, he must give his reasons for the denial.

Today's actions are prompted by a settlement stipulation concerning these issues in the lawsuit on the Consolidated Permit Regulations. These proposed amendments will not have an economic impact on the regulated community, nor will they have any impact on public health or the environment.

DATE: EPA will accept comments on these proposed amendments until July 11, 1983.

ADDRESS: Comments on these amendments should should be addressed to the Docket Clerk (Docket 3005—Hearings), Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or in Washington, D.C. at 382-3000. For specific information on this proposed amendment, contact Deborah Wolpe, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 382-4754.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1980, and May 19, 1980, EPA promulgated regulations implementing Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.* These regulations establish the first phase of a comprehensive program for the handling and management of hazardous waste (40 CFR Parts 260–265, 45 FR 33066–33289). In addition, on May 19, 1980, EPA promulgated the Consolidated Permit Regulations, governing five permit programs.[1] On January , 1983, the Consolidated Permit Regulations were deconsolidated. Each permit program now appears in a separate Part of the Code of Federal Regulations. The changes proposed today concern only the RCRA portion of the Consolidated Permit Regulations, now codified at 40 CFR Part 270.

The Subtitle C RCRA regulations, among other things, require hazardous waste management (HWM) facilities which treat, store, or dispose of hazardous waste to obtain a permit from EPA or an authorized state [2] and require that hazardous wastes be designated for, delivered to, and treated, stored, or disposed of only in these permitted facilities.

Recognizing the EPA would not be able to issue permits to all HWM facilities before the Subtitle C program became effective, Section 3005(e) of RCRA provides that a facility that meets certain requirements will be treated as having been issued a permit until such time as final administrative action is taken on its permit application. This statutory authorization to operate a HWM facility between the effective date of the Subtitle C program (November 19, 1980) and the issuance or denial of a final permit, is known as "interim status."

Interim status is conferred on any person who:

(1) Owns and operates a facility required to have a permit, which is in existence on November 19, 1980;

(2) has complied with the requirements of Section 3010(a) of RCRA (notification of hazardous waste activity); and

(3) has made an application for a permit under Section 3005 of RCRA.

EPA has defined the term "application for a permit" under section 3005(e) to mean only Part A of the permit application [See 40 CFR 270.70]. The application for a RCRA hazardous waste management permit is in two parts—A and B. Part A includes some very basic information about a facility such as its location, owner, the wastes it handles and the processes it employs [see 40 CFR 270.13]. Part B consists of more technical information reflecting the facility standards in 40 CFR Part 264. To qualify for interm status, however, only Part A of the permit application must be submitted.

This preamble and today's proposed amendments relate to the procedural aspects of failure to qualify for interim status, and denial of a permit.

II. Failure to Qualify for Interim Status

An owner or operator of a HWM facility may fail to qualify for interim status for any of the reasons listed in the statute as prerequisites to interim status: (a) The facility was not in existence on or before November 19, 1980; (b) the owner or operator failed to comply with Section 3010 of RCRA (*i.e.*, failed to notify, if required); or (c) the owner or operator failed to submit Part A of his permit application on time.[3] In addition, an owner or operator may fail to qualify for interim status if he fails to submit a complete Part A permit application. Section 270.70 of the regulations currently states that if, upon examination or reexamination of a Part A application, EPA determines that it fails to meet the standards of the regulations, EPA may notify the owner or operator that the application is deficient. Section 270.70 provides that the result of such a determination is that the owner or operator is not entitled to

[1] The five permit programs which were covered by the Consolidated Permit Regulation are: the hazardous waste management (HWM) program under Subtitle C of RCRA, the Underground Injection Control (UIC) program under Part C of the Safe Drinking Water Act, the National Pollutant Discharge Elimination System (NPDES) program under section 402 of the Clean Water Act, the "Dredge and Fill" program under section 404 of the Clean Water Act, and the Prevention of Significant Deterioration (PSD) program under regulations implementing section 165 of the Clean Air Act [45 FR 33290–33588 (May 19, 1980), previously codified at 40 CFR Parts 122–124].

[2] Pursuant to Section 3006 of RCRA, a state may obtain authorization to run the hazardous waste program in lieu of the Federal program. For a discussion of state authorization of the RCRA program, see the preamble to 40 CFR Part 123 (now Part 271) in the May 19, 1980 Federal Register, 45 FR 33386, and the preamble discussion accompanying the January 29, 1981 amendments to those regulations, 46 FR 8298; and subsequent amendments on July 26, 1982, 47 FR 32373.

[3] Failure to file a Part A on time may not always result in a failure to qualify for interim status. The Agency may, by compliance order issued under Section 3008 of RCRA, extend the date by which the owner or operator of an existing HWM facility may submit Part A of its permit application, as there is no statutory deadline for submitting the permit application. [See 40 CFR 270.10(e)(3)].

interim status, and is subject to EPA enforcement for operating without a permit.

Petitioners in the litigation on the Consolidated Permit Regulations, *NRDC v. EPA*, No. 80-1607, and consolidated cases (D.C. Cir., filed June 2, 1980),[4] argued that a determination that an owner or operator never acquired interim status cannot be made without some procedural safeguards. They argued that notice and opportunity for comment are necessary before the Agency can require a facility to cease operations because it failed to qualify for interim status.

The Agency believes that, as a practical matter, there are procedural safeguards already in place. It is standard operating procedure to allow a facility to correct, explain, or resubmit Part A of the permit application if it is found deficient, although such a procedure is not included in the regulations. To assuage petitioners' concerns, however, the Agency is today proposing to amend § 270.70 to expressly provide that before EPA determines that Part A of a permit application is deficient, it will notify the owner or operator in writing of the apparent deficiency. The notice will specify the grounds for EPA's belief that the application is deficient, and will give the owner or operator 30 days from the date of receipt to respond to the notification and to explain or cure the deficiency. If, after such notice and opportunity for response, EPA still finds that the application is deficient, it then can take appropriate enforcement action.

Some petitioners asserted that, in addition to notice and opportunity for comment on EPA's decision that a Part A application is deficient, the permit applicant should be granted a hearing on request. In EPA's view, a hearing is unnecessary. The statute does not require a hearing and issues in controversy should be simple and straight-forward enough to be resolved without resort to a hearing.

This proposal would put in regulatory form what is already standard Agency procedure. EPA believes that it is reasonable to give permit applicants an opportunity to cure deficient applications. Today's proposal would guarantee applicants that opportunity.

III. Opportunity for a Hearing Prior to Denial of an Initial Permit

As stated earlier, Section 3005(e) of RCRA states that any person who owns or operates an existing facility meeting the criteria listed in that section, shall be treated as having been issued a RCRA permit until such time as final administrative disposition of the permit application is made. Final administrative disposition occurs when EPA either issues or denies the permit.

The petitioners in the NRDC lawsuit raised several issues concerning the issuance or denial of an initial RCRA permit. They argued that due process requires the opportunity for a hearing before a permit is denied for a facility operating under interim status. In addition, they argued that the imposition of extensive, expensive, conditions in a permit might be tantamount to a denial of a permit, therefore a hearing should be available in such situations as well. The petitioners admitted that a full evidentiary hearing would not be necessary in every case, but some type of hearing ought to be available.[5]

EPA's position with respect to formal adjudicatory hearings was stated in the preamble to the May 19, 1980 regulations. It is EPA's position that such hearings are not required for the issuance of RCRA permits. The Agency stated that the requirements of due process are flexible, and that other procedures may be used which can be adapted to the nature of the problem being addressed (See 45 FR 33409-33411).

EPA believes that the current regulations meet the applicable due process tests. The regulations provide for notice of what the Agency proposes to do, an opportunity to challenge that proposal both through written comments and an informal public hearing, and a response to comments and a decision based on the administrative record.

Petitioners believed that the May 19, 1980 regulations only gave a right to this public hearing in situation were EPA proposed to issue a permit, and not when the Agency proposed to deny a permit. As promulgated on May 19, 1980, section 124.12(a) stated that the Director shall hold a public hearing whenever there is a " * * * significant degree of public interest in a draft permit." EPA's intention when promulgating this regulation was to provide a public hearing in situations where EPA issues either a tentative decision to issue or to deny a permit. In fact, a notice of intent to deny a permit is considered a draft permit.[6] This was clarified in amendments promulgated on July 15, 1981 (46 FR 36704) in response to an amendment to Section 7006(b) of RCRA.

As stated in the preamble to those amendments, the Agency intends that the requirement to hold an informal hearing (when one is requested) apply to cases where the Agency has tentatively decided to deny a permit as well as when the Agency has tentatively decided to issue a permit. All that RCRA and due process require is the opportunity for an informal hearing. That opportunity exists both for the issuance and denial of a RCRA permit.

The petitioners also were concerned that in some instances, there would be complicated factual issues that could be addressed better through a formal, rather than an informal, hearing. As the regulations are currently written, the Regional Administrator always has the discretion to hold a formal panel hearing. However, the petitioners objected to a lack of assurance in the regulations that they would receive a written response to a request for such a hearing, should the Regional Administrator deny the request. They were concerned that there would be situations were EPA and the permit applicant would disagree about changes necessary to bring the facility into compliance with the regulations. In situations where the Regional Administrator proposes to issue a permit, but the applicant disagrees as to major permit conditions, the petitioners want the opportunity for a panel hearing.

As a matter of policy, EPA has determined that permit applicants should have an opportunity for a panel hearing when there is a tentative decision to deny the initial permit for an

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[4] For further discussion of the *NRDC v. EPA* case and the settlement agreement filed on the RCRA-related issues, see the preamble to the proposed amendments on owner signature and certification, 47 FR 32038 (July 23, 1982).

[5] There are three types of hearings available under Part 124. These are: (1) Public hearings. Public, or informal, hearing must be held whenever the Director receives written notice of opposition to a RCRA draft permit and a request for a hearing within 45 days of public notice of the draft permit [See 40 CFR 124.12(c)]. (2) Evidentiary hearings. Evidentiary hearings under Subpart E of Part 124 are formal adversarial hearings conducted by a judicial officer pursuant to formal rules of practice. Evidentiary hearings are available under Section 3008 of RCRA in connection with the termination of a RCRA permit. They are not available upon the issuance or denial of a RCRA permit. See 40 CFR 124.12 and 124.71(a) and the preamble discussion at 45 FR 33409-11; and (3) Panel hearings. Panel hearings under Subpart F of Part 124 are nonadversarial hearings before a panel consisting of three or more EPA employees having special expertise or responsibility in areas related to the issues to be decided. A panel hearing is available whenever the Regional Administrator determines that as a matter of discretion, it would be an appropriate way to process a draft permit. Evidentiary hearings and Panel hearings are both considered formal adjudicatory hearings, as they conform to the formal hearing requirements of the Administrative Procedure Act.

[6] If the Director tentatively decides to deny the permit, he issues a "notice of intent to deny" the permit. A notice of intent to deny is a type of draft permit, which is processed under the same procedures as any draft permit [See 40 CFR 124.6(b)].

existing facility, and where the applicant and EPA disagree on major conditions in the initial draft permit for an existing facility. Today's proposed amendment to § 124.12(e)(2) provides assurance that such a hearing will not be arbitrarily denied.

Under today's proposal, the permit applicant may request a panel hearing pursuant to §124.114. Such a request must be made before the end of the 45-day public comment period. The applicant must explain in his request why he believes that the issues for which he requests a hearing are genuine issues of material fact, and are issues which are determinative with respect to one or more contested permit conditions. If the Regional Administrator denies the request for a panel hearing, he must send a brief written statement to the applicant explaining his reasons for concluding that no determinative issues have been presented for resolution in a panel hearing.

This proposal would give the petitioners the assurance they want that a panel hearing will not be unreasonably denied.

It should be noted that in circumstances where the Administrator remands an appeal to the Regional Administrator, the Administrator may direct the Regional Administrator to hold a non-adversary panel hearing, if none has been held before.

VI. Economic Impact

These proposed amendments will not have any economic impact on the regulated community. as stated in the background information, it is standard operating procedure for the Agency to allow an applicant the opportunity to correct, explain or cure an incomplete Part A of the RCRA permit. This proposal, therefore does not change anything but the regulatory language.

The second regulatory change requires the Regional Administrator to provide a written reason for denying an applicant's request for a formal hearing. This proposed change increases the paperwork of the Regional Administrator, but does not affect the regulated community.

VII. Request for Comments

The Agency invites comments on all aspects of these proposed regulations. EPA anticipates that finalization of today's proposal will provide part of the basis for the settlement of the *NRDC* v. *EPA* litigation affecting the RCRA portion of the Consolidated Permit Regulations. However, EPA will carefully consider all public comments on this proposal before making its final decision.

VIII. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations, and revisions thereto take effect six months after their promulgation. In addition, Section 553(d) of the Administrative Procedure Act requires publication of a substantive rule not less than 30 days before its effective date. The purpose of these requirements is to allow the regulated community sufficient lead time to prepare to comply with major new regulatory requirements. For the amendments proposed today, however, the Agency believes that an effective date 30 days or six months after promulgation would cause unnecessary disruption in the implementation of the regulations and might deny the public certain safeguards in the permitting process. These amendments, if promulgated in final form, would not impose substative requirements on the regulated community, but rather would guarantee certain procedural safeguards. The Agency believes that this is not the type of regulation that Congress had in mind when it provided a delay between the promulgation and the effective date of revisions to regulations. Consequently, EPA believes that it will have good cause to make these amendments effective immediately if and when they are promulgated in final form, but requests comments on whether such action would cause hardship for the regulated community or would otherwise be inappropriate.

IX. Executive Order 12291

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

—An annual effect on the economy of $100 million or more;
—A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or
—Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not major because it will not result in an effect on the economy of $100 million or more. It merely provides some procedural safeguards upon the failure to qualify for interim status and the issuance or denial of a RCRA permit. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This amendment is not a major regulation, therefore no Regulatory Impact Analysis is being prepared.

This amendment was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

X. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the reporting or recordkeeping provisions that are included in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval under Section 3504(h) of the Act. Any final rule will include an explanation of how the reporting or recordkeeping provisions contained therein respond to any comments by OMB or the public.

XI. President's Task Force on Regulatory Relief

The President's Task Force on Regulatory Relief designated the Consolidated Permit Regulations (40 CFR Parts 122–124) for review by EPA. This proposal supports the goals of the Task Force by reducing the burden of the RCRA portion of the Consolidated Permit Regulations (now deconsolidated) on the regulated community. This proposal also fulfills one of EPA's obligations in the settlement of industry litigation on the RCRA portion of the Consolidated Permit Regulations. In addition to issuing proposals aimed at settling the litigation, the Agency has deconsolidated the regulations to make them more easily usable by the public. As a result of deconsolidation, there was some reorganization of the regulations. Thus, this proposed amendment is in somewhat different format and location than it appeared in the settlement agreement.

XII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of proposed rulemaking for any rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility

analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment imposes no substantive requirements on the regulated community. Accordingly, I hereby certify that this proposed regulation, if issued in final form, will not have a significant economic impact on a substantial number of small entities.

Dated: April 26, 1983.

Lee L. Verstandig,

Acting Administrator.

List of Subjects

40 CFR Part 270

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Waste pollution control, Water supply, Indians—lands.

PART 270—[AMENDED]

It is proposed that 40 CFR Parts 270 and 124 be amended as follows:

1. The authority citation for Part 270 reads as follows:

Authority: Sections 1006, 2002(a), 3005, 3007 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA) (42 U.S.C. 6901, 6912(a), 6925, 6927 and 6974).

2. In Part 270, it is proposed to amend § 270.70 by revising paragraph (b) to read as follows:

§ 270.70 Qualifying for interim status.

* * * * *

(b) *Failure to qualify for interim status.* If EPA has reason to believe upon examination of a Part A application that it fails to meet the requirements of § 270.13, it shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for EPA's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in his Part A application. If, after such notification and opportunity for response, EPA determines that the application is deficient it may take appropriate enforcement action.

PART 124—[AMENDED]

3. The authority citation for Part 124 reads as follows:

Authority: The Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; the Clean Water Act, 33 U.S.C. 1251 *et seq.*; the Clean Air Act, 42 U.S.C. 1857 *et seq.*

4. In Part 124, it is proposed to amend § 124.12 by revising paragraph (e) to read as follows:

§ 124.12 Public hearings.

* * * * *

(e)(1) At his or her discretion, the Regional Administrator may specify that RCRA or UIC permits be processed under the procedures in Subpart F.

(2) For initial RCRA permits for existing HWM facilities, the Regional Administrator shall have the discretion to provide a hearing under the procedures in Subpart F. The permit applicant may request such a hearing pursuant to § 124.114 on one or more issues, if the applicant explains in his request why he or she believes those issues: (1) Are genuine issues of material fact and; (2) are determinative with respect to one or more contested permit conditions, identified as such in the applicant's request, that would require extensive changes to the facility ("contested major permit conditions"). If the Regional Administrator decides to deny the request, he or she shall send to the applicant a brief written statement of his or her reasons for concluding that no such determinative issues have been presented for resolution in such a hearing.

[FR Doc. 83-12492 Filed 5-9-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 264 and 270

[SW FRL 2251-7]

Hazardous Waste Management System: Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and the Hazardous Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the hazardous waste permit regulations. The regulations require, among other things, that a permittee under the Resource Conservation and Recovery Act maintain records of all ground-water monitoring data for the active life of the hazardous waste mangement facility. Today's proposal would change this requirement to allow the permittee to retain records of ground-water monitoring data for ten consecutive years only. This proposal eliminates a burdensom recordkeeping requirement without compromising protection of human health and the environment.

This amendent, if promulgated in the same form as proposed here, would result in an estimated savings to the regulated community of approximately $45,000 a year by reducing the burden of retaining ground-water monitoring records.

DATE: EPA will accept comments on this proposal until July 11, 1983.

ADDRESS: Comments should be addressed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the docket as "Docket 3004—Ground-water Monitoring Data."

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline toll-free at (800) 424-9346 or in Washington, D.C. at 382-3000; or Deborah Wolpe, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 382-4754.

SUPPLEMENTARY INFORMATION: On February 26, 1980, and May 19, 1980, EPA promulgated regulations implementing Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.* These regulations established the first phase of a comprehensive program for the handling and management of hazardous waste (40 CFR Parts 260-265, 45 FR 33066-33289). In addition, on May 19, 1980, EPA promulgated the Consolidated Permit Regulations governing five permit programs.[1] On January ——, 1983, the Consolidated Permit Regulations were deconsolidated. Each of the five permit programs now appears in a separate Part of the Code of Federal Regulations. The changes proposed today affect only

[1] The five permit programs which were covered by the Consolidated Permit Regulations are: The Hazardous Waste Management (HWM) program under Subtitle C of RCRA, the Underground Injection Control (UIC) program under Part C of the Safe Drinking Water Act, the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Clean Water Act, the State "Dredge or fill" program under Section 404 of the Clean Water Act, and the Prevention of Significant Deterioration (PSD) program under regulations implementing Section 165 of the Clean Air Act. [Previously codified in 40 CFR Parts 122-124, 45 FR 33290-33588].

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the nematocide ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity raspberries. The proposed regulation to establish a maximum permissible level for residues of the nematocide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before February 3, 1984.

ADDRESS: Written comments by mail to: Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 2E2605 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Oregon and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the nematocide ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl) phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl) phenyl (1-methylethyl) phosphoramidate in or on the raw agricultural commodity raspberries at 0.1 part per million (ppm).

The data submitted in the petition and other relevant material have been valuated. The pesticide is considered seful for the purpose for which the olerance is sought. The toxicological ata considered in support of the oposed tolerance were a 2-year dog eding study with a no-observed effect vel (NOEL) of 0.025 mg/kg/day (1.0 m); an 18-month mouse oncogenicity dy with a NOEL of 7.5 mg/kg/day (50 m) and no observed oncogenic effects all levels tested (2, 10, and 50 ppm); a ear rat feeding study with a NOEL for E inhibition of 0.15 mg/kg/day (3 ppm); a 3-generation rat reproduction study with a NOEL of 1.5 mg/kg/day (30 ppm); and teratology studies using rats and rabbits with NOEL's of 0.5 mg/kg and 0.3 mg/kg, respectively. An oncogenicity study in a second species (rat) is currently being conducted and is expected to be completed in 1986.

The acceptable daily intake (ADI), based on the 2-year dog feeding study (NOEL of 0.025 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.0025 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.15 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0045 mg/day; the current action will increase the TMRC by 0.00005 mg/day (1.1 percent). Published tolerances utilize 3.01 percent of the ADI; the current action will utilize an additional 0.03 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Raspberries are not considered an animal feed item and, therefore, there is no expectation of secondary residues in meat, milk, poultry, and eggs. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.349 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E2605/P320]. All written comments filed in response to this petition will be available in the Program Management and Support Division at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 16, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.349(a) be amended by adding and alphabetically inserting the raw agricultural commodity raspberries to read as follows:

§180.349 Ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * *	*
Raspberries	0.1
* * * *	*

[FR Doc. 84-7 Filed 1-3-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[FRL-2501-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of data and request for comment.

SUMMARY: On March 16, 1981, the American Iron and Steel Institute following up on its comments on interim final Agency regulations, submitted a rulemaking petition pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA) requesting an exclusion from the presumption of hazardousness presently contained in the regulations for lime neutralized

waste pickle liquor sludge from all steel finishing operations (formerly EPA Hazardous Waste No. K063). In response to that petition, the Agency has obtained data which will become part of the administrative record for Agency action. EPA is now making this data available for public inspection and comment.

DATE: EPA will accept comments until February 21, 1984.

ADDRESSES: Comments should be sent to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the docket number "Section 3001—Spent pickle liquor listings." The supporting information is available for inspection and copying in Room S-212, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. Comments will be made available as they are received.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at 1-800-424-9346 or at (202) 382-3000. For technical information contact Jacqueline W. Sales, Office of Solid Waste (WH-565B), 401 M St., SW., Washington, D.C. 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, when EPA promulgated the first phase of the RCRA Subtitle C hazardous waste regulations, the Agency included in its list of hazardous wastes spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K062) and sludge from lime treatment of spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K063). The sludge is generated by a well known technique involving lime neutralization, flocculation, clarification, and, in most cases, dewatering of the resultant sludge.

On November 12, 1980, in response to public comment, the Agency removed EPA Hazardous Waste No. K063 from the list and relied on the provisions of 40 CFR 261.3(c)(2) to retain regulatory control over these wastes. This provision states that wastes derived from treating hazardous wastes are presumptively hazardous. In addition, the Agency indicated that it would consider a rulemaking petition to exclude these wastes from RCRA control it the steel finishing industry submitted data which demonstrated that these wastes are non-hazardous.

On March 16, 1981, the American Iron and Steel Institute (AISI), following up on its earlier comments, submitted a rulemaking petition requesting an exclusion of lime neutralized waste pickle liquor sludge (LNWPLS). AISI submitted data showing that lead and hexavalent chromium, the constituents of concern for which the waste is listed, are present in the LNWPLS in essentially an immobile form. EPA has since obtained considerable additional data, both from AISI members and from other sources, which bears on the original waste listing and on AISI's rulemaking petition. We are now seeking comment on this information. This information and comments we receive will form the record for subsequent Agency rulemaking.

II. Availability of Information

The following information is available for public inspection in the EPA RCRA docket:

A. American Iron and Steel Institute Rulemaking Petition

AISI submitted Extraction Procedure (EP) extract data from fourteen steel finishing operations to support their claim that lead is present in lime neutralized waste pickle liquor sludge (LNWPLS) in concentrations well below the maximum EP toxicity limits and hexavalent chromium is well below the proposed EP toxicity limits (see 45 FR 72029-72041, October 30, 1983) demonstrating that they are present in essentially an immobile form (see Table 1).

TABLE 1.—LIME NEUTRALIZED WASTE PICKLE LIQUOR SLUDGE

[EP Extract Values (ppm) [1]]

Facility	Lead	Total chromium	Hexavalent chromium
1 [2]	<0.030	0.19	0.089
2 [2]	0.039	0.018	0.008
3	0.0027	0.037	
4 [2]	0.04	0.82	0.16
5 [2]	<0.02	2.07	
6	0.37	0.35	
7	0.15	1.00	
8	0.60	<0.03	
9	0.12	0.024	0.025
10	0.09	<0.02	
11 [2]	<0.10	0.05	
12 [2]	0.055	0.076	
13	0.10	<0.02	
14 [2]	0.18	5.10	0.127

[1] These values represent an *average* of all samples analyzed from each facility.
[2] Stainless steel facilities.
Source: AISI rulemaking petition.

B. Data from Site-specific Delisting Petitions

Agency records indicate that approximately 360 steel finishing facilities handle or generate LNWPLS; therefore, the Agency does not view the data submitted in the AISI rulemaking petition (*i.e.*, EP extract data from fourteen facilities) as fully representative of steel finishing industry wastes. The Agency, therefore, reviewed additional data available from site-specific delisting petitions (see Table 2 for data; petitioners names are listed at the end of today's notice). These data appear to support AISI's contention that lead and hexavalent chromium are present in low levels and are substantially immobilized in properly neutralized LNWPLS. (Virtually all of the chromium present in the lime neutralized waste will be in the trivalent state because total chromium is reduced by ferrous ion, a reducing agent present in all spent pickle liquors.)

TABLE 2—IRON AND STEEL INDUSTRY, LIME NEUTRALIZED WASTE PICKLE LIQUOR SLUDGE

[EP Extract values (ppm [1])]

Facility [2]	Lead	Total chromium	Hexavalent chromium
1	0.50	0.10	0.10
2	0.29	0.05	0.05
3	0.80		0.10
4	0.08	0.05	
5	0.45	0.26	
6	0.04		0.07
7	0.30	0.06	0.01
8	0.02	4.73	
9	1.20	0.03	0.02
10	1.00	3.80	0.01
11	0.05		0.22
12	0.17	0.03	0.02
13	0.25	0.02	
14	0.57	15.0	0.03
15	1.00	0.38	0
16	1.36		0.01
17	0.50	0.50	
18	0.147	0.04	
19	0.50	0.10	0.005
20	0.06	0.223	0.022
21	1.70		0.053
22	0.058	0.062	
23	0.19	0.17	
24	0.10	0.03	0.03
25	0.08	0.10	
26	1.00		1.00
27	0.03	0.10	0.50
28	0.02	0.68	0.02
29	0.15		0.45
30	0.01	2.20	0.02
31	0.649		0.056
32	0.12	0.10	
33	0.04	0.40	
34	0.60	0.02	
35	0.42	0.11	
36	0.32	0.11	
37	0.21	0.10	
38	<0.50	0.38	
39	0.10	0.23	
40	0.11	2.70	0.18
41	2.60	0.05	
42	0.17	1.03	<0.02
43	0.03	0.04	

[1] These values represent the *maximum* EP values for all samples analyzed from each facility.
[2] The facility names are listed at the end of today's notice.

C. EPA Studies to Determine Whether Commingling of Spent Pickle Liquor With Non-hazardous Waste May Affect the Treatment Process And Whether Hazardous Constituents Other Than Those For Which Spent Pickle Liquor Was Listed Are Present in the Waste at Levels of Regulatory Concern

In considering the AISI petition, the Agency is concerned that in making such a decision (such as to exclude LNWPLS), a diverse group of persons who treat spent pickle liquor but whose wastes may still be hazardous may be excluded. Our basis for this concern is two-fold: first, we are concerned that if the spent pickle liquor is commingled with non-hazardous waste (such as organic waste streams), commingling could adversely affect the treatment process and increase the leachability of the toxic heavy metals. Steel finishing is practiced by a large diverse group of manufacturers. For example, plants in such standard industrial classes (SIC) as Paints, Varnishes, Lacquers, Enamels (SIC 285), Industrial Organic Chemicals (SIC 286) and Adhesives, Sealants, Printing Ink, Other (SIC 289) treat spent pickle liquor and generate LNWPLS. If the spent pickle liquor were commingled with other wates that are generated by these industries, the Agency believes that the metal leachability could be directly affected. The Agency has data from delisting petitions which indicate that organic-containing wastes may interfere with effective lime neutralization.[1]

Therefore, because commingling of spent pickle liquor with other materials could likewise affect treatability, we are contemplating a rule to exclude only those wastes where we have assurances that the treatment process is controlled to prevent significant interferences. Although the steel industry may mix other waste streams with spent pickle liquor before treatment, there do not appear to be interfering agents, such as organics, in these other waste streams (see EPA Phase I Report for the Spent Pickle Liquor Listing). For example, cold rolling process wastes (oily waste containing organics) are frequently mixed with spent pickle liquor prior to treatment. However, the oily organic containing phase is typically skimmed off prior to lime treatment. Thus, organics are not expected to be present in significant concentrations to interfere with waste treatment, or to be present in LNWPLS. Findings from delisting petitions for LNWPLS from the iron and steel industry appear to indicate that treatment is effective.

Secondly, the Agency is concerned that when spent pickle liquor is commingled with other wastes before treatment there may be hazardous constituents, other than lead and hexavalent chromium, in the LNWPLS at levels of regulatory concern. The Agency has completed the first phase of this study which addresses hazardous constituents present in LNWPLS from the iron and steel industry. We have evaluated raw waste pickle liquor influent typically lime treated by the iron and steel industry. Organic toxicants do not appear to be present in the effluent in significant concentrations (see Development Document for Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Vol. V). Data indicate, however, that nickel is present in LNWPLS from stainless steel finishing operations. Since nickel is a constituent in the manufacture of stainless steel, the Agency can reasonably expect nickel to be present in the wastes. The Agency is evaluating whether the levels present in these wastes are of regulatory concern. No other toxic metals are present in significant concentrations in the EP extract from LNWPLS (see EPA Stainless Steel Finishing Waste Characterization, May 1982 and Development Document for Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Vol. VI).

Copies of the following information and studies discussed in this Notice are available for public inspection in the RCRA docket:

1. AISI Rulemaking Petition.
2. EPA, *Stainless Steel Finishing Waste Characterization*, Contract No. 68-01-6467, May 1982.
3. Witmer, Charlotte, *Toxicity of Orally Ingested Nickel Compounds*, September 1982 (report submitted to EPA by the Specialty Steel Industry).
4. EPA, Phase I Report for the Spent Pickle Liquor Listing, Contract No. 68-01-6804, December, 1983.
5. Delisting Verification, Sampling Mission No. 1: Environmental Waste Removal, Inc. Contract No. 68-01-6467, October, 1982.
6. Delisting Verification, Sampling Mission No. 2: Al-Chem Tron, Inc., Contract No. 68-01-6467, October, 1983.
7. EPA, Development Document for Effluent Limitation Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Vol. V, EPA 440/1-82/024, May 1982.
8. EPA, Development Document for Effluent Limitation Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Vol. VI, EPA 440/1-82/024, May 1982.
9. Letter to Earle Young (AISI) from John Lehman (EPA), July 16, 1981.
10. Letter from Matthew Straus (EPA) to Stephen Schwartz (AISI), October 5, 1981.
11. Letter from John Lehman (EPA) to Stephen Schwartz (AISI), October 27, 1981.
12. Letter from Rita Lavelle (EPA) to Earle Young (AISI), December 27, 1982.
13. Letter to Lee Thomas (EPA) from R. Sarah Compton (Counsel for Specialty Steel Institute), April 21, 1983.
14. Letter to R. Sarah Compton (Counsel for Specialty Steel Institute) from John H. Skinner (EPA), November 9, 1983.
15. Site-Specific Petitions to Delist EPA Hazardous Waste Nos. K062 and K063:

IRON AND STEEL INDUSTRY

Petition No.	Facility
0506	U.S. Steel Corp.
0120	Copperweld Steel Co.
0271	Union Carbide.
0027	Bekaert Steel Wire.
0228	Carpenter Technology.
0014	Johnson Steel & Wire.
0475	Olin Corp.
0097	Allegheny Ludlum.
0099	Keystone Group.
0348	Bethlehem Steel Corp.
0106	Jones & Laughlin Steel.
0115	Timken Co.
0423	Quanex Corp.
0117	Trent Tube.
0214	Ohio Steel Tube Co.
0455	Inland Steel/Indiana Harbor Works.
0482	Mid-West Fabricating Co.
0105	Great Lakes Steel.
0298	Ingersoll Johnson Steel Co.
0158	Al Tech Specialty Steel Corp.
0066	Crucible, Inc.
0029	Firestone Steel Products.
0055	ARMCO, Inc.
0063	Keystone Group.
0075	Ohio Steel Tube Co.
0080	Gulf & Western.
0085	ARMCO, Inc.
0094	Allegheny Ludlum.
0108	Allegheny Ludlum.
0110	Allegheny Ludlum.
0134	Empire Detroit Steel Division.
0159	General Cable.
0160	Al Tech Specialty Steel Corp.
0266	General Cable.
0179	Lehigh Lancaster.
0203	Vulcan Rivet & Bolt Corp.
0132	Peerless Chain Co.
0389	Sandvik.
0144	Bekaert Steel Wire Corp.
0273	Bethlehem Steel Corp.
0193	Bethlehem Steel Corp.
0243	Plymouth Tube Co.
0089	Triangle PWC.

Other Industries

0191	Leggett & Platt, Inc.
0192	Chemline Corp.
0193	American Nickeloid Co.
0303	Robertson, Inc.
0310	Calvin Ind.
0323	Liquid Dynamics.
0324	National Standard.
0347	General Electric.
0397	Beech Aircraft Corp.
0404	Conversion Systems, Inc.
0424	GMC Harrison Radiator.
0379	Special Metals.
0433	Cleaners Hanger Co.
0451	True Temper Sport, Inc.
0460	Steel Warehouse Co.

[1] For example, as part of its spot check verification program for delisting, the Agency has visited several facilities that treat electroplating wastes and commingle them with other nonhazardous wastes (such as organic waste streams). In reviewing these results, we find that, in most instances, the treated wastes continue to leach high concentrations of toxic metals or actually exhibit the EP toxicity characteristic. The type of treatment used at these facilities is virtually the same as that used in treatment of spent pickle liquor. (See Delisting Verification, Sampling Mission #1 and Sampling Mission #2, October, 1982.)

IRON AND STEEL INDUSTRY—Continued

Petition No.	Facility
0460	MOOG Automotive.
0471	H. H. Robertson Co.
0491	CWM.
0507	Teledyne Monarch Rubber.
0523	All-Brite.
0524	International Galvanizing Co.
0005	Fosbrink.
0024	Dresser Industries.
0028	Florida Wire & Cable.
0044	Wiremill Inc.
0048	American Recovery Co.
0051	Maytag.
0059	Chem Mst Services.
0068	Carborundum.
0060	Al Chem-Tron, Inc.
0139	Resource Recycle Tech/Industrial.

The Agency requests that all comments be submitted to the RCRA Docket Clerk on or before February 21, 1984.

Dated: December 21, 1983.

Jack McGraw,

Acting Assistant Administrator for Solid Waste.

[FR Doc. 84-16 Filed 1-3-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42028A; FRL 2742-3]

Propylene Oxide; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In the First Report of the Interagency Testing Committee (ITC), the ITC designated the category of alkyl epoxides for priority consideration for epidemiological studies and testing for carcinogenicity, mutagenicity, teratogenicity, other chronic effects, and environmental fate. This notice addresses one member of the alkyl epoxides category, propylene oxide. Other members of the category will be addressed in other Federal Register notices.

Under section 4(a) of the Toxic Substances Control Act (TSCA), EPA today is proposing that manufacturers and processors of propylene oxide test this chemical for teratogenicity. EPA is not proposing epidemiological studies or testing for carcinogenicity, mutagenicity, other chronic effects, or environmental fate at this time.

DATES: Submit written comments on or before March 5, 1984. Make requests to submit oral comments by February 21, 1984. If requests are made to submit oral comments, EPA will hold a public meeting on March 19, 1984 on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit X of this preamble.

ADDRESS: Submit written comments in triplicate identified by the document control number (OPTS-42028A) to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Rm. E-543, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9065). In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

I. Introduction

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established in Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated the alkyl expoxides category for priority consideration in its First Report, submitted to EPA in October 1977, and published in the Federal Register of October 12, 1977 (42 FR 55026). The category, as defined by the ITC, includes all non-cyclic aliphatic hydrocarbons with one or more epoxide functional groups. The ITC recommended that the alkyl epoxides category be considered for the following testing: carcinogenicity, mutagenicity, teratogenicity, other chronic effects and environmental fate; it also recommended epidemiological studies. This notice serves as EPA's response to the recommendations of the ITC for one member of the alkyl epoxide category, propylene oxide.

Under section 4(a) of TSCA, the Administrator shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Agency finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

In making section 4(a)(1)(A) findings, EPA considers both exposure and toxicity information to make the finding that the chemical may present an unreasonable risk. For the first finding under section 4(a)(1)(B), EPA considers only production, exposure and release information to determine if there is substantial production and significant or substantial exposure or substantial release. For the second finding under both sections 4(a)(1)(A) and 4(a)(1)(B), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the third finding that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's approach to determining when these findings are appropriately made is described in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 Fr 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 46528 and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations for propylene oxide, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of propylene oxide under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); unpublished health and safety studies submitted by manufacturers and processors of propylene oxide under the TSCA section

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124 and 270

[SW-FRL 2535-6]

Hazardous Waste Management System—The Hazardous Waste Permit Program; Procedures for Decisionmaking

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today amending its hazardous waste permit regulations. These regulations were promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act (RCRA) and were included in the Consolidated Permit Regulations (which have since been deconsolidated). These amendments will allow an owner or operator of an existing hazardous waste management facility who submits an incomplete Part A of the RCRA permit application to receive a notice of the deficiency and an opportunity to cure it before being subject to EPA enforcement for operating without a permit. The Agency is also amending the regulations to require that if the Administrator denies a request for a panel hearing on an initial permit for an existing hazardous waste management facility, he must give his reasons for the denial.

Today's actions are prompted by a settlement stipulation concerning these issues in the *NRDC v. EPA* lawsuit on the Consolidated Permit Regulations. These amendments will not have any economic impact on the regulated community, nor will they have any impact on public health or the environment.

DATE: These amendments are effective October 24, 1984.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free at (800) 424-9346 or in Washington, D.C. at 382-3000. For specific information on these amendments, contact Deborah Wolpe, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382-2222.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1980 and May 19, 1980, EPA promulgated regulations implementing Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. 6901 *et seq.* These regulations established the first phase of a comprehensive program for the handling and management of hazardous waste (40 CFR Parts 260–265, 45 FR 33063–33239). In addition, on May 19, 1980, EPA promulgated the Consolidated Permit Regulations governing five permit programs. On April 1, 1983, the Consolidated Permit Regulations were deconsolidated. Each permit program now appears in a separate part of the Code of Federal Regulations. The changes proposed today concern only the RCRA portion of the Consolidated Permit Regulations, now codified at 40 CFR Part 270.

On May 10, 1983, EPA proposed amendments to the hazardous waste permit regulations, 40 CFR Parts 270 and 124 (48 FR 21098). These proposed amendments: (1) Ensure that owners and operators of hazardous waste management facilities are notified of defects in Part A of their permit applications and given an opportunity to correct these defects; and (2) set forth conditions when a permit applicant may request a hearing under Subpart F and ensure that if the Administrator denies a request for a panel hearing on an initial permit, he must give his reasons for the denial.

EPA has received a number of comments on these amendments. Almost all of the commenters strongly support the amendments as they were proposed. Therefore, today we are promulgating these amendments in final form and responding to questions and comments raised on these issues during the public comment period.

II. Failure To Qualify for Interim Status Because of an Incomplete Part A

An owner or operator of a hazardous waste management (HWM) facility may fail to qualify for interim status for any of the following reasons which are listed in RCRA as prerequisites to qualifying for interim status:

(a) The facility was not in existence on or before November 19, 1980;

(b) The owner or operator failed to comply with Section 3010 of RCRA (*i.e.*, failed to notify, if required); or

(c) The owner or operator failed to submit Part A of his permit application on time.[1]

In addition, an owner or operator may fail to qualify for interim status if he fails to submit a complete part A permit application. Section 270.70 of the regulations states that if, upon examination or reexamination of a Part A application, EPA determines that it failed to meet the standards of the regulations, EPA may notify the owner or operator that the application is deficient. Section 270.70 provides that the result of such a determination is that the owner or operator is not entitled to interim status, and is subject to EPA enforcement for operating without a permit.

On May 10, 1983, the Agency proposed amending 40 CFR 270.70 to provide that before EPA determines that Part A of a permit application is deficient, it will notify the owner or operator in writing of the apparent deficiency. The notice will specify the grounds for EPA's belief that the application is deficient and will give the owner or operator 30 days from the date of receipt to respond to the notification and to explain or cure the deficiency. If, after such notice and opportunity for response, EPA still finds that the application is deficient, it may then take appropriate enforcement action.

The proposed amendments were prompted by a settlement stipulation concerning this issue in the litigation on the Consolidated Permit Regulations, *NRDC v. EPA*, No. 80-1607, and Consolidated Cases (D.C. Cir., filed June 2, 1980).[2]

This proposal, however, merely put in regulatory form what the Agency believes is already standard operating procedure with respect to deficient Part A applications. EPA believes it is reasonable to give permit applicants an opportunity to cure deficient applications before interim status is denied; and, in practice, does allow an applicant to correct, explain or resubmit a Part A, if it is found deficient. This amendment merely includes these procedures in the regulations. All but two of the comments EPA received on this amendment strongly supported adopting it.

One commenter suggested that the time limit of 30 days to correct deficiencies in Part A applications be extended to 45 days. This, the commenter claimed, would allow complex facilities adequate opportunity for further contact with the Agency to resolve uncertainties and submit a complete application. We do not agree that the additional 15 days is necessary. Thirty days should be a more than adequate time period to contact the agency and correct or cure a Part A. Part

[1] Failure to file a Part A on time may not always result in a failure to qualify for interim status. The agency may, by compliance order issued under Section 3008 of RCRA, extend the date by which the owner or operator of an existing HWM facility may submit Part A of its permit application, as there is no statutory deadline for submitting the permit application (see 40 CFR 270.10(e)(3)).

[2] For further discussion of the *NRDC v. EPA* suit and the settlement agreement filed on the RCRA-related issues, see the preamble to the proposed amendments on owner signature and certification, 47 FR 32038 (July 23, 1982).

A's consist of straight-forward requests for information which the applicant should already have on hand, such as a description of the processes to be used for treating, storing, or disposing of waste at the facility; the design capacity of these processes; the location of the facility, etc. An extra fifteen days is not necessary for such information needs.

One commenter opposed any change to 40 CFR § 270.70(b). The commenter stated that such a change raises the question of whether there are still owners and/or operators who have not filled out a proper Part A application. The commenter was concerned that the Agency is still looking through delinquent Part A's to determine deficiencies, rather than calling in Part B's.

The Agency will always be receiving Part A applications when we change the regulations to regulate facilities that may have originally been exempted (e.g., small quantity generators, new wastes). Under these circumstances a facility may still submit a Part A application and may then qualify for interim status if it was in existence on November 19, 1980.

The promulgation of this amendment does not affect the Agency's current priority in permitting hazardous waste facilities. Our priorities are still focused on calling Part B's and issuing permits to facilities as quickly as possible rather than reviewing delinquent Part A applications. However, since we may always receive new or revised Part A's, we believe today's change to § 270.70 is reasonable both to put in regulatory form what is already standard procedure and to assuage the litigants' concerns in this area.

III. Opportunity for a Hearing Prior to Denial of an Initial Permit

On May 10, 1983, EPA also proposed amending 40 CFR 124.12 to provide that during the 45 day public comment period a permit applicant may request a panel hearing pursuant to § 124.114 for initial RCRA permits. The applicant must explain in his request why he believes that the issues for which he requests a hearing are genuine issues of material fact. He must also explain why these are determinative issues, *i.e.*, which are likely to influence the outcome of one or more contested permit conditions, and which would require extensive changes to the facility. If the regional Administrator denies the request, he would have to send a brief written statement to the applicant explaining his reasons for concluding that no determinative issues have been presented for resolution in a panel hearing. The basic reason for this amendment is to provide some assurance that a panel hearing will not be arbitrarily denied.

The petitioners in the NRDC lawsuit raised several issues concerning a hearing on the issuance or denial of an initial RCRA permit. They argued that due process requires the opportunity for a hearing in all cases before a permit is denied for a facility operating under interim status. In addition, they argued that the imposition of extensive, expensive conditions in a permit might be tantamount to denial of a permit, therefore, a hearing should be available in such situations as well. They believed that the existing regulations did not provide for a hearing in all instances.[3]

It is EPA's position that formal adjudicatory hearings are not required for the issuance or denial of RCRA permits; that an informal public hearing plus the notice requirements currently in the regulations are sufficient to satisfy due process requirements.[4] The current regulations provide for notice of what the Agency proposes to do, an opportunity to challenge that proposal both through written comments and informal public hearing, a response to comments, and a decision based on administrative record. Section 7004(b) of RCRA provides for an informal public hearing upon receipt by the Director of a written notice of opposition to the Agency's intent to issue a RCRA permit and of a request for such a hearing.

Petitioners also believed that the May 19, 1980 regulations only gave a right to a public hearing in situations where EPA proposed to issue a permit. This was not EPA's intent. As clarified in amendments promulgated on July 15, 1981 (46 FR 36704), the Agency intends that the requirement to hold an informal hearing (when one is requested) apply to cases where the Agency has tentatively decided to issue a permit. The term "draft permit" applies to both.

Finally, the petitioners were also concerned that in some instances, there would be complicated factual issues that could be addressed better through a formal, rather than an informal hearing. As the regulations are currently written, the Regional Administrator always has the discretion to hold a formal panel hearing. However, the petitioners objected to a lack of assurance in the regulations that they would receive a written response to a request for such a hearing, should the Regional Administrator deny the request. They were concerned that there would be situations where EPA and the permit applicant would disagree about changes necessary to bring the facility into compliance with the regulations. In situations where the Regional Administrator proposes to issue a permit, but the applicant disagrees as to major permit conditions, the petitioners want the opportunity for a panel hearing.

As a matter of policy, EPA has determined that permit applicants should have an opportunity for a panel hearing where there is a tentative decision to deny the initial permit for an existing facility, and where the applicant and EPA disagree on major conditions in the initial draft permit for an existing facility. Today's final amendment to § 124.12(e)(2) provides the assurance that a panel hearing will not be arbitrarily denied.

All of the comments the Agency received on this amendment urged that the amendment be adopted as proposed. One commenter requested clarification on an apparent contradiction as to whether a panel hearing is considered a formal or an informal hearing. The commenter claimed that footnote 5 of the preamble in the proposed rule (45 FR 21099) states that panel hearings are considered formal adjudicatory hearings as they conform to the formal hearing requirements of the Administrative Procedure Act, while the preamble seems to indicate that the panel hearing is considered an informal hearing. They quote the following passages of the preamble:

> * * * the Agency intends that the requirement to hold an *informal hearing* (when one is requested) apply to cases where the Agency has tentatively decided to deny a permit as well as when the Agency has tentatively decided to issue a permit (48 FR at 21099, emphasis added).

and later:

> As a matter of policy, EPA has determined that permit applicants should have the opportunity for a *panel hearing* when there is tentative decision to deny the initial permit * * * (48 FR 21099, emphasis added).

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[3] There are three types of hearings available under Part 124. These are: (1) *Public Hearings.* Public hearings must be held whenever the Director receives written notice of opposition to a RCRA draft permit and a request for a hearing within 45 days of public notice of the draft permit. The Director may also hold such a hearing at his discretion. (See 40 CFR 124.12(); (2) *Evidentiary hearings.* Evidentiary hearings under Subpart E of Part 124 are formal adversarial hearings conducted by a judicial officer pursuant to formal rules of practice; and (3) *Panel hearings.* Panel hearings under Subpart F of Part 124 are nonadversial hearings before a presiding officer and a panel consisting of three or more EPA employees having special expertise or responsibility in areas related to the issues being decided. Evidentiary hearings and panel hearings are both considered formal adjudicatory hearings, as they conform to the formal hearing requirements of the Administrative Procedure Act. Public hearings are considered informal hearings.

[4] See 45 FR 33409–33411 (May 19, 1980).

This is not a contradiction. In the first quote, we are simply explaining that an informal hearing, *i.e.*, a public hearing, is all that is required to satisfy due process requirements. In the second quote, we are stating that over and above due process requirements, EPA's policy will be to allow permit applicants an opportunity for a panel hearing when there are factual issues which may be addressed better through a formal, *i.e.*, a panel hearing.

Another commenter has requested that the Agency state clearly what the proper procedure would be if a hearing was requested and then denied. They suggest that there should be administrative recourse to the Regional Administrator's decision.

If a hearing has been properly requested under § 124.114, and the Regional Administrator denies the request, the applicant will receive a brief written statement of the Regional Administrator's reasons for concluding that no determinative issues have been presented for resolution in a panel hearing (see today's amendment to § 124.12). The Regional Administrator shall then prepare a recommended decision under § 124.124. Any person whose hearing request has been denied may then appeal that recommended decision to the Administrator as provided in § 124.91.

It should be noted, as it was in the proposal (see 48 FR 21200), that in circumstances where a permit has been appealed, and no formal hearing was held, the Administrator may remand the appeal to the Regional Administrator, and direct the Regional Administrator to hold a non-adversary panel hearing.

IV. Economic Impact

These amendments will not have any economical impact on the regulated community. As stated in the background information, it is standard operating procedure for the Agency to allow an applicant the opportunity to correct, explain or cure an incomplete Part A of the RCRA permit. The amendment to § 270.70 therefore, does not change anything but the regulatory language.

The amendment to § 124.12(e) requires the Regional Administrator to provide a written reason for denying an applicant's request for a formal hearing. This change increases the paperwork of the Regional Administrator, but does not effect the regulated community.

V. Executive Order 12291

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

An annual effect on the economy of $100 million or more;

A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or expert markets.

This regulation is not major because it will not result in an effect on the economy of $100 million or more. It merely provides some procedural safeguards upon the failure to qualify for interim status and the issuance or denial of a RCRA permit. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. These amendments are not major regulations. Therefore, no Regulatory Impact Analysis is being prepared.

These amendments were submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, EPA must prepare a regulatory flexibility analysis for all final rules to assess their impact on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This regulation will not have any economic impact on owners and operators of hazardous waste management facilities (including those which are small entities). Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Dated: April 18, 1984.

William D. Ruckelshaus,

Administrator.

List of Subjects

40 CFR Part 270

Administrative practice and procedure, Air-pollution control, Hazardous materials, Reporting and record-keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Waste pollution control, Water supply, Indians-lands.

40 CFR Parts 270 and 124 are amended as follows:

PART 270—[AMENDED]

1. The authority citation for Part 270 reads as follows:

Authority: Sections 1006, 2002(a), 3005, 3007 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA) (42 U.S.C. 6901, 6912(a), 6925, 6927 and 6974).

2. In Part 270, § 270.70 is amended by revising paragraph (b) to read as follows:

§ 270.70 Qualifying for interim status.

* * * * *

(b) Failure to qualify for interim status. If EPA has reason to believe upon examination of a Part A application that it fails to meet the requirements of § 270.13, it shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for EPA's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in his Part A application. If, after such notification and opportunity for response, EPA determines that the application is deficient it may take appropriate enforcement action.

PART 124—[AMENDED]

3. The authority citation for part 124 reads as follows:

Authority: The Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; the Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 1857 et seq.

4. In Part 124, § 124.12 is amended by revising paragraph (e) to read as follows:

§ 124.12 Public hearings.

* * * * *

(e)(1) At his or her discretion, the Regional Administrator may specify that RCRA or UIC permits be processed under the procedures in Subpart F.

(2) For initial RCRA permits for existing HWM facilities, the Regional Administrator shall have the discretion to provide a hearing under the procedures in Subpart F. The permit applicant may request such a hearing pursuant to § 124.114 (no) one or more on

issues, if the applicant explains in his request why he or she believes those issues: (1) Are genuine issues to material fact; and (2) determine the outcome of one or more contested permit conditions identified as such in the applicant's request, that would require extensive changes to the facility ("contested major permit conditions"). If the Regional Administrator decides to deny the request, he or she shall send to the applicant a brief written statement of his or her reasons for concluding that no such determinative issues have been presented for resolution in such a hearing.

[FR Doc. 84-10345 Filed 4-23-84; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 2488-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today amending its regulations under the Resource Conservation and Recovery Act to change the hazard class under which commercial chemical products containing low concentrations of warfarin and zinc phosphide are listed. Waste products containing either warfarin at concentrations of 0.3% or less, or zinc phosphide at concentrations of 10% or less, are now listed as hazardous wastes when discarded, instead of acutely hazardous wastes. This change has been made because these lower concentration formulations of warfarin and zinc phosphide do not meet the criteria for classification as acutely hazardous waste.

EFFECTIVE DATE: November 12, 1984.

ADDRESSES: The public docket for this regulation is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 am to 4:00 pm Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Wanda LeBleu-Biswas, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

I. Background

Under the authority of Section 3001 of the Resources Conservation and Recovery Act of 1976, as amended (RCRA), the Agency promulgated, as 40 CFR 261.33 of the regulations, a list of commercial chemical products or manufacturing chemical intermediates which are hazardous wastes if they are discarded or intended to be discarded. The phrase "commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use, and which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. 40 CFR 261.33 also lists as hazardous wastes off-specification variants and the residues and debris from the clean-up of spills of these chemicals, if discarded or intended to be discarded (§ 261.33 (b) and (d)). Finally, § 261.33 lists as hazardous wastes the containers, or the residues remaining in the containers, or the inner liners removed from the containers that have held those chemicals listed in § 261.33(e), if discarded or intended to be discarded, unless the containers or inner liners have been triple-rinsed with an appropriate solvent, or have been decontaminated in an equivalent manner, or the inner liners have been removed. A chemical substance is listed in 40 CFR 261.33(e), and is subject to a small quantity generator exclusion limit of 1 kilogram per month, if it meets the criteria of § 261.11(a)(2); that is, it is acutely hazardous because it has been shown in animal studies to have an oral LD_{50} (rat) toxicity value of less than 50 milligrams per kilogram, a dermal LD_{50} (rabbit) toxicity value of less than 200 milligrams per kilogram, an inhalation LD_{50} (rat) toxicity value of less than 2 mg/l, or is otherwise capable of causing or otherwise significantly contributing to serious illness.

Chemical substances are listed in § 261.33(f), and are subject to the small quantity generator exclusion limit of 1000 kilograms per month,[1] if they satisfy § 261.11(a)(1), exhibiting identified characteristics of EP toxicity, reactivity, corrosivity, or ignitability; or § 261.11(a)(3), satisfying the criteria for listing as toxic, *i.e.*, they have been shown in scientific studies to be toxic, mutagenic, teratogenic, or carcinogenic to humans, other mammals or aquatic animals, or to be phytotoxic.

The National Pest Control Association (NPCA), Vienna, VA had petitioned the Agency to exclude warfarin- and zinc phosphide-containing commercial chemical products used for pest control from the list of acutely hazardous wastes. Petitions had also been received from Sterling Drug Company, New York, NY and the Ralston Purina Company, St. Louis, MO, requesting that certain warfarin-containing products be excluded.

[1] EPA publicly committed to reexamine the small quantity generator exclusion limit, and these products may be subject to a revised small quantity generator exclusion limit at a later date. In fact, there are bills in the Congress at this time which, if passed, will decrease the small quantity generator exclusion limit to less than 1000 kilograms per month.

II. Petitions for Rulemaking and Proposed Rule

In light of the data submitted by the Sterling Drug Company in their petition, EPA tentatively concluded that commercial chemical products or manufacturing chemical intermediates or any off-specification chemical product containing warfarin at concentrations of 0.3% or less, or containing zinc phosphide at concentrations of 10% or less do not meet the criteria for listing as an acutely hazardous waste since the acute oral LD_{50} (rat) value exceeds 50 mg/kg. EPA therefore proposed on February 23, 1983, that commercial chemical products or manufacturing chemical intermediates or any off-specification chemical product containing warfarin at concentrations of 0.3% or less, or zinc phosphide at concentrations of 10% or less, are not acutely hazardous and should not be listed in § 261.33(e).

However, the Agency further proposed that formulations containing 0.3% or less warfarin should be listed under § 261.33(f) because of their chronic toxicity. In addition, the petitioner's data showed that formulations containing zinc phosphide at concentrations of 10% or less are somewhat toxic, and should not be completely removed from regulation under § 261.33. Rather, the Agency therefore proposed that formulations containing zinc phosphide at concentrations of 10% or less should be listed under § 261.33(f) because of their toxicity (48 FR 7714–7716).

III. Comments Received and Final Rule

The Agency received only two comments on the proposed rule: one from the State of New Jersey Department of Environmental Protection, and one from the State of Texas Department of Health. Both comments supported the Agency's proposal. Both commenters agreed with the Agency's proposed action.

Accordingly, EPA is today amending 40 CFR 261.33(e) to revise the listing for warfarin to include only those products which contain more than 0.3% warfarin, and is also amending § 261.33(f) to add warfarin when present at concentrations of 0.3% or less as EPA Hazardous Waste No. U248. EPA is also amending both § 261.33(e) to revise the listing for zinc phosphide to include only those products which contain more than 10% of the active substance, and § 261.33(f) to add commercial chemical products, manufacturing chemical intermediates or spill residues containing zinc

phosphide at concentrations of 10% or less as EPA Hazardous Waste No. U249.

As a result of today's action, the concentration of warfarin or zinc phosphide in a discarded commercial chemical product becomes critical in determining whether the waste is regulated under § 261.33 (e) or (f). In interpreting today's regulation, EPA intends that the generator shall measure the concentration in the waste resulting from the intended use (*e.g.*, application strength pesticide solutions remaining in the application tank) rather than the initial concentration in the purchased product (unless, of course, the product itself is discarded). Any dilution or other adulteration of discarded products for the purpose of reducing the concentration of warfarin or zinc phosphide, however, is hazardous waste treatment (it is "designed to change the * * * chemical character * * * of * * * the hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous * * * (see RCRA Section 1004(34))) and is subject to the permit requirements of Subtitle C.

IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions to the regulations take effect six months after promulgation. Therefore, this amendment will take effect November 12, 1984.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final regulation is not major because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. In fact, this regulation will reduce the overall costs and economic impact of EPA's hazardous waste management regulations. There will be no adverse impact on the ability of United States-based enterprises to compete with the foreign-based enterprises in domestic or export markets. Because this amendment is not a major regulation no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in Room S-212A at EPA.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small business, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will generally have no adverse economic impact on small entities (as defined in the Regulatory Flexibility Act). Rather, since small pesticide applicators will now not have to dispose of small quantities of certain waste zinc phosphide or warfarin pesticides as hazardous wastes, today's action will result in a savings to small business. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

VIII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: May 3, 1984.

William D. Ruckelshaus,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 and 6922).

2. Section 261.33(e) is amended by revising the listings for warfarin, 3-(alpha-acetonylbenzyl)-4-hydroxycoumarin and salts, and zinc phosphide to read as follows:

Hazardous waste No.	Substance
*	* * * * *
P001	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts, when present at concentrations greater than 0.3%.
*	* * * * *
P001	Warfarin, when present at concentrations greater than 0.3%.
P122	Zinc phosphide, when present at concentrations greater than 10%.

3. Section 261.33(f) is amended by adding the following substances:

Hazardous waste No.	Substance
*	* * * * *
U248	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts, when present at concentrations of 0.3% or less.
*	* * * * *
U248	Warfarin, when present at concentrations of 0.3% or less.
U249	Zinc phosphide, when present at concentrations of 10% or less.

[FR Doc. 84-12507 Filed 5-9-84; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 2564-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act by exempting lime stabilized waste pickle liquor sludge generated from the iron and steel industry (Standard Industrial Classification Codes 331 and 332) from the presumption of hazardousness presently contained in the regulations. These wastes may still be hazardous, however, if they exhibit any of the characteristics of hazardous waste. EPA is taking this action in response to comments to an interim final rule and to a rulemaking petition submitted by the American Iron and Steel Institute (AISI). The effect of this amendment is to reduce or eliminate the regulatory requirements applicable to those individuals who generate and manage these wastes and now comply with the requirements of the hazardous waste management regulations.

DATES: Final rule effective December 5, 1984.

ADDRESSES: The public docket for this final rule is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or (202) 382-3000. For technical information contact Jacqueline Sales, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background

The regulations implementing the hazardous waste management system under Subtitle C of the Resource Conservation and Recovery Act (RCRA) are published in Title 40 of the Code of Federal Regulations (CFR) in Parts 260 to 266, 124, and 270 and 271. These regulations include lists of hazardous wastes (40 CFR 261.31 to 261.33) and, as originally promulgated, included two wastes from steel finishing operations: (1) Spent pickle liquor from steel finishing operations (K062) and (2) sludge from lime treatment of spent pickle liquor from steel finishing operations (K063). (See 45 FR 33123, May 19, 1980.)

Spent pickle liquor (K062) is a strongly acidic solution generated from a process that removes oxide scale from steel surfaces. These wastes commonly contain high levels of hexavalent chromium and lead. The sludge from treatment of spent pickle liquor (K063) is generated by a well known technique involving lime neutralization, flocculation, clarification, and, in most cases, dewatering of the resultant sludge. Sludge generated from this treatment process is generally landfilled; thus, the Agency was concerned that high levels of lead and hexavalent chromium could migrate from these wastes, persist in the environment, and result in contamination of drinking water sources. EPA's compendium of damage incidents contains several cases of environmental damage resulting from land disposal of inadequately neutralized spent pickle liquor sludge. (See Background Document to wastes K062 and K063, May 2, 1980.)

During the comment period on the May 1980 rules, the Agency received a number of comments requesting that lime stabilized waste pickle liquor sludge (LSWPLS) [1] be removed from the list of hazardous wastes. In particular, the American Iron and Steel Institute (AISI) presented limited data to the Agency which indicated that the toxic constituents of concern, hexavalent chromium [2] and lead, are present in the Extraction Procedure (EP) extracts at levels well below the maximum EP toxicity limits.

On November 12, 1980, in response to these comments, the Agency deleted LSWPLS (K063) from the hazardous waste list. However, at that time, the Agency felt that insufficient data was submitted by the regulated community to justify a conclusion that LSWPLS typically and frequently will not be hazardous. Therefore, the Agency relied on the provisions of 40 CFR 261.3 (c)(2) to retain regulatory control. These sludges are considered to be hazardous under that provision because they are derived from the treatment of a listed hazardous waste (K062). (See 40 CFR 261.3(c)(2).) In addition, they remain hazardous wastes until they no longer exhibit any of the characteristics of hazardous waste and until they are excluded from Subtitle C regulation by the Agency on a site-specific basis under 40 CFR 260.20 and 260.22. (See 40 CFR 261.3(d).)

Of major concern to the Agency was whether these sludges would leach significant concentrations of lead and hexavalent chromium. Thus, in evaluating exclusion petitions, we indicated that we would consider petitions for individual facilities for these wastes to be adequate if petitioners demonstrate that the concentrations of lead and hexavalent chromium in the EP extracts are significantly below the maximum and proposed maximum concentration levels contained in 40 CFR 261.24 (See 45 FR 74883, November 12, 1980). In addition, EPA indicated that the Agency would consider an industry-wide rulemaking petition to exclude these wastes from RCRA Subtitle C jurisdiction if the steel finishing industry submitted representative data which demonstrated that these wastes, on an industry-wide basis, are non-hazardous. (See 45 FR 74888, November 12, 1980.)

II. Reason and Basis for Today's Amendment

On March 16, 1981, AISI submitted a rulemaking petition requesting an industry-wide exclusion of LSWPLS. AISI submitted EP extract data from 14 steel finishing operations to support their claim that hexavalent chromium and lead are present in the LSWPLS at low levels and in essentially an immobile form.

All analyses were performed using the EPA Extraction Procedure (40 CFR Part 261, Appendix II). AISI claims that the data submitted were representative of sludges generated from both carbon steel and stainless steel finishing operations. The wastes included in the survey were collected from several stages in the treatment process. For example, several samples were obtained from treatment plant clarifiers after neutralization, and from sludge holding impoundments. Additional samples included vacuum filter sludges. Of the 59 samples analyzed, average hexavalent chromium and lead concentrations from carbon steel manufacturing were 0.025 and 0.10 ppm, respectively, with a maximum single value of 0.030 ppm for hexavalent chromium and 0.60 ppm for lead; for stainless steel manufacturing,

[1] Lime stabilized waste pickle liquor sludge was originally referred to as lime neutralized waste pickle liquor sludge; however, we believe that the term "lime stabilized . . ." better characterizes the waste.

[2] On October 30, 1980, the Agency amended the basis for listing these wastes to indicate that they are listed due to the presence of hexavalent chromium rather than total chromium. See 45 FR 72029.

the results were an average hexavalent chromuim and lead concentration of 0.10 and 0.07 ppm, respectively with a maximum single value of 0.22 ppm for hexavalent chromium and 1.04 ppm for lead (see Table 1).[3] Therefore, AISI argued that both hexavalent chromium and lead are present in the waste in essentially an immobile form, and should not automatically be deemed hazardous.

TABLE 1—LIME STABILIZED WASTE PICKLE LIQUOR SLUDGE

(EP extract values (ppm)) *

Facility	Lead	Hexavalent chromium
1+	<0.030	0.089
2+	0.039	0.008
3	0.0027	
4+	0.04	0.16
5+	<0.02	
6	0.37	
7	0.15	
8	0.60	
9	0.12	0.025
10	0.09	
11+	<0.10	
12+	0.055	
13	0.10	
14+	0.18	0.127

* These values represent an average of all samples analyzed from each facility.
+ Specifies steel facilities.
Source: AISI rulemaking petition.

However, the Agency did not view the data submitted in AISI's petition (EP data on LSWPLS from 14 plants) as a representative sampling of the steel finishing industry.[4] The Agency, therefore, investigated additional available data. This investigation included a detailed review of site-specific delisting petitions submitted by the iron and steel industry to exclude spent pickle liquor (K062) or sludge from lime treatment of spent pickle liquor (formerly K063). The particular focus of our review was the level of hexavalent chromium and lead in the EP extracts. Maximum EP extract levels of 2.6 and 1.0 ppm for lead and hexavalent chromium, respectively, were noted (see Table 2). In all cases, the maximum leachate values for hexavalent chromium and lead are well below the maximum permissible EP toxicity limits. For example, 94 percent of all samples (165) analyzed for lead from EPA's database are less than 10 times the National Interim Primary Drinking Water Standard (NIPDWS) while greater than 97 percent of all samples (72) analyzed for hexavalent chromium are less than 10 times the NIPDWS for total chromium. These data support AISI's contention that lead and hexavalent chromium are substantially immobilized in properly stabilized LSWPLS. Furthermore, since lime stabilization of spent pickle liquor within the iron and steel industry is conducted using a well known uniform treatment process, the Agency has concluded that data from both the AISI petition (14 facilities) and delisting petitions (43 facilities) are representative of the steel finishing industry.

TABLE 2.—IRON AND STEEL INDUSTRY, LIME NEUTRALIZED WASTE PICKLE LIQUOR SLUDGE

(EP extract values ppm)[1]

Facility	Lead	Hexavalent chromium
1	0.50	0.10
2	0.29	0.05
3	0.63	0.10
4	0.08	
5	0.45	
6	0.04	0.07
7	0.30	0.01
8	0.02	
9	1.20	0.02
10	1.03	0.01
11	0.05	0.22
12	0.17	0.62
13	0.25	
14	0.57	0.03
15	1.00	0
16	1.36	0.01
17	0.50	
18	0.147	
19	0.52	.005
20	0.06	0.022
21	1.70	0.053
22	0.056	
23	0.19	
24	0.10	0.03
25	0.08	
26	1.00	1.00
27	0.06	0.50
28	0.02	0.02
29	0.15	0.45
30	0.01	0.02
31	0.649	0.058
32	0.12	
33	0.04	
34	0.60	
35	0.42	
36	0.32	
37	0.21	
38	<0.50	
39	0.10	
40	0.11	0.18
41	2.60	
42	0.17	<0.02
43	0.03	

[1] These values represent the maximum EP values for all samples analyzed from each facility.

The Agency also evaluated the iron and steel pickle liquor process to determine whether interfering agents could be present that adversely affect the treatability of these wastes. (See EPA Phase I Report for the Spent Pickle Liquor Listing, Contract No. 68-01-6804, December 1983.) In evaluating this data, it appears that spent pickle liquor from steel finishing operations may be mixed with other process wastes (such as cold rolling waste) before treatment. (See EPA Development Document for Effluent Limitation Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Vol. VI, EPA 440/1-82/024, May 1982.) However, there do not appear to be interfering agents in these other waste streams. These other wastes typically do contain organics, which are contained in an oily layer. However, when these wastes are commingled with spent pickle liquor, the oily layer is emulsified and skimmed off prior to lime treatment. After skimming, the effluent typically contains 10–25 mg/l of oil. However, the amount of oil remaining in the effluent after treatment is usually very low. For example, data from two facilities show oil concentrations of 4 and 6 mg/l in the treated effluent. (See EPA Development Document for Effluent Limitation Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Volumes I and VI; EPA 440/1-82/024, May 1982.) This process, therefore, effectively removes organics before the sludge is generated. Thus, organics are not expected to be present in significant concentrations in LSWPLS nor are they expected to interfere with waste treatment. Data from delisting petitions for LSWPLS from the iron and steel industry, as evidenced by EP extract data, indicate that treatment of spent pickle liquor by this industry is, in fact, effective.

The Agency recently noticed all of this data for public comment. (See Notice of Availability of Data and Request for Comment, 49 *FR* 427, January 4, 1984.) Commenters did not challenge that the data indicated that iron and steel LSWPLS is typically and frequently effectively treated and non-hazardous. (Our response to comments is included as Section VI. of this preamble.)

We therefore have decided to promulgate a final rule excluding LSWPLS generated by plants in the iron and steel industry (Standard Industrial Classification (SIC) Codes 331 and 332) from the "derived-from" rule in 40 CFR 261.3. However, the waste will be considered hazardous if it exhibits a hazardous waste characteristic, and generators are required to make this determination periodically (see 40 CFR 262.11).

III. Regulatory Status of LSWPLS From Industry Categories Other Than Iron and Steel

As stated earlier, LSWPLS is also generated by industries other than the iron and steel industry (e.g., engraving, fabricated metal products, household appliances, commercial treatment facilities, and others). Altbough the

[3] The levels of total chromium in the EP extracts were also analyzed and in general are quite low. However, since the EP toxicity characteristic addresses total chromium, LSWPLS which fails the EP for total chromium remains hazardous waste.

[4] From the Section 3010 notification database and data collected by the Effluent Guidelines Division. The Agency estimates that approximately 424 facilities from many industry categories either generate or manage LSWPLS.

Agency has determined that treatment of spent pickle liquor from the iron and steel industry is typically effective, this may not be the case for LSWPLS generated from other industry categories.

The Agency lacks comprehensive, industry-wide data on these other sludges and also does not have data on whether wastes with interfering properties might be commingled with these sludges. The iron and steel industry likewise has clarified that its petition has no applicability for LSWPLS generated by plants outside the iron and steel industry. Thus, the Agency will continue to process delisting petitions for LSWPLS that is generated in industries other than iron and steel on an individual basis. (See 40 CFR 260.20 and 260.22.)[1] It should be noted that no commenters to the Agency's January 4 notice argued that LSWPLS from other industry categories should be excluded from § 261.3.

IV. EPA's Concern With the Presence of Additional Toxic Constituents in LSWPLS

As discussed earlier, LSWPLS is listed as hazardous because of the presence of significant concentrations of hexavalent chromium and lead. However, the Agency was also concerned that the waste may contain toxic constituents other than hexavalent chromium and lead at levels of regulatory concern. Therefore, we did investigate whether other toxicants could be present in these wastes at significant levels to determine whether we should amend the existing listing for spent pickle liquor (*i.e.*, to modify the listing of LSWPLS to add other toxic constituents to Appendix VII). As we noted in the January 4 notice, the toxic metal nickel is present in LSWPLS from stainless steel operations (it is an essential constituent in the process), and is present in the EP extract from stainless steel LSWPLS. The Agency is continuing to evaluate whether the nickel levels in the extract are of regulatory concern. The Agency did not receive any comments to its January 4 notice regarding nickel. Other toxicants (organic and inorganic) do not appear to be present in the LSWPLS generated by the iron and steel industry in significant concentrations. (See EPA Phase I Report for Spent Pickle Liquor Listing, Contract No. 68-01-6804, December 1983.) Commenters to the January 4 notice likewise did not contend that other hazardous constituents might be present at significant levels. Therefore, the Agency is not proposing to modify the listing to add additional toxic constituents.

V. Response to Comments

As noted above, on January 4, 1984, the Agency made available for public inspection and comments data pertaining to Agency action on the AISI rulemaking petition (see 49 *FR* 427). Few comments were received. Most of the commenters generally agreed that EPA should grant the industry-wide exclusion for LSWPLS generated from the iron and steel industry.

One commenter did express concern, however, that a generic (industry-wide) delisting could result in improper management of spent pickle liquor and LSWPLS (*i.e.*, some generators may mix other hazardous wastes with spent pickle liquors or lime slurry); therefore, they argued that the Agency should impose management standards to assure that LSWPLS is managed properly.

First, it should be remembered that spent pickle liquor mixed with other hazardous waste remains a hazardous waste under § 261.3(a) (2) (iii) and (iv). In addition, today's action applies only to iron and steel industry LSWPLS arising from normal waste treatment operations. Only these wastes were the subject of AISI's petition, and only these wastes were considered by the Agency. Addition of hazardous wastes to the treatment process is not part of the lime precipitation and stabilization process for treating spent pickle liquor. Today's action does not apply to treatment sludges resulting from any other type of treatment.

As to the commenter's reference to management standards, the EP toxicity test is used to simulate the release of the hazardous constituents, hexavalent chromium and lead, in the absence of management standards. The available data indicate that these wastes would not present a substantial hazard to human health and the environment in the absence of management standards. Therefore, the Agency does not believe it necessary to impose such standards for LSWPLS generated from the iron and steel industry.

Another commenter operates a multiple waste treatment facility which treats several hundred different wastes (*e.g.*, paint wastes, industrial process wastes, metal-bearing sludges, etc.) which result in a "stabilized" waste treatment residue. In granting a temporary exclusion for several of the commenter's proposed facilities, the Agency required a waste management strategy to assure the stability of the treated wastes. The management plan involves testing each batch of stabilized waste for a number of specific parameters (*i.e.*, metals, total organic carbon, etc.). The stabilized wastes are also required to be placed in demonstration cells (for two years) surrounded by monitoring wells to verify long-term stability. The commenter believes that the Agency should treat all generators equally by applying the same management requirements to assure that neutralization/stabilization of the LSWPLS is also conducted in an environmentally sound manner.

The Agency believes that there is no unequal regulatory treatment of multiple waste treatment facilities. The Agency requires all wastes from multiple waste treatment processes that are "delisted" from regulation to be handled in the same manner. (See temporary exclusions granted to Tricil Environmental Services (formerly Systech) in Hilliard, Ohio, Nashville, Tennessee, and Muskegon Heights, Michigan, 46 *FR* 17197, March 18, 1981; Chem-Clear, Cleveland, Ohio, 46 *FR* 40165, August 6, 1981; and Envirite (formerly Liqwacon) in York, Pennsylvania, Thomaston, Connecticut, Canton, Ohio, and Harvey, Illinois, 46 *FR* 61281, December 16, 1981.) The Agency does not require generators treating a single waste stream by well-understood treatment processes to demonstrate treatment efficacy by these same means. The reasons for requiring batch testing of the commenter's treated wastes—a wide variety of hazardous wastes treated by a new process not in widespread use—thus are not present here, and would be inappropriate for LSWPLS.

VI. Effect of Today's Action

Today's amendment, therefore, excludes LSWPLS generated by the iron and steel industry from being defined as a hazardous waste by 40 CFR 261.3. Persons generating this waste must still determine whether this solid waste exhibits any of the characteristics of hazardous waste identified in Subpart C

[1] The Agency is now evaluating the following delisting petitions for LSWPLS from plants outside of the iron and steel industry: Leggett & Platt, Inc. (=0191); Chemline Corp. (=0192); American Nickeloid Co. (=0193); Robertson, Inc. (=0303); Calvin Ind. (=0310); Liquid Dynamics (=0323); National Standard (=0324); General Electric (=0347); Beech Aircraft Corp. (=0397); Conversion Systems, Inc. (=0404); GMC Harrison Radiator (=0424); Special Metals (=0375); Cleaners Hanver Co. (=0433); True Temper Sport, Inc. (=0451); Steel Warehouse Co. (=0460); MCO Automobile (=0464); H. H. Robertson Co. (=0471); CWM (=0491); Teledyne Monarch Rubber (=0507); All-Brite (=0523); International Galvanizing Co. (=0524); Fosbrink (=0005); Dresser Industries (=0024); Florida Wire & Cable (=0026); Wiremill Inc. (=0034); American Recovery Co. (=0056); Mayfag (=0051); Chem Met Services (=0059); Carborundum (=0068); AL Chem-Tron, Inc. (=0060); Resource Recycle Tech-Industrial (=0139).

of Part 261. The Agency is amending § 261.3(c)(2) of the regulations to indicate this change. The following site-specific delisting petitions submitted to the Agency to exclude LSWPLS from the iron and steel industry will therefore become moot by today's final rule:

IRON AND STEEL INDUSTRY

Petition No.	Facility
0536	U.S. Steel Corp.
0120	Copperweld Steel Co.
0271	Union Carbide.
0027	Bekaert Steel Wire.
0226	Carpenter Technology.
0014	Johnson Steel & Wire.
0475	Olin Corp.
0097	Allegheny Ludlum.
0099	Keystone Group.
0348	Bethlehem Steel Corp.
0106	Jones & Laughlin Steel.
0115	Timken Co.
0423	Quanex Corp.
0117	Trent Tube.
0314	Ohio Steel Tube Co.
0455	Inland Steel/Indiana Harbor Works.
0482	Mid West Fabricating Co.
0105	Great Lakes Steel.
0298	Ingersoll Johnson Steel Co.
0158	Al Tech Specialty Steel Corp.
0088	Crucible, Inc.
0029	Keystone Steel Products.
0095	ARMCO, Inc.
0063	Keystone Group.
0075	Ohio Steel Tube Co.
0080	Gulf & Western.
0065	ARMCO, Inc.
0094	Allegheny Ludlum.
0108	Do.
0110	Do.
0134	Empire Detroit Steel Division.
0159	General Cable.
0160	Al Tech Specialty Steel Corp.
0266	General Cable.
0179	Lehigh Lancaster.
0203	Vulcan Rivet & Bolt Corp.
0132	Peerless Chain Co.
0369	Sandvik Inc. Specialty Steel.
0144	Bekaert Steel Wire Corp.
0273	Bethlehem Steel Corp.
0193	Do.
0243	Plymouth Tube Co.
0069	Triangle PWC.

VII. Procedural Issues

EPA is issuing this regulation as a final rule. The action is taken in response to comments on the May 19, 1980 interim final rule listing LSWPLS as a hazardous waste. The Agency also noticed AISI's responsive rulemaking petition for public comment, and took public comment on the information it gathered between 1931 and the present. Under these circumstances, the Agency believes there has been ample notice and comment on this action.

VIII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final regulation is not a major rule because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. In fact, this regulation will reduce the overall costs and economic impact of EPA's hazardous waste management regulations. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in Room S-212 at EPA Headquarters.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.*, whenever an agency is required to publish general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will generally have no adverse economic impact on small entities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, and Recycling.

Dated: May 30, 1984.

William D. Ruckelshaus,

Administrator.

PART 261—[AMENDED]

For the reasons set out in the preamble, 40 CFR Part 261 is revised as follows:

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. 40 CFR 261.3 is amended by revising paragraph (c)(2) to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(c) * * *

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation run-off) is a hazardous waste.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste: (A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC codes 331 and 332).

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